Shadowboxing: legal mobilization and the marginalization of race in the Dutch metropole, 1979-1999

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1. Between the shadows

Ethnic groups stand in the shadow of justice. We will therefore have to consider extra-legal means to ensure that the fight against racism does not become a party of shadow boxing.
– Tansingh Partiman, January 1983[1]

In January 1983, over five hundred people gathered to discuss legal strategies against what they perceived to be the rising problem of racial discrimination in the Netherlands. Violent crimes against people racialized as non-white were increasingly in the news, and for the first time since the Second World War, an openly anti-immigrant, some said even racist, party had gained a seat in the Dutch parliament. Eager to avoid what they saw as comparatively worse 'race relations' in the United Kingdom and United States, but also inspired by legal advocacy there, a diverse group of Dutch law professors, policy makers, advocates and activists gathered to brainstorm options. One result of that meeting was the creation of the Landelijk Bureau Racismebestrijding (National Office to Combat Racism, LBR), an 'independent organization' fully funded by the Dutch Ministry of Justice. The goal of the organization would be 'combatting racial discrimination using legal means'.[2]

[1] Quoted in Hansje Ausems-Habes (ed), *Congres Recht en Raciale Verhoudingen: verslag van een op 21 januari 1983 Gehouden Congres* (Gouda Quint 1983).

[2] A.M. van Maurik, "Akte van Oprichting, Stichting Landelijk Bureau Ter Bestrijding van Rassendiscriminatie." (A.M. van Maurik, notaris, April 9, 1985), IDEM Rotterdam Kennisbank. Most of the internal LBR reports and documents I refer to in this manuscript are stored at the IDEM Rotterdam Kennisbank, a collection of more than 44,000 documents related to inclusion, discrimination and (LGBT-) emancipation. The collection and catalogue of the LBR formed the original basis for the IDEM repository. "IDEM Rotterdam Kennisbank," IDEM Rotterdam, accessed January 7, 2025, https://idemrotterdam.nl/kennisbank/.

For fifteen years, the LBR operated with a mandate to use 'legal means' to accomplish its goal.[3] However an online database of jurisprudence addressing racial discrimination in the Netherlands during this time lists only ten cases in which the LBR was a named party in an adversarial legal action.[4] Of these cases, more than half were not heard in courts of law, but before internal complaint boards, or ombudspersons; in one court case, the LBR was the defendant, sued by a political party it accused of racist practices.[5] By contrast, in the same period, the LBR published thousands of pages of reports, jurisprudence, articles and advisory documents. Its board of directors included lawyers, academics, and activists, many of whom would go on to careers in universities and government institutions. Yet neither the actions of the LBR nor other legal strategies to address racial discrimination in the Netherlands have been addressed in the ubiquitous writings on Dutch 'minorities policies' or 'post-colonial communities' that have appeared in the intervening years,[6] nor have they been the subject of theorization on how law

[3] The LBR existed as an organization for twenty-four years, but only the first fifteen focused on the law. In 1999, the LBR merged with the Anti-Discriminatie Overleg (ADO) and the Antiracisme Informatie Centrum (ARIC), and amended its charter to focus more on general education and advocacy.

[4] "Artikel 1 Jurisprudentiedatabase," accessed June 20, 2022, http://art1.inforlibraries.com/art1web/Vubis.csp?Profile=Profile3. The Jurisprudentiedatabase is a subset of the IDEM Rotterdam Kennisbank. Like the *kennisbank*, the database began with data collected by the LBR and published under the title *Rechtspraak Rassendiscriminatie*. The database currently contains 1688 cases or matters, 1026 of which occurred during the years 1985 and 2007 when the LBR was active. During the years under study in this dissertation, 1985-2000, the LBR is a named party in 12 separate cases, but two of these are appeals of the same underlying matters so I have only counted them once each.

[5] Centrum Democraten v HIFD, LBR, TZ en HTFD, online Art.1 Jurisprudentiedatabase (Rechtbank 's-Gravenhage 1989).

[6] See e.g. Ulbe Bosma, ed., *Post-Colonial Immigrants and Identity Formations in the Netherlands*, IMISCOE Research (Amsterdam: Amsterdam University Press, 2012); Ulbe Bosma, *Terug Uit de Koloniën: Zestig Jaar Postkoloniale Migranten En Hun Organisaties*, Postkoloniale Geschiedenis in Nederland (Amsterdam: Bert Bakker, 2009); Ulbe Bosma and Marga Alferink, "Multiculturalism and Settlement: The Case of Dutch Postcolonial Migrant Organisations," *Journal of International Migration and Integration* 13, no. 3 (August 1, 2012): 265–83, https://doi.org/10.1007/s12134-011-0196-2; Henk Molleman, "Het minderhedenbeleid in retrospectief," *Socialisme & Democratie*, De drie I/s: Immigratie -- Integratie -- Islam, 60, no. 1/2 (2003): 62–66; Philomena Essed and Kwame

constructs race in the Dutch context. This project addresses those absences using an in-depth case study of the LBR to explore the interactions between *race* and *law* in the postcolonial Dutch metropole.[7]

This project defines *race*, not as a static or biological category, or even an aspect of identity, but as a 'technology for the maintenance of human difference.'[8] Race so defined often manifests as a discourse, operating, as Stuart Hall writes, 'like a sliding signifier [referencing] not genetically established facts but the systems of meaning that have come to be fixed in the classifications of culture.'[9] The discourse and technology of racialization are always *enacted*; they *act* on bodies and impact the material existence of both the actors and the acted upon; the ways they are enacted 'then organize and are inscribed within the practices and operations of *relations of power* between groups.'[10] Once racializing practices become features of a society, they form the superstructure on which that society rests. This is what sociologist Eduardo Bonilla-Silva means when he writes about 'racialized social systems.'[11] This race-as-practice approach stands in contrast to the ideological or psychological conceptions of racism that rest on logics of individual belief,

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Nimako, "Designs and (Co)Incidents: Cultures of Scholarship and Public Policy on Immigrants/Minorities in the Netherlands," *International Journal of Comparative Sociology* 47, no. 3–4 (August 2006): 281–312, https://doi.org/10.1177/0020715206065784; But see Rob Witte, *Al Eeuwenlang Een Gastvrij Volk: Racistisch Geweld En Overheidsreacties in Nederland (1950-2009)* (Amsterdam: Aksant, 2010), http://web.b.ebscohost.com.ezproxy.leidenuniv.nl:2048/ehost/ebookviewer/ebook/ZTAwMHh3d19fMzg3NDA0X19BTg2?sid=6eb2831c-c661-4d42-9f3e-0d56eda7db5a@sessionmgr101&vid=0&format=EB&lpid=lp_5&rid=0 (briefly citing LBR failures to aggregate incidents of racialized violence as one reason no such national-level data exists).

[7] Scholarly consensus indicates that the hyphenated term *post-colonial* refers to a time period, while the non-hyphenated *postcolonial* refers to an ongoing condition created by colonial practices. In this work, I choose the non-hyphenated *postcolonial* following the theories of Stuart Hall and others. See e.g. Stuart Hall, *The Fateful Triangle: Race, Ethnicity, Nation* (Cambridge, Massachusetts: Harvard University Press, 2017), 101.

[8] Alana Lentin, *Why Race Still Matters* (Cambridge, UK ; Medford, MA: Polity Press, 2020), 5.

[9] Hall, *The Fateful Triangle*, 45–46.

[10] Hall, 47 (emphasis in the original).

[11] Eduardo Bonilla-Silva, "More than Prejudice: Restatement, Reflections, and New Directions in Critical Race Theory," *Sociology of Race and Ethnicity* 1, no. 1 (January 1, 2015): 75, https://doi.org/10.1177/2332649214557042.

prejudice, or bias, and critiques the effectiveness of self-proclaimed antiracist measures that rest on these logics.

To call attention to *race* as a system of practices, instead of a static trait, I use the term *racialization* or phrase *people racialized as* throughout this dissertation, instead of *race* or descriptors like *white person* or *Black people*.'[12] The term racialization has four benefits which justify its longer word count. First, it pushes back against naturalizing racialized identifiers like *white* or *Black*, reminding us that racialization is always a socially constructed, contextual process. Second, it highlights the fact that *race*, when applied to identity, is often ascribed to people without their consent or in ways that do not correspond to their personal identity or material reality.[13] *Racialization* calls attention to these processes of ascription. Third, the term reminds us that race and racialized identities have always meant more than skin color, and that other categorical descriptors like nationality, religion, language or ethnicity are all terms which can both communicate and impose racializing characteristics.[14] Finally, and perhaps counterintuitively, *racialization* resists essentializing and homogenizing race as an aspect of human

[12] Following the practice of critical race scholars as well as the Associated Press's style guide, I capitalize Black, but not white to reflect the fact that these terms have acquired different meanings in the context of antiracist movements and politics. See also Folúkẹ́ Adébísí, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility*, Kindle (Bristol: Bristol University Press, 2023); "AP Definitive Source | Why We Will Lowercase White," November 15, 2018, https://blog.ap.org/announcements/why-we-will-lowercase-white.

[13] See the recent situation in which TV personality Johan Derksen racialized Dutch member of parliament Habtamu de Hoop as 'Surinamese' despite the fact that De Hoop was born in Ethiopia and identifies as Frisian, an incident identified by De Hoop's fellow members of parliament as 'everyday racism'. https://nltimes.nl/2024/04/10/football-pundit-johan-derksen-causes-outrage-racist-remarks.

[14] See e.g. Ali Meghji, *The Racialized Social System: Critical Race Theory as Social Theory* (Cambridge Medford (Mass.): Polity, 2022), 129 (Meghji counters the idea that islamophobia or antisemitism have replaced racism by demonstrating that 'all these forms of racism are inherently connected.... both represent Orientalist imaginaries, both adopt a position of cultural racism where the "group characteristics" of Jews and Muslims are stereotyped and stigmatized and both are articulated as a form of conspiracy theories.'). Gender and class are also descriptors that interact with racialization, but are not stand-alone proxies for *race* in the same way as the descriptors used here.

experience. The phrase *people racialized as…* places people first in the description, highlighting that people who experience similar racializing practices may differ extremely in terms of other aspects of their lived experiences and identities.

One of the social systems that racializes people is the legal system, or more generally *law*, a process legal scholars of racialization often refer as 'how law constructs race'. This dissertation defines *law* in a manner consistent with H.L.A Hart's theories of legal positivism, in which laws are rules people in societies create, using procedures those societies recognize as legitimate, to govern conduct.[15] The law discussed below is mostly that created or recognized by the Dutch state, but goes beyond published statutes and regulations to include policy and programs, what in Dutch is often called *beleid*.[16] What distinguishes law as I use it from more general moral codes or voluntary guidelines is the ability of the state to enforce it. Relatedly, unless otherwise specified, the term *government* as used below refers to the executive branch of the Dutch government, manifested in the cabinet ministries and their ministers. The gap between legally enforceable norms and government practices of enforcement, between what state actors say they value and what they do, especially in times when public discourse around norms and values are shifting, is a space in which practices of racialization may become visible and which I probe in the chapters below.

For roughly 350 years, various types of Dutch law employed explicitly racialized language to create categories of people, and to enforce adherence to these categories. These racial categories impacted individuals' freedom of movement, intimate relationships, rights to property, self-determination, citizenship, education, religious freedom, and to life itself. The end of formal colonial governance in Asia and the Caribbean also brought an end to most explicit references to race in Dutch law.[17] Still, by the late 1970s, material differences

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[15] H. L. A. Hart and Penelope A. Bulloch, *The Concept of Law*, 2. ed., repr, Clarendon Law Series (Oxford [u.a]: Clarendon Press, 1998).

[16] For scholarly debate on differences between *law* and *policy*, see e.g. Theodore J Lowi, "Law vs. Public Policy: A Critical Exploration," *Cornell Journal of Law and Public Policy* 12, no. 3 (Summer 2003): 493–501 (concluding that in most practical applications, the distinction is irrelevant).

[17] But see H. H. M. Beune and A. J. J. Hessels, *Minderheid--Minder Recht? Een Inventarisatie van Bepalingen in de Nederlandse Wet- En Regelgeving Waarin Onderscheid Wordt Gemaakt Tussen Allochtonen En Autochtonen*, WODC 35 ('s-Gravenhage: Ministerie van Justitie: Staatsuitgeverij,

between the social and economic standing of people that government policies defined as 'ethnic minorities' and those it described as 'Dutch' were serious enough to merit a variety of state interventions.[18] The LBR was one such intervention, designed to address racial discrimination. By 2000, however, discussions that identified racial discrimination, or other racialized inequality, as nation-wide problems had largely disappeared from Dutch public discourse; some scholars of race described the topic as 'unspeakable' and Dutch society as 'color mute' as opposed to color blind.[19] It's not that social and economic inequality among

1983) (government-funded study of all legal differences between 'Dutch' citizens and 'ethnic minorities' in Dutch law and policy, concluding that references to nationality remained prevalent in Dutch law and were often equivalent to making racialized distinctions).

[18] I place the terms 'ethnic minority' and 'Dutch' in quotation marks through much of this dissertation when referring to groups of people to call attention both to the fact that I am invoking terminology of the time period in question, which I would not use in my own writing, and to the fact that these terms had, and continue to have contested meanings, both of which will be explored in detail below. See also Philomena Essed, *Understanding Everyday Racism: An Interdisciplinary Theory*, Sage Series on Race and Ethnic Relations, v. 2 (Newbury Park: Sage Publications, 1991), 15, https://web.p.ebscohost.com/ehost/detail/detail?vid=0&sid=1d25ec20-0bf6-4676-b4c5-bf12d3e6a976%40redis&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=477951&db=e000xww (describing 'ethnic group' as a 'problematic concept which has been defined on the basis of diverse criteria… [and is now] relevant not so much for its intrinsic meaning, but for the political meaning it acquires in a conceptual political framework of pluralism.') Essed goes on to observe that use of the terms 'ethnicity' or 'ethnic groups' often go hand in hand with the denial that race or racism are still functional concepts, 'thereby delegitimizing resistance against racism and denying fundamental group conflict.'; see also Gerrit Bogaers, "Commentaar op de 'Ontwerp-Minderhedennota', Ministerie van Binnenlandse Zaken, April 1981, door SARON," n.d., personal archive mr. G.J.A.M. Bogaers, SARON (antiracist group active during the time under study, complaining that the term 'minority' implied groups of lesser value than the majority).

[19] Philomena Essed and Sandra Trienekens, "'Who Wants to Feel White?' Race, Dutch Culture and Contested Identities," *Ethnic and Racial Studies* 31, no. 1 (January 1, 2008): 59, https://doi.org/10.1080/01419870701538885; Philomena Essed, *Understanding Everyday Racism: An Interdisciplinary Theory*, Sage Series on Race and Ethnic Relations, v. 2 (Newbury Park: Sage Publications, 1991), https://web.p.ebscohost.com/ehost/detail/detail?vid=0&sid=1d25ec20-0bf6-4676-b4c5-bf12d3e6a976%40redis&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#AN=477951&db=e000xww ('[S]ince WWII it has become taboo in the Netherlands to describe persons in terms of their "race" and to point out the problems of racism. Whereas in publications right after the war, authors openly

differently racialized groups of people ceased to exist, or that racial discrimination was no longer a problem. Recent reports from the Dutch Bureau of Statistics (Centraal Bureau voor de Statistiek, CBS)[20] and Social and Cultural Planning Office (Sociaal en Cultureel Planbureau) consistently disprove that wishful thinking,[21] as do protest movements, such as those in the 2010s against the blackface character *Zwarte Piet* (Black Pete) and in 2020 as part of the international movement Black Lives Matter, and recent scandals involving racial profiling by the Dutch tax authorities.[22] But even these problems remain contested when framed as central to Dutch culture or history.[23] These are the circumstances that led me to the research questions below.

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discussed problems of racial miscegenation, in particular in relation to Indonesians, which would be almost unthinkable today. The rejection of the term race does not mean that racial categorization is absent in Dutch thinking.').

[20] CBS, "Samenvatting - Integratie en Samenleven | CBS," webpagina, Samenvatting - Integratie en Samenleven | CBS, accessed August 19, 2024, https://longreads.cbs.nl/integratie-en-samenleven-2022/.

[21] Welzijn en Sport Ministerie van Volksgezondheid, "Ervaren discriminatie in Nederland II - Publicatie - Sociaal en Cultureel Planbureau," publicatie (Ministerie van Volksgezondheid, Welzijn en Sport, April 2, 2020), https://www.scp.nl/publicaties/publicaties/2020/04/02/ervaren-discriminatie-in-nederland-ii.

[22] "Zwart Manifest," March 25, 2021, https://zwartmanifest.nl/home/; Ashwant Nandram, "In reactie op Black Lives Matter benoemt kabinet Nationaal Coördinator Discriminatie en Racisme," *de Volkskrant*, September 28, 2021, online edition, sec. Nieuws & Achtergrond, https://www.volkskrant.nl/gs-b63980a2; Petra Vissers, "Black Lives Matter NL: Een losjes netwerk dat groeit en groeit," *Trouw*, June 13, 2020, Online edition, sec. verdieping, https://www.trouw.nl/gs-b5c58b50; Samir Achbab, "De Toeslagenaffaire is ontstaan uit institutioneel racisme," *NRC*, accessed February 10, 2022, https://www.nrc.nl/nieuws/2021/05/30/de-toeslagenaffaire-is-ontstaan-uit-institutioneel-racisme-a4045412; Sinan Çankaya, "Opinie | Ze bedoelden het wél zo – het racisme kan onmogelijk ontkend worden," *NRC*, accessed May 30, 2022, https://www.nrc.nl/nieuws/2022/05/27/ze-bedoelden-het-wel-zo-het-racisme-kan-onmogelijk-ontkend-worden-a4129407.

[23] See e.g. Menno van Dongen, "NPO organiseert racismedebat onder leiding van Jort Kelder, activisten roepen op tot boycot," *de Volkskrant*, July 8, 2020, online edition, sec. Cultuur & Media, https://www.volkskrant.nl/cultuur-media/npo-organiseert-racismedebat-onder-leiding-van-jort-kelder-activisten-roepen-op-tot-boycot~b2e3dc64/; Essed and Nimako, "Designs and (Co)Incidents," 301.

1.1. Research questions and project overview

How did Dutch law and legal practice shift in just two decades from using race as an explicit category on which to base citizenship and migration laws to denying the relevance of race? How did the problems of racialized inequality and racial discrimination go from demanding national attention to being 'absent presences'[24] in roughly the same amount of time? This dissertation uses an in-depth case study of the LBR, and other instances of legal mobilization occurring around the same time, to explore how law and legal practices made these shifts in mainstream discourse and policy around race possible. This research contributes to the development of general knowledge around racializing processes in the Dutch context, to scholarship about the role of law and legal mobilizations in creating, maintaining and contesting racial hierarchies, and to historiography about the memorability of these processes. It specifically adds to the growing body of research on afterlives of colonialism in Dutch society, arguing that race and racialized inequality are two such afterlives, and demonstrating how law plays a role in transplanting these afterlives from the colonial to the postcolonial period.

Below I address the following research questions and sub-questions:

1. How has law been mobilized to address racialized hierarchies in the Dutch metropole in the postcolonial period?
    a. How do these legal constructions of race differ from those in the colonial period?
2. How did postcolonial legal mobilizations affect public memory of colonial legacies and contribute to shaping the Dutch metropole as a postcolonial community?
    a. How did these mobilizations impact the public discourse around racialization and racialized inequality?

The case study focuses on the years 1978 through 1999, beginning when the idea for a national organization to address racial discrimination in the Netherlands

[24] Amade M'charek, Katharina Schramm, and David Skinner, "Technologies of Belonging: The Absent Presence of Race in Europe," *Science, Technology, & Human Values* 39, no. 4 (July 1, 2014): 459–67, https://doi.org/10.1177/0162243914531149.

entered public discussion, and ending when the LBR ceased officially prioritizing *juridische middelen* (legal measures) as key to its organizational mission. In addition to being the years in which the LBR was most active in the legal sphere, these years represent a time when the Dutch government actively engaged in policies it claimed would address economic and social inequalities in the metropole between groups of people racialized as non-white and people racialized as white. The end of the period under study, around the year 2000, represents what many historians and scholars consider to be a 'harder turn' in both political discourse and policies dealing with 'newcomers' or other people racialized as non-white or non-Dutch, as well as an increasing denial that racism existed as a structural problem in the Netherlands.[25]

My approach to answering these questions is interdisciplinary, using elements of critical legal scholarship and legal history, as well as critical and decolonial approaches to archival research and historiography. It contributes to ongoing discussions in all these fields. It also speaks to ongoing public discussions about the role of race, law, slavery and colonial history in present-day Dutch society. Chapter Two analyses legal constructions of race in Dutch history, beginning with the colonial period and continuing through the early 1970s; this chapter draws heavily from Critical Race Theory and other race-critical theories as well as from broader sociological and anthropological traditions.[26] Chapter Three places the LBR, and other legal mobilizations, in the context of broader Dutch 'minorities policies', the name given to a variety of government policies aimed at people racialized as non-white residing in the metropole in the 1970s and 1980s.[27] Chapter Four describes the legislative process of creating the LBR in that context. Chapters

[25] See eg. Witte, *Al Eeuwenlang Een Gastvrij Volk*, 139; G.R. Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders: Nederlandse Politici over Burgers Uit Oost & West En Nederland 1945-2005* (Vrije Universiteit Amsterdam: Rozenberg Publishers, 2007), 324.

[26] See e.g. Philomena Essed and David Theo Goldberg, eds., *Race Critical Theories: Text and Context* (Malden, Mass: Blackwell Publishers, 2002) (for distinctions between Critical Race and race critical theories).

[27] The 'minorities policies' also targeted people described as 'caravan dwellers,' which likely included people now racialized as Roma or Sinti, and people living in *achterstandswijken*, or socio-economically depressed neighborhoods.

Five and Six analyze activities carried out by the LBR. Chapter Seven makes conclusions and identifies potential for further research.

1.2. Contributions to existing research

This project addresses a general lack of research that explicitly centers racialization as a relevant factor in Dutch society. For many years in academia and broader public discourse, the topic was so rarely addressed that in 2014 anthropologist Amade M'Charek described 'race' as an 'absent presence' in Dutch life.[28] Of course, racializing practices were never absent, nor was scholarship addressing them; rather scholars who dared to bring them up were either banished to the 'epistemic margins' or professionally punished.[29] This is what happened to sociologist Philomena Essed following her publications on 'everyday racism' in 1984 and 1993,[30] to Teun van Dijk following his book *Elite Discourse on Racism* in 1993,[31] and to British academic Chris Mullard in 1991. The University of Amsterdam hired Mullard in 1984 to run its new Center for Ethnic and Racial Studies, but ended his contract and dissolved the center, following allegations that it was too focused on 'race and ethnic studies' and not enough on pedagogy.[32] The CERS closure represented what many active on issues of racism and sexism at the time found to be both a turn toward 'the use of the insider-outsider paradigm – "us versus them"

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[28] M'charek, Schramm, and Skinner, "Technologies of Belonging."

[29] Guno Jones, Nancy Jouwe, and Susan Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek: Vragen en meer vragen over de doorwerking van kolonialisme en slavernij in Amsterdam en Utrecht," *Tijdschrift voor Geschiedenis* 136, no. 3 (2023): 281, https://doi.org/10.5117/TvG2023.3.009.JONE.

[30] Philomena Essed, *Alledaags Racisme*, paperback (Amsterdam: Van Gennep, 2018) (new edition of mass market publication of her PhD thesis; first edition 1984); Essed, *Understanding Everyday Racism*; see also Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek," 281.

[31] Teun van Dijk, "Reflections on 'Denying Racism: Elite Discourse and Racism,'" in *Race Critical Theories: Text and Content*, ed. Philomena Essed and David Theo Goldberg, 3d ed. (Malden, MA: Blackwell Publishers, 2005), 4841–485.

[32] Kwame Nimako, "About Them, But Without Them: Race and Ethnic Relations Studies in Dutch Universities," *Human Architecture: Journal of the Sociology of Self-Knowledge* 10, no. 1 (January 1, 2012): 45–52.

- as the starting point [of government policy and government sponsored research, where t]he "us" represents "white" Europeans; the "them" represents the "Other,"'[33] as well as a broader 'disappearance of an antiracist perspective inside the academy'.[34] All three of these scholars continued their academic work at positions abroad. Those who stayed in the Netherlands often received threats or other backlash, as happened to Gloria Wekker following the publication of her book, *White Innocence,* in 2016.[35] To this day, even scholars who address issues like intolerance or inequality in Dutch society often prefer terms like *racial nationalism* or *Eurocentrism* to racism, and *ethnicity* to race.[36]

Thanks to the work of activists who reinvigorated protests against the blackface character *Zwarte Piet* in the 2010s, and linked it to broader movements to 'decolonize the university' in those years, research and publication into the role of race in the Netherlands has increased in the last decade.[37] However, it remains on the periphery of both historiography, social science and legal scholarship, where it has been treated respectively as a phenomenon of the past, residing in long-ended

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[33] Nimako, 47.

[34] Troetje Loewenthal, "Er Ontbreekt Altijd Een Stuk van de Puzzel. Een Inclusief Curriculum Gewenst," in *Caleidoscopische Visies: De Zwarte, Migranten- En Vluchtelingen-Vrouwenbeweging in Nederland*, n.d., 65.

[35] Gloria Wekker, "Witte Onschuld bestaat niet, maar dat wilt u van mij niet horen," *NRC.NEXT*, November 18, 2017, Online edition, sec. Opinie; see also cases of threats again journalist and publisher Clarice Gargard described in Josien Wolthuizen, "Ze wensten Clarice Gargard dood, nu moeten ze voor de rechter verschijnen," Het Parool, September 8, 2020, https://www.parool.nl/gs-b6556ed3.

[36] See e.g. Jan Willem Duyvendak, "What about the Mainstream?," *Tijdschrift over Cultuur & Criminaliteit* 7, no. 1 (March 2017): 99–103, https://doi.org/10.5553/TCC/221195072017007001006; Jan Willem Duyvendak and Menno Hurenkamp, "Tussen superdiversiteit en nativisme," *Wiardi Beckman Stichting* (blog), December 16, 2022, https://wbs.nl/publicaties/tussen-superdiversiteit-en-nativisme; "The Return of the Native - Paperback - Jan Willem Duyvendak, Josip Kesic, Timothy Stacey - Oxford University Press," accessed July 8, 2024, https://global.oup.com/academic/product/the-return-of-the-native-9780197663042?cc=nl&lang=en&.

[37] Guno Jones, "'Activism' and (the Afterlives of) Dutch Colonialism," in *Smash the Pillars*, 2018, 161–73; Philomena Essed and Isabel Hoving, eds., *Dutch Racism*, Thamyris / Intersecting: Place, Sex and Race, no. 27 (Amsterdam: Rodopi B.V, 2014).

practices of slavery and colonial oppression, as an imaginary basis for irrational personal prejudice, or a prohibited aberrant practice.[38] Given the personal and professional risks taken by earlier scholars of racialization in the Netherlands, and the relative ease with which my own research has progressed, it would be inaccurate and disrespectful to portray my research as contributing to gaps in theirs. More accurate is to frame this project as being possible because of the work they began; a seedling growing through pavement cracks made by those who endured the more violent process of breaking through. This chapter details the state of those cracks and how this research aspires to widen them.

1.2.1. The *how* and *why* of racialization

At the root of my research questions sits a deeper inquiry, namely, why does racialized inequality still exist in the postcolonial era. Seventy-seven years after the passage of the Universal Declaration of Human Rights, sixty years after the passage of the International Convention on the Elimination of All Forms of Racial Discrimination, in a nation that has signed on to both of these treaties and passed domestic laws and policies to enforce them, why does racialization continue to significantly, materially impact peoples' lives? Nobel laureate Toni Morrison counsels that when the question of *why* is difficult to answer, it helps to look to the *how*.[39] When applied to racialized oppression, Morrison's advice is not so different from that of Bonilla-Silva, who observes that the 'analytical crux for understanding racism' is 'uncovering the mechanisms and practices (behaviors, styles, cultural affectations, traditions, and organizational procedures) at the social, economic, ideological and political levels responsible for racial domination.'[40] In other words,

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[38] See e.g. Halleh Ghorashi, "Taking Racism beyond Dutch Innocence," *European Journal of Women's Studies* 30, no. 1_suppl (June 1, 2023): 16S-21S, https://doi.org/10.1177/1350506820978897; Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek."

[39] Toni Morrison, *The Bluest Eye*, 1st Vintage International ed (New York: Vintage International, 2007), Ch 1 ('There is really nothing left to say - except why. But since why is difficult to handle, one must take refuge in how.').

[40] Bonilla-Silva, "More than Prejudice," 75; Eduardo Bonilla-Silva, "Rethinking Racism: Toward a Structural Interpretation," *American Sociological Review* 62, no. 3 (1997): 465–69, https://doi.org/10.2307/2657316.

the key to understanding *why* racialized hierarchies exist lies in examining *how* racialization is done. While racializing practices have common elements across national and even global contexts, there is value to examining the specifics of how specific political, social and temporal contexts construct race in different ways.[41] My research contributes to the development of knowledge around racialization in the Dutch context, how law and legal mobilization operate as technologies that create and maintain racialized hierarchies, and why, so many years after formal decolonization and affirmative legal efforts to address racialized discrimination, those hierarchies still exist.

Like that of Bonilla-Silva, my approach to answering these questions is fundamentally materialist. I hypothesize that people's material well-being in society, their physical, economic, political and social positions within racialized hierarchies, form the fundamental motivations to engage in or combat racializing practices. This approach to racialized inequality represents a departure from those that focus on irrational, individual prejudices or fears of a generalized other, approaches which have dominated much of the theorization about racialized inequality in Dutch society to date.[42] While there are undoubtably Marxist influences in my approach, and that of the sociology on which it is based, a materialist approach also fits a legal analytical framework. The evidence that forms the basis of legal trials is evidence of conduct, which is observable and leaves traces in the material world. *Why* an alleged act was done, that is evidence of intent or

[41] Bonilla-Silva, "Rethinking Racism," 476; But see Meghji, *The Racialized Social System*; Michelle Christian, "A Global Critical Race and Racism Framework: Racial Entanglements and Deep and Malleable Whiteness," *Sociology of Race and Ethnicity* 5, no. 2 (April 1, 2019): 169–85, https://doi.org/10.1177/2332649218783220.

[42] Bonilla-Silva, "More than Prejudice," 75; Ali Meghji and Tiger Chan, "Critical Race Theory, Materialism, and Class," in *On Class, Race, and Educational Reform: Contested Perspectives* (Bloomsbury Academic, 2023), 192, https://doi.org/10.5040/9781350212411 ('[K]ey to Bonilla-Silva's approach was a shift as to the understanding of racism, away from the interpersonal to one which conceives of it as a materialist theory that considers conflict, ideology, and structure as the essential mediums through which racialization and racism take place.'); For influential Dutch theorization about the origins of racial prejudice and discrimination see e.g. Frank Bovenkerk, ed., *Omdat Zij Anders Zijn: Patronen van Rasdiscriminatie in Nederland* (Meppel: Boom, 1978); R. den Uyl, Chan Choenni, and Frank Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*, LBR Reeks; Nr 2 (Utrecht: Landelijk Bureau Racismebestrijding, 1986).

motive, is most often inferred from evidence of that conduct; fact finders are allowed to infer that people intend the natural consequences of their actions.

In the context of postcolonial, racialized social systems, inaction, or refusals to act can also have predictable consequences, and so this dissertation spends a considerable amount of time analyzing the significance of inaction and failures to act. American historian Ibram X. Kendi has argued that in the modern world there is no such status as 'being not-racist'; people are either participating in practices that uphold racialized inequality (a status he defines as racist) or working to actively oppose and change them (which he defines as antiracist).[43] Many actions Kendi might characterize as 'not-racist,' critical gender scholar Sara Ahmed calls 'nonperformative antiracism'. For Ahmed, nonperformative acts pay lip service to antiracist or non-discriminatory ideals but fail to change racializing practices or to engage in actions that alter existing racialized hierarchies. Her empirical research is on twenty-first century academic institutions that engage in 'institutional speech acts' such as commitments to equal opportunity hiring, diversity or discrimination-free workspaces, then fail to take action against complaints brought in pursuit of these policies.[44] The failure to act allows the problematic behavior not only to continue but to escape being labeled 'a problem' and therefore requiring a solution. Nonperformative antiracist practices, and the motivations behind engaging in them, are themes that return to help explain both the *how* and *why* of Dutch racialization in the chapters below.

This project uses a case study of legal mobilizations (or failures to mobilize) to examine how racialization occurs in the postcolonial Dutch metropole. Racializing processes do not occur without reasons. Bonilla-Silva identifies the lack of connection between the concept of race and racism and the reasons for racialization, a lack of connection between the *how* and the *why*, to be the primary problem with much of the existing scholarship on the topics. 'Absence of this explanation,' he writes, 'makes [some theories of race] incoherent, unstable, and dependent on elite-led racial projects ([For example,] are nonelite whites non-

[43] Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, Kindle (New York: Nation Books, 2016), Prologue.

[44] Sara Ahmed, "The Nonperformativity of Antiracism," *Meridians* 7, no. 1 (2006): 104–26; see also Sara Ahmed, *Complaint!* (Durham: Duke University Press, 2021).

racialized subjects with no interest in racial domination?)'.[45] For Bonilla-Silva, and other critical scholars of race, the motivations to engage in racializing social practices begin with justifications for European imperialism and chattel slavery and defending material interests in those practices; they recognize that these motivations began with 'the capitalist class, the planter class, [and] colonizers', but recognize that '[a]fter racial categories were used to organize social relations in a society…race became an independent element of the operation of the social system.'[46] Bonilla-Silva observes that racializing social systems always operate to achieve the interests of people racialized as white, and involve processes of domination and subordination that go beyond racial discourse. Alana Lentin is blunter, describing race as a technology of difference, 'the goal of which is the production, reproduction and maintenance of white supremacy.' [47]

White supremacy is the condition that results when social processes consistently privilege the material interests of people racialized as white at the expense of people racialized as non-white, and the reason that Bonilla-Silva observes that people racialized as white have a 'shared interest in maintaining the status quo.'[48] What this definition implies, and what I want to make explicit, is that white supremacy is not (only) a dogma promoted by 'extreme right' ideologues carrying torches or wearing Nazi uniforms, or even a viewpoint exclusively held by people racialized as white. White supremacist ideology may have begun, as Chapter Two will address in more detail, as religious or political propaganda to justify colonial land grabs and chattel slavery, but it has developed over the centuries into deeply held, albeit often unconscious, beliefs of many people living in places variously called 'the West,' the 'global North', or the 'developed world,' or of people benefitting from economic and social logics developed here, that the systems under

[45] Bonilla-Silva, "More than Prejudice," 75–76.

[46] Bonilla-Silva, "Rethinking Racism," 473.

[47] Lentin, *Why Race Still Matters*, 5.

[48] See e.g. Lentin, *Why Race Still Matters*; Alana Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment: 'Race' in Europe by József Böröcz: A Comment," *Sociological Forum* 37, no. 1 (March 2022): 304–10, https://doi.org/10.1111/socf.12791; David Theo Goldberg, *The Racial State* (Malden, Mass: Blackwell Publishers, 2002).

which we live are foundationally sound and fundamentally fair.[49] Legal scholar Kimberlé Crenshaw describes this belief as 'race consciousness' and describes it as supporting a self-enforcing loop, where belief in the soundness of racialized, capitalist systems reinforces beliefs that people who fail to succeed in those systems, disproportionately people racialized as non-white, are personally to blame for these failures, which in turn reinforces belief in the fairness of the systems, and so on.[50] Gloria Wekker implicates such faith in the justice of the status quo in defining the concept 'white innocence' in the Netherlands, and raises the possibility that this innocence entails not wanting to know, as much, if not more, than not knowing.[51]

I realize the term *white supremacy* may be provocative to readers who are used to seeing it reserved for its more outward and extreme manifestations. It has also been suggested to me that using white supremacy risks implying that this is a true or natural condition. To that end I have considered phrases like *white privilege*, *feelings of white superiority*, or *white arrogance*, but ultimately found them lacking. The first of these is accurate but incomplete, usually referring to the position of people racialized as white in an educational context, which then supports a broader, global, system of white supremacy.[52] The latter two seem to limit the concept only to its ideological or emotional elements, ignoring its material and systemic aspects and their attendant violence. Ultimately, I choose to use the term white supremacy in this manuscript to call attention to that violence, which is

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[49] This idea paraphrased from Tony Platt in masterclass held at Leiden University, 5 September 2024, discussing Tony Platt, *The Scandal of Cal: Land Grabs, White Supremacy, and Miseducation at UC Berkeley* (Berkeley, California: Heyday, 2023).

[50] Kimberlé Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101, no. 7 (1988): 1381, https://doi.org/10.2307/1341398 ('This strengthening of whites' belief in the system in turn reinforces their beliefs that Blacks are indeed inferior. After all, equal opportunity is the rule, and the market is an impartial judge; if Blacks are on the bottom, it must reflect their relative inferiority. Racist ideology thus operates in conjunction with the class components of legal ideology to reinforce the status quo, both in terms of class and race'.).

[51] Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham: Duke University Press, 2016).

[52] Kalwant Bhopal, "Critical Race Theory: Confronting, Challenging, and Rethinking White Privilege," *Annual Review of Sociology* 49, no. 1 (July 31, 2023): 111–28, https://doi.org/10.1146/annurev-soc-031021-123710.

real, ongoing, and material, and refers not to a fringe ideology, but a mainstream collection of practices and conditions. Using the term white supremacy is also an important epistemological shift; it accurately names the cause of racial inequality in modern society and prevents false-flag arguments about who can or cannot be 'prejudiced' and therefore practice racism.[53] The above is not to suggest that oppression does not exist against or among people racialized as white, or that other aspects of socially constructed identities such as gender, class, sexual orientation or physical ability do not operate independently of and in combination with racialization.[54] It is only to suggest that when *race* is deployed as a social practice or structure it is done so with the end of materially privileging whiteness as a racialized status.

It is one thing to argue that the general motivation for racialization in the Dutch context is to maintain a material system of white supremacy, but quite another to accuse individual people of consciously desiring this outcome. Such accusations are not the intention of this project. While intention is a subject I address in this dissertation, it is one about which I remain ambivalent. On the one hand, because racialized inequality is the result of racializing *practices*, it is enacted and perpetuated by anyone engaging in these practices, regardless of their intent or belief systems, or even their own racial or ethnic identity. On the other hand, the

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[53] Bonilla-Silva, "More than Prejudice," 76 ('Blacks and people of color can be "prejudiced"... but so far no society has created a social order fundamentally organized around the logic and practices of black or brown supremacy....and given the historical resistance to racial domination, it is highly unlikely that the struggles against white supremacy will result in pro-black and pro-brown racial regimes.'); see e.g. Mohsen al Attar, "Tackling White Ignorance in International Law—'How Much Time Do You Have? It's Not Enough,'" *Opinio Juris* (blog), September 30, 2022, http://opiniojuris.org/2022/09/30/tackling-white-ignorance-in-international-law-how-much-time-do-you-have-its-not-enough/.

[54] See e.g. Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1241–99, https://doi.org/10.2307/1229039 (laying out the basis of a theory of intersectionality); Devon W. Carbado and Cheryl I. Harris, "Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory Essay," *Harvard Law Review* 132, no. 8 (2019 2018): 2193–2239; Maayke Botman, Nancy Jouwe, and Gloria Wekker, eds., *Caleidoscopische Visies: De Zwarte, Migranten- En Vluchtelingen-Vrouwenbeweging in Nederland* (Amsterdam: Koninklijk Instituut voor de Tropen, 2001).

people who authored and initiated many of the practices described below made loud proclamations that the intent of those actions was 'combatting racial discrimination' or reducing social and economic inequalities for people racialized as non-white, so intent is not irrelevant, nor is the gap between stated intentions and the foreseeable outcomes of the practices enacted to meet them. In the end, I have adopted a two-fold answer, which may seem paradoxical, but that I believe reflects the reality of how racialization was done in the period under study.

First, I propose that when it comes to inherited racialized societal structures that have, over centuries, perfected the practice of burying white supremacy in the guise of neutrality and nature, a process I describe in detail in Chapter Two, the intent of the parties involved doesn't really matter. Policies created in the 1980s and carried out in the 1990s had racializing effects, regardless of the intent of the parties involved and those policies and practices merit examination. On the other hand, I cannot ignore evidence of the intentions of those engaged in these racializing practices. Prior to entering academia, I worked as a criminal lawyer in United States courtrooms; in that context, what is called circumstantial evidence of intent often made the difference between conviction or acquittal. Circumstantial evidence includes facts related to the circumstances in which people act (or fail to act) and allows the inference that those circumstances may indicate their states of mind; it includes what actors knew, could have known, or should have known, as well as their power to act (or refrain from acting) on this knowledge. To ignore circumstantial evidence in the study of the legal mobilizations below, and instead characterize all actions by all parties as innocent, would be to ignore a vital part of why and how racialization occurs in the postcolonial Dutch metropole. In general, under the circumstances described below, I am more willing to attribute conscious intent to those responsible for designing and enacting government policies than those employed to execute them. This is particularly so when it comes to many of the 'minorities policies' and programs described below, including the LBR, where the stated intentions of such programs seemed at odds with the powers and practices those employed within them were granted or encouraged to carry out.

1.2.1.1. Critical Race Theory in the Dutch context

Because racialization is practiced in context, it stands to reason that these practices differ across regions, cultures and time. While Bonilla-Silva's work is grounded mostly in empirical research conducted in the United States, other scholars of racialization argue that it is foundationally a European project. Inspired by postcolonial and decolonial scholars like Stuart Hall and Walter Mignolo, they argue that racialization is part of how Europe created itself.[55] Political economist and African American studies professor Barnor Hesse describes 'Europeanness, [as] a defining logic of race in the process of colonially constituting itself and its designations of non-Europeanness, materially, discursively and extra-corporeally.'[56] Others point out that Europe can only be defined against and in opposition to the racialized or religious 'others' living at the imagined borders of land political economist Kwame Nimako has called a peninsula of Asia.[57] Put another way, 'Europe is only meaningful as against not-Europe, a division that…ultimately summates what race does: divide and elevate, classify and subjugate, Europeanness on one side, non-Europeanness on the other of what Du Bois in 1903 called "the color line"'.[58]

Hesse emphasizes, however, that racialization has never stopped at skin color or only been about physical traits, but always extended across a variety of markers of social distinction and organization.[59] He identifies three types of

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[55] See e.g. David Theo Goldberg, "Racial Europeanization," *Ethnic and Racial Studies* 29, no. 2 (March 1, 2006): 331–64, https://doi.org/10.1080/01419870500465611; Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment".

[56] Barnor Hesse, "Racialized Modernity: An Analytics of White Mythologies," *Ethnic and Racial Studies* 30, no. 4 (July 1, 2007): 646, https://doi.org/10.1080/01419870701356064.

[57] Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment"; József Böröcz, "'Eurowhite' Conceit, 'Dirty White' Ressentment: 'Race' in Europe," *Sociological Forum* 36, no. 4 (December 2021): 1116–34, https://doi.org/10.1111/socf.12752; Goldberg, *The Racial State* Nimako quote heard by this author at Black Europe Summer School, Amsterdam 2018.

[58] Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment," 306 (citing Hesse directly and Aimé Césare and Etienne Balibar generally).

[59] Hesse, "Racialized Modernity," 646, 653 ('biologisation of the colonially constituted "European/Non-European" …is but one historical symptom and political formation of race through modernity.').

racializing processes at work throughout European history. They include (1) 'cultural racialization' which elevates the languages, history, religion of European regions above those from Africa, Asia and the Americas; (2) 'epistemological racialization' which valorizes knowledge created by European scholars and in European (and later North American) universities above all others 'without reference to the impact of coloniality' on other regions, and (3) 'governmental racialization' in which people racialized as Europeans use laws and other regulatory and administrative procedures to exercise power over 'non-Europeanized ("non-white") assemblages as if this was a normal, inviolable or natural social arrangement of races.'[60]

Chapter Two applies the above theories of race, generally defined as practices of creating and maintaining categories that materially benefit people racialized as white, to examine governmental racialization in Dutch colonial history. The remaining chapters examine how legal mobilizations, including the LBR, affected those practices of racialization in the postcolonial Dutch metropole.

What Hesse calls 'governmental racialization', legal scholars might call 'legal constructions of race' the exploration of which is at the core of Critical Race Theory (CRT). CRT rejects the idea 'that legal institutions employ a rational, apolitical, and neutral discourse with which to mediate the exercise of social power', instead arguing that these institutions function as part of racialized society both to create and enforce racialized hierarchies.[61] Because legal institutions are embedded in, and mostly dedicated to preserving, larger societal power structures, CRT recognizes the limited utility of formal legal equality in achieving materially significant reordering of these structures. As opposed to entirely rejecting legal strategies for social change, however, CRT scholars recognize the need to selectively use rights-based strategies to achieve concrete, incremental, material improvements where possible, such as enforcement of anti-discrimination laws related to employment, housing or voting rights, while advocating and organizing for larger-scale social change through other forms of political and social mobilization.[62]

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[60] Hesse, 656.

[61] Crenshaw, "Race, Reform, and Retrenchment."

[62] e.g. Crenshaw.

Critical Race Theory emerged in legal academia in the United States in the late 1980s but has since expanded into a globally applicable theory for assessing racialized legal systems.[63] CRT has been slow to catch on in European legal academia, though that has been changing in recent years.[64] For many years, nearly all the legal scholars engaging explicitly with CRT in the Netherlands were affiliated with the Vrije Universiteit Amsterdam, and mostly with its department of migration law. Betty de Hart recently completed the Euromix Project there, which examined legal regulation of relationships racialized as mixed in the Dutch, British, French and Italian contexts, the resulting scholarship of which has influenced both my methodology and analysis; several participants in the PhD aspects of that project are now working at other Dutch universities.[65] Thomas Spijkerboer and Karen de Vries have published on the colonial origins and racializing effect of international border-control and mobility policy,[66] and Guno Jones has examined legal

[63] Christian, "A Global Critical Race and Racism Framework"; Ali Meghji, "Towards a Theoretical Synergy: Critical Race Theory and Decolonial Thought in Trumpamerica and Brexit Britain," *Current Sociology* 70, no. 5 (September 1, 2022): 647–64, https://doi.org/10.1177/0011392120969764; CRT overlaps in significant ways with Third World Approaches to International Law (TWAIL); where CRT uses race at its lens of primary critique, TWAIL uses colonialism and imperialism. Both schools are in dialogue and openly cite each other. See e.g. James Thuo Gathii, "Imperialism, Colonialism and International Law," *Buffalo Law Review* 54, no. 4 (2007): 1013-; James Thuo Gathii, "Writing Race and Identity in a Global Context: What CRT and TWAIL Can Learn From Each Other," *UCLA Law Review* 67, no. 6 (2021 2020): 1610–50; al Attar, "Tackling White Ignorance in International Law—"How Much Time Do You Have?"

[64] See e.g. Mathias Möschel, *Law, Lawyers and Race: Critical Race Theory from the United States to Europe* (Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2014).

[65] Betty de Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie," *Ars Aequi* April 2021 (April 2021): 359–67; Nawal Mustafa, "A Certain Class of Undesirables: 'Race', Regulation & Interracialised Intimacies in Britain (1948-1968)" (Amsterdam, Vrije Universiteit, 2023); Rébecca Franco, "Between Problematisation and Invisibilisation: The Regulation of Interracialised Intimacies and (Post)Colonial Immigration in France (1954-1979)" (Amsterdam, Vrije Universiteit, 2023); Andrea Tarchi, "Building the Intimate Boundaries of the Nation: The Regulation of Mixed Intimacies in Colonial Libya and the Construction of Italian Whiteness (1911-1942)" (Amsterdam, Vrije Universiteit, 2023).

[66] Karin de Vries and Thomas Spijkerboer, "Race and the Regulation of International Migration. The Ongoing Impact of Colonialism in the Case Law of The European Court of Human Rights," *Netherlands Quarterly of Human Rights*, October 28, 2021, 09240519211053932,

regulation of migration of people racialized as non-white from the former Dutch colonies to the metropole.[67] Legal theory scholar Wouter Veraart has also published what might be termed a critical race/postcolonial analyses of the philosophical origins of Dutch law.[68]

Future scholarship on the relationship between the Dutch, law and race looks more promising thanks to Jones's 2023 appointment as Anton de Kom Chair in the History of Colonialism and Slavery and Their Contemporary Social, Cultural and Legal Impact at both the faculties of law and humanities at the Vrije Universiteit and the Anton de Kom University in Suriname. Jones currently supervises a project on the law of slavery and has recently published an article in which he reevaluates Anton de Kom's *Wij Slaven van Suriname* as an analysis of colonial legal practice.[69] While Jones's appointment is good news for people eager to see his work get the support it deserves, the length of his new title reveals how broad the need for more research on all these topics still is, and the impossibility of charging one person, or even a team lead by that person, to cover it all. The chair has been funded by the Ministry of Foreign Affairs for five years, after which time it will depend on the political priorities of the ministry, revealing the ongoing precarity of research of this nature in the Netherlands.

Of the above scholarship, my project builds most that of De Hart and Jones. De Hart grounds much of her work in 'the legal archive,' which she defines as

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https://doi.org/10.1177/09240519211053932 (Since publishing this article, Thomas Spijkerboer has left the Vrije Universiteit for the University of Ghent, Belgium; Karin de Vries remains at the Vrije Universiteit at the time of this writing.)

[67] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*; Guno Jones, "Dutch Politicians, the Dutch Nation and the Dynamics of Post-Colonial Citizenship," in *Post-Colonial Immigrants and Identity Formations in the Netherlands*, ed. Ulbe Bosma (Amsterdam University Press, 2012), 27–48, https://doi.org/10.1515/9789048517312-002; Guno Jones, "What Is New about Dutch Populism? Dutch Colonialism, Hierarchical Citizenship and Contemporary Populist Debates and Policies in the Netherlands," *Journal of Intercultural Studies* 37, no. 6 (November 2016): 605–20, https://doi.org/10.1080/07256868.2016.1235025.

[68] Wouter Veraart, "Het slavernijverleden van John Locke: Naar een minder wit curriculum?," in *Homo Duplex: De dualiteit van de mens in recht, filosofie en sociologie,* ed. B. van Beers and I. van Domselaar, 2017, 215–37.

[69] Guno Jones, "Citizenship Violence and the Afterlives of Dutch Colonialism," *Small Axe: A Journal of Criticism* 27, no. 1 (2023): 100–122, https://doi.org/10.1215/07990537-10461885.

including judicial decisions, but also speeches and writings by jurists and media coverage of legal controversies, to demonstrate how laws dealing with marriage, divorce and child custody created and enforced racialized boundaries.[70] Her work covers the colonial period through to the present day and thus speaks to the temporal gap I identify above. While my work is not engaged specifically in areas of family law and her scholarship does not specifically address anti-discrimination law or policy, her methodology and observations about the Dutch legal archive have deeply influenced my project. Jones's current work on the legal archive of slavery predates the period of my case study by more than a century, but his earlier work on the legal regulation of migration from the former Dutch colonies from 1945 through 2000 provides the theoretical and historical structure on which I build much of my analysis, and I consider my work to be directly in conversation with his.

Starting with his 2007 doctoral thesis, and over several articles in the years since then, Jones has developed two concepts relevant to my case study: the concepts of 1) liminal citizenship and 2) postcolonial occlusion, the latter of which will be discussed in more detail below.[71] With liminal citizenship, Jones pushes back on the idea, common in much legal scholarship, that citizenship is a total package, and that once a person has citizenship from a nation, they automatically receive all the benefits of citizenship that state has to offer. When it came to citizens from its former colonial territories, Jones demonstrates, the benefits of citizenship, in particular the right to enter the Dutch metropole, were not automatic. Instead, those rights were deeply contingent on the individuals claiming them being perceived by politicians and migration bureaucrats as Dutch or 'belonging to the

[70] De Hart, "'Ras' en 'Gemengdheid' in Nederlandse Jurisprudentie"; Betty de Hart, *Some cursory remarks on race, mixture and law by three Dutch jurists*, 2019; Betty de Hart, "70 Years Moluccans in the Netherlands: The 'Painful Problem' of Mixed Marriages and Relationships – EUROMIX Research Project," accessed August 30, 2021, http://euromixproject.nl/70-years-moluccans-in-the-netherlands-the-painful-problem-of-mixed-marriages-and-relationships/.

[71] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*; Guno Jones, "Unequal Citizenship in the Netherlands" The Caribbean Dutch as Liminal Citizens," *Frame* 27, no. 2 (November 2014): 65–84; Guno Jones, "Biology, Culture, 'Postcolonial Citizenship' and the Dutch Nation, 1945–2007," in *Dutch Racism*, ed. Essed Essed Philomena and Isabel Hoving (Rodopi B.V, 2014), 316–36; Jones, "Dutch Politicians, the Dutch Nation and the Dynamics of Post-Colonial Citizenship."

Netherlands', which did not include the (former) overseas empire.[72] Jones does not use the word *white* in his early work; he rarely if at all uses the word *race* either, reflecting the lack of acceptance for racial discourse or analysis in Dutch academia in the time he published that work. However, the empirical evidence he presents, mostly in the form of parliamentary and ministerial records, reveals racialized discourses evolving from biological to cultural, and demonstrates a racialized impact that leave little doubt that racializing legal practices are at the core of his work. Jones's concept of liminal citizenship also overlaps with what critical race scholars term the gap between formal legal protection and material legal equality, a concept that will be explored and expanded via my case study.

Jones's research centers on governing discourse and practices that begin in the 1950s and continue through the early 2000s and overlap completely with the years of my case study. My research attempts not to fill gaps in his work, but to expand on its foundations. Where Jones focuses on access to the metropole and migration laws as the legal lenses through which to explore racialization and its resulting liminal citizenship, my research focuses more on the right to full protections of the Dutch constitution inside the metropole, specifically on the right to be free from racial discrimination as promised in the first article of the Dutch constitution. With this focus, I believe my research expands Jones's examination of liminal citizenship beyond rights of entry and residence to include rights related more to full participation and belonging in the economy, society and political spheres of the metropole.

1.2.2. Postcolonial history

My case study focuses on the period between 1978 and 1999, the years in which the Dutch government actively considered and then sponsored a national organization dedicated to 'using legal measures to combat racial discrimination',[73] but also a period underexplored in both historical and legal scholarship related to colonial legacies and race. This period followed the end of formal colonial control in the Kingdom of Netherlands, including independence for Indonesia and

[72] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*.

[73] Maurik, "LBR Akte van Oprichting."

Suriname, and the period of materially significant immigration from both of those former colonies, the Dutch Antilles, Turkey and Morocco. From a legal perspective, this represents a transitional period in Dutch law, which went from relying on formal legal regulation and enforcement of explicit racial categories both inside colonies and in policies controlling migration to the metropole, to outlawing such formal racial discrimination in both public policy and private enterprise. From a historical perspective, these years also represent a transition between what I would characterize as the immediate aftermath of independence in which policy makers could not ignore then-recent colonial practices and their potential impact on the metropole, and the more recent present when the relevance of these practices can be called into question.[74] Finally, in terms of public and academic discourse around race in the Netherlands, the year 2000 marked the end of the period in which racialized inequality had at least been characterized as a topic with which the government should be concerned.[75] After 2000, this discourse became 'less tolerant', demanding that 'foreigners' adapt to 'Dutch culture' and even requiring Dutch citizens from the Caribbean to attend citizenship courses if they intended to reside permanently in the metropole.[76] At the same time, discourse around race as a factor in Dutch society all but disappeared.[77] This case study demonstrates that these transitions occurred, not at the stroke of midnight on the new millennium, but over several decades between the 1970s and 2000 and how law and legal mobilizations played roles in that process.

I am fortunate to have begun working on this dissertation during a time in which the institutions that fund the majority of research in the Netherlands have dedicated increasing resources to the history of colonialism and slavery in the Dutch context. In the past five years, research has been published that reckons with the

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[74] Gert Oostindie, "Het Trans-Atlantische Slavernijverleden En Hedendaagse Racisme," in *Doorwerking van Slavernijverleden: Meervoudige Perspectieven Op de Relatie Tussen Verleden En Heden* (Staatscommissie Tegen Discriminatie en Racisme, 2023), 23–29.

[75] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 17 ('In 2005 uitte [Rita Verdonk, oud minister voor integratie] haar twijfels over het bestaan van discriminatie op de Nederlandse arbeidsmarkt.').

[76] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 324; See e.g. Paul Scheffer, "Het Multiculturele Drama," *NRC Handelsblad*, January 29, 2000.

[77] M'charek, Schramm, and Skinner, "Technologies of Belonging"; Essed and Trienekens, "'Who Wants to Feel White?"

role and impact of slavery on several Dutch cities, the Dutch state and Dutch National Bank, and on the violence of the war for independence of the former Dutch East Indies.[78] At the time of this writing, research is ongoing into similar histories of the Dutch royal family, and the Royal Netherlands Academy of Arts and Sciences (KNAW).[79] Some of these projects have been groundbreaking in their treatment of the histories of the Dutch East Indies and Caribbean as connected with each other and the metropole, pushing back on earlier trends which treated these histories as separate, and even irrelevant to each other.[80] Both the Dutch prime minister and king subsequently apologized, first for violence perpetrated by the Dutch military during the war for Indonesian independence, and later for the participation and

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[78] See e.g. Pepijn Brandon et al., eds., *De Slavernij in Oost En West: Het Amsterdam-Onderzoek* (Amsterdam: Spectrum, 2020); Esther Captain, Gert Oostindie, and Valika Smeulders, eds., *Het koloniale en slavernijverleden van Hofstad Den Haag* (Amsterdam: Boom, 2022); Ineke Mok and Dineke Stam, *Haarlemmers En de Slavernij* (Haarlem: In de Knipscheer, 2023); Gert Oostindie, ed., *Het koloniale verleden van Rotterdam* (Amsterdam: Boom, 2020); *Een westers beschavingsoffensief*, 2024, https://www.walburgpers.nl/nl/book/9789464563153/een-westers-beschavingsoffensief; Rose Allen and Esther Captain, *Staat en slavernij: het Nederlandse koloniale slavernijverleden en zijn doorwerkingen* (Amsterdam: Athenaeum-Polak & van Gennep, 2023); Pepijn Brandon and Gerhard de Kok, *Het Slavernijverleden van Historische Voorlopers van ABN AMRO: Een Onderzoek Naar Hope & Co En R. Mees & Zoonen* (Amsterdam: IISG, 2022), https://iisg.amsterdam/nl/blog/iisg-onderzoek-toont-grootschalige-betrokkenheid-slavernij-voorlopers-abn-amro; Esther Captain and Onno Sinke, *Het geluid van geweld: Bersiap en de dynamiek van geweld tijdens de eerste fase van de Indonesische revolutie, 1945-1946* (Amsterdam: Amsterdam University Press, 2022) (Hopefully this list will remain incomplete as more cities and institutions initiate new projects).

[79] Ministerie van Algemene Zaken, "Onafhankelijk onderzoek naar het Huis Oranje-Nassau en de koloniale geschiedenis - Nieuwsbericht - Het Koninklijk Huis," nieuwsbericht (Ministerie van Algemene Zaken, December 6, 2022), https://www.koninklijkhuis.nl/actueel/nieuws/2022/12/06/onafhankelijk-onderzoek-naar-het-huis-oranje-nassau-en-de-koloniale-geschiedenis; "'Meerstemmigheid Is de Kern van Het Onderzoek Naar Het Koloniale Verleden' - KNAW," accessed January 14, 2025, https://www.knaw.nl/nieuws/meerstemmigheid-de-kern-van-het-onderzoek-naar-het-koloniale-verleden.

[80] Allen and Captain, *Staat en slavernij*; Brandon et al., *De Slavernij in Oost En West*; Paul Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia," *Journal of Genocide Research* 14, no. 3–4 (November 2012): 441–61, https://doi.org/10.1080/14623528.2012.719375.

profit of their respective institutions during centuries of Dutch slavery.[81] This increase in research funding owes a great deal to generations of activists and social organizers calling for greater attention to colonial violence and slavery in the Netherlands, and to academics who were undeterred by being labeled 'emotional' or, worse, 'activist' in their pursuit of those topics.[82] A deeper understanding of the colonial period and the Dutch practice of slavery is vital, and this project builds on its foundations, as will be demonstrated in Chapter Two. However, because most of the research stops around the time of the abolition of slavery in the 19th century, or the end of the war for Indonesian independence in 1949, it doesn't make the bridge between the colonial and the postcolonial Dutch contexts, a limitation some of the research acknowledges.[83]

Histories of postcolonial migration, that is migration of people from the former Dutch colonies, fill the temporal gaps above to some extent. Existing historical scholarship often focuses on the experiences of particular groups

[81] Ministry of General Affairs, "Statement by King Willem-Alexander at the Beginning of the State Visit to Indonesia - Speech - Royal House of the Netherlands," toespraak (Ministerie van Algemene Zaken, March 10, 2020), https://doi.org/10/statement-by-king-willem-alexander-at-the-beginning-of-the-state-visit-to-indonesia; Ministerie van Algemene Zaken, "1e reactie van minister-president Mark Rutte na de presentatie van het onderzoeksprogramma 'Onafhankelijkheid, Dekolonisatie, Geweld en Oorlog in Indonesië, 1945-1950' - Toespraak - Rijksoverheid.nl," toespraak (Ministerie van Algemene Zaken, February 17, 2022), https://www.rijksoverheid.nl/documenten/toespraken/2022/02/17/eerste-reactie-van-minister-president-mark-rutte-onderzoeksprogramma-onafhankelijkheid-dekolonisatie-geweld-en-oorlog-in-indonesie-1945-1950; Ministerie van Algemene Zaken, "Toespraak van minister-president Mark Rutte over het slavernijverleden - Toespraak - Rijksoverheid.nl," toespraak (Ministerie van Algemene Zaken, December 19, 2022), https://www.rijksoverheid.nl/documenten/toespraken/2022/12/19/toespraak-minister-president-rutte-over-het-slavernijverleden; Ministerie van Algemene Zaken, "Toespraak van Koning Willem-Alexander tijdens de Nationale Herdenking Slavernijverleden 2023 in het Oosterpark in Amsterdam - Toespraak - Het Koninklijk Huis," toespraak (Ministerie van Algemene Zaken, July 1, 2023), https://www.koninklijkhuis.nl/documenten/toespraken/2023/07/01/toespraak-van-koning-willem-alexander-tijdens-de-nationale-herdenking-slavernijverleden-2023.

[82] Jones, "'Activism' and (the Afterlives of) Dutch Colonialism."

[83] Rose Mary Allen et al., eds., *Dutch Colonial Slavery and Its Afterlives: 2025-2035 Research Agenda*, n.d., https://www.staatenslavernij.nl/nl/de-kennisagenda/.

migrating from different parts of the former Dutch empire, for example, histories documenting experiences of people coming to the metropole from the Dutch East Indies, the Moluccan Islands, Suriname and the Dutch Caribbean Islands. Some of these works, particularly those grounded more in social science than history, emphasize aspects of the migration experience related to 'integration' or 'assimilation' into 'Dutch' society, whether voluntary or compelled.[84] Legal and other social science scholarship on this time tends to also focus on migration and integration policies, but less on what happened to these coercive practices after residency in the metropole was considered established and such welfare programs were completed.[85] Jones and De Hart's work, referenced above, are notable exceptions.

[84] See e.g. experiences of people migrating from the former Dutch East Indies in Esther Captain, *Achter het kawat was Nederland: Indische oorlogservaringen en -herinneringen 1942-1995* (Kampen: Kok, 2002); Harry A Poeze, *In Het Land van de Overheerser Deel I*, Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde 100 (Dordrecht, Holland ; Cinnaminson, U.S.A: Foris, 1986); experiences of people migrating from Suriname and the Dutch Caribbean Islands in e.g. E Maduro and G Oostindie, *In Het Land van de Overheerser*. *Deel II* (Brill, 1986),
http://www.oapen.org/download?type=document&docid=613316; Willem Cornelis Jozef Koot and Anco Ringeling, *De Antillianen*, Migranten in de Nederlandse Samenleving, nr. 1 (Muiderberg: D. Coutinho, 1984); Joan M. Ferrier, *De Surinamers*, Migranten in de Nederlandse Samenleving, nr. 2 (Muiderberg: Coutinho, 1985); Bosma, *Post-Colonial Immigrants and Identity Formations in the Netherlands*; Marc de Leeuw and Sonja van Wichelen, "Civilizing Migrants: Integration, Culture and Citizenship," *European Journal of Cultural Studies* 15, no. 2 (April 2012): 195–210, https://doi.org/10.1177/1367549411432029.

[85] Sarah van Walsum, Guno Jones, and Susan Legêne, "Belonging and Membership: Postcolonail Legacies of Colonial Family Law in Dutch Immigration Policies," in *Gender, Migration and Categorisation: Making Distinctions between Migrants in Western Countries, 1945-2010*, 2013, 149–73; Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*; E. A. Wolff, "Diversity, Solidarity and the Construction of the Ingroup among (Post)Colonial Migrants in The Netherlands, 1945-1968," *New Political Economy*, June 23, 2023,
https://doi.org/10.1080/13563467.2023.2227120.

Work that does address the period of the 1980s and 1990s tends to have been written in the period itself, often in the form of a policy analysis or evaluation,[86] or focused on the aftermath of less legally focused aspects of programs related to the Dutch ethnic minorities and integration policies.[87] These reports were vital to my project, as evidence of how those projects were thought about at the time, but they don't place the policies in a broader historical or theoretical context. More recent research into present day racialized inequalities often limits its analysis to sociological phenomena like prejudice or fear, or addresses the existence of racial profiling and discrimination, as opposed to its causes.[88] This second form of research extends to the present day, when studies into racializing practices like policing and border control rarely connect those practices to historical or colonial roots.[89] This case study aspires to add to the existing research about both postcolonial histories and present day racialized inequalities by placing the 1980s

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[86] See e.g. C.S. van Praag, "Onderzoek naar etnische minderheden in Nederland: een signalement," *Sociologische Gids* 34, no. 3 (May 1, 1987): 159–75; Molleman, "Het minderhedenbeleid in retrospectief."

[87] See e.g. Essed and Nimako, "Designs and (Co)Incidents"; Molleman, "Het minderhedenbeleid in retrospectief"; Laura Coello, ed., *Het Minderhedenbeleid Voorbij: Motieven En Gevolgen* (Amsterdam: Amsterdam University Press, 2013), https://library.oapen.org/handle/20.500.12657/33834; Han Entzinger, "Van 'Etnische Minderheden' Naar 'Samenleven in Verscheidenheid': Vier Decennia Integratiebeleid in Vijf WRR-Rapporten," *Beleid En Maatschappij* 48, no. 3 (July 2021): 307–20, https://doi.org/10.5553/BenM/138900692021048003009.

[88] See e.g. Essed, *Understanding Everyday Racism*; Philomena Essed, "Ethnicity and Diversity in Dutch Academia," *Social Identities* 5, no. 2 (June 1, 1999): 211–25, https://doi.org/10.1080/13504639951563; Halleh Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands," in *Dutch Racism*, ed. Philomena Essed and Isabel Hoving (Brill | Rodopi, 2014), 101–16, https://doi.org/10.1163/9789401210096_006; Melissa F. Weiner, "Whitening a Diverse Dutch Classroom: White Cultural Discourses in an Amsterdam Primary School," *Ethnic and Racial Studies* 38, no. 2 (January 26, 2015): 359–76, https://doi.org/10.1080/01419870.2014.894200.

[89] Peter Rodrigues and Maartje van der Woude, "Etnisch profileren door de overheid en de zoektocht naar adequate remedies," *Crimmigratie & Recht* 5, no. 2 (2021): 108–25, https://doi.org/10.5553/CenR/254292482021005002002; Joanne P. van der Leun and Maartje A.H. van der Woude, "Ethnic Profiling in the Netherlands? A Reflection on Expanding Preventive Powers, Ethnic Profiling and a Changing Social and Political Context," *Policing and Society* 21, no. 4 (December 2011): 444–55, https://doi.org/10.1080/10439463.2011.610194.

and 1990s in a historical context of transition between colonial and postcolonial, and as such the transition of racializing practices from the explicitly legal to the unspoken and implied.

1.2.2.1. Afterlives of colonialism

While historical research into Dutch practices of colonial violence and slavery have received increased institutional support in the last five years, this is not necessarily the case for research into how that colonial history manifests or continues to impact the present day, manifestations often called the afterlives of colonialism. My case study of legal mobilizations around racial discrimination between the 1970s and 1990s contributes to scholarship on the afterlives of slavery and colonialism in two ways. First, it makes the case and provides necessary evidence for the argument that racialized inequality in the metropole is, in fact, an afterlife of colonialism; second, it demonstrates how law and legal mobilization are means by which racializing practices from the colonial era may transform and transplant themselves into the postcolonial period.

In her essay on the challenges, both practical and ethical, of writing about the lives of enslaved women, Saidiya Hartman describes afterlives as 'the detritus of lives with which we have yet to attend, a past that has yet to be done, and the ongoing state of emergency in which black life remains in peril.'[90] Afterlives in Hartman's usage are hauntings, ghosts who refuse to rest in peace before their lives and deaths, which colonial records have treated as property as opposed to human, are properly recognized. Christina Sharpe gets at similar ideas of how the past affects the present using the metaphor of 'the wake', the unsettled water that followed ships bringing people captured from Africa to enslavement or death in the Americas, in which people racialized as Black still swim.[91] In both these frames, the concept of colonial afterlives link to Stuart Hall's description of the postcolonial period as 'an era when everything still takes place in the slipstream of colonialism

[90] Saidiya Hartman, "Venus in Two Acts," *Small Axe* 12, no. 2 (2008): 1–14.

[91] Christina Elizabeth Sharpe, *In the Wake: On Blackness and Being* (Durham London: Duke University Press, 2016).

and hence bears the inscription of the disturbances that colonization sets in motion…. which may be resisted, but whose presence is an active force.'[92]

While much of the recent research into slavery and colonialism in the Netherlands has been groundbreaking, it remains, understandably, focused primarily on excavating the past. Questions of how this past impacts present day Dutch society (the afterlives of colonialism) are mostly referenced in essays about how underdeveloped this area of research is, and its necessity as a topic of future research.[93] Some of these essays doubt the connection, or at the very least, call for more empirical evidence of the connection between slavery and present day racism and racial discrimination;[94] other accept the link between the two as a premise, and share the difficulties of obtaining support for more empirical research in areas of Dutch society involving racism, racial discrimination in the employment and housing markets, elementary and university education, and the health care systems.[95]

Even when research into the afterlives of slavery and colonialism is commissioned and funded, problems persist.[96] In 2021, Jones and historian Nancy Jouwe received commissions from the cities of Amsterdam and Utrecht to investigate the afterlives of colonialism and slavery in those two cities, with historian Susan Legêne eventually joining as project leader. They were to research

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[92] Hall, *The Fateful Triangle*, 101.

[93] Allen et al., *Dutch Colonial Slavery and Its Afterlives: 2025-2035 Research Agenda*; *Doorwerking van slavernijverleden: Meervoudige perspectieven op de relatie tussen verleden en heden* (Staatscommissie Tegen Discriminatie en Racisme, 2023), http://www.staatscommissietegendiscriminatieenracisme.nl/.

[94] See e.g. Gert Oostindie, "Het trans-Atlantische slavernijverleden en hedendaags racisme" in *Doorwerking van slavernijverleden: Meervoudige perspectieven op de relatie tussen verleden en heden*.

[95] See various authors in *Doorwerking van slavernijverleden: Meervoudige perspectieven op de relatie tussen verleden en heden*.

[96] Guno Jones, Nancy Jouwe, and Susan Legêne, "Opdracht gestrand: Hoe de vraag naar de doorwerking van kolonialisme en slavernij in Amsterdam en Utrecht leidde tot meer vragen," in *Geschiedenis voor dekolonisatiebeleid* (Historicidagen 2022, Rotterdam: Vrije Universiteit, 2023), 31, https://research.vu.nl/ws/portalfiles/portal/225361723/OpdrachtGestrand.pdf; Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek."

how these afterlives impacted specific areas of municipal policy, a proposition that ultimately proved unworkable, as the three explained:

> The effects of slavery take place in many areas of life and at many levels. Doing justice to this multiformity without assuming a priori the division into policy areas was the researchers' first concern.... At the same time, the tension was broader, touching on the epistemological question of who should set the agenda for research on social injustice. The research design intended to accommodate the voices of those directly affected by this injustice, but this did not align with the clients' expectations of the role of the researchers. The proposal to incorporate policy domains into the design through the envisioned vignettes ultimately did not yield results. There was no agreement on the research approach, the researchers felt no confidence in their professionalism, and the assignment was returned [and ended in 2022].[97]

Jones, Jouwe and Legêne go on to reflect on their positionality as researchers and its relation to the project. In the short term, they observe, their research was hampered by its status as a publicly commissioned study, ultimately beholden to the parties financing it; they observe that in order to remain vital and 'decolonial' in nature, such research may require a higher degree of 'epistemic marginality'. In a broader perspective, they observe the violence, both emotional and material, they and other researchers racialized as non-white and who are therefore 'directly involved' in this history, have experienced when attempting to make connections between colonial violence and ongoing practices of racialized violence in the postcolonial metropole.[98]

In contrast to the barriers observed by Jones, Jouwe and Legêne, my opportunity to write about colonial afterlives has been privileged by both my personal and professional positions. On the personal level, I am a person racialized as white; while I don't believe this makes me any less involved in histories of racialization or their aftermaths, it does implicate me in ways that offer significantly more protection from the backlash experienced by researchers racialized as non-

[97] Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek," 279.

[98] Jones, Jouwe, and Legêne, 281.

white and who address similar topics. My research has been conducted as an individual PhD project, fully funded by the Royal Netherlands Institute of Southeast Asian and Caribbean Studies (*Koninklijk Instituut voor Taal-, Land- en Volkenkunde, KITLV)*. The KITLV has been reckoning with its own legacy as a research institute created to assist with colonial governance for several years.[99] In 2019, it put out an open call for submissions for projects whose goal was to 'understand the nature and impact of colonial legacies' in places that had been part of the 'Dutch colonial space'.[100] I was clear about my intentions to study ongoing racialized inequality as a postcolonial practice and have been given freedom and support to do so throughout the duration of this research. A fully-funded PhD position at a KNAW research institute is hardly the 'epistemic margins', but it has offered me freedom to explore and ask questions not available in much of the publicly-commissioned research described above.

Scholarly work from those epistemic margins that addressed colonial afterlives of racialization and racialized inequality in the Dutch metropole includes work from the late 1990s and early 2000s that Jones, Jouwe and Legêne identify as being done by 'a handful of engaged knowledge workers in The Netherlands' largely from feminist and queer organizations like Sister Outsider, the Zwarte, Migranten-, en Vluchtelingenvrouwen movement (Black, Migrant and Refugee Women, ZMV), *Nieuwe Perspectief*, Strange Fruit and NIEUWS.[101] Much of the work they cite,

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[99] See e.g. Maarten Kuitenbrouwer, *Tussen oriëntalisme en wetenschap: het Koninklijk Instituut voor Taal-, Land- en Volkenkunde in historisch verband 1851-2001* (Leiden: KITLV Press, 2001); Sanne Rotmeijer, "Blog: Decolonize the Academic Institute: Get Rid of It or Get It Right?," *KITLV* (blog), April 20, 2017, https://www.kitlv.nl/blog-decolonize-academic-institute-get-rid-get-right/; "Workshop | Academic Research in a Decolonizing World: Towards New Ways of Thinking and Acting Critically? | Registration Closed," KITLV, accessed January 20, 2021, https://www.kitlv.nl/event/workshop-academic-research-decolonizing-world-towards-new-ways-thinking-acting-critically/.

[100] "Phd Candidate on Functioning of Postcolonial Memory and Memory Cultures in the Netherlands, Indonesia and/or the Caribbean and Diaspora" (Academic Transfer, October 18, 2019), in author's possession.

[101] Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek" ('Veel werk werd zonder (toereikende) subsidies verricht en was onttrokken aan het oog van het publiek of zelfs van het wetenschappelijk instituut waar het was ondergebracht. Dit gebeurde binnen organisaties als

along with the essay collection *Caleidoscopische Visies*,[102] has also helped me understand the nature of how racializing practices (as well as social practices constructing gender and sexuality) functioned in the Netherlands during and after the period of my case study. Writing mostly in the early 1990s, members of the ZMV movement often used intersectional analysis (bridging critical critiques of race, gender, sexuality and class) to critique the Dutch context, but largely ignored the legal aspects of that analysis.[103] I hope my examination of legal mobilization around issues of race in the era immediately preceding much of this writing provides additional evidence for many of their findings.

Writing closer to the academic mainstream, though still from a critical perspective, political economist Kwame Nimako and historian Glenn Willemsen devoted considerable space to assessing the role of law both in disruptions and continuities of regimes of racial governance in post-abolition (and postcolonial) regimes of race in *The Dutch Atlantic*. Referring to a process they titled 'abolition without emancipation' they explained that 'from a legal and legislative perspective the abolition of chattel slavery constitutes a transformative change in theory; in policy and practice, however, the Dutch legal abolition of slavery rested on progressive control.'[104] They further explained that progressive control 'does not mean *no change*; but rather a change that maintains and regulates existing dominant-dominated relations,'[105] and cited the ten-year period of *staatstoezicht*,

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Sister Outsider, de ZMV-beweging [Zwarte, Migranten-, en Vluchtelingenvrouwen], Nieuw Perspectief, Strange Fruit en NIEUWS, om maar enkele te noemen.').

[102] Nancy Jouwe, Maayke Botman, and Gloria Wekker, eds., *Caleidoscopische visies*, 2d ed. (Zutphen: Walburg Pers, 2024), https://www.walburgpers.nl/nl/book/9789464563610/caleidoscopische-visies (Most references in this dissertation are to the original edition of this collection, published in 2001. In 2024, the book was reprinted with a new introduction, introducing it to a new generation of scholars and activists.).

[103] Gloria Wekker and Helma Lutz, "Een Hoogvlakte Met Koude Winden. De Geschiedenis van Het Gender- En Etniciteitsdenken in Nederland," in *Caleidoscopische Visies: De Zwarte, Migranten- En Vluchtelingen-Vrouwenbeweging in Nederland*, ed. Helma Botman, Nancy Jouwe, and Gloria Wekker (Koninklijk Instituut voor de Tropen, 2001), 25.

[104] Kwame Nimako and Glenn Frank Walter Willemsen, *The Dutch Atlantic: Slavery, Abolition and Emancipation*, Decolonial Studies, Postcolonial Horizons (London ; New York, NY: Pluto Press, 2011), 123.

[105] Nimako and Willemsen, 98.

during which formerly enslaved people in Suriname were nominally free but still legally obligated to work on plantations, as a legal manifestation of such control.[106] During the *staatstoezicht* period, the legal status of workers racialized as non-white changed, but their relationships to power and property remained subordinate to people racialized as white. Nimako and Willemsen followed these observations with a comparison of the 'emancipations' of Catholic people, 'the working class,' and women in the Netherlands and that of formerly enslaved people in the Atlantic colonies. In the case of the first three, laws were passed that enabled their increasing participation in Dutch society with a goal of total participation and 'equality;' in the case of the formerly enslaved, by contrast, 'freedom' meant progressive control, first in the form of forced labor for the colonial state, then by the less-than-equal status as colonial subjects, then as citizens in a metropole where 'racism and sexism become the major obstacle to equality.'[107] Though Nimako and Willemsen's 'abolition without emancipation' concept mirrors that of Crenshaw and other CRT scholars' critiques of 'formal without material equality',[108] Nimako and Willemsen largely ignore laws or legal mobilization around racial discrimination in this 'unfinished business' of emancipation in the metropole.[109] My case study supplements their research, positioning law and legal mobilizations around race both as illustrations of 'progressive control' and 'unfinished emancipation', and as such, the means by which colonial afterlives related to racialized inequality continue operating in the postcolonial Dutch metropole.

1.2.2.2. Archival silence and postcolonial memory in the Netherlands

In addition to serving as a means by which colonial afterlives of racialized hierarchy and white supremacy may travel into the present day, law and legal mobilization can also shield those afterlives from public memory and memorability. When addressing the accessibility of, or frames of reference for, Dutch public memory around slavery and other practices of racialized colonial violence, scholars

[106] Nimako and Willemsen, 99–110.

[107] Nimako and Willemsen, 13–133, 148.

[108] Crenshaw, "Race, Reform, and Retrenchment."

[109] Nimako and Willemsen, *The Dutch Atlantic*, 166.

often remark on absence, using terms like 'aphasia', 'occlusion' or 'lack of memorability.'[110] Specifically, these scholars often cite absences, silences or silencing of evidence of these histories in institutional and cultural archives. In *Silencing the Past*, Michel Rolph Trouillot observed that silencing of history can occur at four moments: those related to 'fact creation (the making of *sources*)…fact assembly (the making of *archives*)…fact retrieval (the making of *narratives)*… and retrospective significance (the making of *history* in the final instance).'[111] A case study of legal mobilizations around racialized inequality in the Dutch metropole in the postcolonial period, and the actions of the LBR specifically, allows for exploration of how law and legal mobilization contribute to all four of these elements, and frames legal mobilizations as site of struggle over memorability.

The terms colonial memory or postcolonial memory refer to the way a nation's history of colonialism is related, or considered relevant, to present day society.[112] They are also closely related to ideas of cultural memory and collective memory, both of which contribute to how a group of people defines itself as a community.[113] Trouillot writes, for example, that Europeans could only see the Haitian Revolution as a haphazard uprising and not as a liberating revolution because the latter was not conceivable to those who had been the oppressors.[114] As Pamela Pattynama writes of the Dutch case, the 'assimilation' of people racialized as mixed from the Dutch East Indies had to be seen as successful because it comported with the Dutch self-image as tolerant and open, and therefore could not incorporate histories of violence or discrimination.[115] Pattynama's observation is reflected in other Dutch scholarship around colonial history and the history of

[110] Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia."

[111] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Kindle, Beacon Press 2015) Ch 1 (emphasis in the original).

[112] See e.g. G. N. T. J. van Engelenhoven, "Articulating Postcolonial Memory through the Negotiation of Legalities: The Case of Jan Pieterszoon Coen's Statue in Hoorn," *Law, Culture and the Humanities*, June 28, 2023, https://doi.org/10.1177/17438721231179132.

[113] Pamela Pattynama, "Cultural Memory and Indo-Dutch Identity Formations," in *Post-Colonial Immigrants and Identity Formations in the Netherlands* (Amsterdam University Press, 2012), 175–92, https://doi.org/10.1515/9789048517312-009.

[114] Trouillot, *Silencing the Past*.

[115] Pattynama, "Cultural Memory and Indo-Dutch Identity Formations," 184.

slavery, where until the last decade scholarly discussions of 'colonial memory' were often paired with observations of 'colonial forgetting' or 'discursive silence' in which the histories of the former Dutch colonial empire in present day Indonesia, or the Caribbean were treated as either separate from or irrelevant to the history of the metropole, or 'selectively remembered' as triumphs and victories of trade and commerce while simultaneously denying or 'forgetting' the violence of conquest or enslavement.[116] Colonial histories were also frequently treated as regionally distinct, with 'triumphs' belonging to histories of the Dutch East Indies and 'shame' related to practices of slavery in the Caribbean, though much of the recent scholarly work into the history of slavery and colonial violence, described above, is making express efforts to remedy this phenomenon.[117]

One influence shaping public memory are archives, collections often maintained by governments, museums, universities etc. Archives are always selective collections and inevitably reflect the perspectives of those who create and curate them, as well as the perspectives of those who collected or created (or failed to collect or create) the documents or objects contained in them. In the case of colonial memory, this perspective is usually that of the colonizers as opposed to the colonized, the enslavers as opposed to the enslaved, creating what scholar Anne Stoler has referred to as 'colonial aphasia'.[118] Material archives maintained by educational, governmental or cultural institutions join with what Edward Said and Gloria Wekker refer to as the 'cultural archives', a less tangible 'unacknowledged reservoir of knowledge and affects' that people in a nation refer to when creating a sense of national identity, and that may rest in art, literature, popular culture or traditions.[119] A cultural archive is less static than a material archive, and the concept blends with ideas of heritage and community values. In the Netherlands, the gaps and silences of cultural, as well as official archives, around racialization and other

[116] Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia"; Markus Balkenhol, "Silence and the politics of compassion. Commemorating slavery in the Netherlands," *Social Anthropology* 24, no. 3 (2016): 284, https://doi.org/10.1111/1469-8676.12328 (citing Michel-Rolph Trouillot).

[117] See e.g. Brandon et al., *De Slavernij in Oost En West*; Allen and Captain, *Staat en slavernij*.

[118] Ann Laura Stoler, 'Colonial Aphasia: Race and Disabled Histories in France' (2011) 23 Public Culture 121; cited by Bijl (n 69) 449.

[119] Wekker, *White Innocence*, 2.

violent colonial practices have led to what Wekker calls a sense of 'white innocence' with regard to race.[120]

Trouillot observed that creating archival silences is not a passive process; on the contrary 'one "silences" a fact or an individual as a silencer silences a gun.'[121] In a similar vein, Guno Jones observes that colonial aphasia is not a passive process but involves active obstruction or denial of the relationships between colonies and the metropole, a process of *postcolonial occlusion*.[122] In the Dutch case, Jones describes how parliamentarians and other policy makers attempted to actively conceal the history and ongoing relationships between the European territory of the Netherlands and its (former) colonies, by continually characterizing people from those colonies as inherently different from and unconnected to the Dutch metropole (a racializing discourse) and using that discourse to justify continuing attempts to limit their access to the metropole.[123] In doing so, they not only denied the relevance of the colonial relationship between the Dutch metropole and those territories, but actively concealed evidence of that relationship, in the form of the racialized bodies of the people in question.

Where Jones focuses on migration policies, and thus barriers to entering or remaining in the metropole, my case study explores how postcolonial occlusion occurred inside the metropole, after the permanent presence of these same groups of people had been reluctantly (if never totally) accepted. Beginning in Chapter Three, I build on Trouillot and Jones to examine how legal mobilizations -- from

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[120] Wekker, *White Innocence*.

[121] Trouillot, *Silencing the Past*, Chapter Two.

[122] Guno Jones, "Just Causes, Unruly Social Relations. Universalist-Inclusive Ideals and Dutch Political Realities," in *Revisiting Iris Marion Young on Normalisation, Inclusion and Democracy*, ed. Ulrike M. Vieten (London: Palgrave Macmillan UK, 2014), 71, https://doi.org/10.1057/9781137440976_5 (quoting Anne Stoler and arguing 'that Dutch colonialism is not disavowed per se: rather, a selective avowal–disavowal mechanism is operative in how Dutch colonialism is retrieved in dominant discourses: on the one hand the "achievements" of Dutch colonialism are celebrated; on the other hand, critical voices that point to the human tragedies and racist ideologies underpinning Dutch colonialism are met with reluctance if not actively repressed. These postcolonial critiques are often "occluded, dismembered" from the narrative of Dutch colonialism.').

[123] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*.

the Dutch governments' choice of laws to address racial discrimination, to the creation of LBR, to the execution of that organizations' mandate -- silenced potential sources, archives, narratives and history related to the role of race and racialization in the postcolonial Dutch metropole, and in doing so obscured those narratives from public scrutiny and memory.

1.2.2.2.1. Law and public memory

Of course, archival silences do not reflect silences in communities affected by colonial violence or slavery, or a lack of memory or memorability. These narratives are always present, whether 'whispered' among families and passed through generations, as historian Esther Captain describes histories of the Dutch East Indies[124] or shouted in the streets by protestors or revolutionaries. The problem is not a lack of sound, but a failure to listen.[125] Law can be one way these narratives of protest, or deviant narratives, may become included in institutional archives. While legal records in Dutch cases do not contain formal trial transcripts, they may contain texts of judicial decisions, witness statements or advocates' written pleadings, or other documentary evidence like photographs, medical records or scientific reports. However, court procedures and their eventual records can also exclude certain facts or narratives as irrelevant, insufficient or impermissibly prejudicial and in doing so can erase the significance of certain stories from the historical record.[126]

Until recently the Dutch 'legal archive' on racialization was the territory primarily of historians or political scientists writing about slavery in the Dutch

[124] Esther Captain, "The Selective Forgetting and Remodeling of the Past: Postcolonial Legacies in the Netherlands," in *Austere Histories in European Societies Social Exclusion and the Contest of Colonial Memories* (London ; New York : Routledge, Taylor & Francis Group, 2017); see also Captain, *Achter het kawat was Nederland*.

[125] See also Guno Jones, "The Shadows of (Public) Recognition: Transatlantic Slavery and Indian Ocean Slavery in Dutch Historiography and Public Culture," in *Being a Slave*, ed. Alicia Schrikker and Nira Wickramasinghe (Leiden: Leiden University Press, 2020), 278 (for discussions of memories of slavery in the Dutch Caribbean diaspora).

[126] Joachim J. Savelsberg and Ryan D. King, "Law and Collective Memory," *Annual Review of Law and Social Science* 3, no. 1 (2007): 192–94, https://doi.org/10.1146/annurev.lawsocsci.3.081806.112757.

Atlantic, as opposed to legal scholars writing about the metropole. For example, Nimako and Willemsen's *Dutch Atlantic* and Karwan Fatah Black's *Eigendomsstrijd* both mention the case of Andries, an enslaved man whose freedom was denied by the Dutch States General in 1776.[127] Dienke Hondius's article 'Access to the Netherlands of Enslaved and Free Black Africans' and her subsequent book *Blackness in Western Europe* also reference Andries's case and those of several other enslaved people seeking freedom through Dutch courts and are different from the previous two books in that they explicitly focus on the metropole.[128] All three of the above historical works use legal archives as sources of evidence of the racialized practice of slavery; they do not emphasize law as a creator and enforcer of race generally. Jones's recent work on legal cases related to slavery and Betty de Hart's work on legal regulation of relationships racialized as mixed are, again, exceptions to this rule. Even here, however, De Hart has mentioned the difficult, even tedious, nature of exploring race in the Dutch legal archive; she describes sifting through volumes of documents looking for racializing terminology that is almost always veiled in euphemisms or implied from other circumstantial details.[129]

Being included in the legal archive often means the individuals involved have involuntarily experienced racialized legal violence. This was the case for Ganna Levy and Awanimpoe, residents of colonial Suriname punished for engaging in a sexual relationship across racialized lines in 1730; she was banished from the colony while he was tortured and killed.[130] It was also the case for other enslaved or

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[127] Karwan Fatah-Black, *Eigendomsstrijd*, 122-128*: De Geschiedenis van Slavernij En Emancipatie in Suriname* (Amsterdam: Ambo/Anthos, 2018); Nimako and Willemsen, *The Dutch Atlantic*.

[128] Dienke Hondius, "Access to the Netherlands of Enslaved and Free Black Africans: Exploring Legal and Social Historical Practices in the Sixteenth–Nineteenth Centuries," *Slavery & Abolition* 32, no. 3 (September 2011): 377–95, https://doi.org/10.1080/0144039X.2011.588476; Dienke Hondius, *Blackness in Western Europe: Racial Patterns of Paternalism and Exclusion*, 2017.

[129] De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie," 360.

[130] Referenced in Hilde Neus, "Seksualiteit in Suriname: Tegenverhalen over liefde en 'vleselijke conversatie' in een koloniale samenleving," *De Achttiende Eeuw* 53, no. 1 (January 1, 2021): 177, https://doi.org/10.5117/DAE2021.010.NEUS; R. van Lier, *Samenleving in Een Grensgebied: Een Sociaal-Historische Studie van Suriname* (Deventer: Van Loghum Slaterus, 1971), 55; for laws governing racializing practices in colonial Suriname, see J.A. Schiltkamp and J. Th. Smidt, de, eds.,

colonized people, memorialized as criminal defendants or enslaved property in the archival records of Dutch slavery and colonialism. But voluntary engagement with courts may also be a way of seeking protections from or redress for such acts of violence. This was the case for Andries, who, while he ultimately lost his legal bid for freedom, demonstrated his agency by pursuing it. Legal procedures as part of a broader social change strategy have been even more evident in recent legal cases in the Netherlands, which demand accountability for colonial and other racialized violence from the Dutch courts. Chief among these is the case of the Rawagede widows, wives and family members of civilians killed by the Dutch army in the Indonesian war for independence. In 2011, they successfully sued the Dutch government for damages for their relatives' deaths. Though the monetary reward was small and only won many years after the violence, the case was as much about colonial memory as it was about individual family losses. Writing about the case, historian Nicole Immler addressed the motivations of Jeffrey Pondaag, who was involved in the case despite not being related to the families involved:

> It is more than archiving a desire for justice; it is building an archive as such, to provide information to an 'ignorant audience.' His concern is the little knowledge about the colonial past in present-day Dutch society, and the legacies of ignorance in the form of what he calls discrimination, racism, and institutionalized structural inequality.[131]

Pondaag's motives as described above are similar to those of artist Quinsy Gario who filed a lawsuit against the City of Amsterdam for issuing permits for 2013 parades featuring *Zwarte Piet*. Gario did not expect to win the case, but urged others to join the suit to demonstrate that Dutch legal institutions 'did not care

West Indische Plakaatboek, Plakaten, Ordonnatiën En Andere Wetten, Uitgevaardigd in Suriname 1667-1816, I, 1667–1761 (Amsterdam: S. Emmering, 1973).

[131] Nicole L. Immler, "Human Rights as a Secular Social Imaginary in the Field of Transitional Justice: The Dutch-Indonesian 'Rawagede Case,'" in *Social Imaginaries in a Globalizing World* (Berlin/Munich/Boston: De Gruyter, 2018), 207, https://doi.org/10.1515/9783110435122-009.

about racism'.[132] Similar motives were also present among antiracist activists in Germany, who used what they described as a hopeless trial of the police for the wrongful death of Oury Jalloh, a man racialized as Black who died in police custody.[133] It is also a strategy having a contemporary resurgence by both climate[134] and antiracist activists, the latter of whom recently won a judgement forbidding Dutch border police to use racial profiles in their border stops.[135]

1.2.2.2.1. Legal (In)action and Archival Silence

Most of the above scholarship on law and memory looks to the cases or incidents that made it into courtrooms. But from a legal perspective, controversies that fail to reach courtrooms are just as important as those that do for shaping both material reality at the time they are brought, and the memorability of that reality. All these acts can be characterized as 'legal mobilizations', practices explored by American sociologist Michael McCann in the early 1980s, who examined the ways law and legal processes are used in movements for social change.[136]

McCann's work acknowledges that the power of law and legal actors lies not only in what they do, but what they refuse to do, and that a refusal to act may be as violent as any judicially imposed penalty. When police, prosecutors, or judges decline or refuse to intervene against allegations of 'arbitrary, violent social control practiced by privileged groups in civil society, including employers and corporate managers, landlords and bankers, debt collectors, security guards and men (over

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[132] Quinsy Gario, "On Agency and Belonging," in *Smash the Pillars: Decoloniality and the Imaginary of Color in the Dutch Kingdom* (Lanham, Maryland: Lexington Books, 2018), 85, note 2.

[133] Eddie Bruce-Jones, *Race in the Shadow of Law: State Violence in Contemporary Europe*, First published in paperback 2018 (London New York: Routledge, Taylor & Francis Group, 2018), 69.

[134] ECLI:NL:HR:2019:2007, State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda, 19/00135 (Engels) (Supreme Court of the Netherlands (Civil Division 2019).

[135] ECLI:NL:GHDHA:2023:173, Gerechtshof Den Haag, 200.304.295, No. ECLI:NL:GHDHA:2023:173 (Hof Den Haag February 14, 2023).

[136] Michael McCann, "Litigation and Legal Mobilization," in *The Oxford Handbook of Law and Politics*, ed. Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington (Oxford University Press, 2008), 524, https://doi.org/10.1093/oxfordhb/9780199208425.003.0030.

women and children)' these legal actors are also enacting state violence, by allowing violent actions to occur when it is in their power to stop them.[137] McCann's observations of the power of legal inaction recall those of Sara Ahmed, discussed above, that nonperformative antiracist measures may do as much harm as those that actively endorses racializing practices, as well as Trouillot's formulation of silencing as an active process.[138]

A case study of the LBR and other contemporaneous legal mobilizations allows the opportunity to unify the above threads of critical legal, legal mobilization, and postcolonial scholarship to examine how law and legal mobilization contributed to archival silences around racialization in the Netherlands in the postcolonial period. It also provides an opportunity to examine how legal constructions of race and postcolonial memory of the role of race in the Netherlands are mutually constructed. By failing to bring controversies about racial discrimination or racialized inequality before legal bodies, the people directing the LBR kept these matters out of legal archives; this archival absence made it harder for future scholars attempting to understand the nature of racialized social systems, or the existence of resistance to these processes, to discover, and in this way rendered those matters unmemorable. But the LBR case study also offers a different aspect of legal analysis than that conducted by McCann or Immler, or the actions taken by Gario or Pondaag; unlike the social movements under study in most legal mobilization analysis, the LBR was created and funded by the state. While its charter described it as an independent organization, it received all its operating funds from the Dutch Ministry of Justice which appointed its first board of directors had final say over its budget. This imbued the organization's actions, or failures or refusals to act, with an element of state power, and that power's attendant violence.

McCann builds his observations about inaction on the theories of legal scholar Robert Cover, who characterized all judicial action as both materially and

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[137] Michael W. McCann and George I. Lovell, *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*, Chicago Series in Law and Society (Chicago: University of Chicago Press, 2020), 380.

[138] Ahmed, "The Nonperformativity of Antiracism"; Trouillot, *Silencing the Past*, Ch.2 ('By silence I mean an active and transitive process: one "silences" a fact or an individual as a silencer silences a gun.').

epistemically violent.[139] Judicial violence is material in that the words of a judge 'are commitments that place bodies on the line.... A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property or even his life.'[140] Judicial violence is also epistemic in that choosing one interpretation of the law over another kills the unchosen version as a form of law.[141] Characterizing judicial inaction as epistemic violence overlaps with race critical scholarship about the impact of silencing issues related to racialization when they come up in societal discourse. Race critical scholar Alana Lentin gives this practice a trademark symbol, calling it 'not racism™' and defines it as 'definitions of racism that either sideline or deny race both as a historical phenomenon and as experienced by racialized people'[142] 'Not racism™', which I also refer to below as racist denial, is one iteration of a battle to define racism, often representing an attempt by those accused of racializing practices to distance themselves from the stigma of that accusation.[143] These denials are violent because they remove the right to define a harm from those affected by it, namely people racialized as non-white, and puts the right to define in the hands of those most likely to perpetrate that harm. In the legal sphere, declaring an action 'not racism' may deny those impacted access to legal protection from or remedies for harm they experience as a result of the action. 'Not racism' also places larger social practices that enact or perpetuate racial inequality outside its scope, such as those that structurally deprive racialized (often also colonized) people of equal access to migration, employment, education or housing, reflected in the characterization of racial inequalities in these sectors as the results of individual

[139] Robert M. Cover, "Violence and the Word Essays," *Yale Law Journal* 95, no. 8 (1986 1985): 1601–30.

[140] Cover, 1601, 1607.

[141] Robert M. Cover, "Foreword: Nomos and Narrative," *Harvard Law Review* 97, no. Issue1 (1984 1983): 42–44.

[142] Lentin, *Why Race Still Matters*, 52–92; Alana Lentin, "Beyond Denial: 'Not Racism' as Racist Violence," *Continuum* 32, no. 4 (July 4, 2018): 402, https://doi.org/10.1080/10304312.2018.1480309.

[143] Lentin, "Beyond Denial," 402 (citing Ahmed 2016, "Evidence", Feminist Killjoys, July 12. https://feministkilljoys.com/2016/07/12/evidence/).

behavior of 'bad apples' as opposed to systemic, structural and often historically rooted logics of white supremacy.[144]

In this case study, the law in question is mostly statutes and policies adopted by various government agencies and institutions; it emanates both from the Dutch cabinet and legislature in deciding which activities to include in criminal prohibitions on 'spreading racial hatred' or racial discrimination, but also the policy directives and decisions at the level of police, prosecutors and judges about how to enforce these prohibitions; Chapters Three and Four evaluate these processes. The LBR engaged in racializing legal practice both through its decisions to pursue instances of discrimination in court or to address them in less adversarial ways as addressed in Chapter Five, and in categorizing the complaints it received as 'racist' or 'not-racist', addressed in Chapter Six. In all cases, exploring in detail the decision-making processes of those involved gives insight not only to the material impact during the period of study but also to the impacts on postcolonial occlusion, judicial inaction and racist denial that may happen in the quasi-independent, state-subsidized models that characterize so many Dutch public interest activities.

1.3. Choice of case study

I propose above that an in-depth case study of the Landelijk Bureau Racismebestrijding and other legal mobilizations around the issue of racial discrimination in the 1980s and 1990s, contributes to discussions around racialization, law, colonial afterlives and colonial memory in the Dutch context, but I did not begin this research project with this case study in mind. I came across the LBR while repeatedly trying, and failing, to find existing archival evidence on the subject about which I thought I would write, Dutch law schools in the immediate aftermath of formal decolonization, and the relative lack of theorization on the relationship between colonialism, law and race in Dutch legal scholarship. My early research revealed that law faculties had been intensely involved in Dutch colonial projects. They trained Dutch jurists and administrators for work in the colonies,[145]

[144] Bonilla-Silva, "Rethinking Racism,"465-469.

[145] Cees Fasseur, "Leiden and Empire: University and Colonial Office 1825-1925," in *Leiden Oriental Connections*, ed. W. Otterspeer (E.J. Brill, 1989), 187-203.

and educated members of the colonial elite in an attempt to spread 'European values'.[146] They published research on 'native' legal practices to which entire departments were dedicated and upon which the foundations of some Dutch research institutes were built.[147] These practices contributed significantly to the two institutions which support this PhD: the KITLV which was formed in 1851, as the Royal Dutch Institute of Language, Geography and Ethnography to conduct research that would allow for better management of the colonies in Asia and the Caribbean[148], and the Van Vollenhoven Institute for Law and Governance, named after Cornelius van Vollenhoven who catalogued 'native' legal practices in the Dutch East Indies.[149] I was interested in how law faculties and those working and studying in them adapted to a postcolonial reality in which the subjects of so many of their efforts no longer accepted that intervention abroad or its legacy in the metropole.

For the most part, this early research indicated little change; law professors who specialized in colonial law and policies, like their colleagues in the social sciences, pivoted their focus, first to the remaining Dutch colonial possession of New Guinea and then, after Dutch rule ended there in 1962, to other 'developing' countries in Asia and Africa.[150] A case in point is that of Professor William Lemaire, born and educated in the Dutch East Indies and raised in its formally segregated legal system. After migrating to the Netherlands in 1952, Lemaire was appointed chair of Interracial Law *(Intergentiel Recht)* at the Leiden University law faculty, a field dedicated to studying the segregated legal system of the Dutch East Indies;

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[146] Poeze, *In Het Land van de Overheerser Deel I*; Harry Poeze, "Indonesians at Leiden University," in *Leiden Oriental Connections*, 250–79.

[147] M. Kuitenbrouwer and Harry A. Poeze, *Dutch Scholarship in the Age of Empire and beyond: KITLV - the Royal Netherlands Institute of Southeast Asian and Caribbean Studies, 1851-2011*, Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde, volume 289 (Leiden: Brill, 2014); Kuitenbrouwer, *Tussen oriëntalisme en wetenschap*.

[148] Kuitenbrouwer and Poeze, *Dutch Scholarship in the Age of Empire and Beyond*; Kuitenbrouwer, *Tussen oriëntalisme en wetenschap*.

[149] E.g. Keebet von Benda-Beckmann and A. K. J. M. Strijbosch, eds., *Anthropology of Law in the Netherlands: Essays on Legal Pluralism*, Verhandelingen van Het Koninklijk Instituut Voor Taal-, Land- En Volkenkunde 116 (Dordrecht, Holland; Cinnaminson, U.S.A: Foris Publications, 1986).

[150] See e.g. Kuitenbrouwer and Poeze, *Dutch Scholarship in the Age of Empire and Beyond*; John Griffiths, "Recent Anthropology of Law in the Netherlands and Its Historical Background," in *Anthropology of Law in the Netherlands*, 1986, 11–66.

over the course of the 1950s, his title changed to Professor of Legal Pluralism.[151] I didn't find any documents explaining or justifying these changes. I could, however, infer from other government documents related to international human rights law justifications given for the Dutch's ongoing presence in New Guinea that it was no longer publicly acceptable to speak of 'races' as legitimate legal categories of people.[152]

In addition to scarcity, other limitations of researching law in the immediately postcolonial era came into play. There were fewer digitized archival resources to access during the pandemic, and those that related to law were often in German or French, two languages I don't speak, or handwritten Dutch which I found difficult to decipher as a non-native speaker. There were also fewer people active in this period still alive to interview. Speaking with legal scholars, who had overlapped in their youth with this earlier era of professors and scholars, turned my attention to the late 1960s and early 1970s, a period known in the Netherlands, and elsewhere in the world, for protests around democratization and equal justice, as well as a period of intense migration from the former Dutch colonies. In 1969, for example, university students had occupied the main administrative building at the University of Amsterdam calling for more democratization of education. Their arrest and subsequent prosecution spurred law students at the time to call for an

[151] Lemaire was a 'European' citizen in the segregated legal system of the Dutch East Indies, and therefore automatically obtained Dutch citizenship after Indonesian independence, but he would likely have been racialized as Indo-European after immigrating to the Netherlands in 1952. He had a brief career as a member of parliament during which he advocated for the 'repatriation' of so-called *spijtoptanten*, Dutch citizens who had remained in Indonesia immediately following independence, but later wanted to migrate to the Netherlands. He joined the Leiden University law faculty after leaving parliament. I had several conversations with Ingrid Joppe, a close friend of the Lemaire family and former assistant of Professor Lemaire, who eventually became a judge and legal scholar in her own right. Joppe shared with me stacks of personal papers and books from the family, including drafts of textbooks on *Intergentiel Recht* and legal pluralism. However, most of this material was related to that law itself and not any postcolonial evolution or reflection. Lemaire died in 1976. His daughter Hélène Lemaire, also a jurist and active on projects of gender equality, died in 2013.

[152] Vincent Kuitenbrouwer, "Beyond the 'Trauma of Decolonisation': Dutch Cultural Diplomacy during the West New Guinea Question (1950–62)," *The Journal of Imperial and Commonwealth History* 44, no. 2 (March 3, 2016): 306–27, https://doi.org/10.1080/03086534.2016.1175736.

increase in what they called 'social lawyering', representation for the poor and political, as well as changes to legal education. Law students published these views in what became known as 'Het Zwarte Nummer' ('The Black Issue') of *Ars Aequi*, a Dutch law journal which remains among the most widely read today.[153] But while 'foreigners' were listed among the groups with whom the law students expressed solidarity, 'Het Zwarte Nummer' contained little elaboration on what solidarity might have meant in practice.[154] This absence was interesting considering increasing activism around the same time period from various groups of people from the former Dutch colonies living and studying in the metropole.[155]

A similar absence greeted me in the publications of critical Dutch legal scholars which began in the late 1970s and early 1980s. *Recht en Kritiek,* a publication dedicated to critical legal theory and which published from 1975 to1997contained very little if anything about race or racial justice. *Nemesis*, a legal journal 'about women and law', published only a handful of articles on race, including an interview with Gloria Wekker in its final issue in 2003.[156] My conclusions of absence in these publications was based on key word searches in the Leiden University library catalogue for words like *ras, discriminatie, rassendiscriminatie, minderheden* etc., but also on physical searches of these publications in the stacks of the Leiden Law Library, leafing through indexes and article titles across hundreds of pages. I did find the critical research on race and gender in publications from outside academia, mostly in writings of the ZMV

[153] See e.g. Mies Westerveld, "40 jaar zwarte nummer, 40 jaar sociale rechtshulp: Oude kwesties in een modern jasje," *Ars Aequi*, January 6, 2010, 387–94; Emile Henssen, *Twee Eeuwen Advocatuur in Nederland 1798-1998* (Deventer: Kluwer, 1998), 225–42; *De balie: een leemte in de rechtshulp: Het Zwarte Nummer* (Utrecht: Ars Aequi, 1970), http://arsaequi.nl/pt_webboek/webboek-de-balie-een-leemte-in-de-rechtshulp/15/.

[154] Westerveld, "40 jaar zwarte nummer, 40 jaar sociale rechtshulp: Oude kwesties in een modern jasje."

[155] In 1965, for example, Antillean students began publishing *Kambio* (Change), which true to its name, criticized the slow pace of transitions to autonomy in the Caribbean ten years after the passage of the Kingdom Charter. The Surinamese Student Union published *De Rode Ster* (The Red Star), addressing issues both in Suriname and the metropole. These organizations joined others that will be addressed in Chapter Three.

[156] Sarah van Walsum and Ellen-Rose Kambel, "ZMV-Vrouwen in Het Feministische Juridisch Vertoog," *Nemesis* 2--3, no. 5/6 (2003): 202–10.

movement referenced above, and in other publications of smaller, more regional and local organizations of women racialized as non-white,[157] but most of these publications did not address law or legal practice.

Nearly a year into my project, I found a book in the Leiden library summarizing something called the Congress on Law and Racial Relations (Congres Recht en Raciale Verhoudingen*)* held in 1985 and described in the opening paragraphs above. I started contacting people quoted there and asking if they would talk to me. They did and I spent that summer driving around the Netherlands, mostly sitting outside due to ongoing COVID precautions, talking to retired law professors, lawyers and activists and resulting in the case study contained here.

1.3.1. The Landelijk Bureau Racismebestrijding

The LBR was not the only organization addressing racial discrimination in the Dutch metropole in the period under study, nor was it an inevitable choice of model for how the Dutch government would engage with growing demands to address the issue. I chose to focus on the LBR as the core organization for my case study for two reasons, one practical and one theoretical. From a practical perspective, the LBR created the biggest paper trail; internal reports and work plans gave me insight into organizational planning and evaluation, while external publications helped me understand how it portrayed its activities to an external audience. From a theoretical perspective, I was curious about the significance of government subsidies of the LBR on legal mobilizations techniques and resulting practices of racialization.

Analyzing organizations in general as a site of racializing practices is important to learn about what sociologist Ali Meghji calls the 'meso-level' of racializing practices, that which comes between the state and individual levels.[158] Meghji explains that meso-level racializing practices may occur at the

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[157] Botman, Jouwe, and Wekker, *Caleidoscopische Visies*; see also Ludidi, Nandisa (dir.), *Wat Was de Zwarte, Migranten- En Vluchtelingen-Vrouwenbeweging?* Vol. 1. 6 vols. In Gesprek Met de ZMV-Vrouwenbeweging. Amsterdam: Atria, kennisinstituut voor emancipatie en vrouwengeschiedenis, 2022.
https://www.youtube.com/watch?v=9sB57qITj2U.

[158] Meghji, *The Racialized Social System*, 23, 99–101.

organizational level of an industry, for example health care or education, where certain positions (nurses, teachers, 'problem' patients or students) are predominantly filled by people racialized as non-white while positions further up the hierarchy (doctors, directors) are filled by people racialized as white. At the same time, racializing practices may occur within an individual business, ministry, or non-profit where racialized hierarchies may be replicate themselves along lines of support staff, program managers and directors. The LBR is a particularly interesting meso-level case study both in terms of its internal structure and decision making, as well as for how it functioned as a quasi-state apparatus. In the 1970s and 1980s, the Dutch government conducted most of its 'ethnic minorities policies', that is policies aimed at addressing economic and social inequalities between people racialized as white and people racialized as non-white, through such organizations. As was the case with the LBR, most of these organizations were nominally independent, in that they had separate boards of directors and staff, but they also depended completely on government funding. Chapter Three discusses these policies and organizations in more detail, but for now it is enough to say that the LBR itself was part of the government's plan to transition from a 'categorical minorities policy' which organized services through organizations dedicated to specific racialized communities (e.g. Moluccan, Surinamese, Dutch Antillean, and 'foreign workers', the last category mostly referring to people from Turkey and Morocco) to a 'general policy' which avoided racialized categories and was aimed at all 'disadvantaged' people. These policies were all aimed at integrating or assimilating people racialized as others into 'Dutch society' without fundamentally changing the nature of that society, or the social hierarchies existent within it.

Chapters Three and Four highlight some of these pre-LBR organizations, and consider the influences of grassroots activists and advocates, leaders of government-funded welfare and advisory organizations set up to represent various groups of 'ethnic minorities,' and researchers, and the extent to which their demands and advice was incorporated into the final organizational charter and funding structure of the LBR. Chapters Five and Six evaluate how the LBR, in turn, impacted the activism and organizing of activists and other un-subsidized groups on issues of racial discrimination and inequality in the Dutch context, and raises questions as to how that influence may have continued to impact the present day.

1.4. Methodology and data collection

This case study is primarily based on archival research, supplemented by conversations with people involved with in the LBR, or other projects related to addressing racial discrimination or racialized inequalities in the same period. Sources related to the LBR include the organization's yearly work plans, and year-end reports, as well as reports and publications the LBR produced. The year-end reports and workplans I used are stored at the offices of Art.1, the national expertise center against discrimination in all its forms.[159] The *LBR Bulletin* and other published periodicals and reports were mostly accessed through the KITLV collection held at the University of Leiden Library, though some were loaned to me by people active at the time. For information on the LBR creation and funding, I used the published minutes of parliamentary meetings, available via the official online database of Dutch government documents.[160]

As discussed above, I recognize that archival research means engaging with battles – both past and ongoing – about what gets included. While the LBR documents were not located in a state or institutional archive, the LBR itself was a state-funded institution and to that end represented an institutional voice. To fully understand the context in which the LBR operated, I wanted to bring in perspectives from people and organizations operating outside its purview. To reach these perspectives, I relied primarily on publications from organizations of and for people racialized as non-white (at the time called 'ethnic minority organizations') and other self-described antiracist organizations active at the time. These resources included publications from the three national organizations set up by the government to represent people from the former Dutch colonies, including *Span'noe*, published by the National Federation of Surinamese Welfare Organizations (Landelijke Federatie van Surinaamse Welzijnsinstellingen), *Marinjo*, published by the Moluccan Advisory organization (Inspraakorgaan Welzijn Molukkers), and *Plataforma*, published by the Antillean Welfare Platform (Plataforma di Organisashonnan Antiano*)*. The challenge with researching my topic

[159] Art.1 is the successor organization to ARIC, the Anti-Racism Information Center, with which the LBR merged in 1999. Art.1 now exists under the umbrella of the IDEM Rotterdam Kennisbank.

[160] "Officiële Bekendmaking," n.d., https://www.officielebekendmakingen.nl/.

in these publications was not a lack of information, but rather an overabundance of articles related to racialized inequality in the Dutch metropole and ongoing critique of ongoing government 'minorities policies'. To draw a manageable line around the amount of information I would review in detail, I focused on titles of articles having to do with law, legal advocacy or court cases. Since the content of these publications was not always catalogued in detail, I physically searched tables of contents of individual volumes around dates where the LBR, or other legal issues were likely to be addressed. I did the most detailed amount of research in *Plataforma*, because of that organization's sponsorship of the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie, Werkgroep R&R*)*, chaired by Joyce Overdijk-Francis, who was legal counsel to the Antillean Platform for much of the period under study. Of course, as will be discussed in subsequent chapters, the publications of nationally subsidized 'ethnic minority' organizations did not always represent the diversity of opinions within those communities. I tried to bring these perspectives in through exploration of the ZMV materials and other related publications at the feminist archive, Atria, the national online archive of Dutch newspapers, Delpher, where I used key word searches similar to those mentioned above, as well as searches for the names of particular organizations and people, and through conversations with activists, journalists and others who were both involved with and critical of these groups.

The published summaries of meetings of the Werkgroep R&R formed another significant corpus of documents which were essential to my case study.[161] The Werkgroep R&R was a group of lawyers and other advocates interested in combatting racial discrimination using the law; they met bimonthly for roughly ten years, usually hosting a speaker on a given topic related to racial discrimination, followed by questions and information sharing. The summaries were invaluable to helping me understand debates and questions circulating in the legal advocacy community at the time in question, and how those debates interacted with programs or policies of the LBR. Chapter Six explores the relationship between the Werkgroep R&R and the LBR, which was less close than one would expect.

[161] I used copies of these summaries held at the Dutch National Library, as well as personal copies loaned to me by Joyce Overdijk-Francis and Gerrit Bogaers. The Black Archives also contains a full set of these summaries, donated by Overdijk-Francis.

Insights and information provided directly by people active on issues of racial discrimination and racialized inequality in the period under study also contributed a great deal to this research. I hesitate to call these interactions interviews; many of them began before I even knew what questions I should ask. They were in fact conversations, discussions that ranged over many topics and helped clarify my questions as much as provide answers. People shared with me their personal reasons for becoming involved in issues around racialized inequality, their relationships to law and legal activities, and their differing opinions on their impacts. I shared mine. We didn't always agree. Everyone was generous with their time and resources; I frequently went home with armfuls of documents, many of which are residing on my desk as I write, with sticky notes indicating to whom they must be returned. I cite some of these interviews in the chapters that follow, but am equally indebted to the people whose words I do not quote directly but who helped me better understand the time I was studying and the relationships among the parties involved. A full list of the people who spoke with me and consented to have their names shared is located in Appendix A.

I scanned and stored most of the primary materials I used, including transcripts of interviews, into Atlas.ti, a program used by many social scientists to conduct qualitative research; at the time of this writing, the database contains 277 documents. As I added documents, I coded them with tags for authors, organizations, years, and persons of interest, as well as themes like 'legal mobilization tactic', 'problem framing' and 'memory'. Rather than a strict qualitative analysis, I used the system and search terms mainly to find and compare sources efficiently as I developed the historical narrative and analysis which makes up this project, for example, finding where publications of 'ethnic minority organizations' quoted or mentioned the LBR. Since Atlas.ti also has a word-search function, I was also able to check large documents for certain phrases, people or themes to make sure I was not missing references to particular cases or controversies.

1.5. Positionality

For the last two years, as my research topic has become more known within the legal academic community, I've been asked to give several workshops or guest

lectures on positionality to law students or early-career socio-legal researchers. Despite my strong conviction that this is a vital topic for both academic researchers and potential future lawyers, I found these requests odd. Positionality as an academic concept comes from qualitative research traditions, and this PhD project is my first entry into academic research, let alone qualitative analysis, so I hardly qualify as an expert; my career until 2020 consisted of six years practicing criminal law, and eight teaching it. What I quickly realized was that my hosts weren't after research expertise, but my growing access to concrete examples of the relationship between race and law in the Netherlands, a relationship law schools are increasingly aware is important, but are still unprepared to address in their core curricula.[162] As a colleagues told me once, 'positionality' goes down easier in a workshop title than 'white supremacy'. My second hunch as to why I am invited to give such talks, not unrelated to the first, is that I am a person racialized as white, as are most of the people who have invited me and who usually attend. Perhaps it helps that I am American and willing to cast the first stones at my home country before moving on to comparisons, but I think that my racialized identity matters more.

I do not know whether critiques of white supremacy are more easily received from a white person, but I am certain making those critiques is. I felt welcome in institutional spaces, like archives and libraries, in ways that my colleagues who are racialized as non-white (or who wear a hijab, or who are not cis gendered, or who use wheelchairs, etc.) are not; when I search in the archive I find representations of people whose identities match mine.[163] No one has questioned my interest in this subject or alleged that I may not be 'objective' because of my racialized identity; if anything, some people also racialized as white may have perceived me as having a more sympathetic ear and shared opinions or value judgements with which I vehemently disagreed. I still wrestle with whether the correct course of action in these moments was to challenge those assertions or to remain silent; I'm sure I did

[162] Alison Fischer, "Colonialism, Context and Critical Thinking: First Steps toward Decolonizing the Dutch Legal Curriculum," *Utrecht Law Review* 18, no. 1 (May 5, 2022): 14–28, https://doi.org/10.36633/ulr.764.

[163] see e.g. introduction in Mustafa, "A Certain Class of Undesirables: 'Race', Regulation & Interracialised Intimacies in Britain (1948-1968)"; Rébecca Franco and Nawal Mustafa, "Invalidating the Archive," *Sentio* 1, no. 2 (2019): 42–48.

both inconsistently. My racial identity compelled me to explain myself and the reasons for my research more to people racialized as non-white, who in the Netherlands have far more often been treated as the subjects of so-called 'minority research' than recognized as agents in shaping Dutch society. In the end, I have attempted to be transparent on all fronts. I have respected the wishes of those I spoke with about whether to name them, and whether to include what they have shared directly, and also respect the decisions of those who declined, with no less appreciation for their time and effort.

I do worry that I am just another 'white researcher' writing about people racialized as non-white in the Netherlands.[164] This is one reason I have tried to center white supremacy as the problem this research addresses, to challenge the assumptions of much of the previous research into racialized inequality or related topics. As other scholars have observed, studying and problematizing 'whiteness' runs the risk of centering the emotions and perspectives of people racialized as white, though it may be a risk worth undertaking if the goal is dismantling white supremacy.[165] To that end, I am also inspired by decolonial scholarship on the importance of making invisible power structures (in their case the colonial, in this case the racialized) visible, especially in an academic setting.[166] Specifically I am interested in making power relations and structures visible, in this case power mobilized to the benefit of people racialized as white at the cost of those racialized as non-white, both historically and presently. This is not about feeling guilty for the

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[164] Nimako, "About Them, But Without Them: Race and Ethnic Relations Studies in Dutch Universities."

[165] Steve Garner, *Whiteness: An Introduction*, 1st ed. (Routledge, 2007), 10–11, https://doi.org/10.4324/9780203945599; Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment," 6; Sara Ahmed, "A Phenomenology of Whiteness," *Feminist Theory* 8, no. 2 (August 2007): Paragraph 59, https://doi.org/10.1177/1464700107078139 ('The task for white subjects would be to stay implicated in what they critique, but in turning towards their role and responsibility in these histories of racism, as histories of this present, to turn away from themselves, and towards others. This "double turn" is not sufficient, but it clears some ground, upon which the work of exposing racism might provide the conditions for another kind of work.').

[166] Adébísí, *Decolonisation and Legal Knowledge*; Walsum and Kambel, "ZMV-Vrouwen in Het Feministische Juridisch Vertoog"; Louise Autar, "Decolonising the Classroom," *Tijdschrift Voor Genderstudies* 20, no. 3 (2017): 307, https://doi.org/10.5117/TVGN2017.3.AUTA; Böröcz, "'Eurowhite' Conceit, 'Dirty White' Ressentment," 16.

sins of my ancestors, but responsible for the ongoing injustice that benefits me in the present and future.

Iris Marion Young addresses the above difference between guilt and responsibility in *Responsibility for Justice,* a book that heavily influenced my desire to conduct research into (and teach) the relationship between race and law.[167] Young acknowledges that systems and institutional-level practices are responsible for creating much of the inequality in modern societies, but that those of us living in democratic societies, and most importantly those of us with political and economic power within those societies, have individual responsibilities to hold those institutions accountable and change them to the extent that we are able.[168] This is a responsibility I feel acutely as a person who has, throughout my life, materially benefited not only from being racialized as white, but also from afterlives of colonialism. These afterlives have manifested in international mobility regimes which allowed me to seamlessly immigrate from the United States to the Netherlands, and have privileged my native language, English, as internationally accepted academic language in which I can now write this dissertation at a Dutch institution. Social responsibility is another reason I feel compelled to research the Dutch metropole, a place I have called home for the past 14 years, where I am raising my children, and where I plan to grow old. To participate responsibly in this society, I need to understand what my positionality means here.

My status as an American immigrant to the Netherlands, a non-native Dutch speaker, and a US-trained lawyer has no doubt influenced this research in ways unrelated to power and responsibility. On the one hand, I think being an outsider allowed me to ask more stupid questions in conversation, both about events in question and about language used, and allowed me to approach the period under study with fewer preconceived notions about what is or is not 'normal' in Dutch society. My experience as a lawyer and community organizer gave me some shared experiences with conversation partners who had held similar jobs. On the other hand, I occasionally had misunderstandings about the role of 'jurists' as opposed to 'advocates' in the Dutch context, as well as the loaded nature of terms like 'activist'

[167] Iris Marion Young, *Responsibility for Justice*, first issued as an Oxford University Press paperback, Oxford Political Philosophy (New York, NY: Oxford University Press, 2013).

[168] Young.

in the legal and academic spheres.[169] For reasons of transparency and accuracy, I have included the original text of Dutch-language materials in footnotes where the choice of words seemed particularly important. I also had recordings of my research conversations professionally transcribed and have given all conversation partners cited below the opportunity to review the transcripts and make additional comments.

To avoid centering any single perspectives in my case study, I have tried to place the activities and decisions undertaken by government and institutional actors in dialogue with broader mobilizations and discussions around racialized inequality and discrimination, which often came from and by people racialized as non-white. But there is no question that the story I am telling highlights the experiences of many people racialized as white, whose stated goal was to combat racial discrimination; there is also no question that for a large part of my career that is a description I would have applied to myself. More than a risk of over-identifying with these actors, I recognize the possibility of judging them too harshly, or implying that I would have or could have done better had I been in their place and with the information they had available, which I am sure is not the case. We are all the products of our times and experiences. Rather than judge the personal motivations behind what happened then, I hope to gain lessons of what can be done better now.

Finally, there is no question that my desire to engage in the issue of how law constructs race in the Dutch context is anything but neutral or objective. Like many scholars of race, I want to answer questions about how racialized inequality and white supremacy function in the Dutch metropole in order to dismantle these phenomena in pursuit of a more just society.[170] As a lawyer and teacher in law schools, I am especially invested in examining the role of law and legal mobilization in creating, perpetuating and combatting racialized inequalities in order to teach

[169] On how the label *activist* can discredit scholarship in the Netherlands, see Jones, "'Activism' and (the Afterlives of) Dutch Colonialism."

[170] See e.g. Meghji, *The Racialized Social System*; Garner, *Whiteness*, 3; Adébísí, *Decolonisation and Legal Knowledge*, 439; Philomena Essed, "Women Social Justice Scholars: Risks and Rewards of Committing to Anti-Racism," *Ethnic and Racial Studies* 36, no. 9 (September 1, 2013): 1395–96, https://doi.org/10.1080/01419870.2013.791396.

future lawyers, judges and organizers.[171] I see this research not only as being part of my responsibility, but also in pursuit of my own liberation.[172]

1.6. Conclusion

However successful this research is, my contribution in this regard will be miniscule compared to the generations of activists and activist scholars who have come before me and had made this project and my ability to pursue it possible. One of those activists, Tansingh Partiman, has generously allowed me to use his words for the title of my dissertation and the full quote to open this chapter. At the 1983 Congress on Law and Race Relations, when most involved were enthusiastically calling for a national organization that would become the LBR, Partiman voiced skepticism. He cautioned the gathered assembly that such a project could easily 'degenerate into a game of shadowboxing.' That my research has led me to share Partiman's fear, at least in part, is probably evident from the title and introductory paragraphs of this manuscript. However, I think there are still lessons to be learned in the details of how decisions were made, how legal measures were attempted, and how their results were interpreted. In revisiting the specifics of the past, I hope we may all work more effectively toward a better future.

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[171] Adébísí, *Decolonisation and Legal Knowledge*; al Attar, "Tackling White Ignorance in International Law—"How Much Time Do You Have?"; Eve Darian-Smith, "Precedents of Injustice: Thinking About History in Law and Society Scholarship," in *Studies in Law, Politics and Society*, vol. 41 (Bingley: Emerald (MCB UP), 2007), 61–81, https://doi.org/10.1016/S1059-4337(07)00003-8; Fischer, "Colonialism, Context and Critical Thinking."

[172] See e.g. Lilla Watson, 1985 UN Decade for Women Conference in Nairobi, ('If you have come here to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together.'); Peggy McIntosh, ed., *Privilege, Fraudulence, and Teaching as Learning: Pluralizing Frameworks: Selected Essays 1981-2019* (New York, NY: Routledge, 2019) ('I myself find that a retreat from the subject of being consciously white is tempting. I see it as curling up and falling asleep, and sleep has its place. But nightmares will come. And I would rather be awake and not a sleepwalker. I now feel that being a white sleepwalker through the world of white control perpetuates a zombielike incapacitation of the heart and mind.').

2. Colonial constructions of race (1596-1974)

In their 2014 essay for the collection *Dutch Racism*, Amy Abdou, Kwame Nimako and Glenn Willemsen identified three problems the practice of chattel slavery created for those who sought to profit from it, which (with slight paraphrasing) can be applied to all Dutch policies of racialized wealth generation in the colonial period. Those problems are: 1) how to make free people unfree and/or dispossess them of their land and its resources, 2) how to exploit the labor of those same people in order to extract resources from that land, and 3) how to make both the exploited and those who benefited from their exploitation forgot the fact of that exploitation.[173] In all three cases, law provided an answer.

This chapter applies an analysis based in Critical Race Theory to existing scholarship on Dutch history from the colonial period through 1975 to demonstrate that racializing practices, and their supporting ideologies, are not recent or foreign imports to Dutch society, but instead have been integral to shaping it.[174] The analysis confirms that, in the colonial period, race was created as a set of formal and explicit legal categories, often written into international treaties and domestic regulations, which were policed and enforced by state violence. The end goal of these racializing legal practices was wealth creation and wealth accumulation for people racialized as European/white via colonial appropriation of land and other natural resources from, and the enslavement or forced labor of, people racialized as non-European/non-white. By contrast, in the postcolonial period, which I identify here as beginning with the end of the Second World War in 1945, Dutch recognition of Indonesian independence in 1949, and the passage of the Statute of the Kingdom of the Netherlands in 1954, explicitly racial language steadily disappeared from formal law. Racialization did not disappear, however, but adapted; it employed

[173] Kwame Nimako, Amy Abdou, and Glenn Willemsen, "Chattel Slavery and Racism: A Reflection on the Dutch Experience," *Dutch Racism*, January 1, 2014, 31–51, https://doi.org/10.1163/9789401210096_003.

[174] Earlier versions of portions of this chapter were published in Fischer, "Colonialism, Context and Critical Thinking," and are adapted here under the Creative Commons Attribution 3.0 Unported license agreement.

language of culture as a replacement for race, and a strategy of occlusion and erasure to protect wealth and property for people racialized as white.

2.1. Racialization and the (legal) construction of Europe

As discussed in Chapter One, the idea of Europe itself has always been defined as against a real or imagined other. Some scholars argue that this oppositional defining predates the colonial period.[175] For a focus on legal constructions of race, however, it makes the most sense to start in the seventeenth century, with the concurrent rise of European nation states and the expansion of those states through colonization in Asia and the Americas, what Nimako and Willemsen call the transition from an age of colonial 'banditry' to an age of 'sovereignty'.[176] They characterize this age as one of treaties, beginning with the Peace of Westphalia in 1648, which arguably created the Netherlands as a sovereign state, and continuing through the outbreak of the French Revolution in 1798; sovereignty defined in these treaties meant mutual recognition of borders and the rights of recognized states to govern their own affairs within them, including the exclusive right to exercise violence against the people residing there.[177] However, these treaties went hand in hand with the 'non-recognition' of territories and people in areas not covered by them, areas and people targeted for conquest, exploitation, enslavement and genocide by the signers of these same treaties.[178] The legal categories in these treaties, signatory and non-signatory, sovereign and non-sovereign, correlated to the eventual categories of European and non-European, free and able to be enslaved, white and non-white. The justification for treating fellow humans in such fundamentally different ways was the then-developing idea of race.

People from the Netherlands began participating in this globalized racializing legal system even before the age of treaties recognized them as belonging

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[175] E.g. Anya Topolski, "The Race-Religion Constellation: A European Contribution to the Critical Philosophy of Race," *Critical Philosophy of Race* 6, no. 1 (2018): 58–81, https://doi.org/10.5325/critphilrace.6.1.0058.

[176] Nimako and Willemsen, *The Dutch Atlantic*, 19–20.

[177] Nimako and Willemsen, 20.

[178] Nimako and Willemsen, 20.

to a sovereign state, at least from the point at which the Dutch East India Company began operating in the Indonesian archipelago in the late 1500s. Its shareholders relied on advice from respected legal philosopher Hugo de Groot to justify their practices of imposing 'free trade' and enforcing contract obligations there, even to the point of removing or massacring people living on the islands if they posed barriers to trade.[179] This search for legal justification before exterminating entire groups of people for the enrichment of Europeans is an early indication that law would play an important part in supporting racialization. Likewise local and national Dutch courts and the Staten Generaal intervened numerous times to regulate and enforce the enslavement of people racialized as Black and African,[180] despite explicit laws regulating the practice remaining absent from statutes or regulations governing the Dutch metropole.[181] Within the colonies, racially oppressed people often resisted and so racial categories were enforced by brutal regimes of corporal punishment, often ending in death, all sanctioned in one way or another by law, which intervened at all points to try and make free people

[179] Reinier Salverda, "Doing Justice in a Plural Society: A Postcolonial Perspective on Dutch Law and Other Legal Traditions in the Indonesian Archipelago, 1600–Present," *Dutch Crossing* 33, no. 2 (October 2009): 159, https://doi.org/10.1179/155909009X461939 (describing that while law was conceived of in The Hague, it was enforced by the sword in the wider world. 'Therefore, if the other party did not produce the goods, this could be construed as a casus belli involving high treason. And this, in the end, provided the legal basis for [Jan Pieterzoon] Coen's infamous massacre of the Natives at Banda-Neira in 1621.'); see also Amitav Ghosh, *The Nutmeg's Curse: Parables for a Planet in Crisis*, Paperback edition (London: John Murray, 2022), 13–14 (describing Coen and other VOC officials' violence in the Banda islands and their justifications for it).

[180] For the case of enslaved Africans brought to Middelburg, referenced in, among others Hondius, "Access to the Netherlands of Enslaved and Free Black Africans" (Staten Generaal decided that while enslaved people could not be sold or enslaved in the Netherlands, the captain who brought them to Middleburg could take them, as property, out of the territory to dispose of at will.); Fatah-Black, *Eigendomsstrijd*; Goldberg, *The Racial State*.

[181] See e.g. Arend H Huussen Jr, "The Dutch Constitution of 1798 and the Problem of Slavery," *Tijdschrift Voor Rechtsgeschiedenis / Revue d'histoire Du Droit / The Legal History Review* 67, no. 1–2 (January 1, 1999): see e.g., https://doi.org/10.1163/15718199919683454 (referenced in; Hondius, "Access to the Netherlands of Enslaved and Free Black Africans"; Natalie Zemon Davis, "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname," *Law and History Review* 29 (2011): 925 (observing that rather than relying on its own regulations, the Dutch relied on Roman domestic law to govern slavery in its Caribbean colonies).

unfree.[182] When it came to the third 'problem' of colonialism and slavery, getting people to forget its existence and their complicity in it, law intervened as well.

2.1.1. Race creates material benefits for people racialized as white

Sociologist Eduardo Bonilla-Silva observed that 'if racial formations exist in the world, they must exist for a reason.'[183] That reason, according to most scholars of race, is to create and maintain material advantages for people racialized as white, at the expense of those racialized as non-white, a situation I refer to in this manuscript as white supremacy. In the colonial period these benefits included tangible property like land or enslaved people, as well intangible rights to protect that property from theft or trespass, and be free from similar enslavement. It included wealth as income from the labor of racialized human property or land taken from people racialized as non-white, but also from social programs based on taxes of wealth generated through those practices. In the colonial period, as in the present day, being racialized as white may have included benefits like access to citizenship, social welfare, reliable protection of (and from) police, courts and military force, free travel and movement, and being preferred for employment and housing, all of which are tied to the ability to create and protect material wealth for future generations. Law professor Cheryl Harris referred to this basket of benefits as 'whiteness as property,'[184] historian George Lipsitz called it the 'possessive

[182] See e.g. Anton de Kom et al., *Wij slaven van Suriname* (Amsterdam: Uitgeverij Atlas Contact, 2020); Nimako and Willemsen, *The Dutch Atlantic*; Zemon Davis, "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname"; Jan Breman, "Colonialism and Its Racial Imprint," *Journal of Social Issues in Southeast Asia* 35, no. 3 (2020): 463–92.

[183] Bonilla-Silva, "More than Prejudice," 75.

[184] Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (June 1993): 1707, https://doi.org/10.2307/1341787.

interest[s] in whiteness'[185], while sociologist W.E.B. Du Bois (echoed by historian David Roediger) named it the 'wages of whiteness'.[186]

2.1.2. Creating the material value of whiteness

Of all the above concepts, Harris's 1993 article, 'Whiteness as Property' provides the most useful framework for explaining how law and legal processes create the material value of white supremacy.[187] Beginning with European colonial expansion into the Americas, she explained, legal rationales for owning private property, based on the philosophy of John Locke, made being racialized as white a prerequisite for ownership. By contrast, being racialized as non-white precluded individuals from owning property, as was the case for those racialized as 'native' to the Americas, but also subjected them to becoming property, as in the case of people racialized as Black. As American property law evolved, so too did whiteness as property; property law expanded from being limited to concrete things like land or movable goods to include legal interests in certain types of status, like that of being a spouse or an heir. Property law also began to reify the status of being racialized as white. White status-property was so valuable that people racialized as white were able to successfully sue for defamation if it was alleged they were not 'white'; people racialized as Black, however, could not allege similar damage if accused or mistaken for 'white', because courts did not deem such an accusation materially harmful.[188]

For 30 years, scholars around the world have built on Harris's foundation to bring the idea of whiteness as property to other geographic and historic locations where similar logics of racialization and property fused through colonial practices

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[185] George Lipsitz, "The Possessive Investment in Whiteness: Racialized Social Democracy and the 'White' Problem in American Studies," *American Quarterly* 47, no. 3 (1995): 369–87, https://doi.org/10.2307/2713291.

[186] David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, The Haymarket Series (London ; New York: Verso, 1991); David R. Roediger, "The Pursuit of Whiteness: Property, Terror, and Expansion, 1790-1860," *Journal of the Early Republic* 19, no. 4 (1999): 579, https://doi.org/10.2307/3125134.

[187] Harris, "Whiteness as Property."

[188] Harris, 1734–36. (what Harris refers to as 'status-property' or 'reputation property').

of land appropriation and enslavement,[189] and even to the global capitalist system of the present day.[190] While still under explored in Dutch legal scholarship, historical research into the economic links between racialized practices of enslavement and colonialism in the Netherlands have indirectly addressed the topic in ever increasing numbers.[191] Historian Martine van Ittersum, referenced above, has demonstrated that the legal philosophy of Hugo de Groot, still influential for its formulation of freedom of trade in maritime contexts, was directly connected to justifying the actions of the Dutch East India Company in its quest for profit in the pacific islands,[192] while Karwan Fatah-Black and Matthias van Rossum have made the case for a broader definition of profitability as it relates to transatlantic trade of enslaved people.[193] What cannot be forgotten in these descriptions of, or debates over, profitability or wealth generated from either colonial expansion or slavery is that these projects are also examples of racialization, practices that created, protected and made material the idea of race.

When the Dutch abolished legalized chattel slavery in their Caribbean colonies in 1863, those who had claimed to own enslaved people (almost entirely people racialized as white) were financially compensated for each of those people still 'owned' at the time of abolition; those in Suriname received 300 guilders, on the islands of Curaçao, Bonaire, Aruba, Sint-Eustasius and Saba it was 200 guilders,

[189] See e.g. Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership*, Global and Insurgent Legalities (Durham: Duke University Press, 2018), 7–9.

[190] Christian, "A Global Critical Race and Racism Framework."

[191] See e.g. Allen and Captain, *Staat en slavernij*; Karwan Fatah-Black and Matthias van Rossum, "Beyond Profitability: The Dutch Transatlantic Slave Trade and Its Economic Impact," *Slavery & Abolition* 36, no. 1 (2015): 63–83, https://doi.org/10.1080/0144039X.2013.873591; Brandon et al., *De Slavernij in Oost En West*; Karwan Fatah-Black, *Sociëteit van Suriname 1683-1795: Het Bestuur van de Kolonie in de Achttiende Eeuw* (Zutphen: WalburgPers, 2019); Brandon and De Kok, *Het Slavernijverleden van Historische Voorlopers van ABN AMRO*.

[192] Martine Julia Van Ittersum, *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615* (Leiden; Boston: Brill, 2006), https://doi.org/10.1163/9789047408949.

[193] Fatah-Black and Rossum, "Beyond Profitability: The Dutch Transatlantic Slave Trade and Its Economic Impact."

and in Sint Maarten, 100 guilders.[194] Formerly enslaved people (exclusively people racialized as non-white) were given nothing for either their physical suffering or generations of lost value of their labor or the accumulation of wealth created from it. Instead, in Suriname, the formerly enslaved were required to work on the plantations for an additional ten years, under state supervision.[195] On the Caribbean islands, former plantation owners persuaded the authorities to criminalize 'vagrancy and idleness' to compel the newly freed to work whatever the circumstances; those found in violation of the laws were sentenced to 'hard labour …in the form of building and maintaining public property or infrastructure.'[196] In Suriname, plantation owners replaced formerly enslaved workers with contract laborers from China, India and Java.[197] In Curaçao, some freed people remained on the plantations they had been enslaved, working subsistence plots in exchange for free labor for the plantation owner, a system not so different from their previous enslavement.[198] In both colonies, laborers could be criminally prosecuted for breaking their contracts, which would be a civil offense if done by a worker racialized as white.[199] Abolition, as such, did not end the racialized nature of

[194] Lauren Lauret, "De Nederlandse politiek en slavernij in de negentiende eeuw," in *Staat en Slavernij* (Amsterdam: Athenaeum-Polak & van Gennep, 2023), 139. (attributing different amounts of compensation to the different market values of goods produced in the respective territories); But see Nimako and Willemsen, *The Dutch Atlantic*, 140 (attributing the different levels of compensation on Sint-Maarten to the earlier abolition of slavery on the French-controlled half of the island, which effectively ended enslavement on the Dutch half).

[195] See e.g. Rosemarijn Höfte, "An Introduction to the History of Suriname from circa 1650 to 1900," in *Twentieth-Century Suriname: Continuities and Discontinuities in a New World Society*, ed. Peter Meel and Rosemarijn Höfte (Boston: Brill, 2001), 10; see also Nimako and Willemsen, *The Dutch Atlantic*, 109–11 (Dutch parliamentarians declaring state supervision would be unnecessary in Curacao since 'hunger would take care of what in Suriname only the fruits of state intervention' could achieve.).

[196] Rose Mary Allen, *Di Ki Manera? A Social History of Afro-Curaçaoans, 1863-1917* (Amsterdam: SWP, 2007), 122–23.

[197] See e.g. Rosemarijn Hoefte, *In Place of Slavery: A Social History of British Indian and Javanese Laborers in Suriname* (Gainesville: University Press of Florida, 1998).

[198] Allen, *Di Ki Manera?*, 132–38.

[199] Hoefte, *In Place of Slavery*, 10; Allen, *Di Ki Manera?*, 124; Nimako and Willemsen, *The Dutch Atlantic*, 116.

property in the Dutch Atlantic; it just meant that the state was involved in creating and protecting that property in a different way.

2.1.3. Protecting the material value of whiteness in the colonies

What all material benefits of whiteness have in common is that their value is derived, at least in part, by restricting access to the category of people who can be considered white, and can therefore enjoy white property.[200] During the colonial period, and the period of legalized enslavement, policing the boundaries of whiteness was often done through explicit legal regulation and enforcement. Though this project focuses primarily on race, concepts of property have long been tied up with gender as well. When it came to the status of enslaved and colonial property, traditional conceptions of gender inheritance had to be adjusted to protect racialized property. Prior to the rise of racialized slavery, the legal status of children under most European laws had been determined by the status of the father; children who were legally recognized by their fathers were eligible to inherit their property, for example. This traditional legal approach posed a problem, however, where men racialized as white impregnated enslaved women. Accordingly, when it came to enslavement, laws were changed so that free or enslaved status followed the mother instead of the father. While some fathers racialized as white bought freedom for their offspring, most of these children remained in enslavement. Enslaved women came to be valued not only for the property of their bodies and their labor, but also as producers of the additional enslaved property of their children.[201]

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[200] Harris, "Whiteness as Property."

[201] Fatah-Black, *Eigendomsstrijd*; see also Kendi, *Stamped from the Beginning*, 39–40, 117, 130 (and generally writings on sexual relationships during slavery in the United States); Zemon Davis, "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname," 978. My focus on the legal aspect here is not to deny or judge the complexity, humanity and agency of enslaved women during this period when it came to sexual relations. Many were subjected to sexual violence too horrific to describe. Some may have made rational decisions to engage in relationships with men racialized as white to improve their position or that of their children. Some even fought for, and few achieved, their own legal rights to marry and inherit property across racialized lines, while engaging in enslaving other people racialized as non-white, as did Elisabeth Samson in Suriname, referenced by Davis.

If the creation of white property rested in part on the status of children of women racialized as Black, then protection of that property also depended, in part, on policing the sexual practices of women racialized as white. They could not be permitted to produce an abundance of free 'non-white' children who may inherit white property or wealth. While the regulations governing Suriname prohibited all relationships between people racialized as white and those racialized as non-white, the punishments inflicted on men racialized as non-white and women racialized as white were much harsher, and much more likely to be enforced than those against men racialized as white who engaged in sex with women racialized as non-white.[202] When sanctioned at all, a prospect only likely if they 'interfered' with another's enslaved property, men racialized as white faced a fine; men racialized as non-white, by contrast, were punished with torture and death, while women racialized as white could face branding and banishment from the colony.[203]

While the buying and selling of people as chattel did not take hold in the Dutch East Indies in the same way it did in the Caribbean, similar practices of racialization and the creation of 'whiteness as property' still emerged there. In their article, 'Slavery in a "Slave Free Enclave",' historians Karwan Fatah-Black and Matthias van Rossum depict extensive use of 'unfree labor' in the Dutch East Indies, following the logics of racialization and white supremacy; 'native' workers were

[202] See e.g. Neus, "Seksualiteit in Suriname," 175–77; Gloria Wekker, "Of Mimic Men and Unruly Women," in *Twentieth-Century Suriname*, ed. Rosemarijn Hoefte and Peter Meel (Kingston: Ian Randle Publishers, 2001), 182, 195, https://brill.com/edcollchap/book/9789004475342/front-1.xml; Guno Jones and Betty de Hart, "(Not) Measuring Mixedness in the Netherlands.," in *The Palgrave International Handbook of Mixed Racial and Ethnic Classification*, ed. Zarine L. Rocha and and Peter J. Aspinall, e-book (ProQuest Ebook Central: Springer International Publishing AG, 2020), 371.

[203] Schiltkamp and De Smidt, *West Indische Plakaatboek* Plaataat 240; Ruud Beeldsnijder, "Awanimpoe en Hanna Levi, een romance uit 18e eeuws Suriname," *Onvoltoid Verleden*, 1999, http://oud.onvoltooidverleden.nl/index.php_id=174.html; Wieke Vink, "Creole Jews: Negotiating Community in Colonial Suriname" (PhD, Rotterdam, Erasmus University Rotterdam, 2008), 267–68.

forced to labor, paid very little and had very few enforced legal protections against violence by white colonial 'employers'.[204]

Protecting whiteness as property in the Dutch East Indies became more important as more people racialized as white moved to the colonies over the course of the nineteenth century, and numbers of people racialized as 'mixed-race' or Indo-European increased. The Dutch East Indies Colonial Act formalized racial categories in law in 1855, creating as legal categories 'Europeans', 'Natives' and 'Foreign Orientals'.[205] In 1892, the Nationality Act attached citizenship to these designations, 'assigning full citizenship to recognized children of Dutch males' while excluding 'natives' from Dutch citizenship and instead attaching the descriptor 'Dutch subjects Non-Dutch'; women racialized as native had no legal entitlements over their offspring legally recognized by men recognized as European.[206] This racialized status governed where people could live, what access they had to public spaces, which system of criminal law and punishment governed their behavior, and perhaps most importantly for ideas of whiteness as property, whether they could own and transfer certain forms of property.[207] To underscore the significance of these legal racial categories, the death penalty ended for European citizens in 1880 (with an exception for war crimes) but remained applicable to those designated 'native' or 'foreign Asian' in the Dutch East Indies until the Dutch recognized Indonesian Independence in 1949.[208]

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[204] Karwan Fatah-Black and Matthias van Rossum, "Slavery in a 'Slave Free Enclave'? Historical Links between the Dutch Republic, Empire and Slavery, 1580s-1860s," *WerkstattGeschichte* 66–67 (2015): 55–74.

[205] Jones and De Hart, "(Not) Measuring Mixedness in the Netherlands.," 374.

[206] Jones and De Hart, 374; see also Michiel Bot, "De Natiestaat Als Olifant in de Kamer van de Postkoloniale Rechtsstaat. Over Nationaliteitsdiscriminatie, Institutioneel Racisme En Het Recht," *Nederlands Tijdschrift Voor de Mensenrechten (NTM/NJCM-Bul)* 47, no. 1 (2022): 78–94.

[207] See e.g. David Van Reybrouck, *Revolusi: Indonesië En Het Ontstaan van de Moderne Wereld* (Amsterdam: De Bezige Bij, 2020); Jan Breman, "W.F. Wertheim: A Sociological Chronicler of Revolutionary Change: Legacy: Wim F. Wertheim," *Development and Change* 48, no. 5 (September 2017): 1130–53, https://doi.org/10.1111/dech.12319.

[208] Salverda, "Doing Justice in a Plural Society," 158 (citing William Lemaire's text on law of the Dutch East Indies and its justification that 'some crimes in the East Indies can be so dangerous that in the interest of forceful repression they deserve to be punished with the death penalty').

So important was this system of racial segregation in the colony, that the law faculty of Leiden University funded two full professorships dedicated to its study (called *integentiel recht*, which scholars of the time translated into 'interracial law') between 1938 and 1976.[209] A study of potential democratic reforms for the colony, published in 1940, dedicated over 100 pages to the question of 'racial differentiation and *Indisch* citizenship'.[210] When the Japanese army invaded the Indonesian archipelago in 1942, they more or less reversed the racialized citizenship hierarchy, placing 'Europeans' in internment camps and leaving the 'native' people and 'other foreign Asians' free to be recruited into the cause of pan-Asian nationalism.[211] When Sukarno declared Indonesian independence, two days after the Japanese capitulation in 1945, most 'European' Dutch both inside and outside the archipelago either ignored the racial aspects of that declaration of liberation, or attributed it to the influence of Japanese propaganda during the war.[212] What followed was a four-year period of fighting characterized by violence of a racialized character and degree with which many in the Netherlands have only begun to reckon.[213] While fighting

[209] R.D. Kollewijn was appointed from 1938-1955, followed by W.L.G. Lemaire from 1956-1976. See e.g. R.D. Kollewijn and Sudiman Kartohadiprodjo, *Intergentiel Recht : Verzamelde Opstellen over Intergentiel Privaatrecht* ('s-Gravenhage [etc.] : Van Hoeve, 1955); W.L.G. Lemaire, *Kwesties Bij de Studie van Het Intergentiel Recht : Rede Uitgesproken Bij de Aanvaarding van Het Ambt van Gewoon Hoogleraar Aan de Rijksuniversiteit Te Leiden Op 23 November 1956* ('s-Gravenhage [etc.] : Van Hoeve, 1956).

[210] W.F. Wertheim and Frans Herman Visman, "Verslag van de Commissie Tot Bestudering van Staatsrechtelijke Hervormingen, Ingesteld Bij Gouvernementsbesluit van 14 September 1940, No. 1x/KAB, Deel II" (Batavia (2d ed New York), 41 (2d ed 1944 1941), 40–145.

[211] Captain, *Achter het kawat was Nederland*, 35–37 (illustrating how, in practice, legal constructions of race never fit within such neat boxes. Captain describes people ending up in internment camps on Java mostly as dependent on their physical appearance. Exceptions were made for Indonesian women married to 'European men' who wanted to join them inside camps. On islands other than Java, legal status counted more than appearance.).

[212] Captain, 163.

[213] See e.g. Gert Oostindie et al., *Beyond the Pale: Dutch Extreme Violence in the Indonesian War of Independence, 1945-1949*, Independence, Decolonization, Violence and War in Indonesia (Amsterdam: Amsterdam University Press, 2022), 461–63; Captain and Sinke, *Het geluid van geweld: Bersiap en de dynamiek van geweld tijdens de eerste fase van de Indonesische revolutie, 1945-1946*; Abdul Wahid and Yulianti, eds., *Onze revolutie. Bloemlezing uit de Indonesische*

ended with the Dutch acknowledging Indonesian independence in 1949, Dutch efforts to limit access to the metropole for anyone racialized as non-white continued for decades.

2.1.4. Protecting the material value of whiteness in the metropole

In the metropole, unlike in the colonies, protecting the exclusive enjoyment of white property could be achieved by limiting access to the metropole where that property, and the wealth it generated, was enjoyed. Framing access to the metropole as a form of whiteness as property adds to the theoretical framework of Cheryl Harris in a way that is necessary if the concept is to be extended to nations like the Netherlands, with an extractive as opposed to settler colonial history.[214] Likewise, bringing Harris's and other critical race scholars' emphasis on the material advantages of whiteness contributes to ongoing work by scholars in the field of Dutch memory studies, specifically in the area of colonial forgetting and occlusion. Existing scholarship on these topics has explored how excluding people racialized as non-white from the metropole contributed to allowing those people living in the metropole (most of whom were racialized as white) to forget or ignore the existence of coloniality, its violence and its legacies.[215] However, this scholarship has mostly ignored the motivation for this forgetting/ignorance/occlusion, or focused solely on

geschiedschrijving over de strijd voor de onafhankelijkheid, 1945-1949, Onafhankelijkheid, dekolonisatie, geweld en oorlog in Indonesië 1945-1950 (Amsterdam: Amsterdam University Press, 2022); Gert Oostindie, *Postcolonial Netherlands: Sixty-Five Years of Forgetting, Commemorating, Silencing*, ed. Michael Bommes, Lena Tsipouri, and Vanja Stenius (Amsterdam University Press, 2012), https://doi.org/10.1515/9789048514021.

[214] Settler colonialism is generally associated with places where the colonial power sought to replace the indigenous population with settlers, usually racialized as white. Examples of settler colonies include the United States, Canada and Australia. These examples contrast with extractive models, where residents from the metropole and their descendants remained in the minority among the indigenous or enslaved population, as in the Dutch Atlantic and East Indies. In reality, of course, most colonial societies existed along a continuum of these concepts.

[215] Adébísí, *Decolonisation and Legal Knowledge*, 16–17 (describing 'exploitative empires' as being distinct from settler ones. 'In exploitative empires, slow death is spatially removed from the metropole and the market for unfree labour and manufactured goods is widened, but not much else distinguishes it from racialised enslavement.').

emotional reasons such avoiding shame or guilt. The risk of leaving the purpose of colonial occlusion to emotion is that it invites the question of why subsequent generations of people racialized as white Dutch should feel shame, guilt or responsibility for the colonial and racializing crimes of their ancestors (or for that matter why people who came to the Netherlands after the colonial period, including those referred to as expats or knowledge migrants who benefit from racialized migration and mobility policies should care[216]). When framed in the terms of white supremacy, however, with that concept's emphasis on the ongoing material benefits of being racialized as white, reluctance to address colonial and racial history becomes easier to understand; it is less about a reluctance to confront the horrors of the past, than a resistance to acknowledging the basis for ongoing advantages enjoyed in the present and the responsibility (or guilt) these advantages impart.[217]

It is difficult to assess the total wealth generated by racialized practices in the Dutch colonial territories. The profit of any given ship filled with enslaved people, agriculture products or minerals must be added to the profit of industries that supported those enterprises. What is generalizable is that most of the wealth generated through colonialism and enslavement found its way back to the metropole, evidence of which can be seen in art and architecture of the time period, from decorative elements of canal houses featuring sugar, ships or enslaved people, to portraits of plantation owners and their servants hanging in Dutch museums.[218] Almost simultaneously with the beginning of that wealth transfer, Dutch law and practice began limiting access to the metropole to people racialized as white Europeans, an act which made access to the metropole, and the enjoyment of race-

[216] For more on racialized global mobility structures, see Thomas Spijkerboer, "The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control," *European Journal of Migration and Law* 20, no. 4 (November 29, 2018): 452–69, https://doi.org/10.1163/15718166-12340038.

[217] Young, *Responsibility for Justice*, 75–96 (on the differences between guilt and responsibility).

[218] See e.g. Dienke Hondius et al., *Nederland: Gids Slavernijverleden = The Netherlands: slavery heritage guide* (Volendam: LM Publishers, 2019); Wekker, *White Innocence*, 159; Eveline Sint Nicolaas and Valika Smeulders, *Slavery: The Story of João, Wally, Oopjen, Paulus, van Bengalen, Surapati, Sapali, Tula, Dirk, Lohkay (Exhibition Rijksmuseum, Amsterdam 5.6-29.8.2021)* (Amsterdam: Atlas Contact Rijksmuseum, 2021).

generated wealth within it, a new right in the basket of what could be considered whiteness as property.

One of the earliest court cases involving enslaved people from Africa and Dutch enslavers was a 1596 decision by the Staten General that enslaved people could not be sold within the 'free soil' of the Republic of the Seven United Netherlands, but that they could be removed in bondage from that soil and sold elsewhere.[219] As racialized categories became formalized in colonial law, first with the 1854 Dutch East Indies Colonial Act, and later with the 1892 Nationality Act,[220] only European citizens had the right to travel to the metropole. When enslaved people were brought to the 'free soil' of the metropole, frequently as servants accompanying their enslavers, court decisions limited the time enslavers could keep those servants in the metropole without affecting their enslaved status, and as such discouraged an enslaved population from becoming a permanent fixture in the metropole.[221] For nearly a century after slavery was formally abolished in the Dutch Atlantic, low incomes and high travel costs had the same effect of limiting access to the metropole as any official policy of racialized access. Most people racialized as non-white who were able to enter the metropole in this era, whether coming from Suriname, the Dutch Caribbean islands, or the Dutch East Indies, were middle or upper class people who came to attend university.[222] Their relatively small numbers, affinity with the ruling elite in the colonies, and often temporary residency, did not present a threat to the racialized order of the metropole, or the value of its racialized wealth, until after 1945.[223]

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[219] Hondius, "Access to the Netherlands of Enslaved and Free Black Africans"; Hondius, *Blackness in Western Europe*.

[220] Jones and De Hart, "(Not) Measuring Mixedness in the Netherlands.," 373–74.

[221] Fatah-Black, *Eigendomsstrijd*, 122-128; Hondius, "Access to the Netherlands of Enslaved and Free Black Africans."

[222] See e.g. Maduro and Oostindie, *In Het Land van de Overheerser. Deel II*; Rosemarijn Hoefte, *Suriname in the Long Twentieth Century Domination, Contestation, Globalization* (New York: Palgrave Macmillan US : Imprint: Palgrave Macmillan, 2014), 108–9, http://link.springer.com/book/10.1057/9781137360137.

[223] Poeze, *In Het Land van de Overheerser Deel I*, 23–24. But see 211-215 (describing the 1927 trial of four Leiden students racialized as 'native' under the Dutch East Indies citizenship law, tried for engaging in activities related to their advocacy for Indonesian independence and ultimately

2.2. Protecting the value of whiteness in the postcolonial metropole

2.2.1. Limiting access to the metropole

Attempts to restrict access to the metropole as a means of maintaining exclusive access to the accumulated wealth of racialized property in the metropole were not abandoned after formal decolonization, only adjusted. Instead of basing migration laws or restrictions on whether Dutch subjects were legally 'European' or 'native,' as they had done until 1949, the Dutch government instead relied on nationality.[224] As former colonies became independent nations, former colonial subjects racialized as 'native', or otherwise not-white, became citizens of those new nations, and lots whatever claim they had to Dutch citizenship, and with it their right to freely enter the metropole.

In 1949, following four years of a protracted war, the Dutch government recognized Indonesia as an independent nation. Agreements that ended the war assigned Dutch nationality to those people designated 'Europeans' on their citizenship papers (*burgerlijke stand),* while conferring Indonesian nationality on those deemed 'native' or 'other foreign Oriental. Dutch citizens who were born in Indonesia, or had lived there more than six months at the time of independence, were given the option of choosing Indonesian nationality; this option was explicitly intended for those 'Indo-Europeans' who had been legally European but were still racialized as 'mixed' and therefore non-white, who the Dutch government hoped would decide to stay in Asia.[225] As a backup plan for these Dutch citizens racialized as non-white, the Netherlands held onto territory in West Papua/New Guinea until 1962, hoping to establish an alternative living space for people 'rooted in the

acquitted, since such activity was not illegal in the Dutch metropole. The students were undeterred; one of them, Mohammad Hatta would go on to become prime minister and then vice president of an independent Indonesia).

[224] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*.

[225] See e.g. Captain, *Achter het kawat was Nederland*, 169–75; Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*; Jones, "Dutch Politicians, the Dutch Nation and the Dynamics of Post-Colonial Citizenship." People from Java living in Suriname at this time were given the choice between Dutch and Indonesian citizenship.

Indies'.[226] In the meantime, the Dutch immigration authorities carried out what was described as a 'policy of discouragement' (*ontmoedigingspolitiek)*. This policy left the decision to award funds to assist relocation to the metropole to the discretion of Dutch foreign office officials working in Indonesia; they were explicitly instructed to issue awards based on the 'best interests' of the families making the request, and also informed those 'best interests' were racialized ones, resulting in people racialized as white (*totoks*) receiving support for travel to the Netherlands and those racialized as non-white being encouraged to stay in Indonesia.[227] While the 'policy of discouragement' officially ended in 1956[228], similar practices denying full access to the benefits of the metropole for people racialized as non-white from the former Dutch East Indies would continue for decades in the forms of policy toward people from the Moluccan Islands.

The people referred to as belonging to the 'Moluccan community' in the Netherlands are mostly descendants of soldiers who fought with the Dutch military during the war for Indonesian independence. Colonial law designated them 'native' and thus slated to receive Indonesian citizenship at the end of the war. However, their political desire for an independent Moluccan republic, combined with their recent military positions and experience, made them unwelcome in the new Indonesia. As part of negotiating peace with the Indonesian government, the Dutch government ordered the Moluccan soldiers to travel, with their families, to the Netherlands in 1951. Once onboard transport ships, the military men were decommissioned and so arrived in the Netherlands without employment or the citizenship required to access it.[229] The Dutch government defended its actions by describing the position of the Moluccans in the Netherlands as temporary. The racialized motivation for this belief was evident in parliamentary discourse of the time; one minister observed that 'the customs, social views and the physical and

[226] Captain, *Achter het kawat was Nederland*, 171.

[227] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 159–63; Jones, "Biology, Culture, 'Postcolonial Citizenship' and the Dutch Nation, 1945–2007," 325.

[228] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 170–72; See also Wolff, "Diversity, Solidarity and the Construction of the Ingroup among (Post)Colonial Migrants in The Netherlands, 1945-1968," 7.

[229] Wim Manuhutu, "Moluccans in the Netherlands : A Political Minority?," *Publications de l'École Française de Rome* 146, no. 1 (1991): 497–505.

mental condition of the Ambonese (sic)…do not dispose them for permanent residence in a Dutch community….'[230] Instead, the Moluccan soldiers and their families were placed in camps, left jobless and without political power until community organizing and political violence by community members in the 1970s forced the government to address their concerns.[231]

Also in the shadow of negotiation over Indonesian independence, the Dutch government granted more autonomy to Suriname and the Caribbean Dutch islands through a new Charter of the Kingdom of the Netherlands, which went into force in 1954, formally ending the colonial status of those territories.[232] Suriname had movements for independence since at least the 1920s, but these were mostly bound up with movements for workers' rights and encouraging solidarity to that end between workers racialized as Creole and those racialized as Hindustani; these are the movements the Dutch government had actively worked to suppress in the first part of the 20th century.[233] By the 1970s, Dutch motivations for keeping Suriname in the Dutch empire were waning. In addition to growing international pressure on all former colonial powers to end colonial relationships, and increasing worries about border disputes with Guyana, what had been financial benefits of colonial governance instead began to impose responsibilities and burdens on the Dutch government. In light of increasing demands for political representation for colonial citizens, financial contributions to infrastructure, and intervention to maintain

[230] Jones, "Biology, Culture, 'Postcolonial Citizenship' and the Dutch Nation, 1945–2007," 323.

[231] Manuhutu, "Moluccans in the Netherlands," 508–10.

[232] See e.g. Michael Sharpe, "The Parallels and Paradoxes of Postcolonial Sovereignty Games in the Dutch and French Caribbean," in *The Struggle of Non-Sovereign Caribbean Territories: Neoliberalism since the French Antillean Uprisings of 2009*, Critical Caribbean Studies (New Brunswick, NJ, USA: Rutgers University Press, 2021), 367–99.

[233]Most famously the Dutch deported community leader Anton de Kom from Suriname to the Netherlands in 1934. See introductory chapter by Tessa Leuwsha Kom et al., *Wij slaven van Suriname*, 7–14; Jones, "Citizenship Violence and the Afterlives of Dutch Colonialism," 104; Less known was community organizer Louis Doedel, who was institutionalized in a mental hospital on what many assumed to be false pretenses based on his activism. Hoefte, *Suriname in the Long Twentieth Century Domination, Contestation, Globalization*, 68–77; see also D. E. de Vlugt, "A New Feeling of Unity: Decolonial Black Power in the Dutch Atlantic (1968-1973)" (Leiden University, 2024), 144–450, https://hdl.handle.net/1887/3753457.

peace in uncertain economic times, mainstream Dutch politicians became advocates for full independence of those territories.[234]

This idea that full independence for the former colonies was not necessarily an empowering move for citizens there, but one that would instead impair their material interests was already being expressed by Caribbean scholars in the 1930s. In his 1935 PhD dissertation, Curaçaoan scholar and politician, Moises da Costa Gomez advocated, instead of independence, for a commonwealth framework like that then developing between the United Kingdom and its former colonies, who argued that 'full autonomy will choke our territories more than renew.'[235] When the Surinamese parliament voted for independence in 1975, it did so by a narrow margin.[236] Aruba, Curaçao and the islands of Bonaire, St. Eustatius, St. Maarten, and Saba remain part of the Kingdom of the Netherlands and continue to negotiate their relationship with the metropole, which critics see as being a continuation as opposed to repudiation of colonial practices.[237] While the Kingdom Charter extended citizenship to residents of the former Dutch colonies, political representation remains weighted in the metropole's favor, a situation which invites the critique that the Kingdom statute reinforced rather than restructured colonial

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[234] Wekker, *White Innocence*, 161; Peter Meel, "Money Talks, Morals Vex: The Netherlands and the Decolonization of Suriname, 1975-1990 on JSTOR," *European Review of Latin American and Caribbean Studies* June 1990, no. 48 (June 1990): 75–78.

[235] Margo Groenewoud, "Decolonization, Otherness, and the Neglect of the Dutch Caribbean in Caribbean Studies," ed. Aaron Kamugisha, *Small Axe: A Caribbean Journal of Criticism* 25, no. 1 (March 1, 2021): 109–10, https://doi.org/10.1215/07990537-8912808 (citing Moises da Costa Gomes's 1935 UvA Dissertation).

[236] Meel, "Money Talks, Morals Vex: The Netherlands and the Decolonization of Suriname, 1975-1990 on JSTOR," 78.

[237] See e.g. Ryçond Santos do Nascimento, *Het Koninkrijk Ontsluierd* (Apeldoorn: Maklu B.V, 2017), 305 ('In brief, the language, system, legal history and rationale of the Charter each point towards the Netherlands for exclusive administrative and legislative primacy within the Kingdom. This Kingdom is both de jure and de facto identical to the Netherlands. As a result, the Caribbean peoples are not only de facto but also de jure subordinate to both the Netherlands and the people of the Netherlands…. Because the Caribbean parts of the Kingdom accommodate separate peoples and not only populations, the present relations between the Kingdom and the Caribbean parts of the Kingdom can only be characterized as colonial.'); see also Sharpe, "The Parallels and Paradoxes of Postcolonial Sovereignty Games in the Dutch and French Caribbean."

tropes 'that people overseas had a need for European leadership and that based on that need, the European peoples had an obligation to exercise political rule over the peoples overseas.'[238]

Jones attributes the desire of the Dutch government to promote full independence, first (successfully) for Suriname and later (unsuccessfully) for Aruba and the rest of the Dutch Caribbean, at least in part, to a desire to control an unpredictable flow of Caribbean Dutch citizens into the metropole.[239] I would add to this attribution the motivation to protect 'white' wealth in the metropole, a motivation more or less admitted by various references in government policy of the time of the fear that 'a black (sic) sub-proletariat' would develop in the metropole if immigration and 'integration' of people coming from Suriname was not addressed.[240]

If Dutch politicians' embrace of independence in Suriname was partly motivated by limiting access to the metropole, it was dubiously successful. Residents of the newly independent Suriname did lose their Dutch citizenship after independence, 25 November 1975, but thanks in part to 'more supple' entry regulations negotiated for the following five years, by 1980 over 160,000 people had immigrated from Suriname to the Dutch metropole.[241] People who had migrated to the metropole from former Dutch colonies joined people often referred to as 'labor migrants', whom Dutch companies had recruited beginning in the late 1960s, first

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[238] Santos do Nascimento, *Het Koninkrijk Ontsluierd*, 298.

[239] Jones, "Dutch Politicians, the Dutch Nation and the Dynamics of Post-Colonial Citizenship," 40–42; see also Meel, "Money Talks, Morals Vex: The Netherlands and the Decolonization of Suriname, 1975-1990 on JSTOR," 78.

[240] Rinus Penninx, *Ethnic Minorities: Part B. Towards an Overall Ethnic Minority Policy? Outline of the Social Position in the Netherlands of Moluccans, Surinamese and Antillean Dutch National and Mediterranean Workers, and a Survey of Official Dutch Policy*, Official English Version, 17–1979 (The Hague: Wetenschappelijke Raad voor het Regeringsbeleid, 1979), 59–60; Penninx's term was forwarded to the government by the WRR commission's advisory report where they warned of a 'relatively large proletariat…consisting to a large extent of members of minority groups.' WRR, *Ethnic Minorities: Part A: Report to the Government* (The Hague: Wetenschappelijke Raad voor het Regeringsbeleid, 1979], XXXII.

[241] Chelsea Schields, "A Science of Reform and Retrenchment: Black Kinship Studies, Decolonisation and the Dutch Welfare State," *Contemporary European History*, March 3, 2023, 8, https://doi.org/10.1017/S0960777323000024; Ferrier, *De Surinamers*, 80.

from southern Europe and then mostly from Turkey and Morocco, and who had eventually been joined by their families and established permanent residence in the Netherlands. Chapter Three addresses how Dutch policy shifted to address these demographic changes inside the metropole.

2.2.2. Hiding race from the metropole

Racialized hierarchies are always contested, whether by rebellion and revolution from those at the hierarchical bottom or ideological and moral questions from those nearer the top. Physical violence through law is one way these contestations are answered; ideology is another. As addressed in chapter one, white supremacist ideologies justify societal inequalities produced by racializing practices and encourage those practices to be perpetuated by private individuals as well as state institutions. White supremacist ideology also presents itself as natural and universal, and in doing so hides the violence required to maintain it.[242] As Abdou, Nimako and Willemsen describe it, a problem created by racialization is getting people to forget the fact of that racialization.[243] Denying, hiding and erasing the nature of the wealth obtained through racializing practices was key to protecting white Dutch wealth in the colonial period, and became even more important in its immediate aftermath.

Race scholar Steve Garner describes whiteness as 'unlike any other [racialized identity] because it is the dominant, normalized location' from which other societal positions are viewed.[244] Feminist and queer theorist Sara Ahmed expands on this view of whiteness as a frame of reference – an orientation point from which the world is perceived, but from which 'white bodies do not have to face their whiteness; they are not oriented towards it and this "not" is what allows whiteness to cohere.'[245] Whiteness is treated as invisible by those racialized as white, in part, for 'purposeful obfuscation' of the source of their relative

[242] Bonilla-Silva, "More than Prejudice," 77; Crenshaw, "Race, Reform, and Retrenchment," 1381.

[243] Nimako, Abdou, and Willemsen, "Chattel Slavery and Racism."

[244] Garner, *Whiteness*, 6 (citing Richard Dyer's 1997 book Whiteness for the first proposition, but adding his own crucial modifier).

[245] Ahmed, "A Phenomenology of Whiteness," 156.

advantage.[246] This invisibility based on not wanting to see is part of what Gloria Wekker terms 'white innocence.[247] Law has always played a role in this obfuscation, treating, in the words of legal scholar Foluke Adébísí, 'cultural values associated with whiteness…as a legal order and global power structure,' while simultaneously claiming 'pretensions to objectivity, neutrality, and universality, which ignore historically contingent contemporary entanglements between power and possibility…'[248] Adébísí calls these claims of objectivity and neutrality of law a 'specific form of violent, and sometimes traumatic, epistemic "gaslighting" to [people] whose embodied and situated knowledges reject the hagiographies of Euro-modern legal knowledge.'[249]

One way law has hidden its racializing power from those who have benefited from whiteness in the Netherlands, as well as from the descendants of those who suffered under it, has been keeping racially explicit laws out of metropolitan legislation, instead confining explicit racial language to regulations or policies located in the colonies. This separation of legal racialization from the metropolitan legal regimes began early in Dutch legal history, with creation of chattel slavery. Neither statutory law in the colonial metropole, nor Dutch legal textbooks of the time, mentioned slavery at all.[250] Instead rules regulating slavery in the Atlantic colonies relied on Roman legal principles that allowed citizens to control their own 'domestic property', including the human property of enslaved people; these principles were made concrete in *Plakkaat Boeken*, which contained specific laws policing race and enslavement, but were only applied in the colonies.[251] When the short-lived Batavian Republic adopted a constitution in 1798, it made no reference to slavery whatsoever, despite being written at the height of the practice, and in the

[246] Steve Garner, "The Uses of Whiteness: What Sociologists Working on Europe Can Draw from US Research on Whiteness," *Sociology* 40, no. 2 (April 2006): 260–61, https://doi.org/10.1177/0038038506062032.

[247] Wekker, *White Innocence*.

[248] Folúkẹ́ Adébísí, "Decolonising the Law School: Presences, Absences, Silences… and Hope," *The Law Teacher* 54, no. 4 (October 1, 2020): 6, https://doi.org/10.1080/03069400.2020.1827774.

[249] Adébísí, 8.

[250] Huussen, "The Dutch Constitution of 1798 and the Problem of Slavery," 104.

[251] See eg. Zemon Davis, "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname"; Schiltkamp and Smidt, de, *West Indische Plakaatboek*.

face of vigorous public debate in the Dutch metropole on the subject.[252] The absence was not an oversight, but a conscious choice for silence. The 1798 constitution was the product of three complete drafts, each one of which had been informed by two different committees charged with studying how to address slavery in the text; these committee reports were followed by vigorous debates among assembly members who include Dutch abolitionist Pieter Vreede.[253] In the end, material questions such as how to compensate enslavers, how to replace enslaved labor on plantations and how to guarantee 'the safety of the colonists' resulted in a decision to leave the subject out of the final document, a non-decision which left slavery in place as the status quo in the colonies for another seventy-five years.[254]

Another way law contributed to limiting the visibility of racializing practices and naturalizing whiteness in the metropole was by excluding people racialized as white from the metropole in what amounted to a legal policy of 'out of sight, out of mind.' This policy began as early as 1596 when the Staten Generaal prohibited a sea captain from selling his cargo of captured Africans in the Dutch city of Middleburg, but allowed him to remove the prisoners from the Dutch provinces and dispose of them any other way he saw fit.[255] The government did not prohibit slavery, but it did forbid conducting the practice visibly in the metropole. Laws governing transportation of enslaved people from the Dutch Atlantic colonies followed, as did those governing the post-independence migration of people racialized as 'native' from the former Dutch East Indies. These policies, both discussed in section 2.2.1 above, also had the effect of hiding the existence of people racialized as non-white, and their role in creating wealth for the Dutch Kingdom from people residing in the metropole and benefiting from that wealth. This is the dual nature of the

[252] Huussen, "The Dutch Constitution of 1798 and the Problem of Slavery," 113; René Koekkoek, "Forging the Batavian Citizen in a Post-Terror Revolution," in *The Citizenship Experiment*, Contesting the Limits of Civic Equality and Participation in the Age of Revolutions (Brill, 2020), 201–39, https://www.jstor.org/stable/10.1163/j.ctv2gjwx6n.12 (describing the tumultuous debates over citizenship, constitutional rule and representative government in the period 1795-1806).

[253] Huussen, "The Dutch Constitution of 1798 and the Problem of Slavery," 108–12.

[254] Huussen, "The Dutch Constitution of 1798 and the Problem of Slavery"; Lauret, "De Nederlandse politiek en slavernij in de negentiende eeuw," 133.

[255] Hondius, "Access to the Netherlands of Enslaved and Free Black Africans,"; Goldberg, *The Racial State*, 18.

postcolonial occlusion that Jones identifies, the way in which law and memory mutually create and enforce each other: on the one hand, the Dutch government 'forgot' the recent colonial past when arguing that people racialized as non-white from the former colonies were completely foreign to the Netherlands and the Dutch way of life; at the same time, restricting the entry of those same people helped hide their existence from people racialized as white and living in the metropole, and enabled them to 'forget' the colonial racialized practices that enabled their quality of life there.[256] The result, as memory scholar Paul Bijl observes is 'that the nation's non-white population [was] systematically excluded from notions of Dutchness'.[257]

The effect of this self-reinforcing loop between legal exclusion of people racialized as non-white, and the disconnection of that exclusion from its colonial and racialized history is to construct the Netherlands as a nation naturally composed of citizens who are mostly white, as opposed to a place legally, violently, constructed to appear that way. That this construction has maintained its power long past the colonial period of explicitly racialized policy and practice is evident in a 2021 case involving racial profiling by Dutch border guards. In the first hearing of that case, a court in Den Haag found that stopping Dutch citizen Mpanzu Bamenga (who is racialized as Black) at an airport border crossing based on his 'ethnicity' was justified because 'ethnicity can be an objective indication of someone's purported nationality.'[258] Though the case was later reversed on appeal, the initial decision reveals not only the tenacity of the idea that there a natural connection between race (or as the judges call it, ethnicity) and nationality, but also how courts continue creating that narrative by enforcing cases based on it.

2.3. Postcolonial racialization changes means but not ends.

The fact that the judges in the Bamenga cases used the term ethnicity instead of race or even skin color, also reveals how effectively racial discourses have been erased from the lexicons of law and power in the Netherlands in the postcolonial

[256] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*.

[257] Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia."

[258] Bamenga Case, No. ECLI:NL:RBDHA:2021:10283 (Rb. Den Haag September 22, 2021).

period.[259] While occlusion has always been part of racializing practice, the discourse of denying its role in European society became all-encompassing following the Second World War and the revelations of the extent of the racialized genocides the Nazis perpetrated on European soil. This sea change in racial discourse occurred at the same time as the process of formal decolonization of the Dutch empire, and influenced the ways in which law could and would construct race in the aftermath of that process.

2.3.1. Condemning racism while protecting other racializing practices

'Racism', observes Hesse, did not exist as a concept until the 1930s. He attributes popularization of the term to Hannah Arendt, who was at that time trying to raise opposition to the Nazi party in Germany and its oppression of Jewish people based on the an ideology that they were biologically inferior to 'Arian' Germans.[260] Creating the concept of racism, which selected one version of racialization, that based on biology or nature, and its visible result, skin color or other physical manifestations, and ignored the various other ways European states racialized the people under colonial control, allowed European states, and their North American allies, to solve a 'conceptual double bind'; they could condemn Nazi racialization and subsequent murder of six million Jewish people, while defending their own similar practices in their overseas colonies.[261]

Instead of being defined by its most prevalent practices tied up with the definition of Europe itself, colonial expansion, border policing and enslavement,

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[259] See e.g. Essed, *Understanding Everyday Racism*, 15 ('The ideological form of racism that is used to rationalize pluralization, called "ethnicism" [and replacing discourse of race with those of ethnicity], proclaims the end of class and race groups, thereby delegitimizing resistance against racism and denying fundamental group conflict….').

[260] Barnor Hesse, "Self-Fulfilling Prophecy: The Postracial Horizon," *South Atlantic Quarterly* 110, no. 1 (January 1, 2011): 159–63, https://doi.org/10.1215/00382876-2010-027.

[261] Barnor Hesse, "Im/Plausible Deniability: Racism's Conceptual Double Bind," *Social Identities* 10, no. 1 (January 1, 2004): 18, https://doi.org/10.1080/1350463042000190976 ('After the Second World War, particularly in the immediacy of the post-Holocaust era, ostensibly the problem of racism, considered by the Western international consensus, was the avoidance of another racial state like the Third Reich.').

racism became, exclusively, an ideology, and an aberrant one; it became an exception to the rule of post-enlightenment European progress and enlightenment, as opposed to one of its foundational principles.[262] The choice to define racism using the Nazi version as the paradigmatic example of the concept, excluded the experience of all other people racialized as non-white (whom Hesse refers to as 'Black populations'), experiencing the ongoing and deadly racializing practices of colonial government in Africa and Asia, segregation and lynching in the United States, apartheid in South Africa, removal of indigenous children to government schools in North America and Australia etc.; these practices became, by definition, 'not racism' and therefore could continue unsanctioned and unabated.[263] Anti-colonial writers of the time, including W.E.B. DuBois, Aimé Césaire and Franz Fanon, recognized the incongruity of European and American states condemning racism in Europe while continuing racialized domination in their colonies or in the southern United States, but their voices were ignored by mainstream domestic and international policy makers of the time.[264]

Hesse points out that linking racialized hierarchy to the body (that is to skin color, facial features, hair texture, skull measurement etc.'), was only ever one aspect of the ideology of European/white supremacy, which was always 'deployed in excess of the corporeal, having multiple references of association (e.g. territory, climate, history, culture, history, religion), suggesting that the body was less the ubiquitous metaphor of "race" than its privileged metonym.'[265] When the Nazi's put biological racialization at the forefront of their propaganda and justifications for the genocide of millions of Jewish and Roma people in the 1930s and 1940s, their opponents in the United States and Western Europe dropped biological

[262] Hesse, 22.

[263] Hesse, 22–23; Hesse, "Self-Fulfilling Prophecy," 159; Lentin, "Beyond Denial"; Melissa F. Weiner, "The Ideologically Colonized Metropole: Dutch Racism and Racist Denial: Dutch Racism," *Sociology Compass* 8, no. 6 (June 2014): 731–44, https://doi.org/10.1111/soc4.12163.

[264] In the United States, the condemnation of Nazi racism led, in part, to what legal scholar Derrick Bell termed 'interest convergence', the idea that some civil rights for people racialized as Black occurred because it was in the political interest of the white majority. Derrick A. Bell, "Brown v. Board of Education and the Interest-Convergence Dilemma," *Harvard Law Review* 93, no. 3 (1980): 524–25, https://doi.org/10.2307/1340546.

[265] Hesse, "Racialized Modernity," 653.

racialization from the socially acceptable basket of racializing tools, but held onto the numerous other means of and justifications for racialization still available to pursue white supremacist ends. Dutch politicians wasted no time in switching to focus on those other means.[266]

Because formal decolonization in the Netherlands occurred almost simultaneously with the rise of racism as a concept and the denial that racism was an aspect of colonial power or wealth accumulation, denying the existence of racialization as a Dutch practice became bound up with denying, occluding and forgetting its colonial past.[267] At the same time, racialized migration policies described in section 2.1.4 above could escape the 'racist' label by shifting to discourses of *culture* or *development* as opposed to biology or nature. These included migration policies which limited access to the metropole for people racialized as non-white and had the effect of protecting racialized wealth located there. For example, when arguing against the residence of people from the Moluccan Islands in the metropole, Dutch parliamentarians did not cite race, but 'the customs, social views and the physical and mental condition' of people from those islands.[268] When, as recently as 2012, Dutch politicians attempted to limit access to the metropole for Dutch citizens from the Caribbean, they also relied on discourses of the cultural unfitness for residency in the metropole.[269] The discourse

[266] For an analysis of how this shift in racialized discourse impacted Dutch policy toward colonial control of New Guinea following Indonesian independence, see Kuitenbrouwer, "Beyond the 'Trauma of Decolonisation'" (describing hearings with the United Nations to decide whether the Netherlands would be able to hold onto those island, in which Dutch diplomats shifted almost overnight from arguing that 'native' Papuans were (biologically) incapable of or (culturally) unprepared for self-rule to arguing that Dutch colonial control would protect those same people's right to self-determination from inevitable colonization by Indonesia).

[267] See e.g. Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia."

[268] Jones, "Biology, Culture, 'Postcolonial Citizenship' and the Dutch Nation, 1945–2007," 323.

[269] Jones, "Just Causes, Unruly Social Relations. Universalist-Inclusive Ideals and Dutch Political Realities," 81–82 (describing the 'Bosman bill' proposing to end free settlement of 'Dutch citizens Curaçao and Sint-Maarten [formerly known as the Dutch Antilles] in the Netherlands. The proposed bill is classed as well as racialised. It is aimed at excluding Dutch citizens referred to as "socially weak Antilleans" [thereby prohibiting the less fortunate from relocating to the richer part of the Kingdom] from free settlement in the Netherlands while exempting the people from the Islands

had shifted away from biology or nature towards culture, but had the same effect of exclusion; to paraphrase Bonilla Silva, it enacted racism without being racist.[270]

2.3.1.1. Discourse changes and identifying race

As the language of culture replaced the language of race generally in the Dutch metropole, so did the specific terms used to refer to racialized groups of people. First and foremost among these terms is the term *Dutch* which, despite increasing scholarship on the way race operates in the Netherlands, remains the catch-all term for citizens of the Netherlands who are racialized as white. Though sometimes modified with the terms native, indigenous, or white, Dutch is a modifier that seems to illustrate ongoing wrestling with how to deal with racialization in the postcolonial Netherlands. Ongoing debate over whether to use the adjectives *witte* or *blanke* to refer to people racialized as white also underscores this unease.[271]

While individuals may refer to themselves in a variety of ways depending on the context and company, the descriptor Dutch is often geographically tied to the metropole, with Caribbean Dutch citizens more likely to identify or be identified with an island than with 'the Netherlands,' either by choice and by ascription. But Dutch is also clearly a racialized container as Dutch citizens racialized as non-white and living in the Netherlands for many generations may still also be racialized as Surinamese, *Indisch*, Moroccan, Indo-European, Turkish, Aruban, Curaçaoan, or

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classified as 'European' Dutch citizens from Aruba, Curaçao and Sint-Maarten [formerly known as the Dutch Antilles] in the Netherlands.').

[270] Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America*, Sixth edition (Lanham: Rowman & Littlefield, 2022).

[271] *Wit* has become the term used by national media outlets and preferred by people who recognize that race is a socially constructed concept. At the same time, preference for the term *blank* has become associated, at best, with a reluctance to embrace the Netherlands as a multiracial society and, at worst, a dog whistle for extreme right, consciously white supremacist actors. See e.g. Cees van der Laan, "Het woord blank hoort niet meer thuis in Trouw," *Trouw*, January 7, 2023, https://www.trouw.nl/opinie/het-woord-blank-hoort-niet-meer-thuis-in-trouw~b1fc317c/ (justifying why *Trouw* uses wit and not blank.); Joni de Vries, "De Macht van Blank," *Jonge Historici* (blog), October 7, 2023, https://www.jhsg.nl/de-macht-van-blank/ (describing history of the term *blank* and highlighting the 2018 adoption of *wit* by the NOS as prompting backlash from members of parliament and others).

Antillean, and may in fact claim that identify for themselves before, or in combination with Dutch.[272] In the documents related to my case study, and in the interviews I conducted over the last few years, using the description Dutch alone usually connoted both Dutch citizenship and being racialized as white.[273] This usage illustrates how whiteness naturalizes itself in discourse and establishes itself as an invisible neutral or default position linked to citizenship and belonging.

Unlike the use of the adjective Dutch to mean people racialized as white, terminology for people racialized as non-white has changed frequently since the colonial period, in popular usage as well as in public policy. As people who migrated from the former Dutch East Indies settled in the metropole a term like *totok* for people racialized as white became offensive, while *Indo* from *Indo-European* was first regarded as offensive, and then reclaimed.[274] The same held for *foreigners* which persisted well into the 1980s and *ethnic minorities* a descriptor problematized at the time and will be discussed more in detail in Chapter Three.[275] In 1984, *allochtoon* was regarded as offensive and 'mostly used by the [explicitly anti-immigrant] Centrumpartij',[276] but by 1989 the term replaced 'ethnic minority' in official government policy.[277] Based in geology, the term refers to those 'not of the land'; its opposite, *autochtoon,* means 'of the land'.[278] The term *allochtoon* was

[272] See e.g. "Lara Nuberg | schrijver, spreker, moderator, audiomaker," Lara Nuberg, accessed March 14, 2024, https://laranuberg.nl (formerly maintained blog 'Gewoon Indisch Meisje').

[273] Personal experience leads me to believe, however, that racialization and nationality are necessary but not alone sufficient to be Dutch. While I am both a Dutch citizen, naturalized in 2015, and racialized as white, no one has ever referred to me as Dutch, nor do I expect them to. I remain an 'American with Dutch citizenship'. My two children, who are also racialized as white and also have dual citizenship, but who were born here and have a father racialized as both white and Dutch, have never to my knowledge had their 'Dutchness' questioned.

[274] See e.g. Peter Schumacher, *Totok Tussen Indo's: Een Persoonlijk Relaas over Arrogantie, Versluierde Discriminatie En Vernedering Onder Indische Nederlanders* (Amsterdam: De Kan, 1995).

[275] Anet Bleich and Peter Schumacher, *Nederlands Racisme* (Amsterdam: Van Gennep, 1984), 14.

[276] Bleich and Schumacher, 15.

[277]WRR, *Allochtonenbeleid*, WRR rapport 36 ('s-Gravenhage: WRR, 1989), https://www.wrr.nl/publicaties/rapporten/1989/05/09/allochtonenbeleid.

[278] See e.g. Willem Schinkel, *Imagined Societies: A Critique of Immigrant Integration in Western Europe* (Cambridge: Cambridge University Press, 2017),

used throughout government policy and mainstream discourse to refer to people with at least one parent born outside the Netherlands, and frequently modified with the qualifier *western* or *non-western*, a geographically nonsensical distinction in which people from the Caribbean were labeled non-western while people from Japan were labeled western, revealing the colonial nature of the categories and their relations to perceived hierarchies of cultures and civilizations, with non-western being problematized.[279] After nearly thirty years of dominating the discourse, the Central Bureau of Statistics (CBS) replaced the *allochtoon/autochtoon* dichotomy with the modifier 'migration background' though holding on to the western/non-western distinctions. In 2022, the CBS rebranded yet again, jettisoning 'migration background' in favor of focusing on where Dutch residents were born; a person's 'nation of origin' (*herkomstland)* is further divided into four levels, of increasing specificity.[280] The result of these ever-changing, and increasingly complicated, demographic terms is that the most people racialized as non-white in the Netherlands still come from what the CBS calls five 'classic migration regions', defined as a those 'where the Netherlands shares a special migration history and where relatively many residents or their parents were born;' in 2022, as in 1975, these places were Turkey, Morocco, Suriname, Indonesia and the Dutch Caribbean islands.[281] At the same time, because these ever-changing words do not carry the same stigma as *race* or *racism*, then institutionally disadvantaging people on the basis of these traits does not bare the same social and cultural prohibitions as doing so on the basis of perceived race. As Essed and Trienekens observed in 2008, 'fear

https://doi.org/10.1017/9781316424230.004; Centraal Bureau voor de Statistiek, "Wat is het verschil tussen een westerse en niet-westerse allochtoon?," webpagina, Centraal Bureau voor de Statistiek, accessed January 6, 2021, https://www.cbs.nl/nl-nl/faq/specifiek/wat-is-het-verschil-tussen-een-westerse-en-niet-westerse-allochtoon-.

[279] Statistiek, "Wat is het verschil tussen een westerse en niet-westerse allochtoon?"

[280] "CBS Introduceert Nieuwe Indeling Bevolking Naar Herkomst | CBS," accessed October 3, 2024, https://www.cbs.nl/nl-nl/nieuws/2022/07/cbs-introduceert-nieuwe-indeling-bevolking-naar-herkomst.

[281] "CBS Introduceert Nieuwe Indeling Bevolking Naar Herkomst | CBS." (using the phrase *afzonderlijke klassieke migratielanden*).

of the accusation of racism is dwindling because *allochtonen* are not considered to be a race'. [282]

The changes to all this rhetoric over the years represent more continuity than change in terms of how race works in Dutch cultural discourse. Dutch remains the privileged point of reference to which all other groups may aspire to, but never succeed in, being assimilated into, in part because Dutch remains white.[283] Shifting rhetoric performs the function, as articulated by Guno Jones, of disavowing structural injustices in favor of 'dominant assumptions of cultural difference and backward-ness of "the others"',[284] in other words, we keep centuries-old practices of racialization in ever modifying discursive packages.

2.3.2. Giving a limited definition of racism the force of law

The discursive separation between *racism* and (colonial) *racializing practices*, noted above, also explains the easy passage of the United Nation's International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in December of 1965[285], and the Dutch government's immediate ratification of that treaty. Dutch parliamentarians did not believe they would have to do much to comply with the treaty since the Netherlands did not have a history

[282] Essed and Trienekens, "'Who Wants to Feel White?," 59.

[283] Essed and Trienekens, 57.

[284] Jones, "Just Causes, Unruly Social Relations. Universalist-Inclusive Ideals and Dutch Political Realities," 979.

[285] See e.g. H. Timothy Lovelace, "Making the World in Atlanta's Image: The Student Nonviolent Coordinating Committee, Morris Abram, and the Legislative History of the United Nations Race Convention," *Law and History Review* 32, no. 2 (May 2014): 425, https://doi.org/10.1017/S0738248013000667 ('The 1964 Sub-Commission's legislative structure placed inordinate amounts of power in the hands of the very nations that had perpetuated many of history's most egregious human rights violations. Those same nations were contemporaneously engaged in an imperialistic struggle to control the destiny of the Third World. The Sub-Commission's legislative process reinforced long-standing hierarchies in global race relations, as it dismissed the black South and much of the so-called "Third World" as sites for the epistemological production of human rights.'); Chana Grijsen, *De handhaving van discriminatiewetgeving in de politiepraktijk*, Dissertation - Utrecht U Repository (Utrecht; Den Haag: Willem Pompe Instituut voor Strafrechtswetenschappen ; In samenwerking met Boom Lemma, 2013).

of racism.[286] When the Dutch government had to comply with the ICERD in 1971, it gave legal force to the categorical denial of what was and was not racism in the Dutch metropole. Instead of legislating to impact practices that had racializing effects, for example its nationality-based migration policies or cultural traditions of minstrelsy,[287] the Dutch government prohibited *expressions* of racists *beliefs*. It amended the penal code to prohibit making public statements insulting people or 'inciting hatred' based on race, religion or life philosophy (*levensovertuiging).*[288] That prohibition was added to Article 137 of the Dutch criminal code; the article originated in the metropole in 1934, as an attempt to preserve public order in response to growing public demonstrations in support of National Socialist movements and public threats against the Dutch Jewish community.[289] An earlier version of the prohibition on *haat zaaien* (spreading hate) first passed in the Dutch East Indies, where it prohibited 'inciting hatred' against 'the governments of the Netherlands or against Dutch subjects and residents of the colony'.[290] As such, Article 137 could be a metaphor for postcolonial legal constructions: a law that began its life with the purpose of shielding colonial actors and actions, including those that imposed formal, legal racialized hierarchies, from critique in the colonies evolved to become a law that shielded the postcolonial iterations of those same actions from legal sanction in the metropole.

When the Dutch government later enacted policies to combat racial discrimination, including creation of the Landelijk Bureau Racismebestrijding

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[286] Grijsen, *De handhaving van discriminatiewetgeving in de politiepraktijk*, 36 (citing parliamentary records in footnote 59).

[287] Sébastien Chauvin, Yannick Coenders, and Timo Koren, "Never Having Been Racist: Explaining the Blackness of Blackface in the Netherlands," *Public Culture* 30, no. 3 (September 1, 2018): 509–26, https://doi.org/10.1215/08992363-6912163; Elisabeth Koning, "Zwarte Piet, Een Blackfacepersonage," *Tijdschrift Voor Geschiedenis* 131, no. 4 (December 1, 2018): 551–75, https://doi.org/10.5117/TVGESCH2018.4.001.KONI.

[288] Grijsen, *De handhaving van discriminatiewetgeving in de politiepraktijk*, 36.

[289] Grijsen, 33–34.

[290] Salverda (n 56) Salverda, "Doing Justice in a Plural Society," 163–66. Even more revealing is that the punishment for spreading hate in the Dutch East Indies was much harsher than that threatened for violations of Penal Law 137 in the metropole: up to seven years in prison as opposed to a few months and a monetary fine.

(LBR), they relied on Article 137 to be the enforcement mechanism of these policies, inextricably tying the definition of racial discrimination in the Netherlands to the limited definition of racism described above. In doing so, policy makers were able to frame racial discrimination, like racism, as driven by individual, falsely held, ideologically driven beliefs and practices that were fundamentally foreign to the Netherlands. Article 137, and the criminalization of racism and racial discrimination more broadly, represent yet another instance of the co-constructive loop between legal constructions of race and racialization and the occlusion of that actual practices of racialization and public memory of its role in Dutch history.[291]

2.4. Conclusion

Throughout colonial history, Dutch law relied on formal, explicit legal constructions of race to address the three problems of creating and protecting racialized wealth in the colonial period that I paraphrased from Abdou, Nimako and Willemsen in the introduction to this chapter. Those were: 1) to make free people unfree and/or dispossess them of their land and its resources, 2) to exploit the labor of those same people in order to extract resources from that land, and 3) to make sure that both the exploited and those who benefited from their exploitation forgot the fact of its existence. In the colonial period, these laws governed the creation of European states, supported their claims to colonized territories, created racialized categories of slave, owner, native and European and attached different burdens, rights and rewards to those categories. Using racialized migration restrictions, law then ensured that the wealth generated by these colonial practices and transferred to the metropole would be enjoyed, almost exclusively, by people racialized as white

[291] The ICERD's role in 'erasing race' is by no means limited to the Netherlands, as explored in Mathias Möschel, Costanza Hermanin, and Michele Grigolo, eds., *Fighting Discrimination in Europe: The Case for a Race-Conscious Approach*, First issued in paperback, Ethnic and Racial Studies (London New York: Routledge, 2016) (explaining that the ICERD has 'not reversed the paradox of "racism without races", i.e. that of sanctioning racism and racial discrimination from state and private actors refusing any form of racial categorization. This paradox characterizes many European legal systems and is generated by the absolute denial of the existence of races coupled with the absence of deeper reflections on the role that race and ethnicity and their underlying changing and adaptable assumptions still play in Europe.').

and European. While discourse around race changed after the Second World War, racialized migration laws were able to continue using discourses of culture and nationality and maintain an almost exclusively white metropole until the mid-1970s, while simultaneously naturalizing and therefore hiding the legally constructed racialized nature of that metropole. How policies and practices aimed at protecting the value of racialized wealth changed and adapted after a significant population of people racialized as non-white established permanent residency in the metropole is the subject of the next chapters.

3. Law, race, and Dutch 'minorities policies' (1974-1983)

3.1. Introduction

By the late 1970s, political and legal efforts to keep people racialized as non-white from residing permanently in the metropole in significant numbers had, by the estimation of the government's own scientific research agency, failed.[292] By 1979, the total Dutch population of around fourteen million included nearly 400,000 people the government called 'ethnic minorities'. This number included approximately 200,000 'foreign workers' whom the Dutch government had recruited through treaties with Turkey and Morocco in the 1960s, and who, by the mid-1970s, had been joined by their families; it included 130,000 people from Suriname, 25,000 from the Netherlands Antilles, and 32,000 people with heritage in the Moluccan Islands.[293] It did not include the approximately 200,000 people racialized as Indo-European, people racialized as Chinese, or 'foreign adoptees' racialized as non-white, for reasons that will be discussed later in this chapter. Most of the people included in the government's definition of 'ethnic minorities' were racialized as non-white. During the colonial period, law helped create material benefits for people racialized as white by constructing formal, explicitly racialized categories of people and attaching different rights to those categories and helped protect those benefits in the metropole through restrictive immigration policies directed at those racialized as non-white, as described in the previous chapter. This goal of using law to protect material benefits for people racialized as white did not change after people racialized as non-white began residing in significant numbers within the metropole; the means by which this goal was pursued did.

This chapter argues that the Dutch government remained committed to maintaining a racialized social and economic hierarchy within the Dutch metropole in the postcolonial period and that it used its 'minorities policies' to do so. This

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[292] WRR, *Ethnic Minorities: Part A: Report to the Government*, vii; Penninx, *Etnische Minderheden. A*, 161; Peter Schumacher, *De Minderheden: 700.000 Migranten Minder Gelijk*, 4. dr, Van Gennep Nederlandse Praktijk (Amsterdam: Van Gennep, 1987) (estimating approximately 400,000 people racialized as 'ethnic minorities' residing permanently in the metropole in 1980 and 700,000 in 1987.).

[293] WRR, *Ethnic Minorities: Part A: Report to the Government*, iv.

commitment to the status quo did not necessarily represent an explicit, or even conscious, commitment to white supremacy as such. However, because that status quo had been built up over centuries of racialized practice, including slavery and colonial exploitation, and was supported by the ideology employed to justify those practices, maintaining it was the equivalent of maintaining a white supremacist hierarchy as it had existed under those systems and continued to exist in the metropole. Because the racialized status quo was the result of many centuries of racializing practices and ideology, these practices and preferences had become incorporated into the value systems of the metropole and helped dictate the standards for success in employment, education, housing and political representation. The government did not have to *do* anything to maintain a racialized status quo except refrain from intervening in those systems.

In the mid-1970s, however, three related phenomena forced the government to do something about what it termed 'the problems' of people racialized as non-white in the metropole. First, the government accepted that a materially significant number of people racialized as non-white would remain in the metropole indefinitely.[294] Second, different groups of people racialized as non-white began demanding action on issues like police harassment and discrimination in housing and employment.[295] Third, visible, openly racist rhetoric and violence began to filter into popular consciousness, threatening the Dutch self-image of being a tolerant, and fundamentally not-racist society, and its desire to remain a 'guiding nation'

[294] See e.g. Penninx, *Etnische Minderheden. A*, 206 (explaining why the government was departing from previous policies of encouraging people racialized as non-white to 'integrate while keeping their own identity,' a policy which had been seen to encourage return, or remigration, to a country of origin. 'Tot op heden werd de slogan "integratie met behoud van eigen identiteit" gehanteerd, maar we hebben gezien dat een dergelijke vage gulden middenweg in de praktijk moeilijk te hanteren valt; in een perspectief van een lang of permanent verblijf van de migrant bijten de twee begrippen elkaar.').

[295] See e.g. "Verslag Kongres Minderheden," Conference Summary (Utrecht: Inspraak Welzijn Molukkers, Stichting Kibra Hacha, Landelijke Federatie van Welzijnstichtingen voor Surinamers, May 31, 1979); Chapters on "Horeca" in Ausems-Habes, *Congres Recht En Raciale Verhoudingen*; "De LOSON Roept Op Tot Massale Deelname Aan de Anti-Racisme-Campagne" (LOSON, December 17, 1975), Instituut Sociale Gescheidenis Amsterdam; For examples of grassroots organizing against racialization prior to 1974, see De Vlugt, "A New Feeling of Unity."

(*gidsland)* on international issues of human rights and democracy.[296] In 1979, the government's scientific research agency published a report simply titled *Ethnic Minorities* (*Etnische Minderheden)* which identified problems facing people the government defined as 'ethnic minorities' and making suggestions for how to address those problems.[297] Between 1979 and 1983 the government solicited feedback from various stakeholder groups before presenting its definitive *Minorities Policy Note* (*Minderhedenbeleid Nota)* to parliament in 1983. That policy document, submitted by the first cabinet of Prime Minister Ruud Lubbers, contained a promise to create a national organization dedicated to using legal means to address racism, the organization that would become the Landelijk Bureau Racismebestrijding (LBR).[298]

This chapter demonstrates that two themes remained consistent throughout the development and implementation of the *Minorities Policy Note*. First, the government maintained the discourse of postcolonial occlusion which had characterized its migration policy in its internal domestic policy. This discourse ignored or denied historically and/or structurally racialized roots of any inequality or discontent among groups of people racialized as non-white, instead blaming a failure to 'succeed in Dutch society' on personal, and primarily 'cultural deficiencies' of racialized groups. Second, while the various minorities policies were nominally created to address problems facing 'disadvantaged' groups, the Dutch government also used these programs to pacify, coopt or otherwise neutralize growing momentum among activists and others to mobilize for change to existing racialized hierarchies, while consistently refusing to enact any programs that might significantly change the social status quo in the metropole. Part of this pacification included conceding that racism and racial discrimination might play some role in keeping 'ethnic minority' groups from succeeding in the metropole, and adopting

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[296] For more on Dutch desire to be seen as a "guiding land" see Joost Herman, "The Dutch Drive for Humanitarianism Gidsland: Is There a Mentor State," *International Journal* 61, no. 4 (2006 2005): 859–74; Bovenkerk, *Omdat Zij Anders Zijn* (often cited as the first time that racial discrimination in the Netherlands received attention from national news outlets).

[297] WRR, *Ethnic Minorities: Part A: Report to the Government*; Penninx, *Etnische Minderheden. A*.

[298] Kamerstukken II 1982/1983 16102 nr. 21, https://zoek.officielebekendmakingen.nl/0000143005.

policies, including the LBR, that nominally appeared to address those problems, but at the same time refusing to force or empower any government agency or organization to effectively enforce anti-discrimination norms. Such a practice embodied Sara Ahmed's concept of nonperformative antiracism described in Section 1.2.1. of this manuscript.

3.2. The status quo and Dutch political culture

A commitment to maintaining the social status quo, paired with solving problems through a protracted process of dialogue and consensus building, often referred to as the polder model of decision making, has been a feature of Dutch public identity for centuries and often portrayed as a positive driver of democratic stability.[299] Indeed, throughout the course of my research when I have described my theory that Ahmed's definition of non-performativity applies to the government's response to racialized inequality in the metropole, people across political and academic viewpoints have often responded with some equivalent of 'That's just Dutch politics!' What this project argues, however, is that when the status quo is based on long-standing structures of racialized oppression, this model of politics can become a vector of that oppression.

In his 1968 book, *The Politics of Accommodation*, political scientist Arend Lijphart observed that unlike its neighbor states, '[a]ll major political problems facing the Dutch during the past century have been resolved peacefully and constitutionally.'[300] Other scholars have shown that the Dutch commitments to a 'depoliticized citizenship' goes back even further, at least to 'revolutions' between 1795 and 1801, when, shocked by violence and terror of the French Revolution, Dutch patriots committed themselves to slow, negotiated decision making over

[299] See e.g. Rudy B. Andeweg and Galen A. Irwin, *Governance and Politics of the Netherlands*, 4th ed, Comprative Government and Politics (Basingstoke: Palgrave Macmillan, 2014).

[300] Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 1st ed. (Berkeley and Los Angeles: University of California Press, 1968), 77 (Lijphart acknowledges 'The only big blot on their record is their failure to withdraw from the colonial empire without bloodshed and severe damage to their national interest,' a qualifier which reminds me of the American expression, 'Other than that Mrs. Lincoln, how did you enjoy the play?').

democratic power struggles.[301] Lijphart defined Dutch politics and the polder model as:

> 'a politics of accommodation. That is the secret of its success. The term accommodation here is used in the sense of settlement of divisive issues and conflicts where only a minimal consensus exists. Pragmatic solutions are forged for all problems, even those with clear religious-ideological overtones on which the opposing parties may appear irreconcilable, and which therefore may seem insoluble and likely to split the country apart.[302]

While the Netherlands may be a 'country of minorities' in that no single party has obtained a majority of seats in parliament since the onset of universal suffrage[303], Lijphart observed that 'Dutch national consensus … does contain the crucial component of a widely shared attitude that the existing system ought to be maintained and not be allowed to disintegrate'.[304]

Lijphart published his book in 1968, after roughly 200,000 people racialized as Indo-European had settled in the metropole, but before significant migration of people from Suriname, the Dutch Antilles, Turkey or Morocco. He did not address whether the national consensus on the fundamental soundness of the status quo extended to people racialized as other within that nation. A few decades later, Philomena Essed opined that it did not. She described the polder model as a means of exercising and disguising (racialized) political power.[305] Using this disguised power, she later observed in an article with Kwame Nimako, polder/consensus

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[301] Koekkoek, "Forging the Batavian Citizen in a Post-Terror Revolution," 239 (highlighting that essentializing certain cultural aspects and assigning them to different groups applied beyond a colonial/European divide as several Dutch lawmakers observed that the violence of the French Revolution was partly to blame on fiery French temperaments, something the more calm Dutch did not have to fear).

[302] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 103.

[303] Andeweg and Irwin, *Governance and Politics of the Netherlands*, 2014, 27.

[304] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 103.

[305] See e.g. Essed, *Understanding Everyday Racism*, 17; Melissa Weiner, "The Demography of Race and Ethnicity in The Netherlands: An Ambiguous History of Tolerance and Conflict," in *The International Handbook of the Demography of Race and Ethnicity*, vol. 4 (New York, NY: Springer Berlin Heidelberg, 2015), 575–96, http://link.springer.com/10.1007/978-90-481-8891-8_27.

politics consistently and categorically reject 'radical' points of view, and define as radial any views 'that problematize essential features of society and social relations and hence advocate fundamental changes,' including those ideas related to systemic racialized oppression.[306]

Lijphart observed seven rules of accommodation politics in the Netherlands. These included:

1. That politics is treated as a business best left to professionals;
2. The agreement to disagree;
3. 'Summit diplomacy' meaning 'government by the elite [and the reality that] the more serious the political question that is at stake, the higher will be the elite level at which it will be resolved';
4. Proportional allocation of resources (i.e. subsidies);
5. Depoliticization using 'complicated economic arguments and the juggling of economic facts and figures incomprehensible to most people';
6. Secrecy, meaning the 'leaders' moves in negotiations among the blocs must be carefully insulated from the knowledge of the rank and file,' and that 'parliamentary approval represents no more than the final stage of the accommodation process'; and,
7. Government has a right to govern, where the government means the cabinet, and judicial review of their decisions is rarely possible.[307]

Political scientists following Lijphart have pointed out that this system of accommodation does not work on all societal issues, especially those that cannot be solved by proportional allocation of subsidies, or agreeing to disagree; they cite as

[306] Essed and Nimako, "Designs and (Co)Incidents," 289; A social parallel to the political polder mentality is the notion of Dutch *gezelligheid*, or a sense of communal happiness. In the social sphere, observe Chauvin and Coenders 'antiracist critique is definitely *ongezellig*.' Chauvin, Coenders, and Koren, "Never Having Been Racist: Explaining the Blackness of Blackface in the Netherlands," 5–6.
[307] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 123–35.

examples issues like abortion and decolonization.[308] Faced with this type of problem, they explain, the government response is usually to refuse to act at all:

> Avoidance of such decisions takes three forms: postponement of the decision; diffusion of the political dispute by technical arguments (depoliticization) and the removal of the responsibility from the government. The three tactics are often used in combination, hence the appointment of an expert committee (preferably composed proportionately) to study the problem is a familiar feature of Dutch politics; 'putting hot potatoes in the refrigerator', as the jargon has it.[309]

These tactics seen as inherent to Dutch political culture substantially overlap with tactics generally deployed to maintain racialized hierarchies and described in the first chapter of this dissertation; these tactics include nonperformative antiracism as observed by race critical scholar Sara Ahmed, judicial inaction observed by legal mobilization scholar Michael McCann and legal scholar Robert Cover, and denial of racializing practices through a strategy of declaring those actions 'not-racism' as described by race critical scholar Alana Lentin. All of these tactics were present in various degrees throughout the language and execution of policies collectively referred to as Dutch 'ethnic minorities policies'.

3.2.1. Perceived threats to the Dutch status quo, 1974-1983

In the mid-1970s, as it was accepting the permanent presence of some people racialized as non-white in the metropole, the Dutch metropole also faced a declining economy and increasing competition for jobs and housing across the population. In general, groups of people racialized as non-white were hit harder by the economic recession than those racialized as white/Dutch. By the 1980s, some sources estimated that unemployment rates among people racialized as Moluccan, Surinamese, Antillean, Turkish or Moroccan were two to four times as high as those

[308] Andeweg and Irwin, *Governance and Politics of the Netherlands*, 2014, 42.

[309] Andeweg and Irwin, 42.

for Dutch people racialized as white.[310] As jobs and housing became less available, tensions between people racialized as non-white and those racialized as white-Dutch became more visible sometimes manifesting in violence. Criminologist Rob Witte describes what he terms the 'first race riot' in the Netherlands as taking place in 1972 when a 'Turkish' landlord evicted a 'Dutch woman' and her children in Rotterdam, resulting in 'several nights of unrest and attacks on hostels and hotels of Turkish people' where 'the police were present but did not intervene.'[311] These incidents were highlighted in the early 1980s by the first openly anti-immigrant parties to gain popularity in the Netherlands for the first time since before the Second World War, first in the form of the Volksunie (People's Union) and later the Centrumpartij (Center Party).[312]

Growing incidents of racialized violence directed at people racialized as 'foreign workers' joined incidents of political violence related to the status of people from the Moluccan Islands. On the one hand, some demands from the Moluccan community were unique among groups of people racialized as non-white in the Dutch metropole in the 1970s. As discussed in Section 2.2.1, they had come to the Netherlands involuntarily and agreed with the Dutch government, at least initially, that their stay in the Netherlands should be temporary; they wanted to return to an independent Moluccan nation in the Indonesian archipelago. As the years dragged on, however, the desire for political self-determination mixed with more immediate social realities, like poor quality housing, and limited employment opportunities.[313]

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[310] Statistics cited by Frank Bovenkerk in an address to the Working Group on Law and Racial Discrimination, published in Joyce Overdijk-Francis (ed.), "Positieve Diskriminatie in Nederland; Ervaringen in de VS," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, September 3, 1985); see also sections on employment and housing problems in groups targeted by "minorities policies" in Penninx, *Etnische Minderheden. A*.

[311] Rob Witte, 'Racist Violence and the State: A Comparative European Analysis' (1995) 121, 122–123 (also describing destruction of 'Turkish businesses' in Schiedam in 1976 following a knife fight between 'two Turkish and five Dutch boys').

[312] Adrian Goemans, "De Centrumpartij," in *Nederlands Racisme*, ed. Peter Schumacher and Anet Bleich (Amsterdam: Van Gennep, 1984), 86–108.

[313] See e.g. "Molukker en agent bij 'oorlog' zwaar gewond: Pantserwagens zetten Calekse wijk af," *Het vrije volk: democratisch-socialistisch dagblad*, January 4, 1984, sec. 1, https://www.delpher.nl/nl/kranten/view?coll=ddd&identifier=ddd:010961606:mpeg21:p001, Delpher.

In the late 1970s, members of the Moluccan community engaged in several hijackings and hostage takings, culminating in the death of several activists and hostages.[314] In response to these actions, the Dutch government passed legislation that gave people from the Moluccan community and their descendants rights equal to those of Dutch citizens (with the exception of voting and compulsory military service), and created the Moluccan Welfare Advisory Board (Inspraakorgaan Welzijn Molukkers), a government-funded organization designed to communicate the interests of the Moluccan community on areas of relevant social policy.[315] This representation was largely symbolic, however; no legislation required the government to accept or even respond to the feedback it received from the Moluccan Advisory Board, a fact about which representatives of the group consistently complained.[316] Even with these limited powers, the Dutch government was determined that the Moluccan Advisory Board remain the only organization of its kind.

3.2.1.1. Threat of organized groups of people racialized as non-white

As opposed to advisory (*inspraak)* organizations, the Dutch government preferred to channel its subsidies to welfare (*welzijn*) organizations aimed at improving the skills the government deemed necessary for 'integration' of specific groups of people racialized as non-white. These organizations had been around

[314] Wim Manuhutu, 'Moluccans in the Netherlands : A Political Minority?' (1991) 146 Publications de l'École Française de Rome 497, 510 (explaining that while the primary purpose of the hijackings and occupations was to gain attention for an independent Moluccan republic, the effect was the Dutch government paying more attention to social and economic needs of the community in the Netherlands).

[315] Justus Uitermark, *Dynamics of Power in Dutch Integration Politics: From Accommodation to Confrontation*, Solidarity and Identity (Amsterdam: Amsterdam University Press, 2012), 67; Penninx, *Etnische Minderheden. A*, 30, 38.

[316] "Verslag Kongres Minderheden," 21–22 (M. Mual suggesting that government should be required to justify when and why it ignored advise from *inspraakorganen*); Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 62–64 (H. Smeets of the Inspraakorgaan Welzijn Molukkers complaining that there was still no legal requirement that either national or regional governments listen to or respond to advice).

since large-scale migration of people from the Dutch East Indies began in 1945, and often originated in churches or other religious organizations before receiving state subsidies.[317] The goal of these groups was to assimilate new residents of the metropole as quickly as possible into 'Dutch society', or to help them maintain connections to communities that would encourage them to 'remigrate' to their lands of origin;[318] it was never to provide a platform for political organization or representation, and certainly not to provide a space from which to mobilize political action.[319] When the National Coalition of Surinamese Welfare Organizations requested an *inspraak*-like role in 1977, the government ignored the request.[320] Two years later, in a report to the Ministry of Culture, Recreation and Social Work, government researcher Hubert Campfens warned the ministry that social programs were needed 'to take the wind out of the sails of extreme movements by properly guiding the minorities.'[321]

Campfens's report is evidence for later observations by historian Ulbe Bosma that 'from the post-war period until deep into the 1970s, *Indische*, Moluccan and Surinamese organizations were earlier seen as obstacles than as partners in integration. There was no trust that self-organizations could be let loose in the power-play of a free society.'[322] Political and social theory scholar Willem Schinkel has also characterized government subsidized advisory and welfare organizations for people racialized as non-white as functioning 'much like alibis for the government, which, upon "consulting" representatives, could legitimately claim societal consensus….'[323] As long as the groups remained focused on problems related to culture or other issues located within the groups themselves, the 'minority

[317] Bosma, *Terug Uit de Koloniën*, 172.

[318] See policies referred to as 'integratie met behoud van eigen identiteit' referred to in e.g. Penninx, *Etnische Minderheden. A* and described in footnote 294 above.

[319] Bosma, *Terug Uit de Koloniën*, 45–48.

[320] Bosma, 190 ('De autocratische minister Van Doorn van CRM zag in 1977 geen noodzaak zo'n orgaan voor het welzijn van Surinamers in te stellen. Het was duidelijk dat de regering er nog niet aan toe was immigranten invloed te geven op het overheidsbeleid.').

[321] Bosma, 50 (citing Camfens 1979 report at 37).

[322] Bosma, 50.

[323] Schinkel, *Imagined Societies: A Critique of Immigrant Integration in Western Europe*, 126.

organizations' did not threaten the status quo; if they attempted to engage in broader political change, they could become a threat.

Regardless of the government's intentions that organization stayed focused on welfare, once those organizations started to be run by people racialized as non-white, as opposed to advocates (mostly racialized as white) working on their behalf (what the Dutch called *zaakwaarnemers*[324]), the organizations began to pose a political threat to the standing racialized order. Accordingly, the official *Minorities Policy Note*, presented to the Dutch parliament in 1983, deprioritized funding for groups racialized as non-white, suggesting instead a single national advisory board to represent all 'minority groups'.[325] The policy also recommended a 'general approach' (*algemeen beleid)* to social welfare programs, which instead of being run through group-specific organizations (*categoriaal beleid)* would channel individual people racialized as non-white toward the same welfare and governing agencies aimed at 'problem neighborhoods' or any group of people in need of social assistance and available to all.[326] While cuts to funding for group-specific organizations were certainly part of a general trend toward more neoliberal governance, they had the specific political effect of weakening the only national platforms for advocacy on behalf of groups racialized as non-white in the Netherlands.[327]

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[324] See e.g. Peter Scholten, "Constructing Dutch Immigrant Policy: Research–Policy Relations and Immigrant Integration Policy-Making in the Netherlands," *The British Journal of Politics and International Relations* 13, no. 1 (February 1, 2011): 75–92, https://doi.org/10.1111/j.1467-856X.2010.00440.x (for more detailed definition of term zaakwaarnemer); see also Entzinger, "Van 'Etnische Minderheden' Naar 'Samenleven in Verscheidenheid.'"

[325] Kamerstukken II 1982/1983 16102, nr. 21; Most of the established welfare and advisory organizations were unhappy with this national advisory body, opining that they would work in coalition under their own terms, not that managed by the government, see e.g. "Toespraak van de Secretaris van Het Inspraakorgaan Welzijn Molukkers, de Heer G. Ririassa Ter Gelegenheid van de 9e Dag van de Brasa, d.d. 27 November 1983 Te Utrecht," *Span'noe*, 7&8.

[326] Kamerstukken II 1982/1983 16102, nr. 2.

[327] See e.g. León Weeber, "De toekomst van het categoriale welzijnswerk Antillianen: Beheersfunctie of platformen voor emancipatie," *Plataforma*, May 1985, ; In 1997, the government recognized one national organization as representing all 'ethnic minority' groups, the Landelijk Overlegorgaan Minderheden (LOM), cutting funding to the previously existing groups accordingly. The Inspraakorgaan Welzijn Molukkers closed its doors in 2007, see e.g. "Inspraak Molukkers —

Between the release of the *Ethnic Minorities* report in 1979 and the *Minorities Policy Note* in 1983, the government circulated earlier versions and solicited reactions from various sectors of society, including 'ethnic minority' welfare and advisory organizations, an approach consistent with Lijphart's observations about how political compromises were reached as part of the politics of accommodation. When the policy contained in the definitive *Note* enacted the opposite of what the 'ethnic minority welfare' organizations had advised, the leadership of these organizations expressed their displeasure. The editorial board of *Span'noe*, the publication of the coalition of Surinamese welfare organizations, complained that the government was defunding work that had been done *for* groups racialized as non-white just as the leadership of those groups was beginning to be done *by* people from those groups. 'Taking matters into one's own hands, taking one's destiny into one's own hands, is important for groups who want to acquire an equal place in society,' the editors wrote. They went on to observe that the government's promise to fund 'local self-organizations' was illusory as it would only subsidize pre-approved activities and not general operating costs, or salaries for personnel.[328] Anco Ringeling, director of the Platform for Antillean Organizations, agreed in the pages of that organization's publication, *Plataforma;* 'The velvet glove approach to the general policy frameworks contrasts sharply,' he wrote, 'with [the] frontal attack being launched on the ethnic groups' own organizations.'[329]

MOZA," online magazine, MOZA | Je dagelijkse portie Molukse Zaken, August 24, 2022, https://www.moza.nu/vragen/inspraak-molukkers; When the LOM was disbanded in 2013, so was national funding for the organizations that had been brought within it. Those that continue operate as independently funded non-profit organizations, see e.g. "Stichting OCAN - about," OCAN, January 11, 2017, https://www.ocan.nl/organisatie/over-ons.

[328] "Eerste Reaktie Op Definitieve Minderhedennota Vernietigend," *Span'noe*, 1983, KITLV Collection.

[329] Anco Ringeling, "Minderhedennota Een Zwaktebod: Of Hoe de Regering Opheild Waar Zij Moest Beginnen," *Plataforma*, December 1983; see also Arendo Joustra, "Directeur Rabbae van Nederlands Centrum Buitenlanders: 'Minderhedennota is een tegenstrijdig verhaal,'" *de Volkskrant*, September 17, 1983, Delpher ('De zwaarste kritiek van de zeven grootste minderhedenorganisaties, waarvoor [Mohamed] Rabbae als spreekbuis fungeert, luidt dat de nota een sfeer ademt van "aanpassen of oprotten".); "Minderheden Teleurgesteld," *Het Vrije Volk: Democratisch-Socialistisch Dagblad*, September 16, 1983, Delpher.

The response of Dutch government representatives to this critique reveals the expectations the government had for these subsidized 'minority' organizations. On the one hand, asking the organizations for feedback was supposed to allow the government to claim it had built consensus and made informed policy decisions as part of the political accommodation process. On the other hand, even though there was no legal requirement to accept the groups' advice, to claim consensus government representatives had to justify why it had ignored that advice. One way this was done was by delegitimizing the people making the critique, a strategy reflected in an interview Henk Molleman, then director of 'minority affairs' for the Ministry of the Interior, gave to national newspaper *de Volkskrant* in 1983:

> All but two of those seven minority organizations [criticizing the *Minorities Policy Note*] are welfare foundations, subsidized by the Dutch government. Those were never set up as organizations of minorities themselves. The rest should not pretend to speak on behalf of minorities. Moreover, those people absolutely did not represent their own association, because they had not even met about it. It was a personal action of people who felt compelled to torpedo the [policy] paper on the day it came out. These are people I have met with for eight years and who have never left their seats. I am sick and tired of all these personal interests and this prying.[330]

It is true that leadership of the welfare and advisory organizations was not democratically elected by their constituents, and that more activist members of communities racialized as non-white often criticized the welfare and advisory group leadership as being bureaucrats who didn't represent the real interests of their communities.[331] When the Nederlands Centrum Buitenlanders (NCB, Dutch Center for Foreigners), an organization set up to benefit 'foreigners' largely of Turkish and Moroccan descent, hired 41-year-old lawyer Mohammed Rabbae as its director in

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[330] Marieke Aarden and Arendo Joustra, "Toen Had Je Toch Ook al Die Man Op Tweehoog Met in Zijn Fietsenhok Een Paard: Interview Met Henk Molleman," *Volkskrant*, October 1, 1983, Zaterdag edition, sec. Het Vervolg, Delpher.

[331] Tansingh Partiman, interview by Alison Fischer, audio & transcript, October 12, 2021, in author's possession; Hugo Fernándes Mendes, interview by Alison Fischer, audio & transcript, October 1, 2021, in author's possession.

1982, the choice made national news as the first hiring of one such 'foreigner' to head an organization dedicated to the interests of 'foreigners.'[332] But all welfare and advisory groups had staff members who came from the communities they were set up to serve, whose job it often was to work closely with their constituencies (*achterbannen)*, through meetings, community groups and publications. One of the reasons that POA (Plataforma di Organisashonnan Antiano), the Antillean welfare platform, took so long to officially open was due to efforts to create a representative staff and administrative board.[333] Representatives of these diverse groups of welfare and advisory organizations had been consistent in communicating their concern and critique of 'minorities policies' in the four years between the publication of the *Ethnic Minorities* report and the official policy. For government representatives like Molleman to discount their feedback and the authenticity of their representation out of hand revealed a racialized and colonial attitude about who had the right to make decisions in the Dutch metropole and to make decisions on behalf of 'minorities'. In the view of Molleman and other cabinet members, the answer was implicitly Dutch people racialized as white. In the *Volksrant* interview above, Molleman did not address the irony that, like the leaders of the 'minority groups' he criticized, neither he nor any of the other 'experts' creating and executing 'minorities policies' had been chosen by or were representative of groups of people racialized as non-white.

The above discussions over who ran 'ethnic minority organizations' and what position they held is an illustration of what sociologist Ali Meghji calls the 'meso level' of racialized social structures, which occurs at the organizational level.[334] Racialized structures, explains Meghji, are often '*schemas* connected to *resources;*' in the case of racialized organizations, these schemas connect 'to societal resources in a way that reproduced the racial order.'[335] Workplaces can be examples of racialized organizations when, for example, their executive or administrative

[332] Haro Hielkema, "Mohamammed Rabbae zal niet zwijgen," *Trouw*, May 1, 1982, sec. Zaterdag & Zondag, Delpher.

[333] Anco Ringeling, interview by Alison Fischer, interviewer notes, November 21, 2022, in author's possession.

[334] Meghji, *The Racialized Social System*, 23, 92.

[335] Meghji, 93–94.

hierarchies reproduce racialized structures by promoting people racialized as white to executive functions while confining people racialized as non-white to administrative or support functions.[336] Using different terminology, but arriving at similar conclusions, many Dutch scholars have also observed that the 'minority' research and policy industry fits Meghji's criteria of a such racialized organization, with researchers and policy makers racialized as white setting the agenda, to be carried out by people racialized as 'ethnic minorities'.[337] In this light, it would not be surprising if many of these organizations reproduced rather than challenged the existing racialized hierarchy in the Netherlands in the 1970s, and 1980s; such reproduction was baked into their design.[338]

3.2.1.2. Threat of a 'racialized proletariat'

While people from Suriname and the Dutch Antilles had not, as of the late 1970s, engaged in political action or violence comparable to that of the Moluccan community, the government feared the possibility of such actions. In 1979, the Scientific Council on Government Policy (Wetenschappelijk Raad voor Regeringsbeleid, WRR) advised that any social programs to benefit groups of people racialized as non-white must be paired with stricter immigration policies to prevent the development of a 'relatively large proletariat … consisting to a large extent of members of minority groups; [this proletariat] would also include the second generation which, despite having in the meantime acquired a "Dutch level of aspirations", would not be able to improve its position'.[339] This fear of a racialized proletariat wasn't new, but echoed earlier government research recommending that

[336] Meghji, 99–101.

[337] See e.g. Essed and Nimako, "Designs and (Co)Incidents"; Nimako, "About Them, But Without Them: Race and Ethnic Relations Studies in Dutch Universities"; Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands."

[338] Groups representing people racialized as non-white recognized this potential and publicly debated the risks associated with government subsidies in their publications. See e.g. Weeber, "De toekomst van het categoriale welzijnswerk Antillianen: Beheersfunctie of platformen voor emancipatie," 19–20.

[339] WRR, *Ethnic Minorities: Part A: Report to the Government*, xxxii; Hoefte, *Suriname in the Long Twentieth Century Domination, Contestation, Globalization*, 109 (citing 1983 chapter by Frank Bovenkerk using the term 'urban proletariat' to describe migration from Suriname.).

people racialized as Surinamese, at that time still Dutch citizens, be limited in accessing the metropole, to 'combat the fear of a black (sic) sub-proletariat.'[340] Though unnamed in the report, presumably the group in fear would be those residing in the metropole and racialized as white.

The repeated use of the term proletariat, often associated with Marxism, worker revolutions and the Cold War specter of spreading communism, reveals the fear among policy makers and researchers that such groups would threaten existing wealth allocation and racialized hierarchies in the metropole. It also implies the connection, conscious or not, in the minds of policy makers, between existing racialized hierarchies and the material benefits of whiteness. Interesting to note here, is that people racialized as non-white would also later invoke the specter of an ethnic proletariat to advocate for their own policy interests. When a delegation of representatives from a coalition of 'minority' welfare and advisory organizations met with the Queen's representative in 1986, they warned the representative against cutting programs aimed at their communities, cautioning '[o]n the contrary: if something is not done soon, it is to be feared that the Netherlands will get an ethnic proletariat!'[341]

3.3. Postcolonial occlusion and aphasia in characterizing the problems of 'ethnic minorities'

While fear of backlash to racialized economic inequality had historic precedents, the causes government researchers and policy makers publicly identified for that inequality were, by contrast, ahistoric. They ignored any history of racialized colonial practices which may have contributed to economic inequality in the metropole and instead attempted to blame most shortcomings on people racialized as non-white themselves. The opening paragraphs of the era's seminal research document, *Ethnic Minorities*, set the tone. The report observed:

> *In recent decades*, the indigenous Dutchman has been confronted with a series of fellow human-beings of differing culture or race, or both. Fellow

[340] WRR, *Ethnic Minorities: Part A: Report to the Government*, 60 (citing Biervliet et. al. 1975, 337).
[341] R. LaReine, "Memorandum Aan Kabinetsinformateur de Koning," *Plataforma*, June 1986 (emphasis in the original)(at the time of this comment, LaReine was the chairperson of POA).

> citizens of the Kingdom of the Netherlands of *very different racial and cultural origin* and foreign workers from various Mediterranean countries *have begun to appear* at the workplace or in the area where he lives. He may have come across refugees from many countries, or have had to get used to the phenomenon of adopted Vietnamese or Korean children in his neighbourhood. He may have taken advantage of the presence of foreigners by eating cheaply and well at restaurants serving dishes prepared by Chinese, Italian, Moroccan or Surinamese chefs. The occasional Dutchman may even have had his shoes polished in Amsterdam by an unemployed guest-worker who had taken up the old trade he had plied in Istanbul or Ankara. Without doubt Dutch society has become more 'colourful' and diversified *in recent decades as a result of the immigration* of countless small and large groups of *foreign nationals*. There are strong indications that this is not a temporary phenomenon.[342]

Portraying people racialized as non-white as exotic creatures who appeared in the metropole without reason or precedent allowed people racialized as white-Dutch, and the Dutch government, to maintain their innocence with regard to the causes of economic and social disadvantages experienced by 'the newcomers' and their connection to a racialized colonial past. Any social programs subsequently offered could then be characterized as charity, any adjustment made by the majority community as tolerance.[343] By contrast, an approach which recognized that many people racialized as non-white in the metropole had deep historic ties to the Dutch nation, were in fact citizens of that nation, and had been integral to the creation of the wealth experienced in its metropole, would have made demands for equal access

[342] Penninx, *Etnische Minderheden. A*, 5 (emphasis mine); *Ethnic Minorities* author Rinus Penninx would have a long career in 'minority research', first at the WRR and later at the University of Amsterdam's Institute for Migration and Ethnic Studies. He is referenced extensively in Essed and Nimako's critique of the 'minority research complex,' "Designs and (Co)Incidents."

[343] See e.g. Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands"; Ghorashi, "Taking Racism beyond Dutch Innocence."

to the metropole and its wealth more legitimate, as well as impaired ongoing efforts to justify limiting immigration from the former colonies.[344]

The enactment of 'minorities policies' must be seen then, not just as the acceptance of the presence of people racialized as non-white in the metropole and an effort to address socio-economic equalities they experienced, as it has often been portrayed, but a continuation of efforts to limit the extent to which people racialized as white would be forced to share the wealth created by racialized colonial and oppressive practices with the people or ancestors of those who made that wealth possible. Political scientist E.A. Wolff has explored how this 'reluctance to share' manifested in the Dutch welfare system of the 1950s, with politicians racializing some groups of immigrants from the former Dutch East Indies as more 'western' and 'rooted' in the metropole, and therefore deserving of sharing in social welfare systems located here, while portraying others as more 'eastern', less 'rooted' and therefore less deserving.[345] I argue that those same tropes of *foreign* as equivalent to *undeserving* were still operating in the 1980s, and manifested in 'minorities policy'.

This practice of postcolonial occlusion, described in Chapter Two, as the affirmative effort to separate people in the Dutch metropole from evidence of their colonial past and its legacies, was also evident in the discourse describing the 'problems' facing people government agencies labeled 'ethnic minorities'. The scientific committee of the WRR summarized those 'problems' as: (i) *achterstandsproblemen*, which the official English version of the report translates as 'social backwardness' caused 'by their lower socio-economic position…often shared by ethnic minorities – admittedly often to a greater degree – with disadvantaged groups within society generally', (ii) 'cultural and identity problems' related to whether the groups were 'prepared and able to adapt to the dominant culture or else to preserve and experience a sense of independent identity', and (iii)

[344] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*; Jones, "What Is New about Dutch Populism?" (describing efforts to limit migration from the Dutch Caribbean as continuing at least through the 2010s).

[345] EA Wolff, 'Diversity, Solidarity and the Construction of the Ingroup among (Post)Colonial Migrants in The Netherlands, 1945-1968' (2023) New Political Economy <https://hdl.handle.net/1887/3632254> accessed 26 March 2024.

'majority problems' which related to whether the 'host society [was] prepared to develop towards a society in which people of diverse ethnic backgrounds can live together harmoniously.'[346]

While the WRR's assessment above did allow for the possibility that some problems facing people racialized as non-white were caused by members of the 'host' population of people racialized as white and Dutch, most of the report and the policies that followed it attributed those problems to intrinsic characteristics of people racialized as non-white and their 'culture', which the report described as including lack of formal education or job training, lack of 'traditional family structure', and lack of Dutch language abilities.[347] The belief that traits or behaviors intrinsic to people racialized as non-white were the primary causes for any inequality they experienced in Dutch society was evident by the repeated use across various 'minorities policies' and related reports of the term *achterstand,* as opposed to *achterstelling*.[348] Both words share the root *achter*, meaning behind, but *stand* connotes a more static position or place, while *stellen* can be a verb meaning to propose or suggest. The idea of *achterstand* as an inherent disability, and *achterstelling* as an imposed barrier is reflected in literature on these topics both from the time period under study.[349]

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[346] WRR, *Ethnic Minorities: Part A: Report to the Government*, vii.

[347] WRR, *Ethnic Minorities: Part A: Report to the Government*.

[348] See e.g. "Onderzoek integratiebeleid; Rapport bronnenonderzoek Verwey-Jonker Instituut," officiële publicatie (Den Haag: Tweede Kamer, 2004 2003), 26–27, 35, https://zoek.officielebekendmakingen.nl/kst-28689-11.html (evaluating 20 years of policies aimed at people racialized as minorities or *allochtonen*, repeating idea of *achterstanden* throughout entire period.).

[349] See e.g. Loewenthal, "Er Ontbreekt Altijd Een Stuk van de Puzzel. Een Inclusief Curriculum Gewenst," 52 (making unfavorable comparisons to policies aimed at the emancipation of Dutch women racialized as white and those aimed at 'ethnic minotiries'); Kees Groenendijk, "De Rechtspositie van Chinezen in Nederland: Van Achterstelling Naar Formele Gelijkheid," in *De Chinezen*, ed. Gregor Benton and Hans Vermeulen, vol. 3, 4 vols., Migranten in de Nederlandse Samenleving (Muiderberg: Coutinho, 1987), 85–115 (evaluating the position of people racialized as Chinese in the Dutch metropole); B.P. Sloot, "Katern 90: Rechtssociologie," *Ars Aequi*, Katern 90: Rechtssociologie, accessed October 11, 2022, https://arsaequi.nl/product/katern-90-rechtssociologie/ (using both terms as representing separate problems facing workers racialized as non-white); Chan Choenni and Tjeerd Van der Zwan, "Notitie Plaatsingbeleid Utrecht:

That the Dutch government researchers primarily considered people racialized as non-white to *be* problems, as opposed to *experiencing* problems created by systematic, racialized inequality in education, housing, migration or employment policies, was clear from the explanation of which groups were included in the 'ethnic minorities' policies. 'Moluccans, Dutch nationals of Surinamese and Antillean origin and Mediterranean workers, have been designated as minorities,' the report explained, because they were 'regarded as problem groups for whom the government is required to implement special policies.'[350] By contrast, the report and policy excluded people racialized as Indo-European because, after being 'the subject of governmental attention and policy for only relatively brief periods… [they] subsequently ceased to exist as problem groups'.[351] Other groups of people, such as those racialized as Chinese, were excluded from 'minorities policy' because they were considered too small in number or too insular as a community to cause problems for the Dutch majority racialized as white.[352] Exclusion from 'minorities policy' did not, however, mean that people racialized as Indo-European, Chinese or other group racialized as non-white did not experience racialized practices or discrimination.[353]

Achterstelling Voor Allochtonen?," *LBR Bulletin* 2, no. 2 (1986): 11–15 (identifying the affirmative barriers of housing policies for people racialized as ethnic minorities).

[350] Penninx, *Etnische Minderheden. A*, 6.

[351] Penninx, 6; Penninx and others were likely influenced in these conclusions by a 1958 report which described the incorporation of 'repatriated' people from the former Dutch East Indies as having been 'silent' (geruisloos) and therefore successful. See J. H. Kraak and Nel Ploeger, *De repatriëring uit Indonesië: een onderzoek naar de integratie van de gerepatrieerden uit Indonesië in de Nederlandse samenleving* ('s-Gravenhage: Staatsdrukkerij- en Uitgeverijbedrijf, 1958), 3.

[352] WRR, *Ethnic Minorities: Part A: Report to the Government*, ix; See also Groenendijk, "De Rechtspositie van Chinezen in Nederland: Van Achterstelling Naar Formele Gelijkheid."

[353] E.g. Captain, *Achter het kawat was Nederland*, 131; Excluding people racialized as Chinese from the definition of 'ethnic minorities' also revealed that the definition had little to do with 'integration' and everything to do with which communities called attention to or demanded change in their socio-economic status. Most writers at the time described the 'Chinese community' as insular in the extreme, but as solving problems internally and thus not needing inclusion in policies or programs. See e.g. Gregor Benton and Hans Vermeulen, eds., *De Chinezen*, Migranten in de Nederlandse Samenleving, nr. 4 (Muiderberg: D. Coutinho, 1987).

3.3.1. The role of culture in postcolonial occlusion and racialization

As discussed in section 2.3 above, following the defeat of the Nazis in the Second World War, biological or 'scientific racism', the type of racialization that white supremacist ideology based on inherently biological traits, was no longer politically acceptable. However, the idea of privileging some manifestations of culture, including language, religion, cuisine, music etc. was (and one could argue still is) widely accepted in Euro-American policy and discourse. In the Netherlands, this manifested in the idea that 'Dutch culture' was preferable to the culture of any immigrant community and that integrating people racialized as non-Dutch into that culture was a desirable public good.[354] That culture was envisioned as something static and inherent (immigrants could aspire to, but never quite achieve full assimilation), reveals the parallels to the use of biological race in earlier discourses.

The replacement of *race* with *culture* replicated itself across the discourses used in attempts to exclude postcolonial migrants, racialized as non-white from the metropole. Cultural discourse continued as a mode of policing those same groups once they had established residency inside the metropole. Schinkel has argued that 'immigrant integration policies' in the postcolonial Netherlands have weaponized the discourse of culture both to police racialized hierarchies and to protect those hierarchies from political scrutiny.[355] He observes that while specific terms of integration discourse have changed over second half of the 20th century, it all shares an essential 'culturist logic': 'an emphasis on the *values* that characterize *Dutch* society' and a belief that 'immigrants' should assimilate into those values, combined with the unspoken logic that such assimilation is never fully possible.[356] While 'Dutch culture' is seen as being ideal, the cultures of various immigrant groups are seen as the source of their ongoing social, political and economic inequality in the Dutch metropole.[357] Because *culture* does not have the same troubled connotations

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[354] Wolff, "Diversity, Solidarity and the Construction of the Ingroup among (Post)Colonial Migrants in The Netherlands, 1945-1968"; Jones, "Biology, Culture, 'Postcolonial Citizenship' and the Dutch Nation, 1945–2007," 320–27; Leeuw and Wichelen, "Civilizing Migrants," 199.

[355] Schinkel, *Imagined Societies: A Critique of Immigrant Integration in Western Europe*, 116.

[356] Schinkel, 123.

[357] Schinkel, 124 ('The culturist turn explicitly relates the negative socioeconomic indicators [including the emergence of a migrant underclass] to "culture" and to the incommensurability of

as *colonialism* or *racism* as a source of social and economic inequality, the government has no social obligation to intervene, as it would in the case of racism or, perhaps, colonial exploitation; that it does intervene can then be characterized as benevolent or charitable.[358]

Far from an abstract idea, Schinkel illustrates how the rhetoric of culture influenced policy and practice to actively discourage political organization against or on the basis of racialization/race in the Netherlands. Since the 1980s, he explains:

> Migrant self-organization has been increasingly problematized in the Netherlands. Self-organizations are no longer eligible for government subsidies unless they do things to weaken ethnic identity by organizing 'bridging' contacts to other ethnic categories, preferably the 'non-ethnic' category of 'autochthonous Dutch.' But in the face of the relatively unfortunate economic position of migrants and their increased cultural problematization, such attempts at derailing existing efforts at self-organization nip potential class conflict in the bud. Political mobilization on the basis of 'ethnic identity' is the worst imaginable political offence. At the same time, the problematization of economically deprived migrants and their offspring by systems of politics and policy thoroughly ethnically dispensated (sic) remains relatively undisputed.[359]

3.3.2. Connecting racialized inequality to colonial oppression

Arguing that government mischaracterization of the reasons for racialized inequality in the Netherlands occurred out of ignorance are not credible. Perspectives of people racialized as non-white were easy to find in the myriad of pages published in magazines, newsletters, radio programs or public campaigns by diverse individuals and groups representing people racialized as non-white, and

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culture in the plural. Cultural issues were discovered as the cause of structural inequalities, and various economic differences were coded as cultural differences.'); see also Penninx, *Etnische Minderheden. A.*

[358] Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands."

[359] Schinkel, *Imagined Societies: A Critique of Immigrant Integration in Western Europe*, 153.

contained numerous references to the colonial past and its relevance to inequality in the metropole.[360] These connections were not novel, but went back at least a generation. If government actors were not aware of them, it had to have been a choice not to listen, as opposed to there being nothing to hear.

In the decades preceding formal Dutch decolonization, for example, Surinamese activists Anton De Kom and Otto Huiswoud (both racialized as Creole/Black) gained notoriety in the metropole for making explicit the connections between race, class and decolonial struggles. One of the reasons De Kom was deported from Suriname to the metropole in the 1933 was because he united people across the communities racialized as Creole, Hindustani and Javanese within the colony through ideas of worker and class solidarity and in doing so presented an intolerable threat to the Dutch colonial order.[361] The less famous but equally strident Otto Huiswoud made the connections between racialization and class even more explicit, not only in Suriname but across national and continental borders. He was an active member of groups of writers advocating for Pan-African unity and anti-colonial struggle, participating in international conferences with the likes of Franz Fanon, Richard Wright, Édouard Glissant and Aimé Césaire, and bringing W.E.B. DuBois to Amsterdam to speak on the topic.[362] He was also a member of the US and international Communist Parties beginning in 1920 and continued to make the connections between race and class after settling in the Netherlands in 1948, where he chaired the Association Our Suriname (Vereniging Ons Suriname*)*, a group that moved steadily to the left of the political spectrum throughout Huiswoud's life and chairpersonship, both of which ended in 1961.[363] De Kom had

[360] See e.g. *Marinjo*, the official publication of the Moluccan Advisory Group, *Span'noe*, representing the National Federation of Surinamese Welfare Organizations, and *Amigoe* and later *Plataforma*, addressing people from the Dutch Antilles, but also newsletters and programs from groups within these communities representing women, young people and students and a variety of other interests.

[361] Bosma, *Terug Uit de Koloniën*, 72.

[362] Bosma, 88 (citing Cijntje-Enckvoort's "The life and work of Otto Huiswoud," and Ruud Beeldsnijder's "Nogmaals Otto Huiswoud".).

[363] Bosma, 72–73, 88; Mitchell Esajas and Jessica de Abreu, "Dit Vergeten Echtpaar Streed Honderd Uaar Geleden al Tegen Racisme," *De Correspondent*, May 7, 2018, https://decorrespondent.nl/8238/dit-vergeten-echtpaar-streed-honderd-jaar-geleden-al-tegen-racisme/ae4aa04d-9de8-02b5-3415-079eeac4d28c.

died in 1945, killed for his work with the Dutch resistance to the Nazis during his exile in the metropole, but student activists in the 1960s and 1970s had rediscovered his writing and used them in their advocacy for both Surinamese independence and the fight against racism in the metropole.[364]

'Racism has always been the weapon of the colonists and imperialists,' proclaimed Surinamese student organization LOSON in its public antiracism campaign, published in 1975.[365] LOSON was a self-described militant (*strijdlustige)* organization, actively working for Surinamese independence, but the relevance of colonial practice was proclaimed by more centrist organizations as well. In 1979, the three national, government-subsidized welfare and advisory groups for people from the Moluccan Islands, Suriname and the Dutch Antilles met together to discuss 'their position in Dutch society' and to collaborate on advice to the government regarding 'minorities policy'.[366] Speakers identified their shared colonial histories and complained that the effects of colonialism had been scarcely referenced in discussions of identity or assimilation. They also problematized the systematic exclusion of people from the former colonies, and other people racialized as non-white, from research into their own communities and from commissions forming policy related to them.[367] Speaker Stanley Inderson, representing the Antillean welfare organization Kibra Hacha, observed:

> One closes his blue eyes, turns away the white face and thus legitimizes our humiliation. At such moments, one thinks unwillingly of Aimé Césaire and wonders whether he was right in saying that it would be worthwhile to make it clear to the very white, very honorable, very humanist, very Christian, very socialist bourgeoisie of the twentieth century that what he cannot forgive Hitler is not the crime per se, that his wrath has not been aroused by the

[364] Bosma, *Terug Uit de Koloniën*, 76.

[365] "De LOSON Roept Op Tot Massale Deelname Aan de Anti-Racisme-Campagne"; Lynn Baas, "Geschiedenis als wapen. De functie van geschiedenis in de strijd van de Landelijk Organisatie van Surinamers in Nederland. 1973-1994" (Master's Thesis Public History, Amsterdam, University of Amsterdam, 2020), copy in author's possession.

[366] "Verslag Kongres Minderheden."

[367] "Verslag Kongres Minderheden," 9–10 (critique by Dhr. Harald Roseval, representative of the coalition of Surinamese welfare and advisory groups).

> crimes against humanity, the humiliation of man as such, but what he blames Hitler for is the fact that he, Hitler, had applied to Europe colonial practices which until then had been extensively and exclusively reserved for non-Western peoples.[368]

Inderson's allusion to the influence of Adolf Hitler and the Holocaust calls attention to the power of that comparison for groups of people racialized as non-white who sought to organize themselves against ongoing inequalities in the metropole in the 1970s and 1980s. If inequality in the metropole was caused by 'cultural backwardness', as the government argued, then the Dutch government could let it be; if, however, it was the result of Nazi-like racism, then something would have to be done.

3.3.3. Ignoring and obscuring colonial causes of racialized inequality

Inderson's speech, and similar speeches by others at the 1979 Minorities Congress, makes clear that the absence of references to colonial causes of contemporary racial inequality in the metropole by policy makers or government researchers racialized as white-Dutch was not the results of innocence or aphasia, but an active refusal to see or hear the perspectives and voices of people racialized as non-white, a refusal made all the more glaring by the fact that most of the speakers at that Congress were representing organizations the government itself had set up and funded. While it may be impossible to divine the intentions of individual policy makers, the circumstances surrounding their decisions at the time seem to indicate a situation like that Gloria Wekker observes in *White Innocence*: not a case of 'I don't know' but one of 'I don't *want* to know'.[369]

The refusal to hear or see connections between racialized inequality in the metropole and colonial practices was itself a continuation of a colonial governing mentality which identified people racialized white as objective, rational and therefore capable of crafting and implementing social policy, while characterizing people racialized as non-white as emotional, irrational and requiring guidance and

[368] "Verslag Kongres Minderheden," 26.

[369] Wekker, *White Innocence*, 17.

supervision.[370] This attitude may explain why nearly all the researchers who conducted the studies on which the government claimed to base its 'minorities policies' were people racialized as white, and why Henk Molleman did not feel the leadership of 'minority organizations' were competent to criticize those policies.[371]

3.4. Postcolonial occlusion and aphasia in designing 'minorities policies'

Like the report that preceded it, the cabinet's 1983 *Minorities Policy Note* recognized that members of 'ethnic minority groups' faced *achterstanden* in accessing general social services, and that some policy changes were necessary to address these disabilities. Rather than compelling Dutch government institutions or major economic players to change their practices, however, the cabinet directed its policy primarily at perceived personal deficiencies of members of 'ethnic minority' communities. To this end, most of the policy note focused on education, job training and language programs to overcome 'cultural barriers' to employment, as well as policies generally directed at 'disadvantaged neighborhoods' (*achterstandswijken).*[372] That the cabinet paired these policies with a renewed emphasis on limiting immigration and encouraging 'ethnic minorities' to return to their countries of origin *(remigratie)* was interpreted by many representatives of people racialized as non-white as a threat to '*aanpassen of oprotten*' (adapt or bugger off).[373]

Despite largely attributing and emphasizing internal, cultural 'disabilities' of groups racialized as non-white, the WRR's 1979 *Ethnic Minorities* report did allow that among the problems facing 'ethnic minorities' were 'discrimination… [and a]

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[370] Hesse, "Racialized Modernity," 656 (discussions of epistemological racialization also addressed in Chapter Two of this dissertation).

[371] Essed and Nimako, "Designs and (Co)Incidents"; Bosma, *Post-Colonial Immigrants and Identity Formations in the Netherlands*, 191 (describing a research commission on 'minority affairs' in 1978 as having only 'Dutch' employees and without any members from Moluccan, Surinamese or Antillean groups); see also Schinkel, *Imagined Societies: A Critique of Immigrant Integration in Western Europe*; Aarden and Joustra, "Toen Had Je Toch Ook al Die Man Op Tweehoog Met in Zijn Fietsenhok Een Paard: Interview Met Henk Molleman."

[372] Kamerstukken II 1982/1983, 16102, nr. 21, 5.

[373] Joustra, "Directeur Rabbae van Nederlands Centrum Buitenlanders: 'Minderhedennota is een tegenstrijdig verhaal,'" 42.

weak legal position'.[374] Despite being mentioned among the chief themes in the new *Minorities Policy Note*, published in 1983, racial discrimination as a topic got relatively few pages in the policy document. Of 200-plus pages, the entire chapter titled 'Policies on combating barriers' ('Beleid inzake de bestrijding van achterstelling') was less than seventeen pages with the section 'legal action against discrimination' (*juridische bestrijding van discriminatie)* taking up only eight pages of those seventeen. The rest of the report covered issues related to housing, education, employment, welfare, cultural participation and 'emancipation', again with a focus on improving individual capabilities of people racialized as non-white, as opposed to changing the practices of those institutions failing to meet their needs. [375]

The *Minorities Policy Note* began the section on 'combatting disadvantage' by citing anthropologist Frank Bovenkerk's 1978 book *Omdat ze anders zijn* (*Because They Are Different*)[376] as an acknowledgement that discrimination against 'ethnic minorities' in the Netherlands did exist. His book, which described sociological experiments in which a person racialized as white and a person racialized as non-white responded to the same job advertisements to gather evidence of practices of racial discrimination, became a cross-over success, garnering attention not only within academic and government circles, but in the popular media. Policy makers cited it repeatedly as their first realization that racial discrimination existed in the Netherlands.[377] Bovenkerk himself became the government's go-to expert on all related topics, prompting complaints from within communities racialized as nonwhite of the 'Frank Bovenkerk effect' in which 'white' expert opinions were given more weight on issues related to communities racialized as non-white than those of community members themselves.[378]

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[374] WRR, *Ethnic Minorities: Part A: Report to the Government*, ix.

[375] Kamerstukken II 1982/1983, 16102, nr. 2, 5.

[376] Bovenkerk, *Omdat Zij Anders Zijn* (Bovenkerk, who was racialized as white, conducted his early research on migration and remigration, the process of people returning from the Netherlands to the nation from which they migrated, in the Surinamese community).

[377] Kamerstukken II 1982/1983, 16102, nr. 2, 90.

[378] Ausems-Habes, *Congres Recht En Raciale Verhoudingen* (citing Tansingh Partiman using the term); Lida Kerssies, "Nederlandse Overheidsbeleid Stroef Voor Etnische Groeperingen," *Span'noe* 12, no. 2 (1985): 25–27 (criticizing government sponsored 'minority research' conducted exclusively

However popular Bovenkerk's study was, and however rigorous its methods, citing a 1978 sociological study, which focused on fears and unfamiliarity with 'the other' as reasons for 'racial prejudice' and resulting discrimination codified racial denial and colonial occlusion into Dutch government policy as it related to the causes of ongoing racialized inequality in the metropole. In doing so, the cabinet followed the same separation of the concept of racism from racializing practices which began after the Second World War and is described in detail in Section 2.3.1. above. The *Note* went on to proclaim, 'luckily not everyone with these feelings [of racial prejudice] acts on them against individual members of minority groups,' but conceded that even one instance of discrimination was too many. Government policy, the *Note* claimed, had to place 'victims of disadvantage in a situation where they ha[d] professional help and services to demonstrate and stand up to [these disadvantages] in legal procedures'.[379] The legal procedures available, would be those already existing in the Dutch Penal Code; the professional help would take the form of the LBR.[380]

3.4.1. Criminal Law and procedure exacerbate a problem

Criminal law is designed to address behavior that is individual, aberrant, and intentional. As demonstrated in the previous chapters, racialization in the Dutch context was, by contrast, a practice that was institutional, wide-spread and, by the mid-20th century, infused into the superstructure of Dutch society and culture to an extent that it was most often practiced sub-consciously. As such, using criminal law to address problems of racism and racial discrimination in the Netherlands was a practice doomed from the start to be ineffective. The fact that the Dutch government remained committed to a predominantly criminal law strategy in the face of ample evidence and advice to the contrary is circumstantial evidence of an intent that the policy not perform to end these practices. As such, the Dutch strategy of using criminal law to address racial discrimination is a practice of nonperformative antiracism.

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by people racialized as white); "Afscheid van Anco: POA-directeur Anco Ringeling terug naar Aruba," *Plataforma*, March 1987, 18.

[379] Kamerstukken II 1982/1983, 16102, nr. 2, 91.

[380] Kamerstukken II 1982/1983, 16102, nr. 2, 96.

The criminal laws on which the Dutch government would base its legal response to racial discrimination were adopted to comply with the United Nations International Convention on the Elimination of Racial Discrimination in all its forms (ICERD)[381]. As mentioned in Section 2.3.2. above, Dutch cabinet members did not believe compliance with the treaty would be difficult, given that 'the situation in the Netherlands is not so that there is a great need for new, special legal rules directed against racial discrimination'.[382] Accordingly, in 1971, they amended Penal Law 137 to prohibit publicly insulting people, or inciting hatred, based on 'race, religion or philosophy of life'.[383] They later added 429quater, to prohibit professions or businesses (*'een beroep of bedrijf'*) from 'discriminating against people on the basis of race' and 90quater, which defined 'discrimination' as a 'separation, exclusion, limitation or preference that has either the goal or effect of infringing on a human right.'[384] None of these laws covered racial discrimination by people acting in their capacity as government actors, including members of the police and public prosecutor, border guard, immigration authorities, or city officials

[381] The ICERD defines racial discrimination as: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.' Cited in William A. Schabas, "'Civilized Nations' and the Colour Line," in *The International Legal Order's Colour Line: Racism, Racial Discrimination, and the Making of International Law*, ed. William A. Schabas (Oxford University Press, 2023), 12, https://doi.org/10.1093/oso/9780197744475.003.0001 (describing the influence of racializing colonial practices on international human rights law, and the generally underdeveloped state of international jurisprudence on racial discrimination).

[382] See Grijsen, *De handhaving van discriminatiewetgeving in de politiepraktijk*, 36; see also A. J. Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras: Enkele Ervaringen Met de Bestrijding van Raciale Discriminatie in Andere Landen*, WODC 45 ('s-Gravenhage: Ministerie van Justitie : Staatsuitgeverij, 1983), https://repository.wodc.nl/handle/20.500.12832/990.

[383] Chana Grijsen, *De handhaving van discriminatiewetgeving in de politiepraktijk* (Willem Pompe Instituut voor Strafrechtswetenschappen ; In samenwerking met Boom Lemma 2013) 36 (also Penal Laws 137c-e).

[384] C.A. Groenendijk, "Lezing: Recht Tegen Rassendiscriminatie Op de Arbeidsmarkt," in *Discriminatie Op de Arbeidsmarkt*, ed. Joyce Overdijk-Francis, vol. 1, Werkgroep Recht En Rassendiscriminatie (Werkgroep Recht & Rassendiscriminatie vergadering, Utrecht: Werkgroep Recht & Rassendiscriminatie, 1983), 5.

because these were considered 'offices' or 'agencies' and not 'professions' or 'businesses'.[385]

Both the ICERD and Dutch penal law defined race fairly broadly; they referenced skin color, but also included nationality, ethnicity and several other factors which might indicate racial discrimination (though discrimination on the basis of nationality could be justified under certain circumstances, as when the state enforced visa or border restrictions).[386] What made penal law ineffective in addressing racialized inequality in the Netherlands, and what incorporated elements of denial and colonial occlusion into any strategy that relied on it exclusively to combat racism and racial discrimination, was not only the legal definition of those crimes, but the constitutional and procedural barriers required before enforcing criminal law.

In states that base their laws on European and Anglo-American legal traditions, criminal law is the only means by which the state may lawfully exercise physical violence against its own citizens.[387] To protect citizens from experiencing this violence without justification or expectation, before it imposes any criminal penalty, a state must clearly define the elements of the crime in a written statute or regulation and then prove, before a neutral fact-finder, that the accused is guilty of every one of those elements.[388] Jurisdictions may differ on how they define the intent required for certain crimes (for example, specific intent-to-kill for first-degree murder, as opposed to recklessness, or gross negligence or indifference for

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[385] Groenendijk, "Lezing: Recht Tegen Rassendiscriminatie Op de Arbeidsmarkt" ('Het betreft echter alleen arbeidsrelaties in verband met de uitoefening van een beroep of bedrijf. De meeste overheidsdiensten vallen daar buiten, omdat het uitoefenen van een "ambt" niet als een "beroep" wordt beschouwd.').

[386] A. C. Possel, ed., *Rechtspraak Rassendiscriminatie* (Utrecht: Lelystad: Landelijk Buro Racismebestrijding ; Vermande, 1987), ix–xi.

[387] See e.g. George P. Fletcher, *Rethinking Criminal Law* (New York: Oxford University Press, 2000) (comparing elements of intent and action required to be proven in criminal cases between European and Anglo-American jurisdictions).

[388] *Reasonable doubt* is considered the highest standard of proof in a legal case, to be contrasted with a *preponderance of evidence* used in most non-criminal cases, in which the evidence for the winning side should be more likely than that of the other, or *probable cause*, the standard by which a person may be arrested and charged with a crime.

a crime like manslaughter), or on the procedures by which evidence must be proven (to an inquisitory judge in continental Europe or before a jury of citizens in the Anglo-American tradition). States may fail to enforce these principles adequately or equally across social hierarchies (as in cases of racially- or gender-biased sentencing); but they all operate under the idea that before a person may be convicted of a crime, the basic elements of intent and action must be proven.[389] Accordingly, while criminalizing a practice may seem like a harsh policy measure, it could actually end up being the least performative action a state can take depending on their willingness and ability to enforce that criminalization.

By using criminal law as the primary legal means by which they would enforce norms against racial discrimination, the Dutch government required that all alleged instances of racial discrimination be proven by these high standards and procedural barriers. These are barriers that make sense before imposing the violent sanctions on people who have consciously chosen to commit illegal, societally aberrant acts like vandalism, theft or battery. They are more difficult to enforce when the intent behind actions like denying a person a job or entry to a facility may be couched in a dozen of other, legally permissible reasons. When used against actors applying standards and practices that have been normalized over centuries of racialization, colonial practice and white supremacist ideologies and then embedded in facially neutral ideas like *competence*, *intelligence* and *Dutchness*, the use of criminal standards of proof becomes illogical to the point of ridicule.

When student activists tried the same tactics at discos in Utrecht in the late 1970s that Bovenkerk's research assistants used for the study *Omdat Ze Anders Zijn*, they experienced these procedural barriers first-hand. Student activist Tansingh Partiman described his experiences at the Congress on Law and Race Relations in 1983:

> The biggest stumbling block is the police. When you go to make the complaint (in the middle of the night, since that's when discos operate) you're often told that the officer of special laws, who has to handle the case,

[389] These are of course the principles of criminal law as they would operate in an ideal case where every individual is treated equally and equitably under law. As previous and subsequent chapters indicate, law is frequently instrumentalized to achieve the opposite effect.

> is out on the street. The first time this happened, we let them send us away to come back Monday morning. In the meantime, there is a circular from the Minister of Justice that says discrimination complaints must be accepted immediately. The next is how you are treated (with your proof in hand) as a person of color. Remarks, like, 'Did you really not ask for it?' And, 'They also reject white people,' are very common. And to the white witnesses, they often say 'Oh, they are always so quick to feel like there's discrimination.' And if you're finally allowed to make a verbal complaint (because as an activist group we don't give up so easily) then you're still not there. They won't give you a copy of the complaint and later you find out that there have been things added that you haven't said. [390]

Partiman went on to share that the barriers to seeking criminal penalties for racial discrimination didn't end at the police station. Delays of up to two years could follow between filing a complaint and charges finally being presented in court.[391] Once in court, the judges and prosecutors frequently the complainants as though they had done something wrong. One local judge asked them, 'Why didn't you try and have more discussion with the bouncer [before filing a complaint]?' At the same time, Partiman described defendant bar owners being given extra consideration, such as in a case when the public prosecutor allowed two defendants to withdraw statements they had made and signed around the time of the complaint, stating 'So you did not mean to say that you wanted to keep your business Dutch-only? I'm so

[390] Tansingh Partiman in Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 131–33.

[391] Partiman gave the impression that a two-year delay was longer than necessary for such cases. While no standard rule exists for how long a Dutch criminal case should take, the OM advises that the length of time depends on the complexity of the case; 'a simple theft from a store' should take around six months while 'a multiple murder' could take longer. One would assume allegations of discriminatory entry policies would be closer to the first than the second. "Hoe lang duurt een strafprocedure?," accessed January 7, 2025, https://www.rechtspraak.nl/Organisatie-en-contact/Rechtsgebieden/Strafrecht/Paginas/Hoe-lang-duurt-een-strafprocedure.aspx; L. van Lent et al., "Klachten Tegen Niet-Vervolging (Artikel 12 Sv-Procedure)," *Utrecht*, 2016, https://repository.wodc.nl/handle/20.500.12832/2119 (describing a 1984 policy change giving complainants the ability to appeal OM decisions not to charge crimes. Then Minister of Justice Van Agt cited the need for complainants to feel 'like justice was being done' as a motivation for the change but made no specific connection to complainants alleging racial or other discrimination.).

relieved.' Finally, the judges themselves refused to impose required punishments, often imposing fines lower than those requested by law, even after a second offense.[392]

In addition to being generally ineffective, criminalizing racial discrimination had the side effect of exacerbating a process that began after World War Two; the process of pathologizing discussions of racialization and racializing practices, and making it more difficult to address the myriad ways in which these practices manifested in Dutch life. In addition to the reigning association with Nazism, to be accused of engaging in racially discriminatory practices now meant being accused of committing a crime and being 'a criminal'. This discourse of criminality went on to impact tactics of the LBR, where director Arrien Kruyt and other staff members studiously avoided the term in any and all communication.[393] It also, perhaps ironically, led to the LBR itself being sued for defamation after accusing organizations of racially discriminatory practices.[394]

The government was aware of the problems with its criminal law strategy. Its own scientific advice council, the WRR, acknowledged most of the above critiques in its advice to the government in 1979, reporting in the first pages of the *Ethnic Minorities* report, that it found 'the sole penalization of discriminatory conduct (see article 137c-e and 429 *ter* and *quater*) of the Penal Code) to be inadequate.'[395] The council's report went on to explain that most victims of racial discrimination were not even aware of their legal options, and that even if they were the cost and effort of bringing cases was likely too burdensome to be effective.[396] At the national Congress on Law and Race Relations, held in January 1983, well before the release of the official *Minorities Policy Note* later that year, law professor A.H.J. Swart observed that lawmakers had chosen a criminal law strategy ten years earlier 'mostly out of inexperience' and that the intervening decade had taught everyone

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[392] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 133.

[393] Arriën Kruyt, interview by Alison Fischer, audio & transcript, August 31, 2021, in author's possession.

[394] See e.g. Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase (Rechtbank Utrecht 1993).

[395] WRR, *Ethnic Minorities: Part A: Report to the Government*, xxv.

[396] WRR, xxv.

that that method was 'scarcely effective.' He went on to observe that this failure 'compelled lawmakers to think of other methods of enforcement, like civil law or administrative law, because the contribution of criminal law is mostly symbolic.'[397] After the government published its definitive *Minorities Policy Note* in 1983, the chair and secretary of the National Federation of Surinamese Welfare Organization responded in the pages of *Span'noe*, that the government's 'putting the accent on legal procedures' as the method of enforcing anti-discrimination norms was in tension with its simultaneous enactment of programs that made accessing legal aid more difficult.[398] In *Plataforma*, aimed at people from the Dutch Antilles, the title of POA legal adviser Joyce Overdijk-Francis's article critiquing the strategy said it all, 'Legal Means to Combat Racial Discrimination: Burden of Proof is the Biggest Stumbling Block.'[399] Despite this and other ongoing critique, the government did not change its focus on criminal law as the primary means by which to enforce anti-discrimination norms.

3.4.2. Legal paths not taken

As was pointed out by many of those critical of the criminal law strategy, criminal law was not the only means by which the government could have responded to racialized inequality or racial discrimination in the metropole. The fact that they did not pursue any of these policies, which may have made more structural inroads against the centuries of racialization that preceded them is further evidence of the government's desire to maintain the status quo. For example, in the years following the publication of *Omdat Ze Anders Zijn,* Frank Bovenkerk began encouraging the government to adopt policies like 'positive discrimination', also called affirmative action, in which private companies and government agencies would be encouraged to proactively recruit and hire people racialized as non-white to compensate for their underrepresentation.[400] He was not

[397] Summary of session "Strafrecht" in Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 223.

[398] H.A. Ritfeld and R.J. Lioe A Joe, "Reaktie Op de Minderhedennota," *Span'noe*, 1983, 12.

[399] Joyce Overdijk-Francis, "Juridische Bestrijding Rassendiscriminatie: Bewijslast Grootste Struikelblok," *Plataforma*, May 1984.

[400] Overdijk-Francis (ed.), "Positieve Diskriminatie in Nederland; Ervaringen in de VS."

alone in his views and was joined over the years by a variety of researchers and advocates in calling for such programs.[401] While the government did engage in a brief program of reserving 500 jobs within government ministries and agencies for people from 'ethnic minority groups' with priority for the first 300 jobs given to people from the Moluccan community, between 1987 and 1990[402], it rejected replicating or extending affirmative action programs on a large scale to private employers or the housing market.[403]

Making civil litigation more possible and accessible would have been another way to expand legal measures to combat racial discrimination. In addition to amending criminal law to comply with the ICERD, the Dutch government had amended Article One of the Dutch constitution to include an equal treatment clause, as well as a prohibition on discrimination.[404] The constitutional amendment was not self-executing, but violating it could serve as an 'illegal act' under which civil cases could be brought alleging direct or indirect discrimination.[405] Civil cases would not result in fines or imprisonment, but could result in financial compensation to victims of discrimination, or a court order requiring a change in

[401] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*; Chan Choenni, "Positieve Actie: Argumenten pro En Contra," *LBR Bulletin* 2, no. 3 (1986): 4–5.

[402] "Ministeries Reserveren Arbeidsplaatsen Voor Minderheden," *LBR*, 1987.

[403] "Minderhedennota Verlegt Accenten," *De Volkskrant*, September 16, 1983, sec. Binnenalnd, Delpher ('This approach of greater accessibility to general facilities excludes, according to the government, the requirement of preferential treatment for minorities in housing and employment. A compulsory system of quotas [so many jobs, so many houses for minorities] is impracticable and there are problems with it in the countries where such a distribution system is used [United States]. According to the government, such a system also creates undesirable distinctions between people who traditionally live in the Netherlands and minorities.') (translation mine).

[404] "Artikel 1: Gelijke Behandeling En Discriminatieverbod - Nederlandse Grondwet," accessed April 15, 2024, https://www.denederlandsegrondwet.nl/id/vgrnb2er8avw/artikel_1_gelijke_behandeling_en?v=1&ctx=vgrnb2er8avw ('Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan.'); M.M. den Boer, "Artikel 1 Grondwet: gelijke behandeling en non-discriminatie," *Ars Aequi* 3 (1987), https://arsaequi.nl/product/artikel-1-grondwet-gelijke-behandeling-en-non-discriminatie/.

[405] Boer, "Artikel 1 Grondwet."

the discriminatory practice. A downside of these cases was that many years could elapse between complaint and resolution. Such was the case of *Nedlloyd v Bras Monteiro*, which began when the Nedlloyd shipping company laid off all its foreign sailors in 1983 before its employees with Dutch nationality, regardless of seniority. Though the courts ultimately found in favor of the foreign sailors, this resolution did not come until 1992, at which point most of them had returned to their countries of origin.[406]

A more promising civil case precedent seemed to have been set in *Rooms-Katholieke Woningbouwvereniging Binderen v Süleyman* Kaya, decided by the Dutch High Court in December 1982. In that case, the court found the Binderen housing corporation liable for racial discrimination against Turkish applicant Kaya, based primarily on statistical evidence, which showed that over a period of six years, Binderen only rented to one 'foreign' applicant out of the 543 dwellings it allocated, a number far below the 423 'foreign' applicants on the waiting list.[407] The *Binderen* case was seen as having enormous potential for future discrimination cases in the Netherlands, not only related to housing, but also employment; such potential was discussed not only by academics[408], but by government-sponsored researchers,[409] groups representing 'ethnic minorities' and independent lawyers[410] and advocates and the Dutch government itself.[411]

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[406] Nedlloyd v Bras Monteiro e.a., online Rechtspraak Rassendiscriminatie (Hoge Raad 1992); see also discussion of case in Cornelis A. Groenendijk, *Heeft wetgeving tegen discriminatie effect? Rede uitgesproken bij de aanvaarding van het ambt van gewoon hoogleraar in de rechtssociologie aan de Katholieke Univ. de Nijmegen op vrijdag 13 juni 1986* (Zwolle: Tjeenk Willink, 1986).

[407] E.H. Hondius, "Private Remedies Against Racial Discrimination - Some Comparative Observations with Regard to R.K. Woningbouwvereniging Binderen v Kaya," in *Unification and Comparative Law in Theory and Practice: Contributions in Honor of Jean Georges Sauveplanne*, 1984, 103–15.

[408] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, See opening speech to the Congress by C.A. Groenendijk in.

[409] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 87.

[410] Joyce Overdijk-Francis (ed.), "Civiel Recht En Rassendiscriminatie," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, May 7, 1985), Nationaal Bibliotheek.

[411] Kamerstukken II 1982/1983, 16102, nr. 2, 98–99.

Both the *Nedlloyd* and *Binderen* cases offered the potential to develop broader legal strategies to address racialized inequality in the metropole (a strategy referred to by legal mobilization scholars and legal activists as impact litigation). Bringing such cases, however, required legal knowledge, resources, and time not available to most people who experienced racialized discrimination in their daily lives. Moreover, unlike in the United States, where impact litigation was a major part of the national struggle for civil rights and racial equality, Dutch courts did not function either constitutionally or in public imagination as major shapers of social policy, nor did Dutch courts have the power to declare acts of parliament unconstitutional.[412] While these cases would continue to be part of the discussion around legal mobilization throughout the 1980s, they did not in and of themselves represent a significant change in government policy as it related to racialization, racial inequality or racial discrimination in the Dutch metropole during this time.

3.5. Grassroots groups and the politics of accommodation

On the eve of the publication of the definitive *Minorites Policy Note* in 1983, the Dutch government remained intransigent on the topic of changing or expanding its reliance on criminal law to address racial discrimination. At the same time, however, grassroots groups were stepping up their activism and calling attention to the ineffectiveness of these laws. The questions was whether, and how, their actions would force the government to alter their policies. Student groups, like Jongeren Organisatie Sarnami Hai (JOSH), the organization of Surinamese students in which activist Tansingh Partiman worked, brought case after case against discos that exercised discriminatory entry policies, as described above. These legal mobilizations were not stand alone strategies, but were part of broader campaigns to bring attention to ongoing patterns of discrimination in the lives of young people racialized as non-white, and were coming from groups engaged in decolonial activism as well as anti-discrimination work.[413] Between 1979 and 1983, the group

[412] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 135.

[413] Partiman, interview (Partiman described himself as 'not having been a disco guy'. He was more invested in issues related to Surinamese independence, and planned to return there after his studies. However, after the 1980 coup, Partiman realized he would be building a life in the Netherlands and became more invested in addressing issues of racialized inequality here.).

filed five criminal complaints with police in Utrecht, experiencing the mixed results Partiman described above.[414]

The failure of the police, prosecutors or courts to take these cases seriously did not discourage the activists from JOSH, but instead motivated them to adjust their tactics. For example, after learning that the son of a racially discriminating bar owner was about to receive a high profile job in Dutch television, they began publicly demanding that either the son intervene in his father's door policy, or the television station rescind the offer of their job; they succeeded on both counts.[415] Members of JOSH and other grassroots organizations also began framing the ineffectiveness of the criminal laws against and criminal court system as problems separate from discrimination at bars and discos, and representative of a general lack of commitment from the government to racial equality in the metropole; in doing, they hoped to raise broader public consciousness about government inaction, and to encourage broader and more political forms of activism. The approach of JOSH activists was consistent with what legal mobilization theorists like McCann and others have observed, namely that losses in court do not necessarily represent failure for a legal mobilization strategy. Instead short term losses can serve to galvanize greater resistance among constituents and strengthen longer term social and political organizing.[416] Partiman observed as much in 1983 when he shared the observation that lends itself to the title of this book. 'Ethnic groups,' he told the Congress on Law and Race Relations, 'stand in the shadow of the law. We will therefore have to consider extra-legal means to prevent the fight against racism from degenerating into a game of shadow boxing.'[417] These extra-legal means were something the Dutch government no doubt hoped to avoid.

One example of how legal consciousness and cases could be part of broader strategies could be found in the actions of Quater, a community group dedicated to combating discrimination and racial inequality in the region around the Dutch city of Hilversum. Like the students in Utrecht, Quater members started their legal mobilizations by sending racially mixed pairs to bars and discos suspected of

[414] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 139–40.

[415] Partiman, interview.

[416] McCann and Lovell, *Union by Law*, 2.

[417] Partiman in Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 133.

discriminatory admission practices.[418] As in Utrecht, the member of the pair racialized as white was allowed entry into the bar while the member racialized as non-white was turned away, and the pairs were initially rebuffed by police and prosecutors when they attempted to file charges. At this point Quater strategies diverged from those of JOSH. Quater's organizational secretary, Gerrit Bogaers, was a lawyer who also had experience and connections with the Hilversum town council (*gemeenteraad)*. He wrote up detailed reports of the visits to the discos and clubs, and the resulting discrimination. Using these reports, and referencing criminal laws against discrimination, he and other Quater members lobbied the Hilversum town council to pass a policy refusing to lease city property to, or approve business licenses or permits for, organizations that refused to comply with anti-discrimination laws. Quater then followed up with the Hilversum city council to make sure it complied with its own regulations.[419] Quater's strategy demonstrates the manner in which legal mobilization strategies can expand beyond litigation via the courts, and illustrated how even limited criminal policies could be used as springboards from which to achieve policy change that impacted individuals racialized as non-white in numbers beyond any individual case.

The actions of both Quater and JOSH fit into what Michal McCann defines as the first and second stages of legal mobilization within social movements: the first stage draws on legal discourse to frame demands as rights – in this case the right to be free from racialized discrimination in the provision of goods and services; the second stage uses legal action – even unsuccessful legal action – 'to contribute to an opportunity structure - to create cracks in which social change can

[418] Gerrit Bogaers, interview by Alison Fischer, audio & transcript, October 16, 2021, in author's possession (Quater took its name from the criminal prohibition of discrimination by businesses but also was inspired by the pun the name created with kater, the Dutch word for tomcat. Like a tomcat, Bogaers told me, the members of Quater were both clever and unafraid.).

[419] Bogaers reporting on Quater actions during the 1983 Congress on Law and Race Relations in Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 135; Gerrit Bogaers, "Recht & Rassendiscriminatie" (Utrecht]; Lelystad: Plataforma di Organisashonnan Antiano, May 6, 1988), 9, Nationaal Bibliotheek; Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 99.

be made'[420] – in these cases demands for larger political mobilization from grassroots activists, or policy change from local authorities.

JOSH and Quater did not carry out their strategies and tactics in isolation from each other. In 1978, along with fifteen other groups interested in combatting racialized discrimination and inequality, they formed SARON, the Society of Antiracist Organizations in the Netherlands (Samenwerkende Antiracisme Organisaties Nederland), a coalition to share knowledge and experiences on these issues.[421] SARON member organizations had different constituencies, and came from different communities with different specific priorities. They declined to adopt a singular or unified program of activities, but joined together when necessary for increased impact, such as by providing unified commentary to the government on the draft *Minorities Policy Note* and its eventual critique of the eventual creation of the LBR.[422]

In its 1982 commentary to the government on the then-in-progress *Note*, SARON described itself as representing 'a national discussion' about racism and the position and role of the government, 'in a real sense of the word,' presumably to distinguish itself from the government subsidized welfare and advisory organizations also providing commentary on the draft policies.[423] The group took particular issue with the existing criminal law regime; they criticized Article 429Quater as nothing more than 'symbolic legislation' and 'virtually unprovable'[424] and suggested amending the provision in a way that would shift the burden away from potential victims of discrimination back to those accused of discriminatory

[420] Michael McCann, "Law and Social Movements: Contemporary Perspectives," *Annual Review of Law and Social Science* 2, no. 1 (December 2006): 26, https://doi.org/10.1146/annurev.lawsocsci.2.081805.105917.

[421] Bogaers, "Commentaar op de 'Ontwerp-Minderhedennota', Ministerie van Binnenlandse Zaken, april 1981, door SARON," n.d. (The number of active member organizations in SARON fluctuated over the years; in 1982 the group listed 15 members in its comments to the Ministry of Interior on the working draft of the *Minorities Policy Note.)*.

[422] See e.g. Bogaers; Gerrit Bogaers, "Uitnodiging - SARON Conference, 10 June 1983" (SARON, June 10, 1983), personal archive of Mr G.J.A.M. Bogaers, SARON.

[423] Bogaers, "Commentaar op de 'Ontwerp-Minderhedennota', Ministerie van Binnenlandse Zaken, april 1981, door SARON," n.d.

[424] Bogaers, 7.

practice. If an action by a business or organization was accused of racial discrimination under Article 429, SARON proposed, the accused proprietor should have the burden of justifying the denial of goods or services, employment or housing on grounds not related to racial discrimination or other impermissible prejudice; failure to provide appropriate justification would result in a conviction for discrimination.[425]

The Dutch government never adopted SARON's advice and remained committed to criminal law as the primary legal means by which to address racial discrimination in the Netherlands. Nevertheless, SARON's commentary on the *Minorities Policy Note* demonstrated that the critique of the non-performativity and ineffectiveness of that legal regime was gathering political steam, growing out of student activist communities to include organizations of community members and professionals across both different demographic groups and regions. In the summer of 1983, SARON organized a conference it presented as an alternative to the Congress on Race Relations held in January of that year. It invited 'independent groups and interested individuals' (as opposed established welfare and advisory organizations) to participate in a 'workshop against racism and [for] the promotion of emancipation.'[426] As opposed to framing the discussion in terms of 'race relations,' the workshop proposed a discussion of nothing less than '1) The social structure of our society; the relationship inhabitants/newcomers; participation in power and the importance of organization, with special regard to: 2) labor relations, 3) our political systems, and 4) education and identity.'[427] The invitation went on to clearly state the 'intention of the organizers to [hold] discussions [on] the possibility of controlling the power held by the policy-making authorities involved in the

[425] Bogaers, 8; While the Dutch Hoge Raad would eventually reverse the burden of proof in civil cases where one party had unequal access to certain information, it is not clear to me that this standard ever would, or could, be applied in criminal cases where the burden of proof remaining on the state is one of the hallmarks of fair trial process. ECLI:NL:HR:2011:BO6106, voorheen LJN BO6106, Hoge Raad, 10/00698, No. ECLI:NL:HR:2011:BO6106 (HR January 28, 2011); ECLI:NL:HR:2022:1058, Hoge Raad, 21/01196, No. ECLI:NL:HR:2022:1058 (HR July 8, 2022).

[426] Bogaers, "Uitnodiging - SARON Conference, 10 June 1983," (English translation by SARON staff for international invitees; changes in brackets are for clarity).

[427] Bogaers.

aforementioned issues…and to reorganize them in such a way that emancipation is ensured.'[428]

I describe SARON, and many of the organizations that made it up, as 'grassroots' organizations, a description that comes from American activism and is often used to described organizations or movements made of many people who are impacted personally by a problem for which they are calling for a solution of their own determination. They come from the soil of the problem, to follow the metaphor, and get their power through numbers, like blades of grass. In describing growing grassroots organizing on the problems related to racialized inequality, and the calls from SARON and its affiliated groups for a more grassroots solutions to these problems, I do not mean to overstate the size of the threat that grassroots organizing posed to the Dutch status quo. As of the early 1980s, the numbers of activists remained small compared to the total population, and they had not yet demonstrated their ability to enact policy change beyond the local level.[429] However, their financial and structural independence stood in contrast to the welfare/advisory model the Dutch government was accustomed to working with on these issues, and which were more consistent with the broader Dutch culture of political accommodation.[430] Very few of SARON's organizational members received government subsidies. This further distinguished them from the social welfare and advisory organizations, which though formally independent, were ultimately dependent on government funding for all of their operational expenses. By contrast, financial independence made SARON and its members organizations less controllable, less predictable and therefore more threatening to the political status quo. The fact that the government solicited SARON's feedback on its draft *Minorities Policy Note* indicated that it felt SARON was a group significant enough

[428] Bogaers.

[429] For evidence of how a grassroots movement can achieve success outside of traditional politics, see the Kick Out Zwarte Piet movement active in the Netherlands from 2011 through 2025, and addressed in detail in Chapter Seven of this dissertation. See e.g. Julia Vié, "Kick Out Zwarte Piet houdt er eind 2025 mee op: Sinds 2010 heeft Nederland heel veel stappen gezet," *NRC*, February 14, 2024, https://www.nrc.nl/nieuws/2024/02/14/kick-out-zwarte-piet-houdt-er-eind-2025-mee-op-sinds-2010-heeft-nederland-heel-veel-stappen-gezet-a4190145.

[430] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 126–29 (specifically the Dutch traditions of "summit diplomacy" and depoliticization of social issues).

to be consulted.[431] At the same time, because SARON was independent and grassroots, the government could not dismiss its critiques using the same arguments Henk Molleman had levied against representatives of the welfare and advisory groups, that they were not representatives of their constituencies.[432]

Another organization from which the Dutch government likely drew cautionary lessons of what not to do as it crafted its definitive 'minorities policy' was the was the Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst, (Association Against Discrimination on the Basis of Race or Ethnicity, VTDR), founded in February of 1979. Unlike the grassroots origins of SARON, the VTDR began as the brainchild of those already influential within the field of 'minorities policy' and racial discrimination. Present at its founding meeting were Frank Bovenkerk, Henk Molleman, then a member of parliament for the Dutch Labor Party (Partij van de Arbeid, PvdA) and shortly to become director of Minority Affairs for the Ministry of the Interior, Han Entzinger, a sociologist and civil servant who would go on to author the *Allochtonenbeleid* (*Foreigners Policy*), which would replace the *Minorities Policy Note* in 1989, and Hamied Ahmad-Ali, the legal expert on the staff of the national coalition of Surinamese welfare organizations.[433] Also present, however, were people from outside the government's managed welfare/advisory structures, some of whom would go on to serve on the VTDR's first board of directors. This group included Peter Schumacher, a journalist later published several books about racism in the Netherlands,[434] and Roy de Miranda,

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[431] Bogaers, "Commentaar op de 'Ontwerp-Minderhedennota', Ministerie van Binnenlandse Zaken, april 1981, door SARON," n.d.

[432] Aarden and Joustra, "Toen Had Je Toch Ook al Die Man Op Tweehoog Met in Zijn Fietsenhok Een Paard: Interview Met Henk Molleman."

[433] Millie Gloudi, "Notulen plenaire vergadering" (Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst, February 20, 1979), personal archive Mr G.J.A.M. Bogaers, SARON.

[434] Bleich and Schumacher, *Nederlands Racisme*; Schumacher, *De Minderheden*; Schumacher had been involved, a decade earlier, in starting the Black Panther Solidarity Committee, the first of such committees in the Netherlands; see De Vlugt, "A New Feeling of Unity," 39, 108–12; Schumacher was also of *totok* heritage, the name given to people racialized as white living in the Dutch East Indies, and brought those experiences into his reflections on racialization in the Netherlands. Schumacher, *Totok Tussen Indo's: Een Persoonlijk Relaas over Arrogantie, Versluierde Discriminatie En Vernedering Onder Indische Nederlanders*.

an advocate and activist from the Surinamese-Creole community, who would later return to Suriname and become part of the government of Desi Bouterse.[435] This mix of representation from those who had been traditionally included within the politics of accommodation, and those representing more independent constituencies, or those opposed to the status quo, was not a success.

Ahmad-Ali described the VTDR to the readers of *Span'noe* as being founded after Bovenkerk's *Omdat ze Anders Zijn* received wide-spread attention in the national media. Over three meetings in the fall of 1978, a group of academics, advocates, writers and activists had met to discuss the need for a national organization to address the following priorities:

1. Providing individual assistance [to victims of racial discrimination] via referral or guidance;
2. Analyzing cases of discrimination and developing solutions;
3. Developing policy and legislative proposals to combat racial discrimination; and
4. Developing activities aimed at raising publicity, information, awareness and action. [436]

When representatives of the four major welfare and advisory groups representing people racialized as non-white met in January 1979 to discuss the recently published government *Ethnic Minorities* report (discussed above in sections 3.3.), they included in their meeting summary support for the idea of an 'institute to handle' complaints of racial discrimination.[437] Given the overlap of the parties involved in these meetings and the dates of those meetings, it is safe to assume the institute they had in mind was the VTDR. By contrast, grassroots organizations represented in SARON were early critics of what they saw as the top-down methods of the VTDR and its leadership. SARON representatives had participated in the plenary session of the VTDR in February 1979, but later complained that their requests to share information about their own activities and

[435] Gloudi, "Notulen plenaire vergadering."

[436] Hamied Ahmad-Ali, 'Het Verschijnsel Racisme in Nederland' (1978) 5 *Span'noe* 22.

[437] 'Verslag Kongres Minderheden' (n 29).

campaigns with the VTRD constituency were denied and that their work was not taken seriously. [438]

In early 1979, the VTDR published several newsletters, held regular office hours to receive complaints or questions about racial discrimination, and published examples of employment advertisements that overtly discriminated on the basis of race; group leadership also expressed the intent to apply for financially sustaining government subsidies.[439] Before they could formally apply, however, internal disputes erupted within the group. In January 1980, three members of the board of directors resigned in protest; these were Roy de Miranda, Peter Schumacher and Ronny Lemmers. De Miranda complained to the national press of 'an ivory-tower mentality' among other VTDR leaders that led to different views of how to handle individual complaints of racial discrimination.[440] Schumacher agreed, and added a general lack of representation within the group of the interests of 'foreign workers'. Both agreed that the voices 'of those who experience racial discrimination' should have had more weight in the VTDR's plans and practices. Frank Bovenkerk, who was then chair of the VTDR, disagreed that people racialized as non-white should take the lead. He accused 'organizations of foreigners' of having done little to address racial discrimination to date, and therefore having needed the VTDR to serve 'a start-motor function'.[441] Despite this defense, Bovenkerk withdrew as chair of the VTDR shortly after January 1980, taking with him the group's national public profile and attention. The VTDR tried to reorganize itself, publishing newsletters,

[438] Representatives from Quater were invited to the VTDR's opening plenary session in February 1979, where they offered to share experiences with the new group. However, by June of that year the relationship had soured. Quater leaders complained that VTDR leadership ignored their requests to share information about Quater activities, and that VTDR members were disrespectful toward Quater's members and their work. Gloudi, "Notulen plenaire vergadering," 4; Gerrit Bogaers, "Werkgroep Quater: indrukken over de vereniging tegen diskriminatie en etnische afkomst" (Quater, June 12, 1979), personal archive mr. G.J.A.M. Bogaers, SARON; Bogaers, interview.

[439] See e.g. Gloudi, "Notulen plenaire vergadering."

[440] "Aanpak discriminatie scheurt vereniging: Deel bestuur ontgoocheld opgestapt," *de Volkskrant*, January 23, 1980, Delpher.

[441] "Aanpak discriminatie scheurt vereniging: Deel bestuur ontgoocheld opgestapt."

holding open office hours and participating in SARON, it never fully recovered from the public split and dissolved in 1982.[442]

The internal drama within the VTDR board received more publicity than any activities the group undertook during its existence. Despite its short life and dramatic end, however, the VTDR raised questions that would come up repeatedly during the creation of the LBR two years later. For example, should a national organization to combat racial discrimination be led by academics or other people racialized as white, or by people who were members of communities or organizations racialized as non-white? Would government subsidies be a necessity for professional operations or an impermissible restraint on the organization's independence? Would the priority be placed on representation of individual victims of racial discrimination, or on combatting racialization and racial discrimination at a more structural or institutional level? Given the overlap between people involved in the VTDR and those involved with the eventual crafting and execution of the *Minorities Policy Note*, including the LBR, the VTDR experience certainly had some influence.[443]

3.6. Conclusion

By the mid-1970s, events related to the increased presence of people racialized as non-white permanently residing in the metropole, combined with growing visibility and unrest related to the social and economic inequality of many people in these groups, compelled the Dutch government to take action. Rather than enact policies that would address the sources of racialized inequality, which were rooted in centuries of practices of colonial exploitation and slavery followed by postcolonial occlusion and denial of the racializing nature of that history, the Dutch government chose for a series of policies aimed at maintaining the status quo in the Dutch metropole, policies it collectively referred to as 'minorities policies.'

[442] Bestuur, "'Beste VTRD-leden,'" May 25, 1982, personal archive mr. G.J.A.M. Bogaers, SARON (letter describing falling membership and lack of interest as reasons to give up the association).

[443] C.A. Groenendijk, interview by Alison Fischer, audio & transcript, July 12, 2021, in author's possession (Groenendijk was involved in both organizations. He did not specifically describe lessons he carried from the VTDR into the LBR, but did characterize the first experience as *mislukt*, a mistake or failure.).

Most of these policies targeted alleged 'cultural disabilities' (*achterstanden*) of people in groups racialized as non-white. The government addressed problems of racism and racial discrimination in the metropole using criminal law, despite mounting evidence that such laws were ineffective at addressing the majority of racial discrimination experienced by people racialized as non-white in the metropole. The combination of the cultural discourse and the limited definition of racism defined by criminal law served both to occlude the colonial origins of racialized inequality in the metropole, and to depoliticize calls for changes to the existing social status quo.

The refusal of the government to deviate from these policies, despite mounting evidence of their ineffectiveness, is evidence of a lack of desire to change the racialized status quo in the postcolonial Dutch metropole, as is the government's response to organizing and calls for change from groups representing people racialized as non-white and other grassroots organizations dedicated to combatting racial discrimination in the metropole. In the latter case, rather than allow the people most affected by problems of racial discrimination, people racialized as non-white and active either in grassroots or welfare/advisory organizations, to determine the appropriate solutions to those problems, the government responded either by dismissing their critiques as illegitimate, or ignoring them completely.

As the 1980s dawned, critiques of the government's exclusively criminal law strategy to address racial discrimination came under increasing fire, not only from grassroots and activist organizations, but also from those Arend Lijphart would describe as traditional political elites. This latter group included academics like Frank Bovenkerk, government researchers like Han Entzinger, and civil servants like Henk Molleman represented in the VTDR, but also members of the government's own scientific research council, the WRR, in its *Ethnic Minorities* report. The combination of these critiques from both inside and outside traditional Dutch politics of accommodation did not change the government's fundamental commitment to maintaining the status quo through its criminal law strategy, but it did cause them to make one concession. The government would provide increased support for individual victims of racial discrimination trying to access those laws. In its formal *Minorities Policy Note*, presented to Dutch parliament in September

1983, the cabinet announced that it would create a national institute to combat racial discrimination using legal means. How the government would structure that organization to maintain the status quo racialized hierarchy in the Netherlands, while at the same time diffusing growing grassroots unrest as well as the public disputes between grassroots and elites that characterized the VTDR would be the question debated across community and organizational lines for the next two years, and is the subject of Chapter Four.

4. Nonperformative intent? Creation of the Landelijk Bureau Racismebestrijding

4.1. Need for a national institute (1983-1985)

The Landelijk Bureau Racismebestrijding (LBR) was a government-made creature. The Lubbers cabinet announced its creation along with the definitive *Minorities Policy Note* to the Dutch parliament in September 1983. The Ministry of Justice provided the vast majority of its funding and had the ability to approve its budget and the composition of its board of directors. In this way, it was not dissimilar from other welfare and advisory organizations created under earlier 'minorities policies'. What made the LBR different, was the promise implied by its name. Unlike organizations which were created to address addressed mostly 'socio-economic and cultural disabilities' (*achterstanden)* imputed to certain groups of people, the very name of the National Office to Combat Racism implied a recognition that one of the barriers to social and economic equality for people racialized as non-white in the Dutch metropole was, in fact, unfair and destructive treatment by people racialized as white. Funding an institution like the LBR implied that the Dutch state bore at least some responsibility for changing that situation.

The promise of the LBR's title was a cynical one, however, because the organization was never intended to address the types of institutional racial discrimination that most impacted the lives of people racialized as non-white living in the Dutch metropole. Instead, the cabinet of then prime minister Ruud Lubbers limited the LBR's organizational mandate to the version of racial discrimination legally enshrined in criminal law, consciously and intentionally discriminating against a person on the basis of race. The government further impaired the LBR from achieving even this limited goal by a funding mechanism that discouraged the LBR from pursuing court cases or other collective legal action.

Activists at the time argued that the Lubbers government constructed the LBR to be a *zoethouder* not a *doorbijter* (a pacifier rather than a problem-solver).[444]

[444] Hugo Durieux, "Anti diskriminatie instituut: Zoethouder of doorbijter?," *Afdruk*, January 12, 1985, Instituut Sociale Gescheidenis Amsterdam (title roughly translates into 'Antidiscrimination institute: pacifier or change-maker'.).

This chapter establishes the accuracy of that assessment, arguing that the Dutch government created the LBR, not to seriously address the material reality of racial discrimination in the metropole, but as part of its practice of nonperformative antiracism, defined by critical scholar Sara Ahmed as a policy that claims to combat racism but fails, as a matter of design, to do so.[445] Ahmed argues that non-performativity of a policy or project like the LBR is not 'a failure of intent or even circumstances' but is in fact the purpose of such policy; 'It works because it fails to bring about what it names.' [446] As in the previous chapter, I argue here that the purpose of a nonperformative policy in this context of the LBR was to maintain the status quo racialized hierarchy in the Dutch metropole, while quieting demands for something to be done to change that hierarchy. This chapter establishes the government's intent through circumstantial evidence, namely numerous instances in which the government was informed or advised of problems with the way it was setting up its legal response to racial discrimination, but consistently dismissed or ignored this advice.

4.2. Early ideas and visions

The idea for a national organization dedicated to addressing racial discrimination entered the government agenda in 1978, during a public commission meeting on the position of Surinamese migrants in the Netherlands. In that session, Chel Mertens, a member of parliament for the D'66 party, called on the cabinet to investigate whether it was possible for the Netherlands to start a national, 'anti-discrimination institute that would handle complaints of discriminatory treatment, and function in an independent and objective manner.'[447] Members of parliament rarely act alone in bringing issues to the national table; Mertens was in direct contact with members of the Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst (Association Against Discrimination on the Basis of Race or

[445] Ahmed, "The Nonperformativity of Antiracism."

[446] Ahmed, 105.

[447] Kamerstukken II 1982/1983, 16102, nr. 2, 102.

Ethnicity, VTDR), which formed that same year, and were in communication with him about his motion.[448]

By the time Mertens introduced his motion, the Netherlands Scientific Council for Government Policy (*Wetenschappelijke Raad voor het Regeringsbeleid*, WRR)'s report *Ethnic Minorities* was already in progress. Eventually published in May 1979, the report contained two parts: a 37-page 'report to the government' which contained advice from the WRR, and a 171 page 'comprehensive survey of government policy to date with respect to a number of ethnic minorities in the Netherlands' authored by researcher Rinus Penninx.[449] The recommendation report contained one page addressing 'discrimination'; it recommended creating 'a national body like those in Great Britain or the United States', and 'consistent with the initiatives stemming from the Second Chamber of Parliament in this area.'[450] The organization would be a:

> single channel for complaints about discriminatory treatment… followed up by advice to enterprises and institutions that are closely involved with minority groups and by mediation and guidance in concrete cases of discrimination, leading if necessary to legal proceedings. In addition, it would need to be investigated whether the national body in question should in such cases be able to obtain an injunction or prohibition from an administrative tribunal or civil court, perhaps enforceable by means of a fine.[451]

Between the dissolution of the VTRD in 1982 and publication of formal *Minorities Policy Note*, in September 1983, different societal groups also began to

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[448] Gloudi, "Notulen plenaire vergadering." (Notes of the meeting indicate that some VTDR members were concerned about the independence of an organization vis-à-vis the government; Frank Bovenkerk agreed to call Mertens on the subject.).

[449] WRR, *Ethnic Minorities: Part A: Report to the Government*; Penninx, *Etnische Minderheden. A*.

[450] Ir. Th. Quené, "Ethnic Minorities: A. Report to the Government," Wetenschappelijke Raad voor het Regeringsbeleid (The Hague: Wetenschappelijke Raad voor het Regeringsbeleid, May 9, 1979), xxv.

[451] Quené, xxv–xxvi.

call for a national anti-discrimination institute. In January 1983, the Interdepartmental Coordination Commission on Minorities Policy (ICM) received two different proposals for such an institute. One came from the Dutch Jurists Committee for Human Rights (Nederlands Juristencomité voor de Mensenrechten). The other was submitted by a coalition of 'ethnic minority organizations' including the National Federation of Surinamese Welfare Organizations, the Moluccan Advisory Organization, the Antillean Platform (Plataforma di Organisashonnan Antiano, POA) and the Netherlands Center for Foreigners (Nederlands Centrum Buitenlanders, NCB); its author was NCB staff jurist Arriën Kruyt, who would go on to become director of the LBR for its first seven years.

4.2.1. Congress on Law and Race Relations

That same month, the NCB, the National Federation of Surinamese Welfare Organizations and the Willem Pompe Institute at Utrecht University's law faculty organized the Congress on Law and Race Relations (Congres Recht en Raciale Verhoudingen), described in the opening pages and referenced in the previous chapter of this dissertation. Kruyt timed the submission of his proposal for a national institute to the conference, using it to gain support and attention for the proposal.[452] Approximately 500 people participated, representing 'ethnic groups, police, administrators, social workers, lawyers, [and] a few officers from the Ministry of Justice and the Ministry of the Interior' as well as several members of parliament. The Ministry of Justice provided funding both for the event and an eventual publication of its proceedings.[453] The goal was to identifying concrete ways to mobilize law in the face of racial discrimination.[454]

Despite hosting attendees from a variety of backgrounds and perspectives, the Congress's messaging about the causes of racial discrimination in the

[452] Kruyt, interview.

[453] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*.

[454] Ausems-Habes. Note-takers were present in each session of the congress. After the conference, the ministries of Justice and the Interior jointly provided funding for publication of the notes and summaries in the book cited here, with the goal that it would be useful 'for legal practice, and political and legal discussions about combatting racial discrimination.'

Netherlands engaged in the same type of colonial occlusion as earlier government framing. It defined the problem as rooted in intentional, aberrant and individual prejudice, as opposed to institutional, routine, material and deeply embedded in Dutch society. 'In recent years', the publication began, 'it is becoming more and more clear that discrimination on the basis of race – both open and concealed – *also* frequently occurs in the Netherlands'.[455] If the conference attendees discussed racializing practices and their role in Dutch history, from colonial conquest and slavery through the policies related to migration from former colonies, those discussions were not included in the 300+ page conference publication.

Individual congress sessions did include discussions of racial discrimination within education, housing, and employment, antisemitism, civil rights, affirmative action and the women's movement. By the end of the day, however, two central themes emerged. The first was whether it was feasible or desirable to legally prohibit the existence of 'racist organizations', like the Centrum Partij; the second was the set up and function of a Dutch institute against racial discrimination.[456] Most of those speaking at the conference agreed on the need for such a national organization. The details of what the specific goals, powers, and methods of that organization would be, however, formed points of major debates which centered around five themes:

1. How the organization would respond to individual victims of racial discrimination, and their potential legal claims;
2. Whether the organization would conduct independent research and if so to what end and with what power to compel information;
3. The ability or desirability of filing legal cases or claims under the organization's own name;
4. Whether the organization should engage in general public education around the issue of racial discrimination;
5. Whether the eventual directors of the organizations should be a person racialized as non-white, or a *zaakwaarnemer*, the term used

[455] Ausems-Habes, 5 (emphasis mine).

[456] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*.

> for people racialized as white and Dutch who worked on issues related to 'ethnic minorities'.

As addressed in Chapter Three, when confronted with rising evidence of racial discrimination and the legal obligation to address it in the early 1970s, the Dutch government had chosen criminal law as the primary legal avenue to do so. This choice relied on individuals experiencing discrimination to trigger enforcement of those laws by filing complaints with police or prosecutors. Everyone engaged with the problem of combatting racial discrimination recognized that a problem with the criminal law strategy was that not enough victims of discrimination filed complaints. In his opening address to the Congress, law professor C.A. Groenendijk did not mince words, but proposed as a guiding principle of the discussion that 'when it comes to combatting discrimination with legal measures, a strategy based on the initiative of individual victims will have little to no effect.'[457] One of the hopes pinned on a national institute was that it would increase the number of complaints filed and therefore make the general policy of handling racial discrimination using criminal law more effective.

On the other hand, even a strategy of focusing on a national institute was not a straightforward proposition. For example, would a national institute receive and adjudicate such complaints itself, deciding on whether racial discrimination had in fact occurred and then issuing fines, compelling compliance or awarding financial damages? Would it serve as a legal service provider, accompanying victims to make complaints to local police or prosecutors and then advising them throughout the process? Or would a national institute be more of an information clearing house, providing information to victims on how to file complaints or contact lawyers competent to handle such cases? The Congress on Law and Race Relations debated all these possibilities over the course of several sessions. One session, 'Plan for an institute to combat racial discrimination' presented the proposal drafted by Arriën Kruyt on behalf of the coalition of welfare and advisory organizations. That proposal reiterated the challenges facing individual victims of discrimination, in both the criminal and civil courts and identified two principle tasks for a national institute:

[457] C.A. Groenendijk, "Recht en rassendiscriminatie: een januskop met lege handen?" Introductory speech published in Ausems-Habes, 15.

first to be 'accessible to victims of discrimination', and second ' to combat patterns of discrimination and [conduct] direct research to those areas.' These two tasks would stand in tension with each other, the proposal observed, since there would likely be *'een overvloed'* (an overflow or flood) of complaints from individual victims and addressing them would take resources away from looking for structural patterns. As a third task, the institute should direct itself toward 'education to prevent discrimination,' even though the expertise for this type of task would not necessarily overlap with legal expertise.[458]

To address the tension in the first two goals, Kruyt's proposal recommended that a national institute not handle complaints directly, but instead maintain a list of qualified legal practitioners to which a victim of discrimination could be referred. Such a referral system would keep the institute 'from drowning in the quantity and time' needed to address individual complaints, and free it up to take on more widespread patterns or practices. On the issue of individual assistance, the proposal also recommended producing a folder informing victims 'what to do if you experience discrimination.'[459] According to the proposal, an institute could address patterns or structural problems of racial discrimination in the Netherlands primarily through research. The first research priority would be to identify possible discriminatory patterns; if and when these patterns were identified, an organization could then to use the evidence of them to file discrimination cases, in the name of many clients, or, if necessary, under its own name. Ideally, the proposal stated, the institute would have the power to compel compliance with this research, but not having powers would not be such a hurdle as most relevant information in the Netherlands was publicly available.[460]

Important to note here is that at the Congress on Law and Race Relations, and in fact throughout the life of the LBR, the term 'structural discrimination' was used to describe patterns or practices of discrimination that affected many people within the same institute or organization; it did not indicate historic racializing practices embedded in social structures, as described by sociologist Eduward

[458] Ausems-Habes, 332–35; Arriën Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983, LBR Concept/Beleid packet, IDEM Rotterdam Kennisbank.

[459] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 333.

[460] Ausems-Habes, 334.

Bonilla-Silva or other critical race scholars referenced in Chapters One and Two. Paradigmatic examples of 'structural discrimination' as defined at the time were the *Nedlloyd* case described above in Section 3.4.2, where a shipping company had a policy of laying off foreign workers before Dutch nationals, or the *Binderen-Kaya* case, also discussed in Chapter Three, where a housing corporation refused to rent apartments any 'foreign' families over a period of years. The idea was that a national organization could gather evidence about such patterns research and use that research to file cases similar to *Binderen-Kaya*.

At the Congress on Law and Race Relations, participants wasted no time identifying problems with Kruyt's proposal. Government researcher A.J. van Duijne Strobosch, at the time finishing a study for the Ministry of Justice about how anti-discrimination institutes worked in countries similar to the Netherlands, observed that such an institute had to have some sort of executive power in order to be effective. It had be able, 'for example, [to] go into a company and require that they provide information…[T]he lack of any powers to sanction (for example, by revoking an operating permit), [could] lead to a situation in which an independent institute ha[d] to limit its task to recording and forwarding complaints.[461] Other attendees agreed with his assessment and worried that without enforcement powers, a national institute would be 'little more than a symbol.'[462] How those powers should be deployed, however, especially in service of individual victims of racial discrimination remained unclear.

[461] Ausems-Habes, 247 ('Het ontbreken van bevoegdheden kan dan ook grote problemen opleveren voor een particulier instituut, zoals het Nederlands centrum Buitenlanders [NCB] voor ogen staat. Het ontbreken van bevoegdheden om bijvoorbeeld bedrijven binnen te gaan, om gegevens op te eisen en het ontbreken van enige "sanctiebevoegdheid" [zoals bijvoorbeeld het intrekken van vergunningen] kan ertoe leiden dat een dergelijk particulier instituut haar taak zal moeten beperken tot het opnemen en verwijzen van klachten. Een van de taken die het NCB nu voor ogen staat, het doen van onderzoek om te komen tot structurele veranderingen, zou wellicht onuitvoerbaar blijken. Ervaringen uit het buitenland leren verder dat discriminatie, eenmaal in de openbaarheid gebracht en onbestraft, steeds meer verhulde vormen aanneemt, zodat steeds verdergaande bevoegdheden door instituten worden gevraagd. Kortom, een particulier instituut zal dan ook niet of nauwelijks in staat zijn discriminatie structureel aan te pakken en te bestrijden.').

[462] Ausems-Habes, 253.

The variety of open questions regarding the powers and possibilities of a future national institute was reflected in the diverse views from the congress's closing plenary session. There, a panel debated who would be in charge of an eventual institute, people racialized as white and Dutch or people racialized as non-white, referred to in the discussion as 'foreigners'. Surinamese Welfare Federation representative Tamara Pos stated that such an institute 'would have to be strongly directed by foreigners,' and that she would most like to see a 'combative institute, carried by foreigners'.[463] Activist Tansingh Partima, representing the Society of Antiracist Organizations in the Netherlands (Samenwerkende Antiracisme Organisaties Nederland, SARON) agreed and went a step further. He:

> identified distrust for such an institute, and not only on his own behalf. He was a proponent of a rigorous tackling of the problem and implied that, in his eyes, such an institute would have to be 'a colored activist group, with occasional support (and no more) from jurists.' A board of directors that was made up of fifty percent white jurists, he would reject completely.[464]

The summary describes an audience that generally held an opinion in line with Partiman's concern that such an institute would not be decisive in times that needed action for people facing racial discrimination; especially representatives of 'ethnic groups' expressed distrust at the idea of a national institute based on the proposed model.[465] Groenendijk, on the other hand, took what the congress scribes described

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[463] Ausems-Habes, 265 ('een strijdbaar instituut, gedragen door buitenlanders.' The term 'foreigners' (*buitenlanders*) here meant people racialized as non-white, who were often referred to at the time as foreigners, another example of the colonial aphasia/occlusion of the fact that many of those same people had been part of the Dutch empire for centuries.).

[464] Ausems-Habes, 266 ('Partiman wees op het wantrouwen, niet alleen van zijn kant, tegen een instituut. Hij is voorstander van een rigoureuze aanpak van de problematiek en dat impliceert dat het instituut in zijn ogen: "Een gekleurde actiegroep zal moeten zijn, met eventuele steun [en niet meer] van juristen." Een bestuur van het instituut dat bestaat uit 50% witte juristen wees hij dan ook volledig af.')

[465] Ausems-Habes, 266 ('Het bleek dat de zaal er in het algemeen een mening op na hield, welke in het verlengde lag van Partiman's visie. Vooral de vertegenwoordigers van etnische groeperingen spraken van hun wantrouwen uit tegenover een dergelijk instituut. Het meest geuite bezwaar was wel dat er van een dergelijk instituut te weinig daadkracht zal uitgaan, terwijl juist nu directe

as 'a view directly opposite that of Pos', stating that if the future institute's leadership were chosen from among the groups representing people racialized as non-white, it would be 'difficult to give the institute a "[unified] face" at the national level… because the diverse organizations differed so much from each other.'[466]

4.2.1.1. The role of whiteness in perspectives on a national institute against racial discrimination

The above discussion illustrates how whiteness functioned, and I would argue still functions, in postcolonial spaces like the Dutch metropole. Groenendijk's comment implied that a person racialized as white, defined in the terms of the time as someone not belonging to an 'ethnic minority group', would be better able to present a universal, or 'unified face' and the interests of diverse groups better than someone racialized as non-white. This comment framed white experiences as universal or neutral in a way that experiences of people racialized as non-white were not and illustrated a core idea of many critical theories of race addressed above in Section 1.2. These theories observe that ideology and practices of white supremacy are both reflected and perpetuated by framing the experiences and perspectives of people racialized as white as objective and neutral, especially in the field of law, while framing the views of people racialized as non-white as biased, or only representative of similarly racialized people.[467] These frames ignore 'historically contingent contemporary entanglements between power and possibility' which have allowed people racialized as white to obtain positions of authority in Europe at the expense of people racialized as non-white.[468] They position whiteness as the 'dominant and normative space against which difference is measured' as opposed

maatregelen [acties, hulpverlening] noodzakelijk zijn. Men meende dat het instituut hier niet in voorziet.').

[466] Ausems-Habes, 266. ('Dat het moeilijk zal zijn het instituut een "gezicht" op landelijk niveau te geven, omdat de diverse organisaties te veel verschillen.')

[467] See e.g. Adébísí, *Decolonisation and Legal Knowledge*; see also Crenshaw, "Mapping the Margins."

[468] Adébísí, *Decolonisation and Legal Knowledge*, 6.

to a racialized construction like any other.[469] This interaction also illustrates how racialization occurs within a 'meso-level' social organization like the LBR; meso-level racialization occurs at an institutional level between state practice and individual action where white experience and expertise are privileged over that of people racialized as non-white.[470] In this case, the racializing practice of framing perspectives of people racialized as white as universal meant that someone racialized as white was seen as more qualified to lead an organization dedicated to combating racial discrimination than someone more likely to have experienced racial discrimination.

Based on conversations with Professor Groenendijk over the course of my research, I have no doubt he made the above comments without any intent to uphold a racialized hierarchy. He had been directly involved in advocating against racial discrimination in the Netherlands since his own student days, and carried that commitment into both his legal advocacy and academic careers.[471] But he was also a product of his own education and upbringing, which privileged perspectives of people racialized like him as objective and universal, while deeming those of people racialized as non-white as biased and limited. Like many of those of his generation, he saw racism as represented by the Nazis and antisemitism, not as a building block of Dutch wealth and society.[472] His comment on the plenary panel is an example of how even those with the best of intentions can engage in practices that perpetuate existing racialized hierarchies. It was also an illustration of one way that particular racializing practice, of privileging the perspectives and experiences of people racialized as white, would play out throughout the set up and implementation of a national institute against racial discrimination.

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[469] Garner, "The Uses of Whiteness," 3 (citing several classic works on race and whiteness, including Richard Dyer's 1997, Peggy McIntosh's 'White Privilege and Male Privilege: a Personal Account of Coming to See Correspondences through Work in Women's Studies'[1988] and Ruth Frankeberg's Displacing Whiteness: essays in social and cultural criticism [1994]).

[470] Meghji, *The Racialized Social System*, 93–101.

[471] Groenendijk, interview.

[472] Groenendijk.

4.2.2. Grassroots organizations

Grassroots organizations and organizations representing people racialized as non-white would continue to make their critiques of a national institute to combat racial discrimination known throughout the two years that elapsed between the Congress on Law and Race Relations and the official start of the LBR. In May of 1983, for example, Arriën Kruyt met with the members of SARON to discuss their concerns. SARON's notes of the meeting identify Kruyt as an 'initiator of the Anti-Discrimination Institute.' That title was apt; he had authored the proposal for such an institute on behalf of the NCB and the other national 'ethnic minority' organizations.[473] Kruyt would also go on to become the LBR's first director, a process described in more detail below. In May of 1983, however, he was still employed the staff jurist of the NCB.

The purpose of the May 1983 meeting was to discuss both sides' views of an institute, since SARON members had made their critiques of existing proposals public. SARON shared four main criticisms of the existing plans: first, that the existence of such an institute would remove the burden that the government should bear to combat racism; second, that SARON's experience with the Dutch legal system led them to believe that the existing legal approach was inadequate to combat racial discrimination; third, they doubted whether individuals experiencing racial discrimination would go through such an institute, if the end result was that they would simply be sent elsewhere for help. Without individual complaints, SARON members argued, an institute would not be able to spot structural patterns. To this end, SARON believed it necessary to reconsider how an institute would handle individual complaints. SARON opined that any anti-discrimination institution had to serve, in the first place, groups actively engaged in fighting racism; these groups should be consulted before the institute chose its research priorities. Finally, the group believed that the staff and directors of any organization had to be 'ethnically profiled', meaning they had to mostly be people racialized as non-white and/or non-Dutch. The notes of the meeting do not indicate any

[473] Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983.

response from Kruyt or other representatives of the 'anti-discrimination institute'.[474]

4.2.3. Research and recommendations

As discussed in Chapter Three, the politics of accommodation relied heavily on 'expert, scientific' institutions and the advice they provided the Dutch government in making important policy decisions.[475] Consistent with these observations, after receiving the *Ethnic Minorities* report from its Scientific Council on Government Policy (WRR) in 1979, in which the council recommended creating a national institute against racial discrimination, the Ministry of Justice, the Ministry of Interior, and the Ministry of Culture and Social Work solicited even more expert advice. In 1980, they jointly commissioned a study of similar institutes, policies and programs 'in nations comparable to the Netherlands' and assigned the task to the Ministry of Justice's Research and Documentation Centre, (Wetenschappelijk Onderzoek- en Documentatiecentrum, WODC).[476] The result, *Bestrijding van Discriminatie Naar Ras*, by WODC researcher AJ van Duijne Strobosch, was published in the summer of 1983.[477]

Despite the extensive nature of and clear recommendations contained in the WODC report, however, the government failed to incorporate its most urgent advice into its creation of the LBR. While the transformation from research paper to policy always involves practical and political adjustments, this failure to follow, or in any way visibly consider, some of the more critical aspects of *Bestrijding van Discriminatie Naar Ras* is another relevant piece of circumstantial evidence of

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474 "SARON Notulen," May 9, 1983, personal archive Mr G.J.A.M. Bogaers, SARON.

475 See e.g. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 113; R.B. Andeweg and Galen A. Irwin, *Governance and Politics of the Netherlands*, Fourth edition (Basingstoke: Palgrave Macmillan, 2019).

476 The result of this commission was Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras* the results of which will be discussed in more detail later in this chapter.

477 Another report, commissioned at the same time, inventoried all Dutch statutes or regulations that could involve a distinction based on race, nationality or ethnicity and made recommendations for where changes should be made. The result, Beune and Hessels, *Minderheid--Minder Recht? Minderheid, minder-recht?* (1983) was over 500 pages long; the follow up appendix containing excerpts from all these laws was nearly five centimeters thick.

intent for the proposition that the cabinet intended the LBR to be nonperformative in addressing racial inequality in the Dutch metropole.

The first major problem the WODC report identified with existing laws prohibiting or addressing racial discrimination in the Netherlands was that they were rarely, if ever, enforced. The problem of enforcement came up again and again throughout the report. A section addressing the proliferation of *gedragscodes* or behavior codes related to non-discrimination, observed that 'enforcement requires special attention: a code of conduct without any form of enforcement mechanism will probably degenerate into a "dead letter"'.[478] A section on research reached similar conclusions; to date, the report detailed, Dutch research had focused more on the existence of racial discrimination than means to combat it.[479] The admission of statistical evidence in the housing discrimination case *Binderen-Kaya* showed that research could be directed toward gathering evidence for litigation, but the question remained whether the targets of such investigations should be forced to cooperate with an institute attempting to gather such evidence.[480] Complicating a lack of cooperation by targets of investigations, the report observed, was the broader lack of good statistics related to 'racial and ethnic minorities' in the labor or housing markets, since the Dutch government did not collect data on race, but instead on place-of-birth. Over the course of a generation or two, the report continued, this problem would become more pronounced as more people racialized as 'ethnic minorities' would be born in the metropole and missed by statistics related to nationality and birthplace.[481] With this last observation, Van Duijne Strobosch observed in real time the occlusion and erasure of race from Dutch public awareness and discourse as it was expressed statistical data.

A second problem the WODC report observed with existing legal approaches to racialized inequality was the government's reliance on individual complaints to enforce anti-discrimination laws which placed unreasonable burdens on victims of discrimination. In criminal cases, for example, individual complainants were 'bound with hands and feet to the police and public prosecutors, as investigative

[478] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 86.

[479] Van Duijne Strobosch, 87.

[480] Van Duijne Strobosch, 88.

[481] Van Duijne Strobosch, 88.

and accusatory organs.'[482] While a handful of criminal cases had been successful against discriminatory entry policies at bars or discos, there had been no groundswell of legal cases related to racial discrimination in employment or housing; at the time of the report, only one case had been brought related to a personnel advertisement, one against an auto insurance company and one against a language institute.[483] The report attributed the lack of cases, first, to the reluctance of victims to report incidents and, second, to the failure of police and prosecutors to follow up on this cases. The two problems were not unrelated, the report elaborated, since in addition to fears of reprisals or being called hypersensitive, language barriers, and lack of information about how to file complaints, victims of racial discrimination also identified a general lack of trust in how the justice systems would handle any complaints they did file.[484] This fear was well founded, the report indicated, as 'police do not take complaints of racial discrimination seriously, the procedures take a long time and the[re are] difficulties in providing proof of discrimination and the general ineffectiveness of criminal proceedings'.[485]

Civil cases that sought court orders to compel change in discriminatory practices or financial damages were useful tools, the report observed, but they were even more rarely filed than criminal ones. One judge in Amsterdam had added symbolic damages of one guilder (a civil law penalty) to a criminal case where the victim was refused entry to a bar; the *Binderen-Kaya* case was widely cited by academics and advocates in the early 1980s as opening the possibility for using statistical evidence as proof of discrimination in the housing and labor markets, but it remained the only case of its kind. Administrative law allowed for local officials to revoke the liquor licenses of bars or restaurants that violated Article 429quater, if the sentence included a fine greater than 1000 guilders, but at the time of the report, no judge had ever imposed so high a penalty. Dutch law did not allow class action suits, where multiple victims could bundle their complaints into one case, and judges frequently refused to allow organizations or associations to file cases on

[482] Van Duijne Strobosch, 89.

[483] Van Duijne Strobosch, 89.

[484] Van Duijne Strobosch, 90.

[485] Van Duijne Strobosch, 90.

behalf of victims, so the private, individual, criminal complaint remained the most available means of legal action against racial discrimination.[486]

The WODC report did not just point out problems with existing laws, it made recommendations for improvement. Most of these recommendations did not focus a national institute. Almost the same number of pages that addressed an institute were dedicated to suggesting that the government engage in 'contract compliance', the practice of requiring parties receiving licenses or subsidies from the government to enforce their anti-discrimination policies, or to engage in affirmative hiring and recruitment of 'ethnic minorities'.[487] As an illustration that contract compliance was a viable strategy, the report highlighted the work of grassroots organization Quater, which had succeeded in pressuring the mayor and town council in Hilversum to rent city-owned space only to organizations with non-discrimination policies.[488] Despite the attention and recommendation of these other solutions, creating a national institute was the one option that ended up in the final *Minorities Policy Note*.

The WODC report ended with discussion of a national institute which would use legal measures to combat racial discrimination. It summarized the two proposals already submitted to the ICM, with some changes to what was described in the Congress on Law and Race Relations bundle. Most significantly, the WODC report attributed to the welfare/advisory coalition proposal the suggestion that a future anti-discrimination institute should be able to initiate legal procedures in its own name, and to compel compliance with research requests/requests.[489] Also contrary to the version presented at the Congress, the report observed that these groups did not envision general education or awareness campaigns as part of the future organization's tasks, as these campaigns involved a different type of expertise and skill than those related to legal knowledge and expertise required for the first two priorities.[490] The discrepancies did not matter much however; the government

[486] Van Duijne Strobosch, 89.

[487] Van Duijne Strobosch, 96–100.

[488] Van Duijne Strobosch, 99.

[489] Van Duijne Strobosch, 77.

[490] Van Duijne Strobosch, 77.

incorporated neither of these recommendations, nor any those related to enforcement or the power to compel information, into the charter of the LBR.

4.3. Cabinet proposal

In September 1983, the cabinet unveiled its vision for a national organization that would use legal means to address racial discrimination in the Netherlands as part of its 1983 *Minorities Policy Note (Minderhedenbeleid Nota)*. As discussed in Chapter Three, the LBR was very much in line with the other policies introduced in that policy note, which shifted away from a 'categorial policy' of channeling social resources through organizations representing specific groups (categories) of people racialized as non-white and towards a 'general policy' of making all public institutions equally accessible. In this context, the goal of the LBR was to improve equal treatment of all people by making anti-discrimination laws more effective.[491]

The *Note* acknowledged Van Duijne Strobosh's WODC report and its conclusion 'based on experience in other countries' that enforcement was the most important factor to realizing the promises of anti-discrimination norms and laws, and that the Ministry of Justice was responsible for this enforcement.[492] In the same paragraph, however, the *Note* shifted the burden to victims of discrimination and reiterated the cabinet's refusal to change existing laws:

> [E]nforcement of the norm in our legal system is also done primarily by those whose interests are directly affected and who - because they do not accept it - stand up for their rights in some way. For those who believe themselves to be victims of discriminatory treatment, in principle, the way is open to them independently, with or without the help of a lawyer or other legal aid agency, to seek their rights before the courts through the normal procedures known to our legal system.[493]

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[491] Kamerstukken II 1982/1983, 16102, nr. 2, 14 ('Onder dit thema worden maatregelen vermeld om de rechtspositie van leden van minderheidsgroepen te verbeteren en om discriminatie te voorkomen en te bestrijden.').

[492] Kamerstukken II 1982/1983, 16102, nr. 2, 96.

[493] Kamerstukken II 1982/1983, 16102, nr. 2, 96 (translation mine).

The *Note* continued to emphasize victims' responsibility for enforcement of anti-discrimination laws in the following pages, stating that if criminal laws were not sufficient, these individuals could file administrative or civil procedures, and if they exhausted all domestic options they could exercise the right to file individual complaints under international treaties.[494] The government also expressed its preference that non-governmental entities, like 'social organizations and in particular businesses' take up the cause of enforcing anti-discriminatory norms in their own internal policies and practices.[495]

The cabinet's insistence that its existing procedures were adequate, given the critique of those procedures from the multiple sources mentioned in the previous pages provides further evidence of its intent to create an organization that gave the appearance of action while failing to change any practice or policy that would materially affect the status quo racialized hierarchy in the Netherlands. The Note itself acknowledged that victims of discrimination were often in 'vulnerable' positions and that there were many barriers to filing individual claims of racial discrimination in civil court cases, including complicated procedures, high costs, and difficult questions of proof.[496] To address these barriers, the cabinet offered the creation of a national institute to combat discrimination.[497] It did not, however, grant that organization any of the powers needed to address problems with enforcement or evidence collection. The cabinet proposed a national organization with the following priorities:

a. advising victims of discrimination and being available to them as much as possible;
b. providing training and expertise for legal advisers and building up a national network of legal advisers;
c. serving as a source of information for local groups active the field of anti-discrimination;

494 Kamerstukken II 1982/1983, 16102, nr. 2, 96. The right to file individual complaints under the ICERD had come into effect in 1982, when Senegal became the 10th country to ratify the treaty, an option mentioned by Minister Rietkerk in his address to the Congress on Law and Race Relations.

495 Kamerstukken II 1982/1983, 16102, nr. 2, 97.

496 Kamerstukken II 1982/1983, 16102, nr. 2, 98–100.

497 Kamerstukken II 1982/1983, 16102, nr. 2," 101.

d. providing information to (potential) victims of discrimination on how to defend themselves against discriminatory behavior; [and]
e. identifying structural forms and patterns of discrimination.[498]

The *Note* acknowledged that listing these priorities did not address many questions raised by the WODC report and other critical voices; it did not specify what an organization would do for individual victims of discrimination, for example, or what would be done after the organization identified structural forms or patterns of discrimination. Instead, it deferred these questions to the Interdepartmental Commission on Minority Affairs (ICM) who would further advise the government on these matters, with the priority being that any outcomes 'lower the threshold for victims of discrimination to turn to the courts in appropriate cases.'[499] The *Note* made clear, however, that whatever the ICM advised, the resulting national institute would not be an agency empowered to resolve individual complaints of discrimination, nor would the government be expanding the legal options to address racial discrimination any time soon. 'Only if it were unambiguously clear that the current legal channels were inadequate,' the *Note* stated, 'and would remain so with the measures outlined above' could such an addition be considered. [500] In the meantime, the cabinet envisioned 'a foundation (*stichting)* with broad societal support (*maatschappelijk draagvlak)*, where societal organizations and organizations of minorities are represented'.[501]

In the *Note*, the cabinet promised to fund the national institute for five years, using funds already allocated to the 'anti-discrimination portion of the minorities policies', after which point the cabinet would evaluate the foundation's mission and functions. In the meantime, the cabinet instructed ICM to prepare advice based on consultation with 'the organizations of minorities and the relevant societal

[498] Kamerstukken II 1982/1983, 16102, nr. 2, 100–101.

[499] Kamerstukken II 1982/1983, 16102, nr. 2, 103.

[500] Kamerstukken II 1982/1983, 16102, nr. 2, 103.

[501] Kamerstukken II 1982/1983, 16102, nr. 2, 102 (leaving open the possibility of a (separate) 'small, decisive agency' to support the work of the foundation, but giving no further explanation of what form or structure this smaller organization would take, or when it would be determined necessary).

organizations'. With that, the cabinet considered its response to the 1978 Tweede Kamer motion to investigate a national institute complete.[502]

4.4. Tweede Kamer critique

While the cabinet may have considered its work on the details of a future anti-discrimination institute to have been sufficiently delegated to the ICM, members of the Tweede Kamer were less convinced. The voiced their concerns in several sessions with cabinet members in early 1984. D'66 MP Elida Wessel-Tuinstra cited 'the government's own report' along with the Prinsenhof Conference on racial discrimination held in Amsterdam in early 1984, for their observations that the government itself was also a cause of racial discrimination, and argued these practices necessitated 'an actually independent office that had real power, also with respect to [policing] the government'; Wessel-Tuinstra went on to argue that such powers were not reflected in the proposed 'national bureau', which was fundamentally different from 'an anti-discrimination institute'.[503]

Pacifist Socialist Party MP Andrée van Es was also highly critical of the government's proposal. First, she criticized the *Minorities Policy Note* more broadly as too quickly abandoning categorical support for 'minority' welfare and advisory organizations. 'Fighting for an equitable position in a dominant majority culture is a long process,' she observed making comparisons to civil rights in the United States, as well as the emancipatory movements of women and Catholic people in the Netherlands. She continued:

> Nowhere in this *Minorities Policy Note* has it been observed that the Dutch culture is not only dominant because it is the majority culture, but because it has been declared superior. Racism has a long colonial past. In our society, 'white' not only outnumbers 'black' in numbers, but it is also considered better than 'black'. While excesses of discrimination can be combated with

[502] Kamerstukken II 1982/1983, 16102, nr. 2, 103.

[503] Handelingen II 1983/1984, 16102, nr. UCV 48, 38, https://zoek.officielebekendmakingen.nl/0000132420.

> anti-discrimination institutions, structural inequality, such as occurs in the labor market or the housing market, cannot.[504]

Along with Communist Party MP Ina Brouwer, Van Es was one of the few members of parliament, or indeed of any of the people racialized as white and involved in issues of racial discrimination in this period, to publicly make the connection between racial inequality in the metropole and the Dutch colonial past.[505] She brought up several times during the parliamentary debate that minority groups were in the best positions to determine what they needed, and had already advised the cabinet what a legal organization should look like; she then asked Minister of Interior Rietkerk if he would abide by their advice.[506] Rietkerk demurred, saying that while the goals of the organization were 'inspired' by these discussions, it was not necessarily the case that they would follow them directly. He added that the details of what he was by now referring to as the Landelijk Bureau Racismebestrijding (LBR) would be handled by the Ministry of Justice and that specific questions should wait for its minister.[507]

When Justice Minister Korthals Altes appeared before the chamber several days later, he focused more on the boundaries the government would place on the coming national institute than on its powers. The future LBR would not pursue legal claims of discrimination on its own, he clarified; if needed, the institute could refer cases to the national ombudsman or the public prosecutor.[508] Because the LBR would receive all its funding from the Ministry of Justice, the ministry would have to approve the organization's articles of incorporation (*oprichtingsakte*), budget

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[504] Handelingen II 1983/1984, 16102, nr. UCV 48, 18.

[505] Handelingen II 1983/1984, 16102, nr. UCV 48, 16; Van Es would also publish a version of her critique of the government's racial discrimination policy with journalist Rudi Boon in Rudi Boon and Andrée van Es, "Racisme en overheidsbeleid," in *Nederlands Racisme*, ed. Peter Schumacher and Anet Bleich (Amsterdam: Van Gennep, 1984), 109–25.

[506] Handelingen II 1983/1984, 16102, nr. UCV 48, 38.

[507] Handelingen II 1983/1984, 16102, UCV 48, 41.

[508] Handelingen II 1983/1984, 16102, UCV 61, 3–5, https://zoek.officielebekendmakingen.nl/0000132433.

and core activities, and board of directors.[509] While this subsidy gave the Ministry of Justice some say over the eventual direction of the LBR, the Minister did not think that right to oversight extended to members of the Tweede Kamer. When liberal party (Volkspartij voor Vrijheid en Democratie, VVD) MP Jan Kees Wiebenga asked when the chamber would have a chance to comment on the articles of incorporation or subsidy for the LBR, Minister Korthals Altes replied that he didn't think that time would come.[510] With this response, the minister seemed to characterize the LBR as public for the purposes of Ministry oversight, but private when the Tweede Kamer requested the same.

This contradictory framing of the LBR continued with respect to discussions about the composition of the first board of directors, which would be listed in the articles of incorporation and therefore also require approval from the Ministry of Justice. When asked why the Ministry should approve the first board, Korthals Altes answered, 'a foundation (*stichting)* is a non-democratic organizational form' and that board members could be 'co-opted' if appointed by particular organizations. It was therefore useful for the Ministry to appoint the first board, 'in consultation with invested parties (*de betrokkenen)* so that in addition to representation of the organizations involved, there will be, to a certain extent, legally skilled and experts on the board.'[511] Korthals Altes's vision for who should sit on such a board included representatives from three areas: people from organizations of 'minorities and minority welfare organizations', people from 'societal organizations' like labor unions and Association of Churches, and finally people from the legal sector, including people from 'university faculties, judges, the Dutch Bar Association (Nederlandse Orde van Advocaten*)*, the union of legal aid providers and the Dutch Jurists Committee for Human Rights.' He added his opinion that it was important

[509] Handelingen II 1983/1984, 16102, UCV 61, 5 ('Zonder aan het private karakter van het bureau afbreuk te willen doen, is het vanuit een oogpunt van beheer noodzakelijk dat aan het verlenen van subsidie een aantal voorwaarden wordt verbonden….').

[510] Handelingen II 1983/1984, 16102, UCV 61, 23 ('Er zal met de subsidiegever wel van gedachten worden gewisseld over hoe het precies in het vat zal worden gegoten. Ik zie echter niet helemaal in hoe de inspraak van de Kamer tot haar recht zou kunnen komen wanneer wij te maken hebben met een privaatrechtelijke stichting die statuten krijgt.').

[511] Handelingen II 1983/1984, 16102, UCV 61, 24.

that people get seats on the board 'based on their expertise.'[512] Korthals Altes identified the government's position that an anti-discrimination bureau should not operate 'only with the consent of [ethnic] minorities' as being 'the most important difference' between the proposals put forth by the NCB and the national 'minority organizations' and the cabinet's own plan. He maintained, however, 'that is our philosophy: the National Bureau is not only a cause of the minorities themselves but must also find support by the majority.'[513]

While on its face, the idea that the whole of society should support the work of combatting racial discrimination does not seem controversial, the idea of 'broad societal support' (*breed maatschappelijk draagvlak)* is a tricky one when it comes to protecting the rights of people in a political minority (in this case people racialized as non-white on the political issue of white supremacy/racial inequality). If, for example, the majority of the Dutch population did not support active measures to reduce racial discrimination, how should the LBR respond?[514] The idea of requiring majority support for anti-discrimination laws also ran counter to the ideas of universal human rights that underscored the International Convention on the Elimination of Racial Discrimination, which the Netherlands had ratified in 1968, as well as Article One of the Dutch constitution, which gave people a right to be free from discrimination based on race, and was also added in 1983. The cabinet ministers did not provide answers to these questions, but they would continue to return throughout the organizational life of the LBR.

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[512] Handelingen II 1983/1984, 16102, UCV 61, 3.

[513] Handelingen II 1983/1984, 16102, UCV 61, 3 ('Dat is onze filosofie: het landelijk bureau is niet alleen een zaak van de minderheden zelf, maar moet juist ook een draagvlak vinden bij de meerderheid.... Voor een echt geïntegreerd, door iedereen gedragen minderhedenbeleid moeten daarin ook voor de meerderheid representatieve organisaties zijn opgenomen. Een samenhangend antidiscriminatiebeleid kan alleen worden gevoerd als het door de gehele maatschappij wordt gedragen. Deze overtuiging ligt hieraan ten grondslag en zij mag ons naar mijn mening niet worden ontnomen.').

[514] For examples of how majoritarian politics can work against the rights of fellow citizens, see Jones, "Citizenship Violence and the Afterlives of Dutch Colonialism," 122 ('Right-wing populists seem to seek restoration of economic and socioeconomic supremacy for the normalized, majoritarian part of the citizenry via restoration of racialized supremacy and hierarchies.').

4.5. Conclusion

Given the context of what the Dutch government knew as it set out the organizational parameters the future LBR, one can conclude that the ultimate inability of the LBR to perform in a way that would materially impact racialization in the Dutch metropole was not accidental, but baked into its design. The government knew from the beginning that the laws and programs they were proposing would not be effective in addressing racialized discrimination or inequality. They knew, for example, that a criminal law approach to racial discrimination was not working; they knew police were not accepting complaints, that prosecutors were not filing charges, and that judges were not issuing penalties. The government had been advised, by their own researchers and experts, that racialized inequalities in hiring and housing could be better tackled by contract compliance, affirmative action or incentive programs than by punitive measures, but they neglected to change their approach. Researchers had also told government ministers that enforcement was key to making non-discrimination norms effective, and that a national antidiscrimination institute had to have the power to compel production of evidence and impose penalties for non-compliance; the ministers created an institution without any of these powers. Finally, the government knew that an independent organization needed access to courts to compel government agencies and officials to comply with their own anti-discrimination laws, but they made themselves immune from such policing, and made LBR funding contingent on the understanding that lawsuits would be undertaken only as a last resort.

Despite the cabinet's clear intentions and the limitations it imposed, the potential still existed for the LBR to make a material impact on the practice of racialization in the Dutch metropole. It had a national platform, funding for a full-time staff and operating budget. It had the ear and support of high profile academics and government-funded 'minority welfare organizations'. Despite initial objections, the cabinet ultimately granted the LBR the power to file lawsuits in its own name. Whether and how it would make use of those powers and possibilities would be up to the board of directors and staff of the future LBR, and is the subject of the remaining chapters.

5. Nonperformative antiracism? The mandate to use 'legal measures'

5.1. Introduction

The cabinet that created the Landelijk Bureau Racismebestrijding (LBR) had no intention of it becoming an agent for changing the racialized status quo of the social and economic hierarchies in the Dutch metropole, as the previous chapter demonstrated. Despite these intentions, however, the eventual charter of the LBR did permit activities that had the potential to do so. That charter identified the main purpose of the LBR as 'preventing and combatting racial discrimination in the Netherlands'; it charged the organization with 'identifying and combatting structural forms and patterns of discrimination' and included among the authorized means to pursue this goal 'filing legal or administrative procedures under its own name.'[515] Filing cases was listed last among the listed priorities for the LBR, and required approval from the organizational board of directors, and the Ministry of Justice had to approve the LBR's annual budget and could theoretically fail to do so if too much were spent on such cases. But the action was listed in the charter as allowed, and thus invested the LBR with a certain amount of potential power, which would be up to the board of directors and staff of the LBR to transfer into action.

Unfortunately, over the 15 years in which the LBR operated under this charter,[516] the LBR did not mobilize its legal power in a way that either identified existing racialized hierarchies in the Netherlands, and the resulting patterns and structures of racial discrimination through which those hierarchies were maintained, nor did it employ adversarial legal strategies to combat those structures. To the contrary, over the course of its organizational life, it consistently downplayed adversarial legal action, and as such the enforcement of anti-

[515] Maurik, "LBR Akte van Oprichting," Article 2.

[516] The activities evaluated in this chapter include those from the official opening of the LBR, in October 1985, through its merger with the ADO (Anti-Discriminatie Overleg) and ARIC (Anti-Racism Informatiecentrum) in 1999. While the LBR continued to exist as a legal entity until 2007, after the merger the focus on legal measures and racial discrimination ceased to be as central to its organizational mission.

discrimination norms. By systematically decentering adversarial legal strategies, the LBR moved away from the enforcement potential that makes *legal* mobilization different from any other political or social organizing and which made it, as the only national, government-funded organization chartered to use law to combat racial discrimination, unique as an organization; instead it became a nonperformative antiracist organization. As defined by Sara Ahmed, such organizations claim to stand for antiracist norms and practices, but in fact take little to no action to materially end those practices.[517]

While legal mobilization theory makes clear that litigation is not the only way groups seeking social change can mobilize the law, the willingness to engage in it does play an essential role. Litigation is but one tool in a basket of 'legal measures' that occur 'in the shadow of law'; others include framing of grievances as rights, raising consciousness about those rights and motivating people to 'name, blame and claim' them.[518] Sometimes the mere threat of legal action can move parties to negotiate changes in policy or practices that meet a movement's demands. However, for such 'legal leveraging' to work in practice, advocates or activists must be able to follow through on such threats.[519] The LBR rarely, if ever, made good on these threats and so failed to perform on the one front it was created to address. This reluctance to engage in adversarial legal activity was present from the moment the LBR began, through the period when it officially abandoned its organizational focus on legal measures in 2000.

The LBR's chosen tactics not only failed to materially perform against racial discrimination in the short term, they perpetuated the occlusion of the role of racialization in Dutch society in the longer term. Failing to file legal cases or complaints about racial discrimination created gaps or absences in legal archives where those cases would have been, an example of what historian Michel Rolph Trouillot describes as 'silencing the past' at the moments of both 'fact creation (the

[517] Ahmed, "The Nonperformativity of Antiracism," 114–17; Sara Ahmed, "'You End up Doing the Document Rather than Doing the Doing': Diversity, Race Equality and the Politics of Documentation," *Ethnic and Racial Studies* 30, no. 4 (July 1, 2007): 590–609, https://doi.org/10.1080/01419870701356015.

[518] McCann, "Litigation and Legal Mobilization," 524–25.

[519] McCann, "Law and Social Movements," 30.

making of *sources*)' and 'fact assembly (the making of *archives*)'.[520] Dutch scholar of racialized violence, criminologist Rob Witte, observed the results of this silencing in both his 1995 doctoral thesis and 2010 book on the subject; he had to use newspaper databases and archives to track such acts because no national archive chronicled them, a process he observed allowed people to deny that such violence was a national, structural problem in the Netherlands.[521] In the case of acts of racial discrimination, which unlike riots, fights or attacks addressed in Witte's research, occurred more often outside of public view and were less likely to be covered by journalists, the problem of erasure and silencing would be, and was in fact, even more complete.

As discussed throughout this manuscript, I am not arguing this exclusion of facts from the historical record was an intentional, or even conscious, act on the part of the LBR directors and staff. They perceived the incidents of racial discrimination to which they were responding as just that, aberrant incidents. They did not interpret those acts as signs of larger structural practices of racialization that had deep roots in Dutch history and still impacted Dutch society. They did not perceive structural racism as an afterlife of the racializing practices of slavery and colonialism. In this way, the views of the directors and staff of the LBR, and the politicians who authored their mandate, were also products of colonial aphasia and occlusion; they were based on perceptions of the Netherlands as a tolerant nation with no deep history or tradition of racism, as discussed in Section 3.4.2 above. This ignorance was hardly innocent, however; as addressed in multiple sections above, there were plenty of organizations and activists who did make those connections. The decision to ignore or dismiss that information was a sign of a type of arrogance that can also be considered a colonial afterlife and byproduct of ideological white supremacy. It is also an example of how colonial occlusion/aphasia reproduces itself, informing strategies which lead to non-performativity which leads to more aphasia and occlusion of the role of race in both Dutch history and its present.

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[520] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Kindle, Beacon Press 2015) Ch 1 (emphasis in the original).

[521] See e.g. Witte, *Al Eeuwenlang Een Gastvrij Volk*, 193; Rob Witte, "Racist Violence and the State: A Comparative European Analysis" (1995).

5.2. LBR start-up period (1983-1985): Limiting expectations

The set-up period of the LBR is notable for how quickly the priorities of the young organization shifted away from the idea of using courts and legal strategies to combat racial discrimination. Despite warnings contained in the government's own reports about the importance of enforcing anti-discrimination norms,[522] and the potential for courts as vehicles for enforcement, despite the experiences of grassroots and 'ethnic minority' groups, and independent lawyers engaged in court-based strategies, despite the potential precedent of the 1982 *Binderen-Kaya* case that statistics might be admissible as proof of discrimination, despite the explicit mention of using 'legal means' in the foundational charter of its organization, the people responsible for setting up the LBR seemed more concerned with managing what they saw as 'too high expectations' for the young organization and avoiding being 'drowned' in a 'flood' of requests for help with individual complaints than on building an organization capable of living up to its name.[523]

The people responsible for setting up the LBR were a professionally impressive group. Nominated in October 1984 by Justice Minister Korthals Altes

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[522] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*.

[523] Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983, 2 (In this first proposal Kruyt used imagery of floods and drowning to describe the threat of a large number of complaints that would likely face an antidiscrimination institute. He wrote there, 'De staf van een dergelijk instituut gaat snel door de overvloed van klachten prioriteiten stellen en selecteren in welke zaak wel en in welke zaak geen actie word ingesteld. Een overvloed van individuele gevallen belemmert de mogelijkheid om gelijktijdig aandacht te besteden aan de structurele aanpak van een probleem.'); These metaphors of storms and floods have been repeatedly invoked by anti-immigration advocates both in the period studied and now. While I found no evidence whatsoever of any anti-immigrant sentiment behind Kruyt's metaphors, and in fact he has continued to advocate on behalf of recent immigrants to the Netherlands throughout his career, his word choice presented then, as now, an unfortunate harmony with the general hostility toward people racialized as 'foreign' and living in the Dutch metropole. See e.g. David Shariatmadari, "Swarms, Floods and Marauders: The Toxic Metaphors of the Migration Debate," *The Guardian*, August 10, 2015, sec. Opinion, https://www.theguardian.com/commentisfree/2015/aug/10/migration-debate-metaphors-swarms-floods-marauders-migrants; Tyler Jimenez, Jamie Arndt, and Mark J. Landau, "Walls Block Waves: Using an Inundation Metaphor of Immigration Predicts Support for a Border Wall," *Journal of Social and Political Psychology* 9, no. 1 (April 20, 2021): 159–71, https://doi.org/10.5964/jspp.6383.

and Minister of Interior Rietkerk, they included five men: Athanasios Apostolou, then director of the Dutch Association for Foreign Workers (Stichting Buitenlandse Werknemers), Hugo Fernandes Mendes, an attorney and qualified judge and named in his capacity as a University of Leiden researcher, E. D. Nijman, 'adult educator and teacher', and Usman Santi, former legal counsel for the Moluccan Advisory Organization, named in his capacity as 'lawyer of Utrecht'; the chair of the board was former judge, Hugo Pos.[524] Both Pos and Fernandes Mendes were born in Suriname and had connections in the various organizations representing the Surinamese community; Pos's daughter Tamara had represented the National Federation of Surinamese Welfare Organizations at the 1983 Congress on Law and Race Relations, discussed in the previous chapter.[525] The set-up board was responsible for developing a statute consistent with ministry financing rules and sets of rules governing personnel, financing and budgeting, finding office space, creating job descriptions for future personnel, developing a confidentiality policy, making a workplan for the first year, and selecting and recruiting a general board of directors.[526] They were given six months to do so, a deadline they succeeded in meeting.

In December 1984, the set-up board received a 162-page 'workbook' created by Leo Balai, then serving as 'bureau assistant' for the set-up board. The document began with Balai's suggestions of priorities for the set-up board and continued with suggested staffing and organizational structure, including a draft profile of a director, and an initial workplan for 1985. Thereafter followed a collection of eleven documents meant to inform an assist the board with their planning and decision-making.[527] Among Balai's first observations and suggestions, was that as soon as it

[524] Kamerstukken II 1984/1985, 16102, nr. 91 (naming members of the LBR start-up board of directors), https://zoek.officielebekendmakingen.nl/0000124484.

[525] Pos had a long and eventful history as lawyer, WWII resistance fighter, and judge, as well as essayist and poet. His 1995 autobiography described the death of Tamara, from cancer, in 1988. Hugo Pos, *In Triplo*, 1st ed. (Amsterdam: In de Knipscheer, 1995], https://www.dbnl.org/tekst/pos_002intr01_01/colofon.php.

[526] Kamerstukken II 1984/1985, 16102, nr. 91, 2–3.

[527] Leo Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)" (Amsterdam: Landelijk Bureau Racismebestrijding, December 3, 1984), IDEM Rotterdam Kennisbank. These documents included:

began the LBR would likely be bombarded with different requests for legal support or advice. To avoid feeding into 'the wrong expectations' about how the LBR could or would respond, he advised the board to quickly prioritize specific problem areas on which it would work. The topics featured in the literature in Balai's workbook focused mainly on problems between police and 'foreigners', housing of 'ethnic minorities' and discrimination in the labor market. These were, incidentally, also the problems identified in much of the government's other 'Minorities Policies'. Balai conceded that other problems existed under the rubric of racism and raised the question whether the chosen forms were the most drastic (*meest ingrijpende)* facing Dutch communities racialized as 'ethnic minorities', but he made no other suggestions of priority areas for the future LBR.[528]

Balai's concerns about impossible expectations opened his advisory memo, and his workbook closed with a memo from law professor C.A. Groenendijk, which raised similar concerns. Basing his opinion on visits to the Commission for Racial Equality (CRE) in the United Kingdom, and literature about anti-discrimination commissions in the United States and Paris, Groenendijk listed 'far too high expectations' as one of three main problems facing a new LBR. The other two

- report by the Advies Commissie Onderzoek Minderheden (ACOM), which included advice to the Minister of the Interior on 'Discrimination, Prejudice and Racism in the Netherlands' (1984);
- report, 'Police and Foreigners' copied by the COMT (1983);
- A.J. van Duijne Strobosch's *Bestrijding van Discriminatie Naar Ras*, (1983);
- The summary of an NCB study day on housing and 'ethnic minorities' held 26 and 27 October 1984;
- report by the Instituut Bestuurswetenschappen on 'mogelijke discriminatoire werking van Rijksregelingen op de woningvoorziening van etnische minderheden' (1981);
- Excerpts from a report by the Ministry of Housing and Spatial Planning on foreign workers and rental housing (1983);
- Excerpts from report by the University of Amsterdam's Institute for Social Geography, 'Turkish and Moroccan Youth in the Labor Market' (1984);
- Excerpts from an NCB report *Juridische Knelpunten bij de verbetering van de arbeidsmarktpositie van migrerende werknemers* (1984);
- Summary of C.A. Groenendijk's lecture on labor market discrimination from the first meeting of the Working Group on Law and Racial Discrimination (1983).

[528] Balai, i.

challenges were attempting to change behaviors of society without a clear basis of power, and gaining trust from groups representing 'minorities' who were victims of racial discrimination, as well as government institutions whose behavior might be discriminatory.[529] Groenendijk echoed Balai's advice that one way to avoid these high expectations was choosing clear and explicit priorities; to this he added avoiding publicity until the bureau was fully staffed and making choices clear to all interested parties. He recommended not choosing more than two social sectors on which to focus (for example labor and housing) and basing this decision not only on the level of need, but also the possibility to achieve victories 'with small investment'.

Groenendijk's memo also illustrates how the LBR began to deemphasize adversarial legal strategies before it even opened its doors. In two parts of the memo, Groenendijk outlined the bases from which the LBR could draw the power to accomplish its goals. These bases included 1) information, 2) good relationships with lawyers, 3) good relationships with 'minority organizations,' 4) political good will, 5) access to judges and 6) publicity (which he cautioned could be a boomerang and also work against the organization).[530] The ordering of these bases is telling, with access to judges as the only significant 'legal' power the organization would have, coming near the end.

Placing legal strategies near the bottom of the list contrasted the advice Groenendijk had given to lawyers and advocates a year earlier, at the opening meeting of the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie, Werkgroep R&R) in September 1983; there he had extoled the potential help an organization dedicated to legal intervention in cases of racial discrimination could offer. Unlike an individual acting alone, Groenendijk observed then, an organization could file complaints with the police or public prosecutor on behalf of an individual victim, in some cases even keeping the name of the victim a secret. Such an organization could seek injunctions against discriminatory advertisements, promotional or firing schemes by employers, complain to the national ombudsman, at the time a recently established position, or even pursue international remedies via the United Nations' Commission Against Racial

[529] Balai, 152 (memo by Kees Groenendijk, "Beleidskeuzen en beslissingen op korte en lange termijn").

[530] Balai, 154.

Discrimination. Legal action was 'no miracle cure', he cautioned, but that was not an excuse to forego legal tools, rather a charge to pursue them 'strategically, selectively and stubbornly'.[531] Nine months before this lecture, in his opening address to the Congress on Race Relations, he had been even more enthusiastic. There, Groenendijk observed that a problem with the laws and regulations associated with Dutch 'minorities policies' was that 'protective' measures against discrimination were phrased in passive language and hardly enforced.[532] He challenged his audience then to think creatively about how to combine different legal strategies and to learn from the successes, and failures, of legal strategies in other countries. However, by October of 1984 he was advising that the LBR prioritize information gathering, 'good relationships' with legal aid groups and minority organizations, and 'good will' and 'political credit' with the Tweede Kamer and government ministries, over the 'legal measures' the LBR was created to undertake.[533]

Groenendijk told me recently that the different messages above did not represent an abandonment of his commitment to the importance of creative or aggressive legal strategies, but the idea that there should be a division of labor in which groups would pursue these strategies. He hoped that independent lawyers and the Werkgroep R&R would actively pursue litigation, while the LBR would support these efforts. His memo supports this recollection, recommending under the second basis of LBR's power, having 'good relationships with legal service providers' and continuing to 'build up' its relationship with the Werkgroep R&R.[534] But even with this clarification the advice seems counter intuitive. The Werkgroep R&R was a group of lawyers and advocates who met on their own time in evenings

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[531] Joyce Overdijk-Francis (ed.), "Discriminatie op de Arbeidsmarkt," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, September 6, 1983), 16, Nationaal Bibliotheek ('Ook op dit gebied blijkt het recht selectief te werken. Dat is geen reden om het gebruik van rechtsmiddelen achterwege te laten. Het is eerder aanleiding om de beperkte mogelijkheden tot correctie van de bestaande achterstelling van leden van etnische minderheidsgroepen weloverwogen, selectief en hardnekkig te gebruiken.).

[532] Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 13.

[533] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," 152–54 (Groenendijk memo).

[534] Balai, 154.

after their regular office hours. They paid dues to cover the costs of sandwiches during their meetings, and photocopies of the summaries of those meetings. The only government subsidy the group received was indirect, through the salary of its chairperson, Joyce Overdjik-Francis; she was also the legal counsel for the subsidized Antillean welfare organization, Plataforma di Organisashonnan Antiano (POA), which allowed her to use working hours to administer the Werkgroep R&R.[535] The LBR, by contrast, was fully funded by the Ministry of Justice with a mandate to use legal measures, including filing cases. It had a full time staff, including two jurists, a director, and several full-time researchers, dedicated office space and the opportunity to secure additional funding for special projects. Moreover, the government claimed to have created the LBR to use 'legal measures' including filing cases to address the problem of access to courts and the legal processes on which it based its enforcement of laws and norms against racial discrimination. The decisions of LBR leadership to downplay these powers and responsibilities from the beginning seems indicative, of a recognition (or perhaps resignation) by those involved that the actual practice of the organization would be something other than that.

5.2.1. Organizational charter

Just in time to meet the six-month deadline set by Justice Minister Korthals Altes, the set-up board of the LBR filed its *akte van oprichting*, or organizational charter, with the Dutch Chamber of Commerce (Kamer van Koophandel) in April 1985. Despite two years of discussions with interested parties across the racial and political spectrum, despite hundreds of pages of research reports and at least as many pages of Tweede Kamer questions and debates, the charter was strikingly similar to proposal for a national institute submitted that Arriën Kruyt had submitted to the government in 1983 on behalf of the four national welfare and advisory organizations representing 'ethnic minority' groups, and to the statements made by the ministers of Justice and Interior to parliament later that year. All three versions mentioned the importance of building a national network of legal service

[535] Joyce Overdijk-Francis, interview by Alison Fischer, audio & transcript, September 9, 2021, in author's possession.

providers and the idea that a national organization would disseminate information and assist with the education of those providers. While the cabinet proposal left out the explicit possibility of filing legal cases in its own name, this was an early component of the coalition's proposal and was brought back in the final charter, albeit framed as something of a last resort. Indeed, perhaps the most telling difference among the proposals and the final charter was the organization of priorities: while both the coalition and cabinet proposals had placed service to victims of racial discrimination as first among their priorities, the final charter placed 'standing by and advising victims' as fourth of its six priorities.

Arriën Kruyt proposal	Cabinet Proposal	LBR Akte van Oprichting
1. be readily accessible to the victim of discrimination; be available by telephone on a permanent basis 2. seek to combat patterns of racial discrimination and conduct research to that end; be able to conduct investigations and subsequently initiate legal proceedings 3. provide education to prevent discrimination 4. establish such a nationwide network of individuals, foundations, Legal Aid Offices and action groups that can help those discriminated against.	1. advising victims of discrimination and being available to them as much as possible; 2. providing training and expertise for legal advisers and building up a national network of legal advisers; 3. serving as a source of information for local groups active the field of anti-discrimination; 4. providing information to (potential) victims of discrimination on how to defend themselves against discriminatory behavior; [and]	1. to build and maintain a national network of legal service providers; 2. to educate and train those service providers; 3. to support communication between local groups, municipalities and other institutions working to combat racial discrimination 4. 'to stand by and advise' and be available to victims of racial discrimination 5. to bring attention to and combat structural forms and patterns of racial discrimination via legal action; and 6. in cases where it was deemed necessary, to file legal or

5. provide schooling for legal aid workers[536]	5. identifying structural forms and patterns of discrimination.[537]	administrative procedures under its own name.[538]

The final LBR organizational charter also included other important guidelines for the nascent organization. For example, it encompassed a rather broad definition of racial discrimination that tracked closely to international and domestic laws. That definition identified two different types of discrimination, one focused on practice and the other ideology. The practice-focused definition included:

> any form, directly or indirectly, of distinction, exclusion, restriction or preference, on the grounds of race, color, descent, ethnic origin or - unless justified on objective and reasonable grounds - of nationality, the purpose of which is to nullify or impair the enjoyment or exercise, on an equal footing, of human rights or any other right, or having the effect of nullifying or impairing them....[539]

The ideology-based definition included:

> ...the expression or distribution, in any form whatsoever, of texts, ideas, representations or information, or the possession of objects containing them, when this is based on the alleged inferiority or superiority of persons by reason of their race, color, descent, ethnic origin or nationality.[540]

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536 Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983 (Kruyt's proposal uses a narrative form, which I have transposed into a list).

537 Kamerstukken II 1982/1983, 16102, nr. 21,100–101. (translation mine. Original: '(a) het met raad terzijde staan van slachtoffers van discriminatie en optimaal voor hen bereikbaar zijn; b. het ter hand nemen van de scholing en deskundigheidsbevordering van rechtshulpverleners en het opbouwen van een landelijk netwerk van rechtshulpverleners; c. het dienen als vraagbaak voor lokale groepen die zich bewegen op het terrein van discriminatiebestrijding; d. het geven van voorlichting aan (potentiële) slachtoffers van discriminatie hoe zich tegen discriminerende gedragingen te verweren; e. het signaleren van structurele vormen en patronen van discriminatie.')

538 Maurik, "LBR Akte van Oprichting."

539 Maurik, Article 2. Section 2.

540 Maurik, 2.

The charter did not include a definition of race, though later LBR publications would publicize the definition of race established by Dutch jurisprudence and international law.[541]

5.2.2. Start-up board of directors and staff

After heavy debate in the Tweede Kamer about who should or should not be included,[542] the LBR charter established a board of directors that seemed to reflect a broad cross section of people who represented groups directly impacted by racial discrimination or invested in combatting it. The charter required that its board of directors include one representative appointed from:

- the Moluccan Advisory Organization (Inspraakorgaan Welzijn Molukkers*)*;
- the National Federation of Surinamese Welfare Organizations (Stichting Landelijke Federatie van Welzijnsorganisaties voor Surinamers*)*;
- the Dutch Center for Foreigners (Nederlandse Centrum Buitenlanders);
- the Association of National Organizations for Foreign Workers (Vereniging Landelijke Samenwerking van Organisaties van Buitenlandse Arbeiders);
- the Platform for Antillean Organizations (Vereniging Plataforma di Organisashonnan Antiano (POA));
- the Association of Dutch Refugee Networks (Vereniging Vluchtelingenwerk Nederland);
- the Association of Dutch Lawyers Committee for Human Right (Nederlandse Juristen Comité voor de Mensenrechten*)*;
- the Society of Antiracist Organizations of the Netherlands (Samenwerkende Antiracisme Organisaties Nederland, SARON);
- a former member of the judiciary responsible for administering justice;
- the Jewish community, 'who has the confidence of broad Jewish circles';

[541] Possel, *Rechtspraak Rassendiscriminatie*, ix.

[542] Handelingen II 1984/1985, 16102, nr. UCV 11, https://zoek.officielebekendmakingen.nl/0000122995.

- the Association for Legal Aid (Vereniging voor Rechtshulp*)*;
- the Netherlands Bar Association (Nederlandse Orde van Advocaten*)*.[543]

Additionally, the charter required that two board members be appointed from the Anti-Discriminatie Overleg (Anti-Discrimination Consultancy, ADO). Board members would serve a term of three years, and had the right to decide among themselves to appoint up to three additional members based on 'specific expertise or ability'.[544] As of the filing of the organizational charter, the LBR board contained fifteen members, including all four members of the set-up board initially appointed by the Ministries of Interior and Justice, with Hugo Pos continuing to serve as chair. Other notable members of the first board of directors included human rights lawyer and law professor Ulrich Jessurun d'Oliveira, representing the Association for Legal Aid, Utrecht University Professor of Criminology Paul Moedikdo, nominated by SARON, and law professor C.A. Groenendijk as an independent expert.[545] Of the sixteen board members, seven were born outside the Dutch metropole (three in Suriname, one in Curaçao, one in the Indonesian archipelago[546], one in Greece and one in Uruguay); Usman Santi was born in 1954 in Camp Westerbork, at that time housing people forced to migrate from the Moluccan Islands. All of the members of the first LBR board of directors were men.

The LBR board did not hold seats representing either groups of employers or business leaders, or major employment unions, as had been requested by liberal party members of the Tweede Kamer. Nor did it contain representatives of organizations dedicated to representing the interests of women, young people, or caravan dwellers, as requested by members of parliament from more leftist parties.[547] This absence reflects what legal scholar Kimberlé Crenshaw calls an 'intersectional failure', or missed opportunity to address the fact that race intersects with other areas of identity such as gender and class, and thus that racial

[543] Maurik, "LBR Akte van Oprichting," Article 4, paragraph 1, lines a-m.

[544] Maurik, 2.

[545] Maurik, 6–7.

[546] Paul Moedikdo was born in 1927 in Bandung, which at that time was part of the Dutch East Indies; at present, it is the capital of West Java, Indonesia.

[547] Handelingen II 1984/1985, 16102, nr. UCV 11, 26.

discrimination may be experienced differently among people who also experience discrimination based on other marginalized aspects of their identities. [548] Because the lack of women and caravan dwellers represented on the set-up board was raised as a concern raised to Minister of Justice Korthals Altes during his questioning by the Tweede Kamer, this intersectional failure of representation is not one of which he or the start-up board members were unaware.[549] Again, the point here is not the motivations of Korthals Altes or others, but the effect of their oversights, which meant that certain perspectives and experiences relevant to combatting racial discrimination were left out of the LBR's initial board of directors.

As with any organization, the board of directors would have oversight but the real direction would come from the staff of the LBR, particularly its director, the hiring of which was also delegated to the set-up board of directors. A list of qualities needed for the position went through a few revisions during the six-month set up period. When Justice Minister Korthals Altes spoke to the Tweede Kamer in March 1984, his emphasis had been on staffing the LBR and its board with people with 'legal expertise'.[550] In Balai's policy workbook, in December of 1984, the job description was drafted by LBR board member and director of the Netherlands Center for Foreign Workers, Athanasios Apostolou. He interpreted 'legal expertise' recommended by the Justice minister into being 'up to date' with the laws and rules governing 'foreigners", experience working with groups of foreign workers, and knowledge of groups serving victims of racial discrimination. Given that the 'accent' of the LBR's goals was on 'legal measures' against racism, 'legal schooling would be recommended.' Apostolou did not go so far as to recommend that the future LBR director be a jurist or practicing lawyer.[551] Groenendijk's memo to the LBR start-up board recommended an overall LBR staff that was both recognizable to 'immigrant

[548] Crenshaw, "Mapping the Margins," see e.g.

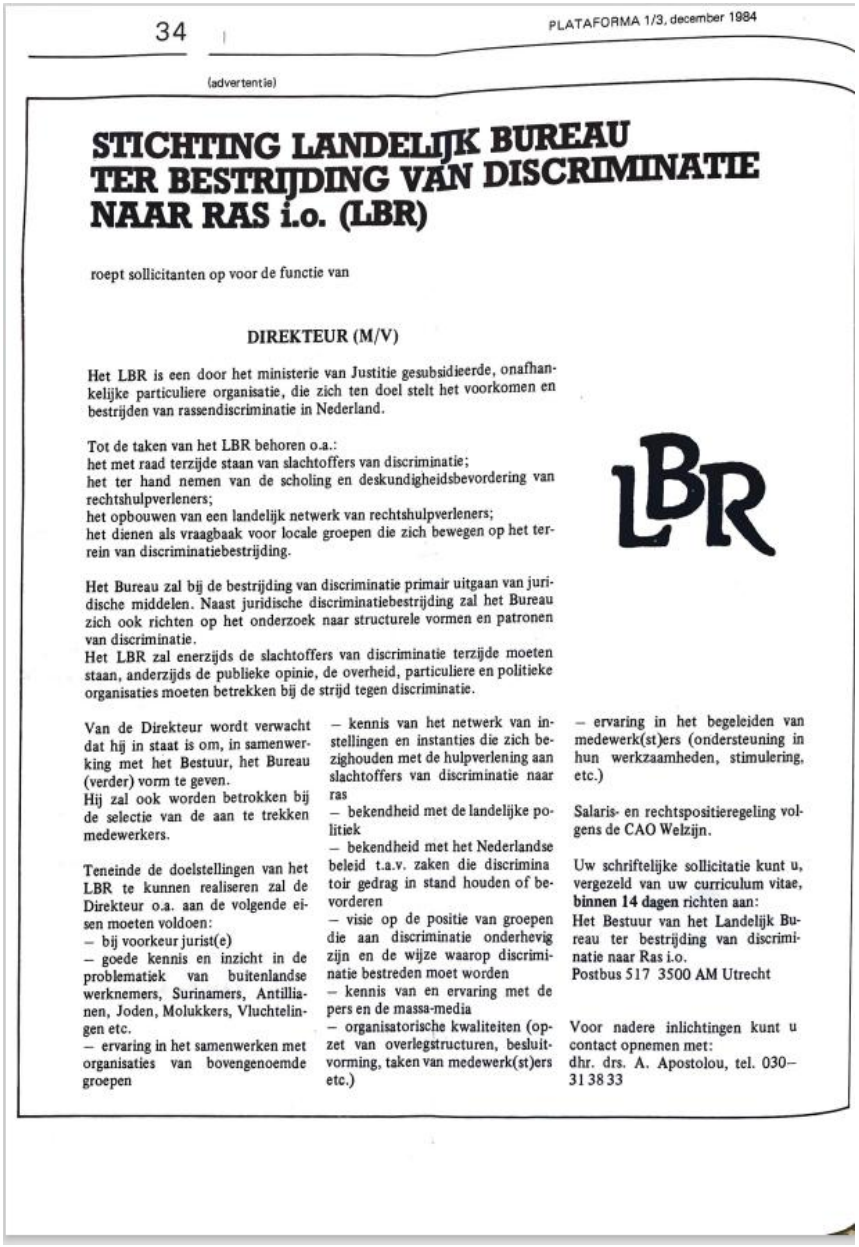
[549] Handelingen II 1984/1985, 16102, nr. UCV 11, 26 (MP Jabaaij asked about the lack of women on the board, MP Krajenbrink about the lack of representation of caravan dwellers [woonwagenbewoners], and MP Wiebenga about the lack of businesspeople and employers.).

[550] Handelingen II 1983/1984, 16102, UCV 61, 3.

[551] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," V ("Enkele gedachten omtrent het profiel van de direkteur van het Landelijk Buro ter Bestrijding van Discriminatie naar ras [LBR]" A. Apostolu, November 1984).

groups' and 'acceptable to potential opponents' though it did not define who those opponents might be or to what they might be opposed.[552]

By the time the job description for LBR director was released to the outside world, it had changed from Apostolou's original draft. In December 1984, *Plataforma*, the quarterly publication of POA, published a call for applications (included in image below); the job description called for someone who was 'by preference a jurist'. The person should have, not only experience with foreign workers, but also 'Surinamers, Antilleans, Jews (sic), Moluccans, Refugees etc.' and experience working with these groups.[553] The 1985 LBR year-end summary reported that 36 people applied for the function.[554] Interviews with former members of the LBR board and others familiar with the process



34 PLATAFORMA 1/3, december 1984

(advertentie)

STICHTING LANDELIJK BUREAU TER BESTRIJDING VAN DISCRIMINATIE NAAR RAS i.o. (LBR)

roept sollicitanten op voor de functie van

DIREKTEUR (M/V)

Het LBR is een door het ministerie van Justitie gesubsidieerde, onafhankelijke particuliere organisatie, die zich ten doel stelt het voorkomen en bestrijden van rassendiscriminatie in Nederland.

Tot de taken van het LBR behoren o.a.:
het met raad terzijde staan van slachtoffers van discriminatie;
het ter hand nemen van de scholing en deskundigheidsbevordering van rechtshulpverleners;
het opbouwen van een landelijk netwerk van rechtshulpverleners;
het dienen als vraagbaak voor locale groepen die zich bewegen op het terrein van discriminatiebestrijding.

Het Bureau zal bij de bestrijding van discriminatie primair uitgaan van juridische middelen. Naast juridische discriminatiebestrijding zal het Bureau zich ook richten op het onderzoek naar structurele vormen en patronen van discriminatie.
Het LBR zal enerzijds de slachtoffers van discriminatie terzijde moeten staan, anderzijds de publieke opinie, de overheid, particuliere en politieke organisaties moeten betrekken bij de strijd tegen discriminatie.

Van de Direkteur wordt verwacht dat hij in staat is om, in samenwerking met het Bestuur, het Bureau (verder) vorm te geven.
Hij zal ook worden betrokken bij de selectie van de aan te trekken medewerkers.

Teneinde de doelstellingen van het LBR te kunnen realiseren zal de Direkteur o.a. aan de volgende eisen moeten voldoen:
– bij voorkeur jurist(e)
– goede kennis en inzicht in de problematiek van buitenlandse werknemers, Surinamers, Antilliänen, Joden, Molukkers, Vluchtelingen etc.
– ervaring in het samenwerken met organisaties van bovengenoemde groepen
– kennis van het netwerk van instellingen en instanties die zich bezighouden met de hulpverlening aan slachtoffers van discriminatie naar ras
– bekendheid met de landelijke politiek
– bekendheid met het Nederlandse beleid t.a.v. zaken die discriminatoir gedrag in stand houden of bevorderen
– visie op de positie van groepen die aan discriminatie onderhevig zijn en de wijze waarop discriminatie bestreden moet worden
– kennis van en ervaring met de pers en de massa-media
– organisatorische kwaliteiten (opzet van overlegstructuren, besluitvorming, taken van medewerk(st)ers etc.)
– ervaring in het begeleiden van medewerk(st)ers (ondersteuning in hun werkzaamheden, stimulering, etc.)

Salaris- en rechtspositieregeling volgens de CAO Welzijn.

Uw schriftelijke sollicitatie kunt u, vergezeld van uw curriculum vitae, **binnen 14 dagen** richten aan:
Het Bestuur van het Landelijk Bureau ter bestrijding van discriminatie naar Ras i.o.
Postbus 517 3500 AM Utrecht

Voor nadere inlichtingen kunt u contact opnemen met:
dhr. drs. A. Apostolou, tel. 030–31 38 33

552 Balai, 154.

553 "Stichting Landelijk Bureau Ter Bestrijding van Discriminatie Naar Ras i.o (LBR) Roept Sollicitanten Op Voor de Functie van DIREKTEUR (M/V)," *Plataforma*, December 1984, 34.
"LBR Jaarverslag 1985" (Utrecht: Landelijk Bureau Racismebestrijding, 1985), IDEM Rotterdam Kennisbank.

indicated that hiring a director was a contested process, involving heated debate and strong feelings.

By May 1, 1985, Arriën Kruyt had been hired as the first director of the LBR. Kruyt did not identify, nor was he racialized by others, as a member of an 'ethnic minority group.'[555] He had become active on issues of discrimination against 'foreigners' when he was a law student in Utrecht and witnessed discrimination against people from Greece who had come to the Netherlands either to work as laborers or seeking asylum.[556] The experience brought him into contact with other law students and lawyers for immigrant and refugee rights, including Groenendijk. Together they started the Workgroup on Legal Assistance on Immigration Cases (Werkgroep Rechtsbijstand Vreemdelingenzaken*)*. In 1976, Kruyt became the staff jurist for the NCB, a position he held at the time of the LBR's founding, and in which capacity he had authored the proposal for a national anti-discrimination institute submitted to the ICM on behalf of that organization and the three welfare/advisory organizations representing people from Suriname, the Antilles and the Moluccan Islands. He had also helped coordinate the 1983 Congress on Law and Race Relations.

While Kruyt was intimately involved in the start-up process of the LBR, he told me he did not seek the position of director, which he thought would be better suited to someone 'from a minority background, which I am not.' He said Hugo Pos had pressured him to apply, and that he only did so after consulting with his friend, Athanasios Apostolou.[557] Apostolou, as mentioned above, was also a member of the LBR start-up board and responsible for drafting the job description for the future director. Kruyt's near decade of work on immigration and discrimination fulfilled the job description in terms of experience with 'ethnic minority' organizations and Dutch political processes. He had not, however, been involved with an organization engaged in combatting racial discrimination in particular; both the NCB and the Workgroup on Legal Assistance for Foreigners focused mostly on immigration and labor laws. While there was overlap between discrimination based on nationality or national origin and that based on perceived race, the legal work of these groups was

[555] Kruyt, interview.

[556] Kruyt.

[557] Kruyt.

usually not connected explicitly to racialization. Perhaps more remarkable for an organization dedicated to combatting racial discrimination through legal measures, Kruyt was not a qualified lawyer, though he did have a bachelor degree in law from the University of Utrecht.

In the short term, Kruyt's racialized identity attracted more attention than his legal qualifications. At a meeting of the Frantz Fanon Center in Utrecht in June 1985, an unnamed Utrecht City Council member from the Dutch Communist Party named, as a general problem, the lack of people racialized as non-white on government, academic and social institutions ostensibly meant to help their communities. Adding 'insult to injury' (*klap op de vuurpijl*) she observed that the LBR had appointed a 'white man' as director, a decision she characterized as 'a huge barrier to go to such a bureau if you have been discriminated against.'[558] In the long term, it may have been his lack of legal experience that made an equal if not greater impact on the future work and legacy of the LBR.

In contrast to six pages describing the form and function of the board of directors, the LBR charter dedicated only seven lines to how the organization should meet its goals. It should, first, hire staff and build up an office; it should meet with relevant organizations and institutions, it should make use of subsidies and other financial tools and it should 'make use of all legally permissible means' useful to achieving its goals.'[559] Arriën Kruyt, as the first director of the LBR, along with the daily board of directors and staff of the LBR, would have a tremendous amount of discretion in interpreting which 'legally permissible means' to use. Kruyt saw himself primarily as a political organizer who knew whom to call in which situations to get certain measures through the cabinet or parliament.[560] This skill set would later manifest in the LBR's consistent preferences for addressing incidents of racial discrimination through dialogue and one-on-one negotiation, as opposed to public confrontation or adversarial legal proceedings.

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[558] Penni Peterson, "Cadeau voor de wereld: Grootser menselijk aanzien zonder ras-, klas-, of sex-onmenswaardighied," *Plataforma*, August 1985, 31.

[559] Maurik, "LBR Akte van Oprichting," 1.

[560] Kruyt, interview.

5.3. Executing the LBR mandate through 'legal measures', 1985-2000

The LBR's organizational charter, defined its purpose as 'preventing and combatting racial discrimination.'[561] The charter then went on to define six goals or priorities through which the organization would fulfill that purpose. The first three of these goals, building a national network of legal service providers, educating and training those providers, and facilitating communication with other groups engaged in racial discrimination will be addressed in more detail in Chapter Six. This remainder of this chapter analyzes the LBR's performance on the second three goals, which are more directly related to legal mobilization as defined by McCann and other socio-legal scholars. These goals were 1) to 'stand by and advise' victims of racial discrimination, 2) to signal and use legal means to combat structural forms and patterns of racial discrimination, and 3) when necessary to bring legal or administrative procedures in the name of the organization.[562] As stated in the introduction to this chapter, I argue below that the LBR failed to use these 'legal means' in a way that was likely to materially impact racializing practices in the Dutch metropole, and as such that its practices constituted forms of nonperformative antiracism, as defined by Sara Ahmed.

Lawyers who work in the public interest often distinguish between 'direct service' work and 'impact or strategic litigation.' In the first instance, the law is considered adequate to address a problem, and the lawyer provides service to those who may not otherwise be able to access that law; for example, lawyers who work for legal aid agencies that provide free representation in criminal cases, or related to child custody or housing. In the second instance, the law itself is considered flawed, and a representative test case, or group of cases, is brought to challenge the legitimacy of that law.[563] Legal mobilization analysis originated mainly from studies of strategic litigation, but it theorizes a broad range of activities that can be considered *legal* and mobilized for social change. For example, 'legal consciousness

[561] Maurik, "LBR Akte van Oprichting," Article 2.1.

[562] Maurik, Article 2, Paragraph 1, lines d-f.

[563] See e.g. Georgetown University Law School, "Public Interest & Non-Profit OVERVIEW," educational, Georgetown Law School: Public Interest & Non-Profit OVERVIEW, accessed June 7, 2024, https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-settings/public-interest/.

raising' involves framing the discourse around social complaints or problems to invoke rights and demands for solutions.[564] Strategic litigation and direct services are also not strictly separate approaches to legal mobilization; clients who come to pubic interest lawyers seeking direct services may bring to those lawyers' attention issues that need to be addressed at a more structural or strategic level, or lawyers seeking representative cases to make a legal challenge may seek out clients who fit the profile and ask if they would be willing to represent the cause. In this way, the LBR's charge both to 'stand by and advise' victims, as well as 'bring attention to and combat structural forms and patterns' of racial discrimination were not necessarily in conflict. The manner in which the LBR approached these two objectives, however, resulted in its failure to achieve its objectives on either front.

5.3.1. A 'second line organization'

From its inception, the LBR staff and board defined it as a 'second line organization', standing behind and supporting the efforts of those 'first line institutions' and individuals that would directly interact with victims of racial discrimination. This reluctance to engage directly with victims of racial discrimination was paired with observations that there were an enormous number of people who needed such services. LBR start-up documents, for example, caution that the organization would be 'flooded' or 'drowned' in requests for help should it attempt to engage directly with individual victims of discrimination.[565] Staff advised tempering expectations of potential victims, waiting until the last minute to release the LBR phone number, and avoiding press as long as possible to avoid these

[564] McCann, "Litigation and Legal Mobilization," 523–26; McCann, "Law and Social Movements," 25–26.

[565] Leo Balai, "LBR Concept Beleids- Werkplan 1985" (Landelijke Bureau Racismebestrijding, January 1985), 26, IDEM Rotterdam Kennisbank ('Enerzijds is het gevaar aanwezig dat de hoge verwachtingen worden gewekt en het LBR overspoeld wordt door klachten waardoor er geen tijd overblijft voor andere werkzamheden.'); Kruyt, "Een instituut tegen rassendiscriminatie," January 12, 1983, 2 ('Het instituut moet in principe niet zelf de klachten gaan behandelen al is het alleen naar om niet te verdrinken in de hoeveelheid en om de tijd vrij te houden voor een structurele aanpak.') See footnotes above regarding the connotations of flood imagery.

floods.[566] Fears of being unable to adequately address victims of racial discrimination were not completely unfounded; many of those involved with the LBR had also worked with the Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst, (Association Against Discrimination on the Basis of Race or Ethnicity, VTDR), the national organization against racial discrimination discussed in Section 3.5 above. That organization disbanded in the early 1980s, in part, over conflicts in how to handle individual complaints. Instead, the LBR decided that the best place to handle individual complaints was at the local level, through hotlines (*meldpunten)* organized by municipal governments or 'welfare organizations of ethnic minority groups'.[567]

Once it opened its doors, the LBR did receive phone calls from individuals complaining of racial discrimination, though in numbers that could hardly be described as overwhelming. A year-end summary reported 200 calls in 1987, and that the LBR staff mostly offered advice by phone, sometimes referring those who called to 'experts in the region'.[568] To facilitate its role as a 'second-line organization' which could refer victims to legal service providers, the LBR charter committed the organization to 'building and maintaining a network of legal service providers dealing with issues of racial discrimination'.[569] Such a network could have been as simple as a list of active lawyers compiled and updated regularly, or a group that met regularly for education and collaboration. But while the LBR made many attempts at systemic cooperation with various organizations of legal service providers and anti-discrimination advocates through the years, by the time it ceased focusing on legal measures in 1999, it still had not successfully accomplished this goal.[570]

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[566] Balai, "Beleidsondersteunende notitie ten behoeve van het bestuur van de stichting Landelijk Bureau ter Bestrijding van Discriminatie Naar Ras I.O. (LBR)," 153.

[567] "LBR Werkplan 1985-1986" (Landelijk Bureau Racismebestrijding (LBR), 1986 1985), 6–7, IDEM Rotterdam Kennisbank.

[568] "LBR Jaarverslag 1987" (Landelijk Bureau Racismebestrijding, 1987), 13, IDEM Rotterdam Kennisbank.

[569] Maurik, "LBR Akte van Oprichting."

[570] "LBR Werkplan 1999" (Landelijk Bureau Racismebestrijding, 1999) (indicated by the fact that forming such a network is still listed in the workplan); see also e.g. "LBR Werkplan 1996" (Landelijk

In addition to building a network of legal practitioners, the LBR was expected to build the capacity and knowledge of legal practitioners through 'education and schooling'.[571] However, as time went on, the LBR staff shifted the focus of this education away from legal service providers. First it targeted staff and volunteers of regional discrimination hotlines and anti-discrimination bureaus, and eventually to more general audiences which had even less to do with law or legal measures.[572] By 1991, only one of the five groups highlighted as having received education from the LBR included legal practitioners; the other four were described as victims of discrimination, 'colleague organizations', policy makers, and actors in 'areas in which the LBR [was] active' including representatives of housing corporations, municipalities, and businesses.[573] This shift in focus mirrored the general organizational abandonment of a focus on law and legal measures as part of the means it used to address racial discrimination, and accordingly the abandonment of its ability to use state power to enforce anti-discrimination rules and laws.

5.3.2. Financial support for individual victims

The initial 'household regulations' of the LBR, which added more concrete detail to the organizational charter, suggested two ways in which the LBR could become directly involved in legal procedures: filing cases under its own name (addressed below) or, in situations where 'the outcome [wa]s important to reaching the statutory goals of the LBR', contributing funds to help pay the costs of such a

Bureau Racismebestrijding, 1996) (stating goal of 'realizing' a network in that year). Why the LBR failed to establish such a network will be further addressed in Chapter Six.

[571] Maurik, "LBR Akte van Oprichting," Article 2, para 1.b.

[572] "LBR Jaarverslag 1986" (Landelijk Bureau Racismebestrijding, 1986), 8, IDEM Rotterdam Kennisbank (Early LBR year-end summaries consistently report that its staff organized or participated in trainings with the Foundation for Training Legal Aid Workers [Stichting Opleiding Sociale Rechtshulp, SOSR], continuing legal education courses or lectures for law students.); "LBR Jaarverslag 1987," 10; "LBR Jaarverslag 1989" (Landelijk Bureau Racismebestrijding, 1989), 4, IDEM Rotterdam Kennisbank.

[573] "LBR Jaarverslag 1991" (Utrecht: Landelijk Bureau Racismebestrijding, 1991), 24, IDEM Rotterdam Kennisbank.

lawsuit through a budget line called *proceskostenfonds* (process cost funds).[574] These funds were mentioned in LBR work-plans from 1987-1996, though frequently in the context of them being underutilized. In 1987, the *LBR Bulletin*, the organization's bi-monthly publication, advertised the availability of the funds, which could be granted based on a written application demonstrating 'that the outcome of the procedure [wa]s important to combating racial discrimination with legal means', and that parties in question did not have the financial resources to pay for the case themselves.[575] By the end of that year, the LBR granted eight such requests and rejected one.[576] By 1990, the LBR had used *proceskostenfonds* to support thirty-one cases, though these cases were not evenly distributed across the years; in 1989, for example, the LBR granted thirteen requests, and in 1990 only four.[577] The type of case and extent of LBR involvement also varied. The 1989 report lists eleven matters (one of which included three separate cases), some of which are described as 'procedures' but others as 'advice' and one as 'advice, settled out of court'. Likewise one case is described as 'discrimination by fight between neighbors, (procedure)', another is merely 'discrimination on work floor (advice)'.[578] Several cases included in these numbers, and in which the LBR was more involved, are discussed below. By 1992, the section of the year-end report dedicated to *proceskostenfonds* described only one case, an appeal of a case started in 1989. In the 1994 report, the number of cases funded by the funds 'could not be quantified'[579] and by 1996, requests for *proceskostenfonds* were so infrequent that the item was cut from the organizational budget.[580]

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574 "Huishoudelijk Reglement" (Landelijk Bureau Racismebestrijding (LBR), 1985 1984), 2, para. 24, IDEM Rotterdam Kennisbank.

575 "Proceskostenfonds Rassendicriminatiebestrijding," *LBR Bulletin*, 1987.

576 "LBR Jaarverslag 1987," 10–11. The funded cases included Vredestein, Werknet, Open Deur, KLM steward, police in Zeist, Goeree case, Enschede housing, Turkish charter flights.

577 "LBR Jaarverslag 1990" (Landelijk Bureau Racismebestrijding, 1990), bijlage 5, IDEM Rotterdam Kennisbank.

578 "LBR Jaarverslag 1989," Bijlage 4.

579 "LBR Werkplan 1994" (Landelijk Bureau Racismebestrijding, 1994), 6, IDEM Rotterdam Kennisbank.

580 "LBR Werkplan 1996," 3.

5.4. Identifying and addressing structural forms of racial discrimination

From the beginning, those who started the LBR suggested that representing individuals in their cases of racial discrimination would interfere with the arguably more impactful goals of 'signaling, and with legal measures combatting, structural forms and patterns of racial discrimination.'[581] One reason the LBR gave for not engaging more with the former was to be able to pursue the latter.[582] 'Combatting structural forms and patterns of racial discrimination' would seem to be a goal most suited to addressing with legal mobilization strategies of strategic litigation, sometimes called 'test cases', defined in Section 5.3 above. However, this was a tactic the LBR avoided at every opportunity. Instead of filing test cases in criminal or civil court, the LBR preferred to privately engage with actors accused of discrimination to reach a mutually agreed upon solution, engage in educational measures or promote voluntary compliance with behavioral guidelines. This choice for out-of-court strategies, sometimes called 'alternative dispute resolution' in the world of legal advocacy, had the consequences of being nonperformative against discrete acts of racial discrimination in the short term, while contributing to the occlusion and denial that racial discrimination existed as a national problem in the Netherlands in the long term. In the short term, private settlement or voluntary compliance may have temporarily addressed the problem of one victim of discrimination, but there was no enforcement mechanism to make sure that same discrimination was not practiced again after the LBR departed the interaction, or against subsequent victims. In the long term, these cases were never made a part of legal or other public archives and so created gaps in the 'legal archive' of how racialization was practiced in the postcolonial Dutch metropole.[583]

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[581] Maurik, "LBR Akte van Oprichting."

[582] See also "LBR Jaarverslag 1990," 3 ('Het LBR richt zich op het opsporen en bestrijden van structurele patronen van rassendiscriminatie. Individuele klachtbehandeling heeft geen prioriteit. Het LBR mist daarvoor de menskracht en de vaak noodzakelijke kennis van lokale omstandigheden en situaties.').

[583] For observations of the present day challenges of researching "race" in Dutch legal archives, see e.g. De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie."

5.4.1. Court cases and administrative complaints

5.4.1.1. Filing court cases in the name of the LBR

In terms of a means to combat racial discrimination, filing cases in its own name was considered from the beginning to be the LBR's tactic of last resort. Justice Minister Korthals Altes said as much in his appearances before the Tweede Kamer discussed in the previous chapter. Before filing a case in its own name, the LBR had to receive permission from its board of directors, but this was not an insurmountable barrier. Many of its early board of directors were long time legal advocates against racial discrimination, and some were even actively involved in activist organizations. However, filing cases under its own named remained a low priority, as reflected in the relatively few cases on record in which the LBR was a named party.

Between 1985 and 1999, the online database of jurisprudence related to equal protection and anti-discrimination lists only ten such cases.[584] In two of these, the LBR was a defendant, as opposed to a complaining party, which means it was not the LBR's choice to be involved in the case.[585] Of the remaining cases, most were

[584] "Results LBR as Party in 'Rechtspraak Rassendiscriminatie,'" database, Art.1 jurisprudentiedatabase, December 11, 2023, https://art1.inforlibraries.com/art1web/List.csp?SearchT1=LBR&Index1=Index2&Database=2&BoolOp2=AND&SearchT2=&Index2=Index1&BoolOp3=AND&SearchT3=&Index3=Index1&Year1=&Year2=&OpacLanguage=dut&NumberToRetrieve=50&SearchMethod=Find_3&SearchTerm1=LBR&SearchTerm2=&SearchTerm3=&Profile=Profile3&PreviousList=Start&PageType=Start&EncodedRequest=t*28*C8*82vYGC*24*CC*AB*A1*CA*5B*AA*BB&WebPageNr=1&WebAction=NewSearch&StartValue=1&RowRepeat=2&MyChannelCount=. The term 'LBR' actually gets twelve hits, but two of these are appeals from earlier cases, so I have counted them only once each.

[585] In the first of these cases, a right-wing political party, the Center Democrats (Centrum Democraten), accused the LBR and three other organizations of inappropriately pressuring people who had signed the party's petition to participate in an election to withdraw their signatures; the court found these accusations without foundation, both in the initial case and on appeal. Centrum Democraten v HIFD, LBR, TZ en HTFD, online Art.1 Jurisprudentiedatabase; In the second, a housing corporation in Lelystad accused the LBR of defamation for alleging the corporation engaged in racist practices; the board of journalists sustained the complaint and ordered the LBR to print retractions in two national newspapers. Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase.

filed before the national ombudsman or administrative bodies, which did not carry the same weight either in terms of potential penalties, or national attention, that would have come from filing criminal or civil cases in Dutch courts. The cases in which the LBR was a complaining party were:

Before the national ombudsman:

1. A complaint on behalf of an applicant for a guard position with the Marine Guard Corp. The ombudsman found that the applicant should not have been dismissed on the grounds that the applicant had not completed military service (he had), but that it was appropriate to deny the application based on language as Dutch language was a legitimate requirement for the job. The decision was that there was 'no discrimination in the form of racist ideas or feelings.'[586]
2. A complaint that the Dutch border patrol guard (Koninklijke Marechaussee*)* had inappropriately determined that a 'Black South African' man travelling through the Netherlands on his way to West Germany did not have sufficient money to pay for his transit and therefore denied him entry; the man alleged he was the only one questioned in such a way and that this was because of his race. The ombudsman decided that the detention was inappropriate, on the grounds that the man had enough money to travel through by train, but the guards only considered plane fare; the ombudsman found no evidence of racism or racial discrimination.[587]
3. A complaint about police in Zeist, who arrested 63 young people, 'including a large number of Moroccan youth' in and in the neighborhood of a department store, after the store complained about rowdy behavior. The LBR accused the police of acting 'carelessly and in a discriminatory manner when deciding on the action,' and complained about how the officers treated the youth after their arrest.

[586] LBR en DR v Ministerie van Defensie | [1987] De Nationale Ombudsman 0221 (dossier no), online Rechtsprak Rassendiscriminatie.

[587] LBR v Min. v Justitie/Marechaussee, 9 Migrantenrecht 1987-9, 64 via Art.1 Jurisprudientiedatabase 64 (De Nationale Ombudsman 1987).

The ombudsman found that while the police had acted inappropriately in a number of aspects, it was 'not sufficiently plausible that the arrests were made solely on the basis of appearance.' Despite this loss at the ombudsman level, the notation observes that one of the youth involved was able to obtain damages in a separate civil case, not brought by the LBR.[588]

Before internal industry review boards or governing bodies:

4. Before the General Union of Temporary Employment Agencies (Algemene Bond Uitzendondernemingen, ABU), the LBR complained about a job advertisement that required 'command of the Dutch language in word and writing' and 'Dutch nationality' for work in a warehouse. This case was brought under the behavioral codes designed in cooperation with the LBR and discussed below. In this case the ABU found the defendant, Werknet, guilty of racial discrimination, but it is not clear what if any punishment was imposed.[589]
5. Before the same board, complaint that an employment agency kept separate lists of 'immigrant job seekers' and annotated some of these lists with comments like 'neat Negro' and 'Sambo'; the board found the complaint well founded, and recommended further legal action be taken in criminal or civil court.[590] It is not clear whether the LBR was involved in any follow up, or if any court case did take place.
6. Before the Supervisory Committee of the Association for Dutch Finance Organizations (Vereniging van Financieringsondernemingen in Nederland), allegation that a loan application was rejected because the applicant did not have Dutch identification documents. The body

[588] LBR e.a. v Burgemeester van (gem. pol.) Zeist, online Art.1 Jurisprudentiedatabase (De Nationale Ombudsman 1988).

[589] LBR v Werknet Uitzendorganisatie BV |, online version Art.1 Jurisprudentiedatabase (Scheidsgerecht ABU (Vz.) 1988).

[590] LBR, RADAR, A.M.K. v Hygro Uitzendbureau BV |, online Art.1 Jurisprudentiedatabase (Scheidsgerecht ABU (Vz.) 1989).

found that the lender had violated the industry 'honor code' which prohibited discrimination on the basis of national origin. No penalty or recourse is mentioned.[591]

7. Before the Board of Journalists (Raad van Journalistiek), the LBR complained about a newspaper columnist who characterized the construction of mosques as discrimination against 'native Dutch people' (*autochtonen)* that had no place in a 'civilized country'. The board found that the journalist's writing fell short of 'racism or xenophobia' and thus was permissible.[592]

Before local and national courts:

8. Along with the Centrum Informatie en Documentatie Israel (CIDI) and the Anne Frank Organization, the LBR filed a civil complaint about a Belgian organization distributing pamphlets in the Netherlands that denied the existence of the Holocaust. The judges found the defendant guilty and ordered him to stop distribution or face a penalty of 10,000 guiders.[593] The man appealed the case (earning another reference in the online jurisprudence database) but the judgment was upheld.[594]

This small sample of cases makes it difficult to discern a strategic line or motivation to address structural or patterns of racial discrimination in bringing these particular cases before these particular bodies. The greater commonality appears to be the reluctance to bring cases in actual courts, instead preferring to deal with internal regulatory bodies or the national ombudsman, fora often

[591] LBR en RADAR v Ohra Financiering NV, Art.1 Jurisprudentiedatabase (Cie van toezicht Financierders 1994).

[592] LBR v R. Hoogland en de hoofdredactie van De Telegraaf, 1601 (dossiernummer) Raad voor de Journalistiek (Raad van Journalistiek 1996).

[593] CIDI, LBR, Anne Frank Stichting v VHO / Verbeke / Vd Bossche, Kort Geding 1992 Art.1 Jurisprudentiedatabase 399 (Rechtbank 's-Gravenhage 1992).

[594] Siegfried Verbeke v. Centrum voor Informatie en Documentatie Israël (CIDI), Anne Frank Stichting, Landelijk Bureau Racismebestrijding, No. 92/2009 (Gerechtshof Den Haag June 16, 1994).

designated under the rubric 'alternative dispute resolution'. As observed above, while these alternative venues may bring (temporary) resolution to individual conflicts, they do not create precedent which courts would be inclined to follow in other, similar cases, nor do they become part of generally available legal archives.

In the case of the national ombudsman, the decisions were not even enforceable in the first instance; the ombudsman, like the Commission for Equal Treatment and the Human Rights College that would later come in the Netherlands, offered only advisory opinions. If a victim of discrimination wanted to receive compensation they would have to pursue their claim in a national court.[595] Viewed in light of their impact on structural patterns or practices of racial discrimination, or on combatting racializing practices generally, the LBR's preference for alternative dispute contributes to an overall sense that its actions failed to perform either in identifying structures or patterns of racial discrimination.

In the early 1990s, some evidence shows that staff and directors of the LBR were unhappy with the small number of cases the organization pursued. The first page of the 1991 workplan stated:

> The LBR is essentially a legal agency. Its main task is to combat racial discrimination by legal means. This also distinguishes the Bureau from other institutions active in the field of combating racial discrimination. In the coming year an attempt will be made to give this main task even more emphasis than in the past. Thus in 1991 the legal activities will be expanded with a number of specific projects. Furthermore, at the expense of the research budget, the Legal Section will be expanded by half a full-time position.... It is foreseeable that after 1991 the Legal Section will have to be enlarged by another half-staff position.[596]

[595] See e.g. Peter Rodrigues and Janny R. Dierx, "The Dutch Equal Treatment Act in Theory and Practice," Text, European Roma Rights Centre (European Roma Rights Centre, October 5, 2003), 3–4, Hungary, http://www.errc.org/roma-rights-journal/the-dutch-equal-treatment-act-in-theory-and-practice.

[596] "LBR Werkplan 1991" (Landelijk Bureau Racismebestrijding, 1991), 1, IDEM Rotterdam Kennisbank.

The next year's workplan echoed these goals, stating that 'in the year 1992, test cases will be an important point of attention,' including not only supporting cases 'but also if necessary, conducting proceedings in [the LBR's] own name.'[597] However, despite refreshed legal ambitions, the organization acknowledged that such cases required extensive resources and that, without additional subsidies, the strategy wouldn't be possible.[598] Later year-end summaries reported that the resources were never acquired and cases never pursued.

Marcel Zwamborn took over the position of LBR director from Arriën Kruyt in 1992. On the subject of the LBR and filing cases in its own name, he was self-critical. He confessed that, though a qualified jurist, his own background and interest lay more in lobbying for improved human rights policies at the European Union and that, pursuant to this interest, he spent a good deal of his time as LBR director lobbying in Brussels. He wanted to start a more aggressive lobbying campaign on issues of racial equality in the Netherlands as well, and believed he had support for such a strategy from the then-LBR board chair Lillian Gonçalves-Ho Kang You. However, he failed to mobilize that support among the LBR staff. He believed one reason for this lack of enthusiasm was that some LBR staff interpreted 'legal measures' as publishing jurisprudence and were committed to these projects above others.[599]

Reflecting on his period as LBR director, Arriën Kruyt stated in 1999 that the Ministry of Justice had never tried to influence the LBR's activities.[600] On the other hand, during Kruyt's tenure as director the LBR did not engage in adversarial legal campaigns. Zwamborn, by contrast, recalled receiving what he characterized as friendly advice from a member of the Ministry of Justice regarding the LBR filing cases under its own name. That person said something to the effect of 'if you're going to sue the government, you had better win'. Zwamborn interpreted this to mean if the LBR was going to use its government subsidized funds to sue that same

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[597] "LBR Werkplan 1992" (Landelijk Bureau Racismebestrijding, 1992), 4, IDEM Rotterdam Kennisbank.

[598] "LBR Werkplan 1994," 6.

[599] Marcel Zwamborn, interview by Alison Fischer, audio & transcript, April 4, 2023, in author's possession.

[600] Arriën Kruyt, "Het Ontstaan En de Beginjaren van Het LBR," *LBR Bulletin*, 1999, 20.

government – or use government funds to sue anyone in a high profile manner – the result should not reflect badly on the government that was providing the money.[601] This exchange underscores the problem with legal mobilization via government subsidy in general; however independent the LBR was chartered to be, it could only go so far in its critique of the ministry or government that enabled it to exist. AJ van Duijne Strobosh had pointed out this risk nearly a decade earlier in *Bestrijding van Discriminatie Naar Ras*; in that report to the government, he observed that US civil rights organizations could function as a check on government because they operated independently of that government.[602] His observation was true in 1983, and remained true throughout the life of the LBR. Whatever the reasons, by 1997, the LBR budget no longer included funds dedicated to 'filing cases in its own name.' The workplan for that year justified this change by explaining that any such case had to be authorized by the LBR board of directors anyway; in the event that the board wanted to file such a case, it could also authorize funding via its 50,000 guilder 'buffer budget'.[603]

5.4.1.2. Consultation on other cases – precedent not put to good use?

Instead of filing cases in its own name, the LBR reports frequently mention 'consultation' with lawyers engaged in cases of racial discrimination, though the reports are often vague as to the specifics of what this consultation or 'close involvement' entailed. Between initial filings and appeals, these cases could stretch over years, or even decades, which is not unusual for test cases. Some of these cases began before the LBR existed, and the LBR consulted on the appeal. One such example is *Nedlloyd v Bras Monteiro e.a.,* which began in 1983, when the defendant shipping company fired 222 non-Dutch citizens as part of its financial reorganization, as opposed to firing in decreasing orders of seniority as would have been customary in the industry.[604] In 1992, the Dutch Hoge Raad decided the firings

[601] Zwamborn, interview.

[602] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*.

[603] "LBR Werkplan 1997" (Landelijk Bureau Racismebestrijding, 1997), 5, IDEM Rotterdam Kennisbank.

[604] "LBR Jaarverslag 1990," 4.

had been the result of discrimination on the basis of nationality and were therefore unreasonable and ordered the fired employees to receive provisional damages.[605]

A case which the LBR reports as 'having carried out', but which does not bear its name is that of the *Nederlands Bureau voor Buitenlandse Studentenbetrekkingen v Ilhan Akel en Inspraak Orgaan Turken*.[606] Filed initially in 1988, the case accused the travel agency NBBS of refusing to sell the same cheap charter flight tickets to Turkey to Turkish nationals living in the Netherlands that they marketed to Dutch passport-holding students as part of package vacations. The trial court and court of first appeal both agreed with the parties that this represented indirect racial discrimination, but the Hoge Raad disagreed, finding for the charter companies.[607] In describing this case for the *LBR Bulletin*, LBR legal adviser (and later Leiden law professor) Peter Rodrigues attempted to tie the loss to the need for a stronger equal treatment law (Algemene Wet Gelijke Behandeling), then under debate in the Dutch parliament.[608] Such a law, he observed, should include the possibility for immigrants to the Netherlands (and their children) to maintain dual nationality, which would prevent companies like NBBS from hiding behind nationality rules in order to carry out racial discrimination. Rodrigues's article is a good example of McCann's observation that a loss in court is not necessarily a defeat for the larger social movement behind it; a loss in court can galvanize support for electoral or political change around the same issue.[609] However, Rodrigues's article in the *LBR Bulletin* seems to be a stand-alone call in this regard, and not a strategy behind which the LBR placed any additional resources or programming.

The LBR also provided 'advice during the legal procedure' of a Turkish employee against the Dutch broadcasting system NOS in 1990. The employee, along with all other '*allochthone* employees' (those racialized as non-white/non-Dutch) had been working free-lance for over a decade while '*autochthone* employees' (those

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[605] Nedlloyd v Bras Monteiro e.a., Rechtspraak Rassendiscriminatie via Art.1 Jurisprudentiedatabase.

[606] NBBS v Ilhan Akel en Inspraak Orgaan Turken (I.O.T.), 283; 0667 Rechtspraak Rassendiscriminatie via Art.1 Jurisprudentiedatabase (Hoge Raad 1991).

[607] Peter Rodrigues, "Rechtspraak: Hoge Raad Acht Onderscheid Naar Nationaliteit Toelaatbaar in NBBS-Zaak," *LBR Bulletin* 8, no. 1 (1992): 12–21.

[608] Rodrigues, 21.

[609] McCann, "Law and Social Movements," 31.

racialized as white and Dutch) all had permanent contracts. In summary proceedings, it was argued that this different treatment represented a case of indirect racial discrimination, but this court required additional evidence before making a decision; as of 1990, the case was proceeding to a fact-finding trial.[610]

One case on which the LBR consulted eventually reached the United Nations Committee on the Elimination of Racial Discrimination, which decided in favor of the complainant.[611] Rather than taking this case as a precedent, however, and pursuing court-based strategies more actively, the LBR's response was tellingly ambivalent. The case stemmed from an August 1989 incident involving a resident of Utrecht racialized as Moroccan. The man attempted to rent a home, but was informed by his potential neighbors that if he did so, they would set fire to the house. The man went to the police station to file a complaint under Penal Law 137, but the police did not accept the complaint until a local anti-discrimination group intervened.[612] After that, the office of the prosecution delayed the case for over two years before the Court of Appeals dismissed it in June 1991.[613] The UN committee found in the complainant's favor, holding that the Dutch state 'did not afford the applicant effective protection and remedies within the meaning of Article 6 of the Convention [on the Elimination of Racial Discrimination]'.[614] The LBR commented on the case, stating:

> The LBR naturally hopes that tensions [like the ones in this case] are resolved initially through mediation. However, where criminal offenses are clearly involved, the provisions of criminal law should actually be used to protect victims of racial discrimination and enforce standards. LBR has repeatedly pointed out to the Ministry of Justice that prosecutors do not properly weigh in on whether or not to prosecute. In addition to proper guidelines, the Ministry should also ensure that the police and the Public Prosecution

[610] "LBR Jaarverslag 1990," 5.

[611] L.K. v The Netherlands, online University of Minnesota Human Rights Library (The Committee on the Elimination of Racial Discrimination 1993).

[612] L.K. v The Netherlands, online University of Minnesota Human Rights Library paragraph 2.2.

[613] L.K. v The Netherlands, online University of Minnesota Human Rights Library at paragraphs 2.6-2.7.

[614] L.K. v The Netherlands, online University of Minnesota Human Rights Library at paragraph 6.7.

> Service have sufficient people and resources to recognize and handle cases of discrimination.[615]

This commentary is essentially a 'we told you so' to the Ministry of Justice, followed by a recommendation that amounts to more of the same. The Ministry of Justice, police and prosecutors had been informed for decades, at that point, that their officers and prosecutors were not properly enforcing anti-discrimination measures. Beginning in the late 1970s, police inaction and indifference had been the subject of community activism by JOSH and SARON, reports and publications from both government and academic institutions,[616] articles in publications directed at groups of people racialized as non-white,[617] and from the LBR itself.[618] Numerous 'memoranda', guidelines and behavioral codes had also been issued to the public prosecutor about how to handle such cases.[619] Rather than initiating a new strategy of criminal complaints, inspired by the UN decision, however, the LBR continued to recommend more of the same: discussion and education.

Other, more general forms of consultation included serving as a 'question bank', and 'source of expertise' for any 'first line' advocates working on racial discrimination. While in the early years of the LBR, these 'first line' advocates were mostly seen as lawyers, as time went on the LBR began to focus more on people

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[615] "LBR Jaarverslag 1992," 1992, 13, IDEM Rotterdam Kennisbank.

[616] See e.g. Bovenkerk, *Omdat Zij Anders Zijn*; Claudia Biegel and Kenneth Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie* (ʾs-Gravenhage: VUGA, 1986); Claudia Biegel, Anita Böcker, and Kenneth Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet* (Zwolle: Tjeenk Willink, 1987); Monique M. J. Aalberts and Evelien M. Kamminga, *Politie En Allochtonen: Verslag van Een Onderzoek Naar de Relatie Tussen Gemeentepolitie En Allochtonen in Nederland*, C.O.M.T. Rapport, no. 10 ('s-Gravenhage: Staatsuitgeverij, 1983).

[617] Joyce Overdijk-Francis, "Recht En Rassendiscriminatie: 'Nog Veel Werk Te Doen': Vijf Jaar Werkgroep Recht & Rassendiscriminatie," *Plataforma*, July 1988, (describing instructions from the Minister of Justice to the police in 1985, instructing them how to handle cases of alleged racial discrimination, and guidelines from the Minister of Social Work and Employment on discrimination indicating problems with police enforcement.).

[618] "LBR Werkplan 1992," 10–11; "LBR Jaarverslag 1994" (Landelijk Bureau Racismebestrijding, 1994), 4, IDEM Rotterdam Kennisbank.

[619] Biegel, Böcker, and Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet*, 135.

working at local anti-discrimination bureaus.[620] 'In concrete terms,' an early workplan described, such consultation could include 'a particular case [or] some other form of support in or out of court.'[621] The type and intensity of LBR's 'consultation' in many of these cases is difficult to gauge from the reports. The 1990 report provides the most detail in terms of the cases themselves but describes the LBR's input only as 'being intensely involved'. On the one hand, this lack of detail makes sense; the LBR staff were 'jurists' not 'advocates', a distinction in Dutch law between those who have graduated with a legal education and can therefore give legal advice, and those who have completed additional professional training and can appear in court and represent clients. Likewise, legal advice is usually considered privileged between attorneys and clients and so one would not expect the content to be included in a report. On the other hand, when justifying their activities to those funding them, as is often the purpose of annual reports like the ones used in this case study, additional detail would seem to be warranted if they demonstrated that the LBR was adding value to these cases. Unfortunately many descriptions focus more on the LBR actions than the results those actions achieved. For example, a 1997 report, describes the case of a Somali family assigned social housing in Den Bosch; when the woman and her child went to visit the house, they were greeted with a banner reading 'full is full' and shouts against 'foreigners' in the neighborhood. The LBR 'contacted the municipality of Den Bosch and listed various options for (legal) action. Ultimately, this case did not lead to criminal prosecution of the local residents involved.' The report did not mention what happened to the Somali family, only that the case, and others like it, remained 'a point of attention' for the LBR.[622]

Evidence against the effectiveness of LBR consultations in making material impacts on practices of racial discrimination in the metropole can be found in the absence of the LBR from discussions among lawyers actively engaged in cases on these matters. Many of these attorneys participated in the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie, Werkgroep

[620] "LBR Jaarverslag 1997" (Landelijk Bureau Racismebestrijding, 1997), 4, IDEM Rotterdam Kennisbank.

[621] "LBR Werkplan 1985-1986," 10.

[622] "LBR Jaarverslag 1997," 6.

R&R), legal practitioners and activists who began meeting regularly in September 1983 and published detailed summaries of their meetings. These minutes did not often mention the LBR in the context of active cases they discussed. If the LBR was, as its year-end reports described it to be, a valuable resource to such first-line legal service providers, one would expect it to be referenced more and in greater detail in the minutes of these meetings. However, as will be discussed more extensively in Section 6.3.3, the groups barely interacted.

5.4.2. Consultation with government organizations

The LBR frequently reported being consulted by public prosecutors, staff of local anti-discrimination bureaus and social workers.[623] The 1987 year-end report, for example, includes an entire section titled 'LBR and the government' where it describes the LBR writing reports for parliament regarding the set-up of criminal law, police registers and the then-under-debate Algemene Wet Gelijke Behandeling (General Equal Treatment Law), consulting with municipalities on positive action and housing, advising about candidate lists in provincial elections, and giving advice to individual members of parliament.[624] The 1988 report describes being consulted by the police regarding proper procedures for detaining individuals to check their identification,[625] a process many antiracist groups and organizations representing people racialized as non-white had opposed for years because of its potential for racial profiling.[626] While there is nothing wrong with giving advice per se, the LBR only had so many staff and was frequently shorthanded, as is often indicated in its later reports. While this advice may have fallen in the larger goal of 'combatting racial discrimination' and while law and policy could represent 'legal

[623] "LBR Jaarverslag 1988" (Landelijk Bureau Racismebestrijding, 1988), 3, IDEM Rotterdam Kennisbank.

[624] "LBR Jaarverslag 1987," 13–14; See also "LBR Jaarverslag 1989," 5 (listing the Pubilc Prosecutors office and individual prosecutors as among those asking for advice, but not specifying the topic); "LBR Jaarverslag 1990," 4 (referencing prosecutors and 'diverse police departments').

[625] "LBR Jaarverslag 1988," 3.

[626] Joyce Overdijk-Francis, "Nederland Fabeltjesland? Discriminatoire Aspecten van Het Vreemdelingtoezicht," *Plataforma*, December 1986, 20, (describing two hundred such organizations which joined together in 1982 to form the 'National Action Committee "No pass-law, but equal rights"' and communicate this opposition to the Dutch government, without success).

means' these activities seem further away from its core business of increasing the capacity of enforcement of existing anti-discrimination norms of individuals and organizations. Like out-of-court settlements and other alternative dispute resolution methods, advice to government organizations left no public records and did not become part of public legal archives.

5.4.3. Legal consciousness raising

The LBR's mandate to 'bring attention to and combat structures and patterns of racial discrimination' in the Netherlands was in a way a charge to raise 'rights-consciousness', a concept defined by McCann as a stage of legal mobilization that 'draws on legal discourse to name problems' in terms of rights and injustices and to connect those problems to potential legal solutions.[627] What makes consciousness raising a mobilization tactic, however, is the ability to connect awareness to action; it is in this regard the LBR failed to make clear its intentions or plans or to produce results.

5.4.3.1. Publishing and Disseminating Jurisprudence

By many measures, the most impactful 'legal measure' taken by the LBR during the course of its existence was its collection and dissemination of jurisprudence – cases and decisions related to legal claims of racial discrimination in a variety of contexts. Beginning in 1985, the LBR began publishing jurisprudence relevant to racial discrimination.[628] It began publishing cases in the *LBR Bulletin*, the organization's bi-monthly publication, and then bundled those case reports into books entitled *Rechtspraak Rassendiscriminatie*, which were updated and re-published three times between 1987 and 1991, before being merged into the electronic database in 1992.[629] To date, the online Jurisprudentiedatabase, now maintained by the antidiscrimination organization Art.1, is the only place to find summaries of many Dutch cases related to racial discrimination.

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[627] McCann, "Law and Social Movements," 25.

[628] The LBR took over this practice from the Working Group on Law and Racial Discrimination, which began doing so in 1983. The Working group will be discussed in more detail below.

[629] "LBR Jaarverslag 1992," 12.

The LBR legal staff was aware of the importance of this publication and dissemination work to wider strategies of combating racial discrimination. Staff legal adviser Anne Possel, who edited *Rechtspraak Rassendiscriminatie,* wrote in the first edition:

> [T]he more widely known [court decisions] become, the more likely they are to be effective. If one knows, for example, that a civil action against the policy of a discriminatory housing association can be successful partly because the court does not impose impossible requirements for proof, then familiarity with this case law will have practical consequences. The aggrieved know what to do and the housing association knows what to expect in the case of discriminatory policies.[630]

There was nothing wrong with the LBR's assessment of the importance of jurisprudence to legal consciousness raising; the problem came with leaving the organization's use of 'legal measures' at publication. Not following up and stimulating the *use* of that jurisprudential knowledge represented a failure of action that led the LBR to function as a nonperformative entity in the field of racial discrimination.

This ambivalent approach to the use of 'legal knowledge' was evident in the contents of the *LBR Bulletin*, which began publishing in 1985. The intended audience of the *LBR Bulletin* is difficult to ascertain; different articles seem directed at legal practitioners, government agencies or law makers, or the general public. I have been unable to find information related to circulation or subscriptions in the annual reports, save for an offer to give free subscriptions to lawyers willing to be in the LBR network of service-providers.[631] The content of the articles contributes to this confusion regarding the target audience. On the one hand, articles frequently include jurisprudence or commentary on it, which give the impression that the publication is directed at legal practitioners. On the other hand, there are just as often interviews with local anti-discrimination office volunteers or employees, book

[630] "Nieuwe Uitgaven: Rechtspraak Rassendiscriminatie," *LBR Bulletin* 3, no. 2 (April 1987): 33.

[631] "LBR Werkplan 1993" (Utrecht: Landelijk Bureau Racismebestrijding, 1993), 5, IDEM Rotterdam Kennisbank.

reviews or announcement of sociological studies or other academic publications, reports of LBR activities or trainings, or pro-con debates about anti-discrimination policy. The articles rarely make explicit recommendations about how lawyers or advocates could use existing jurisprudence or research to pursue strategies in individual cases or against larger patterns of racial discrimination. When I asked former LBR staff members who they identified as the audience for the *Bulletin*, they answered almost universally that it was the staff and volunteers of local anti-discrimination bureaus, but the articles themselves do not seem to support this assertion. Instead, the *Bulletin* seems to jump between commentary on jurisprudence fit for a law journal to general educational or 'open to debate' takes on issues that would be more appropriate for those completely unfamiliar with the subject.

An issue from 1986 provides a representative illustration. That issue had a general focus on housing discrimination, discussed in the editor's introduction and followed by several articles highlighting government policy on the issue and examples of housing discrimination in Utrecht and Gorinchem.[632] An article highlighting 'jurisprudence on the housing market' follows, including discussion on *spreidingsbeleid* in Rotterdam, a policy in which municipalities used housing policy to attempt to 'spread out' families of people racialized as non-white to prevent forming 'ghettos' of such groups, and a case from the local court in Eindhoven. All these cases were covered very briefly, in less than half a page, giving the impression that readers were already familiar with the cases or would pursue them independently, as opposed to using the article to provide guidance as a stand-alone piece.[633] The next article, 'Administrative possibilities to combat discrimination', was authored by an administrative law researcher from the University of Amsterdam; it issued policy advice to local governments, encouraging them to use powers to issue subsidies, licenses and permits to address discrimination in housing and services, as opposed to lawyers or legal service providers, albeit with the acknowledgment that whatever the policy, 'procedures against the government are,

[632] Choenni and Van der Zwan, "Notitie Plaatsingbeleid Utrecht: Achterstelling Voor Allochtonen?," 11.

[633] Anne Possel, "Rechtspraak Woningmarkt," *LBR Bulletin* 2, no. 2 (1986): 20–22.

unfortunately, still necessary' to enforce those policies.[634] Thereafter followed a one page essay by LBR board member and jurist Hugo Fernandes Mendez; this article observed that given the freedom to contract, building owners could be encouraged to deny rentals to overtly racist organizations, like the then active Centrum Partij. Toward the end of the article, Fernandes Mendes included that the Minister of Justice had suggested that if building owners rented to groups they knew would make racist statements while using the space, the building owners could be charged criminally.[635] This suggestion was (and would still be) a fairly novel use of criminal law and turning it into a viable legal strategy would have been something the LBR would have had to put an active effort into to make it a reality. The local antiracist group, Workgroup Artikel 429 Quater, based in Hilversum, was using a similar strategy with its local municipal council, and could have served as a resource for such action.[636] But the article in the LBR bulletin is a scant page long; it includes no list of references or organizations who could offer guidance. The LBR year-end reports or workplans also contain no indication that the organization further attempted to support such organizing. As such, the question is left as to the purpose of this article's inclusion in the LBR Bulletin. The rest of the issue announced publications of a study of positive discrimination measures in the US, UK and Sweden that was commissioned by the government research body ACOM and conducted by Frank Bovenkerk, a page about an ongoing court case against a right-wing member of parliament, and short paragraphs describing other publications related to discrimination and race.

When legal consciousness raising is effective as a form of legal mobilization, it is because it empowers people to take action on their cause. The majority of *LBR Bulletin* articles raised topics or provided information, but stopped short of educating or encouraging readers about how to act once armed with such information. In short, they made statements against racial discrimination, and gave discursive support to actions that might address these problems, but failed to perform via material engagement with most of those actions.

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[634] Tom Hoogenboom, "Bestuursmogelijkheden Tot Discriminatiebestrijding," *LBR Bulletin*, 1986, 2, no. 2 (n.d.): 23–26.

[635] Hugo Fernándes Mendes, "Verhuur van Zaalruimte," *LBR Bulletin* 2, no. 2 (1986): 27.

[636] Bogaers, "Recht & Rassendiscriminatie"; Bogaers, interview.

The content and scope of many of the articles in the *LBR Bulletin* seem particularly denuded of their power to raise *legal* consciousness when compared to articles on similar topics published in the newsletters of organizations dedicated to combatting racism or representing the interests of people racialized as non-white. For example, the published series of summaries of meetings of the Workgroup on Law and Racial Discrimination presented similar issues to those raised in the LBR, but paired information with discussions and suggestions for how to translate that knowledge into action.[637] Articles published by the legal advisers of organizations representing people racialized as non-white made similar links. For example, an article by POA legal counsel, Joyce Overdjik-Francis, in *Plataforma* in May 1985, raised the question of whether to push the government to register citizens' racial and ethnic information along with other census data.[638] After describing the possibilities of collecting such data, and reviewing the concerns associated with such registration, the author made a clear statement of why such collection was still an important step in combatting racial discrimination and made recommendations of how to support such policies and strategies.[639] In the same issue, an article about the potential for 'preferential treatment' of 'ethnic minorities' in employment began by grounding the causes of inequality in Dutch colonial history, and ending by explicitly calling on Dutch institutions to adopt such policies.[640] Even more concrete in terms of legal mobilization was a 1984 *Plataforma* article, 'Legal

[637] Joyce Overdijk-Francis (ed.), "Jaarverslag 1983/1984 & Cumulative Index," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, May 1, 1985), Nationaal Bibliotheek (explaining purpose of Workgroup meeting summaries is to support lawyers in developing law in this area through practice).

[638] Joyce Overdijk-Francis, "Registreren of Blijven Creperen," *Plataforma*, May 1985, ; European legal scholars would echo Overdijk-Francis's conclusions in the 21st century, arguing that the benefits of keeping statistics on racialized identity and discrimination outweigh the risks, see e.g. Möschel, Hermanin, and Grigolo, *Fighting Discrimination in Europe*.

[639] Overdijk-Francis, "Registreren of Blijven Creperen."

[640] Penni Peterson, Cliff Rigot, and Anco Ringeling, "Naar Een Voorkeursbehandeling Voot Etnische Minderheden: Van Formele Naar Substantieve Gelijkheid," *Plataforma*, December 1983, (making clear that the unequal position of Antillean and Surinamese people in the Netherlands comes 'from the fact that they were denied substantive equality of opportunity in the past…. As victims of past and present systemic injustices, they possess relatively lower incomes and higher levels of unemployment and may not adequately utilize available education or training.')(translation mine).

Measures Against Racism: Proof is the biggest stumbling block', in which Overdijk-Francis described all laws relevant to racial discrimination in the Netherlands, from the constitution through criminal law, and described the experience of reporting such crimes to the police, and the possibility that the police may refuse to accept such complaints. She then informed her readership of their rights to appeal these police decisions and ended by identifying concrete action POA, and other organizations representing people from the Caribbean, should take to address these problems of proof. She wrote:

> Here is a task for Antillean organizations. They can play an important role in collecting data for the burden of proof. It concerns a systematic registration over a longer period of time of discrimination cases and of bodies that discriminate. Registration of declarations of discrimination, which may or may not have been prosecuted by the police, or (as the case may be) by the public prosecutor, is also recommended. Such registration can help the difficult task of proof.[641]

While articles in *Plataforma* did not result in material actions against racial discrimination, they did suggest openly that such action was both desirable and necessary. Such messages contrasted to those in the *LBR Bulletin* which often seemed to position research on racial discrimination as an end unto itself.

5.4.4. Conducting research

In the early 1980s, legal advocates against discrimination were excited by the potential to use statistical research and evidence to pursue court cases against large scale incidents or patterns of racial discrimination. These cases were often more difficult to prove than the more explicit incidents of individuals being denied access to a disco or being subject to hate speech. The main reason for this optimism was the *Binderen v Kaya* case, decided in December 1982 and discussed in detail

[641] Overdijk-Francis, "Juridische Bestrijding Rassendiscriminatie: Bewijslast Grootste Struikelblok," 22.

above.[642] In that case, the Dutch Hoge Raad accepted statistical proof of indirect discrimination as sufficient grounds on which to hold the defendant liable for racial discrimination. The *Binderen* case was seen as having enormous potential for filing similar cases, not only related to housing, but also employment. Not only academics[643] but also government-sponsored researchers,[644] groups representing 'ethnic minorities' and independent lawyers[645] and advocates and the Dutch government itself[646] recognized that gathering the statistical information needed for such cases would be beyond the capacity of individual victims of discrimination.[647] It would require the work of a larger organization, ideally able to compel cooperation with its investigations, but at least to be able to compile statistics across industries, regions and years. In the minds of many, the LBR would become just that sort of national organization. Indeed, over the course of its life the LBR produced thousands of pages of research. As time went on, however, it became clear that the research the LBR produced was not destined for the courtroom; in fact, none of the cases listed in Section 5.4.1 above in which the LBR was a named party, or even those in which the LBR was 'closely involved', were based on statistical evidence from the organization's many research projects. Instead of being utilized as the basis for cases, LBR research was frequently presented as an end in and of itself.[648]

The LBR published the results of its research in the *LBR Bulletin* or its supplement, the *LBR Reeks*. Much of this research focused on generalized practices or beliefs about discrimination, the likes of which already existed in the Netherlands in abundance, produced by government research institutions like the ACOM, and supplemented by a variety of other groups and individual researchers, some

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642 Hondius, "Private Remedies Against Racial Discrimination - Some Comparative Observations with Regard to R.K. Woningbouwvereniging Binderen v Kaya."

643 Hondius; Ausems-Habes, *Congres Recht En Raciale Verhoudingen* (mentioned in opening speech to the Congress by Professor Kees Groenendijk).

644 Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 87.

645 Overdijk-Francis (ed.), "Civiel Recht En Rassendiscriminatie," 11.

646 Kamerstukken II 1982/1983, 16102, nr. 21, 98–99.

647 Boer, "Artikel 1 Grondwet," 134.

648 Kruyt, "Het Ontstaan En de Beginjaren van Het LBR" ('De eerste duidelijke resultaten waren onderzoeksrapporten.... Een rapport over uitzendbureaus heeft een geweldig effect gehad.').

independently commissions, others based in universities, all funded through various government ministries. In fact, the Dutch government paid for so much research that it had to also create a separate institution just to track it all; between 1989 and 1993, a time period in which the LBR was also active, that organization catalogued over 300 separate research projects related to 'ethnic minorities' in the Netherlands.[649]

Five years earlier, in his report on to the Ministry of Justice on how to address racial discrimination in the Netherlands, A.J. van Duijne Strobosch had already commented on the quantity of research on the topic. He advised the cabinet that a future national institute should indeed conduct investigations to gather statistical evidence on discriminatory patterns or practices in order to support legal complaints, but should avoid 'research about the existence' of racial discrimination in the Netherlands generally, which already existed in abundance.[650] Researchers and others who identified as members of groups racialized as non-white agreed with his complaints. Sociological researcher Chan Choenni, who would end up working as a staff researcher for the LBR, complained in *Spann'noe* in 1985 that:

> The number of research reports, memos and books on so-called ethnic minorities are already so numerous that it is an almost impossible task to keep an overview.... Many times there are overlaps, irrelevant details and sometimes trivialities....Yet it appears more and more that quotations from these works are being made indiscriminately. A strange kind of incompetence then comes around the corner: to your great surprise, firm statements are made that are clearly based on misconceptions and misinterpretations.[651]

The LBR identified its role as different from those other research organizations in that it spent a lot of time following up on the results of its research so that it would lead to change of circumstances for 'the foreigners who were disadvantaged' by

[649] E. Dijk, "Onderzoek Etnische Minderheden 1989-1992," Documentatie lopend onderzoek sociale wetenschap, Selektie (Amsterdam: Sociaal-Wetenshappelijk Informatie- en Documentatiecentrum, 1993).

[650] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 86.

[651] C.E.S. Choenni, "Evenredigheid En Toegankelijkheid," *Span'noe*, 1985, 12.

discrimination.[652] Unfortunately much of that follow up was often in the form of more research, or non-binding measures that did little to change patterns and practices of discrimination.

5.4.4.1. Case Study One: Employment Agency Discrimination

One illustration of how the LBR used research in 'combatting racial discrimination with legal means' and how fundamentally nonperformative this practice was, can be seen by looking at the LBR's response to allegations of discrimination by employment agencies (*uitzendbureaus* and *gewestelijke arbeidsbureaus*). In 1986, the LBR commissioned researcher Choenni, who was by then working full time for the LBR, and university researchers R. den Uyl and Frank Bovenkerk to research these allegations. The result was *Mag het ook een buitenlander wezen?*, a publication which revealed that local and regional employment offices 'structurally discriminated against ethnic groups'.[653] Using research assistants acting in pairs, one 'descended from an ethnic group' and one 'a native Netherlander', the researchers applied to various agencies, where the 'ethnic group' members were denied twice as often as the 'native' Dutch applicants. They also posed as potential employers, calling the employment agencies and requesting that the agencies *not* send them any candidates of Surinamese or 'foreign' background, openly discriminatory requests to which agency staff members almost universally agreed. The researchers also spoke with staff of the employment agencies, who admitted to accommodating employers' discriminatory requests without informing their supervisors, and with 'members of ethnic groups' who reported experiencing such discrimination.[654] In response to their findings, the researchers recommended eight courses of action, none of which included filing court cases in criminal or civil court.[655]

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[652] "LBR Werkplan 1992," 14.

[653] Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*; (described in) Frank Bovenkerk, C. Choenni, and R. den Uyl, "Het LBR pakt discriminatie bij uitzendbureaus aan.," *LBR Bulletin*, 1986.

[654] Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*, 10.

[655] Bovenkerk, Choenni, and Uyl, "Het LBR pakt discriminatie bij uitzendbureaus aan.," 15–17; Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*, 27–29 (The

Instead, the LBR focused its efforts on working with the General Union of Employment Agencies (Algemene Bond Uitzendbureaus, ABU), to develop a behavioral code (*gedragscode)* which would forbid employment agency staff from engaging in practices like those found in the report. The Dutch parliament, as well as the Ministry for Social Work and Employment, signaled their support for such codes. The ABU accepted the suggestions and developed such a code with the cooperation of LBR staff; the Ministry for Social Work and Employment followed suit.[656] All parties acknowledged the codes would only be effective if enforced,[657] but enforcement remained difficult. In 1988 and 1989, the LBR filed two cases with the ABU regulatory body related to discriminatory Dutch language and citizenship requirements for warehouse workers, where these qualities were not essential to the work.[658] But those complaints was rare. By 1991, not only the LBR but national newspapers were reporting that most employment agencies ignored the non-discriminatory behavioral codes, and continued to discriminate against applicants from 'ethnic minority' groups.[659] That same year, the LBR presented a follow-up report, conducted by researchers at Leiden University and titled *Makkelijker Gezegd* (*Easier Said*); that research consisted mainly of interviews with employment agency workers, who reported finding the non-discrimination code

recommendations did include: 1) that the employment agencies adopt a code of conduct (gedragscode) which included a commitment not to discriminate in accepting candidates, or accommodating the discriminatory wishes of client-employers; 2) that the employment agencies themselves hire more 'members of ethnic groups'; 3) that the agencies train their employees with special attention to (non) discrimination; 4) that the Ministry of Social Work and Employment include non-discrimination requirements in issuing permits to such agencies; 5) that the same Ministry, though its salary control services, check the agencies more frequently for discrimination; 6) that the Dutch cabinet, municipalities and other large institutions only do business with agencies that had non-discrimination policies; 7) that the organizations representing 'ethnic groups' conduct similar investigations at the local level and 8) that agencies register how many 'members of ethnic groups' were registered with their agencies and how many of those candidates had actually been referred to potential employers.).

[656] "LBR Jaarverslag 1987," 2.

[657] Tjeerd van der Zwan, "Anti-Discriminatiecode Voor Uitzendbureaus," *LBR Bulletin*, 1987.

[658] 'LBR Jaarverslag' (n 374) 6 (representing two of the seven cases filed in the LBR's name above).

[659] Henk Muller, "Uitzendbureaus Negeren Gedragscode Discriminatie," *Volkskrant*, October 3, 1991, IDEM Rotterdam Kennisbank; "LBR Jaarverslag 1991," 24–25.

helpful, but lacking 'sufficient skills to resist discriminatory requests of employers.'[660] Instead of filing complaints against individual employment agencies under Art.429quater of the criminal code, which outlawed such discrimination by businesses, the LBR's response to this new evidence of ongoing discrimination was to design a training module for employment agency staff which would focus on how to respond to discriminatory requests from employer-clients, and later 'intensifying schooling' pursuant to a permanent cooperation agreement between the LRB and the ABU.[661]

Rather than accept that, as predicted by A.J. van Duijne Strobosch in 1983, that behavioral codes without enforcement were 'dead letters', a prediction reinforced by their own research, the LBR expanded this nonperformative strategy to other agencies and industries. In the late 1980s and early 1990s LBR staff were active on various committees and in conversation with various industries to develop more behavioral codes and performance guidelines (*richtlijnen)*. These codes and guidelines included, among others, the auto insurance industry[662], airline industry[663], Ministry for the Interior[664], the prison authority[665], the restaurant and hotel industry, city of Amsterdam, labor unions, the Central Labor Administration

[660] "LBR Jaarverslag 1991," 13–14.

[661] "LBR Werkplan 1992," 14; "LBR Werkplan 1993," 13.

[662] "LBR Jaarverslag 1992," 10.

[663] "LBR Werkplan 1993," 14 (In 1992, the LBR announced the results of a survey of KLM's Material Management Department. This survey confirmed earlier complaints by 'immigrants' about the obstacles they faced in their careers within the company. Based on the investigation, the LBR reported that KLM decided to tighten its anti-discrimination policy and set up a working group was set up to implement this policy on which an LBR staff member served. The working group was to focus on 'the installation of confidants and a complaints committee on discrimination and improving opportunities for immigrants to progress within the company.').

[664] "LBR Jaarverslag 1993," 1993, 9, IDEM Rotterdam Kennisbank ('consultation about set up and content for a behavioral code for the ministry; Liley this code would be used as a model for other ministries.').

[665] 'LBR Jaarverslag' (n 573) ('A code for imprisoned people…the LBR exchanges thoughts with the [Ministry of] Justice regarding improving the position of detained foreigners.').

and Dutch Olympic Committee[666], as well as the police and Ministry of Justice.[667] The LBR observed that these codes were more effective than general norms and laws against discrimination because they were more specific and concrete, and often included sanctions for discriminatory behavior.[668] This statement seems to be wishful thinking, however, since other than the two cases brought by the LBR to the ABU in 1988 and 1989, the LBR offered no research or other evidence to prove that guidelines were being enforced. By contrast, evidence up to and including the present day indicates that the sort of discrimination described in the early research continues to this day.[669]

5.4.4.2. Case Study Two: Research on housing discrimination

In addition to the LBR's work on employment bureaus, many people associated with the group often pointed me to research on housing discrimination as an example of the organization's successful work. Closer examination demonstrates, however, that the 'success' of this research was as difficult to assess as that of behavioral codes for employment agencies. Housing discrimination was a problem identified early and often as a priority for the LBR[670], but had proved harder to address than employment or disco discrimination. Government policy documents had long forbidden explicitly racialized *spreidingsbeleid*, or 'dispersal policies' which attempted to 'spread out' groups of people racialized as non-white in different neighborhoods across Dutch cities or regions.[671] In practice, however,

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[666] "LBR Jaarverslag 1993," 9 (cooperation with LBR ranging from discussion to drafting definitive versions of such codes).

[667] "LBR Jaarverslag 1992," 9 (the LBR sat in a committee developing guidelines (*richtlijnen*) for the police and OM; in 1992, 'the current guidelines appear not to be affective and need to be sharpened.').

[668] "LBR Jaarverslag 1993," 8.

[669] See e.g. Anne Dohmen, "Linda verkoopt meer hypotheken dan Ouafa," *NRC*, April 13, 2018, https://www.nrc.nl/nieuws/2018/04/13/linda-verkoopt-meer-hypotheken-dan-ouafa-a1599331.

[670] See e.g. "Verslag Kongres Minderheden," 29–30; "De LOSON Roept Op Tot Massale Deelname Aan de Anti-Racisme-Campagne," 7; Ausems-Habes, *Congres Recht En Raciale Verhoudingen*, 39, 206.

[671] Choenni and Van der Zwan, "Notitie Plaatsingbeleid Utrecht: Achterstelling Voor Allochtonen?," 13; e.g. Bart Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij

such policies persisted using categories like income, family size, employment history or 'lifestyle' to perpetuate the same practice. The Dutch housing ministry requested that housing corporations voluntarily report how many 'foreigners' were included among their renters, but compliance was rare; in its first workplan, the young LBR listed 'compelling' this compliance through 'political and legal measures' a priority.[672]

In September 1989, the LBR published research indicating that housing corporations in Haarlem used the category 'family with many children' to discriminate against Turkish and Moroccan families seeking subsidized apartments.[673] Officials from regional housing corporations that administered these applications denied that they took actions that were impermissible, but also justified that these actions were necessary concessions to protect the interests of 'Dutch' residents.[674] In response to the LBR report, the Dutch ministry responsible for housing (*Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, VROM*) ordered Haarlem to conduct its own research, a request to which Haarlem agreed, along with starting a working group to look into the LBR's recommendations for improvement, which included mandatory reporting for housing corporations.[675] However, the Haarlem city council also complained that the LBR was singling it out when other municipalities engaged in similar practices; [676] LBR researcher Kees Tazelaar agreed with the council on this point, but argued

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Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket,'" *De Volkskrant*, October 17, 1989, sec. Binnenland, Delpher.

[672] "LBR Werkplan 1985-1986," 5.

[673] "Haarlem discriminatie buitenlanders verweten," *De Volkskrant*, September 23, 1989, print edition, sec. Binnenland, Delpher; "LBR Jaarverslag 1990," 14–15.

[674] "Haarlem discriminatie buitenlanders verweten" ('Directeur W. Langeler, van woningbouwvereniging St Bavo, verdedigt het beleid…door erop te wijzen dat Nederlanders vaker zouden verhuizen als er veel buitenlanders in hun wijk wonen… "Ze kunnen zich dan niet meer in hun eigen wijk herkennen."'). Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket'" ('Yvonne Grooten van de NCIV [zei] soms moet de toestroom van "mensen met een kleurtje", zoals zij dat noemt, wel eens worden afgeremd.').

[675] "Onderzoek Naar Discriminatie in Haarlem Gelast," *NRC Handelsblad*, December 29, 1989, sec. Binnenland, Delpher.

[676] "Onderzoek Naar Discriminatie in Haarlem Gelast."

this singling out was strategic and should warn other municipalities to change their practices or be similarly called out.[677]

A scant four months later, however, the success of the Haarlem research was difficult to determine. The city council had 'emphatically denied' any allegations that 'foreign families' were discriminated against with its approval.[678] The 1990 LBR year-end report indicated that the LBR had participated in the Haarlem working group, and that its recommendations had been 'endorsed' by the city council, but the report does not indicate whether those reports indicated mandatory reporting, or how that reporting would be enforced, except to say that the organization was in 'contact with interested local organizations' and had a conversation with the 'LBR and the Bureau of Legal Aid,'[679] but neither LBR reports, nor online databases of legal cases of discrimination or Dutch media archives indicate that such a case was ever filed in Haarlem.

Zooming out, Tazelaar's wish that the Haarlem research serve as a model for national action on housing discrimination also yielded dubious results. An LBR report on housing discrimination in the city of Lelystad, published in 1990 met with immediate resistance from officials there who denied allegations of discrimination and also rejected the idea of engaging in a 'Haarlem model' working group to adopt recommendations of the LBR.[680] One of the housing corporations featured in that report ended up suing the LBR for defamation and winning, forcing the LBR to print retractions of its findings in two national newspapers in 1993.[681]

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[677] Jungmann, "Verplichte Rapportage Corporaties over Buitenlanders Bij Woningtoewijzing Stuit Op Weerstand: 'Rassendiscriminatie Gebeurt Achter Het Loket'" (Tazelaar: 'We hebben bewust een middelgrote gemeente genomen en niet Amsterdam….').

[678] "Haarlem ontkent discriminatie," *Algemeen Dagblad*, January 15, 1990, sec. front page, Delpher.

[679] "LBR Jaarverslag 1990," 14.

[680] Berry Brinkhorst, "Discriminatie Bij Toewijzen van Huizen," *Het Parool*, June 30, 1990, sec. Omstreken & Amsterdam, Delpher; "Gesprek over discriminatie vastgelopen: Lelystad en LBR uit elkaar," *Het Parool*, August 14, 1990, sec. Omstreken & Amsterdam, Delpher; "Heerma Eist Openheid in Racismezaak: Rond Woningtoewijsizing Lelystad," *Het Parool*, September 8, 1990, sec. Omstreken & Amsterdam, Delpher.

[681] Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase; Landelijk Bureau ter Bestrijding van Rassendiscriminatie, "Rectificatie," *NRC Handelsblad*, January 22, 1993, sec. Economie; Landelijk Bureau ter Bestrijding van Rassendiscriminatie, "Rectificatie," *De Volkskrant*, January 22, 1993.

Using these reports as leverage for political change failed to yield clear victories. While in 1991, the LBR reported successfully lobbying Parliament to include a reporting requirement as an amendment to its Housing Law,[682] the ultimate law adopted in 1992 was less clear; it prevented landlords from refusing a report, if the municipality asked for one.[683] By 1993, the political tone of national discussions around housing discrimination seemed to have shifted entirely. That year, an 'Antillean family' tried to rent a house in Tilburg, the home was vandalized with 'racist slogans' and cleaners working for the housing company were threatened, after which point the family was placed in another neighborhood.[684] Rather than tightening anti-discrimination requirements, however, support in the 'public housing world' increased for 'placement policies' that openly considered 'lifestyle and living culture' when placing renters with an eye to avoiding 'neighborhood conflicts.[685] Despite describing these categories as 'alibis for discrimination on the basis of ethnicity', the LBR did not engage in, or recommend, further legal action on the matter, but instead advocated to the readers of its yearly report that municipalities respond more quickly to people causing neighborhood problems.[686] In 1994, it reported having 'close discussions' with a lawyer in Maastricht who achieved a positive result in a discrimination case against a commercial property that refused rental to a person from Ghana, but reported no new efforts on the issue of housing discrimination that year.[687]

5.5. Conclusion

The LBR's fundamentally non-adversarial approach to legal mobilization defined its beginnings, as well as its ends. It's ambivalent, somewhat contradictory relationship to legal mobilization is revealed in how its first director, Arriën Kruyt, looked back at the life of the organization on the last issue of the *LBR-Bulletin*. To

[682] "LBR Jaarverslag 1991," 4.

[683] "LBR Jaarverslag 1992," 16.

[684] Remco de Jong, "Tilburg Schikt Zich in Afkeer Andere Leefstijl," *Het Parool*, October 7, 1993, sec. Binnenland, Delpher.

[685] "LBR Jaarverslag 1993," 19.

[686] "LBR Jaarverslag 1993," 19–20.

[687] "LBR Jaarverslag 1994," 14.

begin, Kruyt acknowledged that 'publicity, consciousness trainings and that sort of thing are undoubtedly necessary, but they don't do much for someone who has just been fired due to discrimination. That person needs an educated advisor who knows their way around the law.' He then went on, to explain that the LBR met this need by 'in the first place bringing the experts in-house, and then on the basis of this expertise lobbying for good laws and educating lawyers to give good help.'[688] In other words, victims of discrimination needed people to take legal action, but that action would come at arms-length from the LBR itself.

In her articles on nonperformative antiracism, Sara Ahmed describes what it means to 'perform equality' – that is, to give a performance, a show, which acts like taking action against inequality or discrimination, but in fact changes nothing. Writing about university diversity policies against discrimination, she poses the question, 'whether what is being measured are levels of institutional competence in producing documents rather than what the university is doing in terms of race equality,' and cites the concern of those working for racial equality on campus that 'writing documents or having good policies becomes a substitute for action.'[689] The activities pursued by the LBR, from informational campaigns, to out-of-court mediation of individual complaints, from prioritizing research and publishing to crafting of elaborate behavioral codes and guidelines, comport with Ahmed's observation; these practices consumed the time and energy of both LBR staff and workers from the industries or agencies in question, while yielding at best unprovable results. At worst, these efforts created the illusion of compliance with non-discrimination norms while allowing ongoing discriminatory practices to continue. They also denied victims of such racial discrimination the chance to shift the perception of their grievances from a 'psychological reality to a material reality' as Nicole Immler observed happened in the case of the Rawagede widows who were able to obtain compensation from the Dutch state decades after their family members were killed by the Dutch military in Indonesia.[690]

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[688] Kruyt, "Het Ontstaan En de Beginjaren van Het LBR," 20.

[689] Ahmed, "The Nonperformativity of Antiracism," 116–17.

[690] Immler, "Human Rights as a Secular Social Imaginary in the Field of Transitional Justice: The Dutch-Indonesian 'Rawagede Case.'"

On the rare instance when the LBR did engage in adversarial legal procedures under its own name, it did so under the ahistorical definition of racism defined in Section 2.3.1 above, that is an explicit, conscious expression of hatred or superiority based on group identity, as opposed to more every day, practical racialized social practices. For example, the cases the LBR filed in Dutch courts were in large part in response to racist speech acts, like pamphlets including Holocaust denials or speeches by self-declared anti-immigrant parties, like the Centrum Partij or Centrum Democraten.[691] Even the cases it filed before regulatory bodies employment agencies were about explicitly racialized categorization of job applicants or requirements.[692] Other cases were more focused on discrimination based on nationality (in the case of Turkish charter flights); while these cases may have overlapped with issues of racial discrimination and racialization, in that some nationalities were racialized as non-white, the LBR never made this connection clear as part of its arguments, or explained the history of why racialization and nationality were so intimately connected, as explained in sections 1.2.2. and 2.2.1 above. By contrast, cases which were deeply racialized, but which involved practices more passively integrated into Dutch society, for example the consistent and persistent reluctance of police or prosecutors to follow up on allegations of racial discrimination[693] the LBR chose repeatedly and over a long period of time for

[691] See e.g. Siegfried Verbeke v Centrum voor Informatie en Documentatie Israël (CIDI), Anne Frank Stichting, Landelijk Bureau Racismebestrijding; Vereniging Centrum Democraten v HIFD, LBR, Van der Zwan HTFD, online Art.1 Jurisprudentiedatabase (Gerechtsof 's-Gravenhage 1993); CIDI, LBR, Anne Frank Stichting v VHO / Verbeke / Vd Bossche, Kort Geding 1992 Art.1 Jurisprudentiedatabase.

[692] Lieneke de Klerk, "Rechtspraak: Discriminerende Aantekeningen Op Kaarten Uitzendbureau: ABU-Scheidsgerecht Doet Wederom Uitspraak in Discrimininatiezaak," *LBR Bulletin*, no. 6 (1990): 21–25; LBR v Werknet Uitzendorganisatie BV |, online version Art.1 Jurisprudentiedatabase.

[693] Biegel and Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie*; Biegel, Böcker, and Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet*; Aalberts and Kamminga, *Politie En Allochtonen*; Anne Possel, "Klachten over Politie-Optreden," *LBR Bulletin* 2, no. 6 (1986): 10–11; For evidence that this reluctance to take on cases remains a present day problem, see e.g. Rolinde Hoorntje, "Racisme in Nederland leidt zelden tot rechtszaak," *OneWorld*, October 8, 2020, https://www.oneworld.nl/lezen/discriminatie/racisme/racisme-in-nederland-leidt-zelden-tot-rechtszaak/.

strategies of dialogue or education, as opposed to more adversarial legal enforcement.

One of the reasons the cabinet created the LBR was to answer critiques from grassroots groups and those representing people racialized as non-white that existing anti-discrimination norms and laws were not being enforced and therefore had no material impact. The government refused to budge from its strategy of relying on individual complaints, but conceded that an organization was needed to make that strategy effective. In refusing to engage with enforcement of those measures in a way that materially impacted large numbers of people experiencing racial inequality in the Dutch metropole, the LBR became, at best, complicit in maintaining the status quo, a society still operating with social and economic hierarchies influenced by a white supremacist past. At worst, its actions also obscured the existence of those problems, occluding the fact that 'incidents' of racial discrimination were in fact wide-spread and national problems, baked into the structure of postcolonial Dutch society, by keeping cases and controversies out of public, legal archives. This occlusion of race as an aspect of Dutch society resulted not only from their legal activities, or lack thereof, but also from the content of their educational and networking efforts, which the following chapter will address.

6. Racism or 'not-racism™'? The mandate to combat racial discrimination

6.1. Racist denial and 'not-racism™' in the postcolonial metropole

One of the six priorities identified by the Landelijk Bureau Racismebestrijding (LBR) charter was to 'bring attention to and combat structural forms and patterns of racial discrimination through legal action.' In executing this mandate, the LBR could have chosen to explore the historical and deeply embedded roots of racialization in Dutch society, going back centuries to colonial expansion and enslavement, or its own daily newspapers which revealed ongoing efforts to limit migration of people racialized as non-white to the metropole. It could have filed test cases on these issues, even expecting that such cases would be lost, to demonstrate the inefficacy of existing laws and their limited definitions of racism or racial discrimination and to help build momentum for wider political change. These were all practices with precedents in the grassroots actions of organizations that preceded the LBR in their engagement with issues of racialized in equality in the metropole, as discussed in Chapter Three. Instead, the LBR turned in the opposite direction. The organization and its leaders consistently avoided explicit references to race or racism even in their limited legal contexts. In doing so, this chapter argues, the LBR contributed to the occlusion and erasure of the role racializing practices played in postcolonial Dutch society. By equating racial discrimination with all other forms of discrimination or unequal treatment, and denying that race or racialization played a role in much of the discrimination they addressed, the LBR also committed 'racist denial,' described by some critical scholars as being its own form of racialized violence, for reasons outlined below.

Section 1.2 above describes critical race scholar Alana Lentin's concept of racist denial, which she also calls 'not-racism™' as the practice of responding to allegations of harmful racializing practices by denying the racializing elements of

those practices.[694] Lentin's concept is a broader critique of combatting racism under its limited, ahistoric definition, where race is:

> narrowly understood as referring uniquely to the attempt to scientifically authenticate the idea of human diversity as hierarchical and immutable heredity, [and separated] from the larger project of European colonial-racial rule.... [R]acialized expression taking any other form than that which invokes a racialized genetic hierarchy is held up to this 'real racism' and found wanting.[695]

Whatever behavior falls outside of the above limited definition is termed 'not racism' which Lentin calls 'a form of discursive racist violence which not only negates people's experiences of racism but reformulates its definition on the basis of a purportedly more objective account, not tainted by emotional involvement.'[696] Racist denial, so defined, exercises white supremacist tropes of what is objective, neutral and therefore true, as opposed to biased, emotional and therefore false.[697] It is materially violent because declaring certain racializing behavior 'not racist' can also remove that behavior from the possibility of legal sanction or remedy. Racist denial by a state-sponsored organization like the LBR is also epistemically violent because it removes the knowledge of racialization as a Dutch problem from mainstream public discourse both in the short term and historical perspectives. This chapter demonstrates that by steadily deemphasizing the role of race or racializing practices in the Dutch metropole, the LBR occluded the ongoing relevance of those practices hierarchies in Dutch society, and the role of law in maintaining those hierarchies, in a way that made it more difficult to address the

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[694] Lentin, "Beyond Denial"; Alana Lentin, "No Room for Neutrality," *Ethnic and Racial Studies*, November 4, 2021, 8, https://doi.org/10.1080/01419870.2021.1994149; Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment," 4.

[695] Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment," 4.

[696] Lentin, 4.

[697] Hesse, "Racialized Modernity," 656 (describing what he calls "epistemological racialization".); Adébísí, *Decolonisation and Legal Knowledge*, 5–6 ('A claim to all-seeing objectivity, neutrality and universality refuses to engage with the workings of power, the restriction of possibility in legal meanings as well as the unviersalised "particular" that is Western masculinist law.').

problems it was founded to combat; it engaged in 'not racism' at an institutional level.

As discussed in Chapter Four, I have mixed feelings about the question of intent as it relates to individual staff or board members of the LBR, both in regard to their choice of particular legal strategies, discussed above, or in their focus on 'not-racist' discourse, discussed below. Based on conversations with former LBR board members and staff, I truly believe they thought that their strategies would be effective in combatting racial discrimination as they understood it at the time. They were, however, acting on their own understandings of that problem and context at the time, understandings formed in the context of ongoing racialized practices, developed in and inherited from the colonial period, normalized over generations until the de facto, facially neutral social conditions of the metropole were, in fact, based on white supremacist assumptions and outcomes. Simply put, because LBR actors were not confronting the roots racialized practices and the resulting racialized inequalities in the metropole, it was unlikely they would have been able to envision effective ways to address those practices or problems. Unlike the policy makers described in Chapter Four, I do not think the LBR staff or board members consciously intended to undermine grassroots efforts by other antiracist groups. However, whatever good intentions the LBR leadership had, the effects of their chosen strategies and projects led to results that, at best, did little to impact the racialized hierarchy in the Dutch metropole and, at worst, protected that status quo behind layers of nonperformative efforts described in the previous chapter.

This section below does not question the individual intentions of members of the LBR staff and board, but it does question the basic understandings and assumptions some (though by no means all) of them had about the origins of racial inequality in the Netherlands. The organization had adopted, at least in their formal policies and projects, the government's assertions that racism or racial discrimination was not a widespread or fundamental problem in Dutch society.[698] This view did not frame postcolonial Dutch society, particularly as it existed in the

[698] See e.g. Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen* ('Discriminatie is het product van het vooroordeel tegen etnische groepen bij [enkele] individuele baliemedewerkers. Het kan zijn dat zij zelf iets tegen buitenlanders hebben, maar ook dat zij veronderstellen dat bij het befrijfsleven vooroordeel leeft….').

European territory of the Netherlands, as being deeply dependent on centuries of racialized oppression and exclusion that had only recently been formally dissolved, and whose legacies and afterlives were deeply embedded in the formal legal structures of Dutch citizenship, belonging, and equal protection before the law. Instead, it framed racism as a personal, albeit irrational, *belief* in the inferiority of a racialized other, and racial discrimination as an adverse treatment based on that belief. The LBR leadership and the research on which they relied, did not characterize these 'racist beliefs' as embedded in Dutch culture, but instead as the result of unfamiliarity or fear caused by relatively recent waves of immigration.[699]

In the period under study, many Dutch people racialized as white, including those in the directorate of the LBR, publicly identified themselves and their national culture as fundamentally open and tolerant.[700] They believed that if their fellow citizens expressed racist or xenophobic beliefs, or engaged in those practices, they did so mostly out of ignorance or a failure to know. If these first assumptions were true, then the solution to racial discrimination was to inform those who ignorantly engaged in it of the impact of their actions or the mistakes in their beliefs with the expectation that they would alter their behavior once made aware.[701] The rare individual (or political party representing such individuals) that continued to consciously engage in racial discrimination, after having been informed, was an outlier and then could be punished criminally or banned from public participation, as evidenced by LBR support of efforts to ban or restrict the Centrum Partij and Centrum Democraten. This belief ignored, however, the way in which Dutch racism, however morally repugnant, was eminently rational; it was the basis of colonial wealth from which nearly everyone in the metropole benefitted, as well as political and economic power which protected that wealth, which I have described as systems of white supremacy and white property described in Chapter Two. As such, the likelihood that racializing practices would be voluntarily abandoned, or white

[699] Bovenkerk, *Omdat Zij Anders Zijn*; Den Uyl, Choenni, and Bovenkerk, *Mag Het Ook Een Buitenlander Wezen*.

[700] Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands"; Wekker, *White Innocence*.

[701] See Kruyt, interview.

property shared with people in the metropole who were racialized as non-white, was highly unlikely.[702]

As discussed in Section 3.3, ignorance of the connection between contemporary forms of racial discrimination and inequality and the Dutch colonial past were far from universal. Groups representing people from the former colonies routinely made the connection, wrote about it in their organizational publications and discussed it in conferences and other media, but the LBR did not adopt this message into its strategy. The impact of institutional denial of the causes of racism and racial inequality in the Dutch metropole did not simply render the tactics adopted by the LBR ineffective, it perpetuated erroneous definitions of race, racism and discrimination in a way that long outlasted the LBR itself.

6.2. 'Not-racism™' in choice of LBR strategies

6.2.1. Knowledge is power as manifestation of white innocence

What Lentin calls not-racism, can also be read as a symptom of what Wekker calls white innocence, the collective refusal by 'white Dutch' society to see the existence or impact of racializing practices in its past and present.[703] This innocence manifested in LBR strategy in the belief, expressed by its founders and embodied in its strategies, that 'knowledge was power' and that education about the existence of racial discrimination would be sufficient to combat discriminatory practices. Law professor C.A. Groenendijk said as much in his early memo to the LBR set-up board, identifying 'mastery of the facts' as a basis of the LBR's power.[704] Former LBR director Arriën Kruyt confirmed that he shared this view in 2021:

> How to change discriminatory laws? Very simple. You first write the report. You must have your facts. If you lobby, your facts should be beyond doubt, otherwise you lose everything. So, you establish facts, which means talking to people. To insiders preferably. And then you write the report and you think

[702] Bonilla-Silva, "More than Prejudice," 75 ('Whites form a social collectivity and that, as such, they develop a racial interest to preserve the racial status quo.').

[703] Wekker, *White Innocence*.

[704] Balai, "LBR Concept Beleids- Werkplan 1985."

> [about] who can change [the situation]. Is that the municipal council? Is that the [board of directors of the housing corporation]? It depends. And then you go to talk to those kinds of people.[705]

My own background in grassroots and community organizing has made me skeptical of the idea that knowledge and information alone can change public policy, especially when put in the context of almost any form of social movement. The mantra of such organizing is abolitionist Frederick Douglas's observation that 'Power concedes nothing without a demand. It never did and it never will.'[706] Elites of any kind, whether economic, political or racial, are rarely persuaded to give up their material advantages because of good arguments. This mantra is also the idea behind much of legal mobilization theory, that courts provide spaces in which the hard enforcement of the state may be brought to ensure the rights of political minorities that political majorities would not otherwise respect or protect. Legal mobilization scholar Michael McCann observes that 'legal advocacy often provides movement activists a source of institutional and symbolic leverage against opponents. This coercive, adversarial dimension of legal mobilization in many ways is the flip side of its generative or consensus-building capacities.'[707] He concedes that such a dialectic between the articulation of a right and its enforcement is less clear in social movement context than in the case of individual disputes, but counters that even in social movements, the enforcement power of courts still plays an important role. This confrontational approach to movements for social change may be more self-evident in American approaches to social mobilization than in the Dutch tradition of accommodation politics. However, grassroots movements in the

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[705] Kruyt, interview, lines 99-104 (interview was in combination of Dutch and English; items in brackets are my translation of the Dutch into English).

[706] Frederick Douglas, "If There Is No Struggle, There Is No Progress" (Speech, West India Emancipation Day, Canandaigua, New York, USA, August 3, 1857), https://www.blackpast.org/african-american-history/1857-frederick-douglass-if-there-no-struggle-there-no-progress/ (preceded by the related observation, 'If there is no struggle there is no progress. Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground; they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters.').

[707] McCann, "Law and Social Movements," 29.

Netherlands had already been challenging and exploring how courtroom strategies could improve, if not replace, the efficacy of accommodation in the face as racial discrimination, as discussed in Section 3.5 above, and the LBR was aware of these efforts and the critiques in which they were based.

If the starting assumption of the LBR was that racial discrimination was caused, not because of the power and privilege it conferred on a certain class of people at the expense of another class of people, but on inexperience, unfamiliarity or ignorance, as well as on the assumption that most Dutch people were not 'racist', then an educational strategy would have made sense. Because those practicing racial discrimination weren't 'racist', they would surely change their practices when shown their discriminatory effects. As Arriën Kruyt explained:

> [Y]ou say, I'm not going to give you a bad name. I'm here to change your practice. That's what you always say because if you shout racism, people say, "No, no, no, I'm not a racist." And I was always very careful in avoiding that [word]... I hate it. I always said, I'm just here to change your practice. Of course you're not a racist. But your practice has the effect. That's what I always [would] try to prove [to those accused of racial discrimination].[708]

6.2.2. LBR preference for dialogue and voluntary settlement

Kruyt's words reflect belief in another false premise about racial discrimination in the Netherlands, that it was practiced by 'racists', a certain type of person with an aberrant world view. This belief was supported by the criminalization of racism in the Dutch penal law beginning in 1971. Different from civil penalties or administrative remedies, criminal law carries a moral stigma. Rather than being associated with this stigma, the LBR assumed those accused of racial discrimination would welcome the chance to change their behavior if confronted with it. Carrying this belief into its strategy, when confronted with specific incidents of racial discrimination, the LBR preferred dialogue to adversarial legal proceedings.[709] Unfortunately, the LBR's own reports show this strategy was rarely effective in either the short or long term. As discussed in the previous chapter,

[708] Kruyt, interview.

[709] See e.g. "LBR Werkplan 1996."

when confronted with evidence that employment agencies were not following behavioral codes that prohibited racial discrimination against job applicants, the organization continued its strategy of dialogue instead of pursuing binding enforcement. The end result was that the agencies kept up their discriminatory practices. When they presented a municipality with a report alleging that the municipality engage in racial discrimination through its allocation of public housing, that municipality sued the LBR for defamation and won.[710]

Most significant of these dialogue/education/awareness strategies may have been those related to practices of public prosecutors or the national police, both of which institutions were consistently accused of not taking sufficient action on allegations of racial discrimination. These complaints had been raised by activists as early as the Congress on Law and Race Relations in 1983,[711] by several consecutive reports and publications throughout the 1980s,[712] and mentioned numerous times in publications by both the LBR and other organizations addressing racial discrimination.[713] The response of the LBR to this decades long problem was to participate in a committee conducting research into compliance with behavioral guidelines imposed by the Procurer General and Ministry of Justice for handling complaints of discrimination, to continue 'incidental discussions' with the internal police commission addressing discrimination, and to bring their recommendations to the attention of local and national politicians.[714] By the end of 1992, the LBR had determined that the existing guidelines for handling complaints

[710] Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase.

[711] Ausems-Habes, *Congres Recht En Raciale Verhoudingen* (Tansingh Partiman testimony in Horeca session).

[712] Biegel and Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie*; Biegel, Böcker, and Tjoen-Tak-Sen, *Rassendiscriminatie-- Tenslotte Is Het Verboden Bij de Wet*.

[713] See e.g. Durieux, "Anti diskriminatie instituut: Zoethouder of doorbijter?"; Joyce Overdijk-Francis (ed.), "De Levensloop van Klachten," Verslag Werkgroep Recht en Rassendiscriminatie (Plataforma di Organisashonnan Antiano, May 25, 1986), 11; Joyce Overdijk-Francis (ed.), "Politie En Diskriminatie," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, November 15, 1983), Nationaal Bibliotheek; Possel, "Klachten over Politie-Optreden."

[714] "LBR Werkplan 1992," 10–11.

of racism were 'insufficient' and had agreed to give commentary on new ones.[715] In 1993, further LBR research concluded that the guidelines in question were in fact 'insufficiently clear and frequently unknown to officials who were supposed to carry them out'; in response the LBR and the Anne Frank Organization agreed to put together more educational materials for the police.[716] A year later, the LBR stated four goals for improving the enforcement of laws against racial discrimination, including 'improving the treatment of immigrants by the police… improv[ing] the way in which the police deal with reports of discrimination; [and] stimulat[ing] the role of the police in tracking down the perpetrators of racist violence.'[717] The concrete plans for achieving these goals, however, included setting up more meetings between the Office of the Public Prosecutor and municipal anti-discrimination offices, attempting to set up a separate registration system of all complaints of discrimination through local anti-discrimination bureaus as opposed to the police, and establishing a 'train-the-trainers' course so police officers could conduct their own courses on anti-discrimination policies.[718] In addition to the police, and employment agencies, the LBR pursued policies of dialogue and non-judicial dispute resolution with telephone companies that required larger deposits from 'foreigners' than from 'Dutch' people,[719] cleaning companies requiring potential employees to speak fluent Dutch, when it wasn't necessary for their cleaning duties,[720] and a construction equipment company, which would only rent to those with a Dutch passport or driver's license.[721]

Chapter Five, above, classified this preference for dialogue and behavioral codes as a type of nonperformative antiracism, but it is equally relevant as an illustration of the systemic denial of the way racializing practices worked in the Netherlands, which is in turn a form of postcolonial occlusion. Engaging in dialogue and voluntary compliance may have achieved good outcomes for the individuals

[715] "LBR Jaarverslag 1992," 9.

[716] "LBR Jaarverslag 1993," 10.

[717] "LBR Jaarverslag 1994," 8.

[718] "LBR Jaarverslag 1994," 9–10.

[719] "LBR Jaarverslag 1994," 11.

[720] "LBR Jaarverslag 1988," 9.

[721] "LBR Jaarverslag 1991," 19.

involved in the short term, but how long the discriminating parties involved complied with their promises, or whether other companies learned from the example and felt compelled to change any similar practices was either taken for granted or not considered. A similar dilemma faces every lawyer who represents individual clients and is also concerned with changing broader social circumstances: when the interests of an individual client and the social conflict, which interests decide the lawyer's course of action? It is a dilemma discussed in a good deal of literature on legal mobilization for social change.[722] Dutch legal advocates against racial discrimination in the 1980s also debated the question, as illustrated in the minutes of a meeting of the Workgroup on Law and Racial Discrimination (Werkgroep Recht en Rassendiscriminatie):

> Question from audience member: If the proof is there, you have to take legal action, don't you?
>
> Fieszbajn (presenting attorney): If it's a one-time thing, you can achieve more via conversation.
>
> Question: But with one traffic violation, you still have to pay a fine, right?
>
> Fieszbajn: Running a red light is a clear case, but with improper discrimination, [handling a first offense through dialogue] isn't a bad rule.
>
> Question: So you take into account the motivation for the discrimination. Isn't that dangerous?
>
> Fieszbajn: If you want to achieve that people are motivated not just by the legal prohibition, but by understanding that they shouldn't discriminate again, then talking is better.
>
> Question: And how does the victim of discrimination feel about this?

[722] See e.g. Noah A. Rosenblum, "Power-Conscious Professional Responsibility: Justice Black's Unpublished Dissent and a Lost Alternative Approach to the Ethics of Cause Lawyering," *Georgetown Journal of Legal Ethics* 34, no. Winter 2021 (2021): 125–90, https://doi.org/English; Charles J. Ogletree and Randy Hertz, "The Ethical Dilemmas of Public Defenders in Impact Litigation," *N.Y.U. Review of Law and Social Change* 14, no. 1 (1986): 23–42.

Fieszbajn: I think that discrimination isn't well understood. And it's not good to immediately file a procedure. Every lawyer should first seek a settlement.

Lioe Tan (another presenting lawyer): I think the example of driving through a red light isn't so crazy. Discrimination is a punishable offense, but the consequences aren't enforced.[723]

In the above conversation, lawyer Fieszbajn argues for the strategy that would dominate the LBR, that of educating people engaged in racially discriminatory practices, while lawyer Lioe Tan and the unnamed questioner allude both to the agency of victims of discrimination and the problem of consistent lack of enforcement. In short, they outline the dilemma between representing the interests of an individual client or the interests of structural or societal change. Such a dilemma would, in theory, be even more important to an organization created expressly to combat a problem like racial discrimination, than to a single attorney representing a single client, but neither the *LBR Bulletin*, LBR workplans, or year-end reports address it. Reasons for its absence can never be proven but it is worth considering the possibility that the LBR directors did not consider most incidents of racial discrimination it addressed to be anything other than one-time occurrences as opposed to evidence of larger national phenomena; they considered the events *incidental* as opposed to *structural*. If the LBR did not consider racial discrimination to be a national problem, then there was no need to combat it as a national problem. However, in failing to treat it as a national problem, the LBR also perpetuated the idea that no such problem existed, a criticism Rob Witte leveled against the LBR in his 2010 book about racialized violence in the Netherlands.[724] This incidental approach is another example of the self-perpetuating cycle of ignorance/denial of the root causes of racialized inequality in the Netherlands leading to further occlusion and denial of the effects of racialization.

[723] Joyce Overdijk-Francis (ed.), "Civiel- en Strafrechtprocedures," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, October 21, 1986), 25–28, Nationaal Bibliotheek.

[724] Witte, "Racist Violence and the State," 86.

6.3. Mission drift, occlusion and aphasia of race in the Dutch metropole

The above sections illustrate how prior conditions of 'white innocence' and 'colonial occlusion' influenced the LBR leadership's interpretation of the causes of racial discrimination. The following sections illustrate how LBR actions further exacerbated those conditions by obscuring the role of ongoing racializing practices and hierarchies as significant problems in postcolonial Dutch society. The did so by downplaying *racial* discrimination as a distinct form of discrimination, alternatively lumping it with discrimination against 'foreigners' or discrimination on the basis of nationality, and pursuing more generalized anti-discrimination projects and policies as opposed to explicitly antiracist ones.

6.3.1. Categorization of potential victims of racial discrimination

LBR workplans and year-end reports frequently conflated discrimination on the basis of perceived race with that based on fear of immigrants generally, or antipathy toward those who did not speak Dutch. These documents addressed how best to 'stand by and advice' victims of racial discrimination. Under the heading 'working methods' the first LBR workplan observed:

> Complainants must be able to turn to their 'own' people: although the [LBR]'s starting point is that combating racism is a problem that concerns the whole of society, it is easier for ethnic minorities who do not speak Dutch well to be addressed in their own language. This can be achieved by having organizations of ethnic-cultural groups at the local level function as reporting points.[725]

The above language assumed that individuals experiencing racial discrimination would 'not speak Dutch well.' In doing so, it ignored the thousands of people racialized as non-white in the metropole whose families had been speaking Dutch for hundreds of years, in colonized territories in Suriname, the Caribbean or the former Dutch East Indies, as well as the second and third generations, then present in the Netherlands, whose parents or grandparents may have come from non-Dutch

[725] "LBR Werkplan 1985-1986," 6–7.

speaking countries, but who had long since been born and raised Dutch speakers. This assumption conflated racial discrimination with discrimination based on national origin, or immigrant status and in doing so framed racial discrimination as something new or alien to Dutch culture. This observation also revealed a certain cynicism in the way the LBR related to organizations representing 'ethnic minorities.' On one hand, these organizations were considered best able to handle 'their own people'. On the other hand, the LBR did not share any financial resources which would support those organizations in these actions, or lobby the cabinet for them to receive such support.[726]

6.3.2. Alienation of antiracist/grassroots groups

Another priority stated in the LBR organizational charter was 'to support communication with local groups and community and other organizations working to combat racial discrimination'.[727] As discussed in Chapter Three, at the time of the LBR's opening in October 1985, many of these groups were active at both local and national levels. There were groups of students and others who carried out individual actions against bars and clubs with discriminatory entry policies, grassroots groups representing individuals from the same geographic region or cultural/ethnic community, many of which were also racialized as non-white, and feminist groups dedicated to representing the interests of women of color. The LBR board of directors held places specifically reserved for representatives from each of the government-funded advisory and welfare organizations representing the four major 'ethnic minority groups' (people from the Dutch Caribbean, Suriname, the Moluccans and 'foreign workers'), as well as representatives from grassroots coalition SARON, and the Dutch Refugee Network. How much influence individual board members had within the LBR, or their respective constituencies varied considerably. Grassroots organizations, particularly those dedicated to more activist agendas and not receiving government subsidies, were suspicious of the LBR from the start. As discussed above, Arriën Kruyt met with members of SARON

[726] Kruyt, interview, 24 (citing providing funds as a problem of the British Commission for Racial Equality and stating the LBR never wanted to play this role).

[727] Maurik, "LBR Akte van Oprichting," 1.

in May of 1983 to discuss their concerns about a national institute, but neither the organizational charter of LBR, nor its initial activities or policies, reflected the concerns SARON brought up at that meeting. Likewise, SARON did not include Kruyt or others visibly active in beginning the LBR in the conference on 'antiracism and emancipation' it organized in January of 1984.[728] SARON would eventually nominate Paul Moedikdo, then a professor of criminology at the Willem Pompe Institute of Utrecht University, to represent the coalition on the LBR board of directors, but I have been unable to find documentation of his feelings about doing so or his impact on the LBR.[729]

Former student activist Tansingh Partiman, whose had expressed his skepticism over the potential for a 'white lawyers club' both at the 1983 Congress on Law and Race Relations, and in meetings with Kruyt, believed his concerns about the LBR were grounded in experience and realistic expectations:

> We [members of the *Jongeren Organisatie Sarnami Hai*] were obviously an activist group. And the people who had long wanted to set up that bureau [the LBR], they were people from those institutions, from the welfare foundations in which the bobos[730] from our communities sat. And that NCB, the Dutch Center for Foreigners, was also primarily a Dutch thing, something of white people especially…. And we thought, these guys who had always just sat behind a desk, and never doing anything anywhere for our people. What are they going to do for us all of a sudden? So we didn't trust them anyway. And that was actually confirmed by the process of creating the institute.[731]

Partiman said he did not fault the welfare organizations for not engaging in activism; they existed to provide social services and provided them well. 'But

[728] Bogaers, "Uitnodiging - SARON Conference, 10 June 1983."

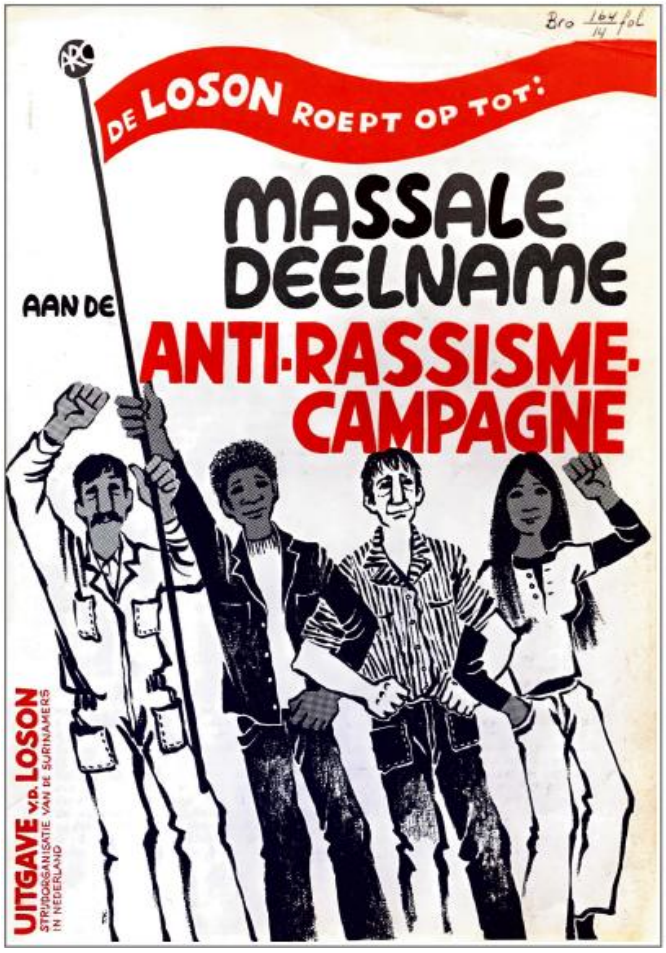
[729] He passed away in 2016 and I was unable to interview him for this project.

[730] The term 'bobo' was popularized by Dutch football player Ruud Gullit in the 1980s to refer to football bureaucrats who talked a great deal, but had neither the experience nor credibility with the players to be respected. I interpreted Partiman's use of the term here to be consistent with this definition. See e.g. "Bobo - de Betekenis Volgens Scheldwoordenboek," accessed December 17, 2024, https://www.ensie.nl/scheldwoordenboek/bobo.

[731] Partiman, interview.

activism is something totally different,' he observed. 'They weren't designed [for activism] and still aren't.'[732]

While the national welfare and advisory organizations may not have been engaged in activism, they were explicitly engaged in issues of race and racial discrimination during the lifetime of the LBR. Though financially weakened by ongoing cuts to their subsidies, these organizations continued publishing information and advice about combatting racial discrimination through their organizational publications, such as *Plataforma* for the Antillean community, *Marinjo* for the Moluccan community and *Span'noe* for the Surinamese community. Self-identified anti-fascist and antiracist groups wrote on similar issues in publications like *AFrduk* (sic). Finally, smaller, often more radical groups of students or young people from racialized communities also organized periodic actions or attempted to raise consciousness through publications.[733] They addressed issues like police violence against men racialized as Black, or the failure to prosecute racist actions, including the 1983 murder of Kerwin Duinmeyer.[734] But while individual staff members of the LBR, often those with independent



[732] Partiman.

[733] Baas, "Geschiedenis als wapen. De functie van geschiedenis in de strijd van de Landelijk Organisatie van Surinamers in Nederland. 1973-1994," 17–21 (discussing antiracist campaign and publication *Wrokoman*). "De LOSON Roept Op Tot Massale Deelname Aan de Anti-Racisme-Campagne."

[734] Arjan Post, "Civilised Provocations in the Lion's Den: Norbert Elias on Racism, Assimilation and Integration: The Prinsenhof Conference, Amsterdam 1984[1]," *Human Figurations* 5, no. 1 (March 2016), http://hdl.handle.net/2027/spo.11217607.0005.102.

connections and personal ties to communities racialized as non-white, like sociological researcher Chan Choenni, or staff legal adviser Leo Balai sometimes published in or gave interviews to these publications, it's hard to say that the LBR played any sort of role coordinating or disseminating information to the target audiences.

The LBR may have done more than just alienate groups set up to represent the interests or welfare of people racialized as non-white in the Dutch metropole, but also damaged the material capabilities of these groups to advocate against racialization and racial discrimination on their own terms. Such concern was expressed by writer Lida Kerssies in *Span'noe* shortly after the LBR opened its doors:

> What does the National Office for Combating Racial Discrimination mean? Is it a prestige object, which is set up because in a country which has always prided itself on tolerance, you cannot avoid fighting racism? Is there not a danger that the fight against racism will be encapsulated [only in the LBR] and that less official organizations (action groups, etc.) will be refused subsidies with a reference to the fact that an antiracism institute already exists?[735]

Kerssies had reason to fear that the LBR would be funded at the cost of groups representing people of color; the *Minorities Policy Note* envisioned as much, suggesting the LBR being funded with the 'anti-discrimination portion of the minorities policies' budget.[736] Once established, the LBR preferred not to distribute any of its budget to welfare or advisory organizations,[737] let alone grassroots organizations dedicated to antiracism. Instead, it supported local anti-discrimination bureaus with both staff and subsidies, as illustrated below.

[735] Kerssies, "Nederlandse Overheidsbeleid Stroef Voor Etnische Groeperingen," 26.

[736] Kamerstukken II 1982/1983, 16102, nr. 21, 103.

[737] Kruyt, interview.

6.3.3. Conflation of racism with other forms of discrimination

The LBR was one of the programs enacted under the Dutch government's 1983 *Minorities Policies Note* all of which emphasized the importance of more 'general' welfare policies over those that channeled resources through specific 'ethnic minority' welfare or advisory organizations. As discussed in Chapter Three, most publications representing people and communities racialized as non-white criticized this shift from a *categoriaal* toward an *algemeen beleid*. An article in *Plataforma* in 1985 was representative of these critiques. It stated, 'The danger of a 'general disadvantaged areas policy [as opposed to one aimed at groups of people racialized as non-white] is that the whites in the neighborhood will benefit the most from new programs.' The writer supported this argument with research done in London, which:

> showed that symptoms of disadvantage situations of "whites" and migrants may overlap… but, this doesn't mean that the causes do. This is because, for migrants, racism and discrimination are the most important causes of disadvantage and so racism has to be combatted.[738]

Conflating the root causes of economic disadvantage of people racialized as white and those racialized as non-white was, in effect, denying the existence of racialized systems as a salient social factor in the Dutch metropole. LBR strategy enacted similar logic as the rest of the 'general policy'(*algemeen beleid)* approach to Dutch 'minorities policies' in its handling of legal discrimination, shifting its focus from the *racial* discrimination it was chartered to address to discrimination more generally. In doing so, it committed the same error as the Dutch cabinet,

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[738] Ellen Lintjens, "Het Achterstandsgebiedenbeleid: 'de dans om de pot met geld,'" *Plataforma* 2, no. 4 (December 1985): 9–10; See also Koot and Ringeling, *De Antillianen*, 148 ('De Antilliaanse organisaties zijn helemaal niet gelukkig met [decentralisatie].'); Kerssies, "Nederlandse Overheidsbeleid Stroef Voor Etnische Groeperingen," 18–19; "Toespraak van de Secretaris van Het Inspraakorgaan Welzijn Molukkers, de Heer G. Ririassa Ter Gelegenheid van de 9e Dag van de Brasa, d.d. 27 November 1983 Te Utrecht" ('Daarom Surinaamse broeders en zusters, laat u door de Nederlandse overheid niet dwingen tot samenwerking met andere etnische groepen, alleen en uitsluitend omdat het die overheid zo goed uitkomt…De afgelopen jaren hebben geleerd dat wij elkaar prima weten te vinden als wij dat zelf nodig vinden….').

mistaking similar symptoms of discrimination with similar causes and therefore assuming similar, general, solutions would be effective. This shift to a focus on general discrimination as opposed to racial discrimination exacerbated elements of denial of racism as a Dutch phenomenon, and also occluded the fact that racialized discriminatory practices were a national problem.

6.3.3.1. Legal network building

Building a national network of legal service providers was listed as the first priority in the LBR's organizational charter. The LBR's choice to build this network though the Workgroup on Legal Representation in Immigration Cases (Werkgroep Rechtsbijstand Vreemdelingenzaken, WRV) instead of the Werkgroep R&R is an early example of how the organization downplayed the importance of race or racialization in its mission. The WRV, as discussed above, had been formed by Arriën Kruyt, C.A. Groenendijk and others in the late 1970s to provide legal assistance in immigration cases.[739] The Werkgroep R&R formed after the Congress on Law and Race Relations in 1983, and was dedicated to increasing the expertise and abilities of lawyers handling cases of racial discrimination.

The Werkgroep R&R pursued its goals through regular meetings in which advocates shared experiences and discussed relevant jurisprudence.[740] The group also hoped to improve and expand the legal possibilities for combatting racial discrimination by joining together in actions with other advocacy groups, and attempting to change relevant laws or practices.[741] Most Werkgroep R&R meetings featured an expert speaker on a specific topic, for example discrimination in the labor market, or the functioning of the national ombudsman's office, followed by questions and discussion between that speaker and the audience, an example of which is in section 6.2.2 above. Each meeting also featured a time when attendees would share general news about racial discrimination cases they were handling, offer and receive advice from each other. Topics addressed at Werkgroep R&R meetings included discrimination in the labor market, by the police and public

[739] Kruyt, interview.

[740] See e.g. Joyce Overdijk-Francis, "Werkgroep Recht En Rassendiscriminatie," *Ars Aequi* 39, no. 5 (1990): 288–91.

[741] Overdijk-Francis, 289.

prosecutors, by local employment agencies, and in education, as well as tactics to combat such discrimination such as positive action, setting up hotlines, bringing complaints to the national ombudsman, filing civil and criminal complaints, and attempting to pass new laws.[742]

Plataforma Di Organisashonnan Antiano (POA), the national group representing the welfare and interests of people from the Dutch Antilles, served as the administrative sponsor of the Werkgroep R&R, and gave Overdijk-Francis, then POA legal counsel, paid hours to serve as chair. Other than indirectly through Overdijk-Francis's salary and administrative costs to POA, the Werkgroep R&R received no government subsidies. Members paid an annual fee of sixty-five gulden, which covered costs of publishing summaries of each meeting, and catering.[743] When demand for the summaries expanded beyond group members, POA began selling the summaries to cover additional printing costs. Throughout the course of its operations, from 1983 through 1992, the Werkgroep R&R had about 200 paying members.[744] It published thirty-nine summaries of meetings dedicated to specific legal issues related to racial discrimination.

Early LBR workplans indicate that the organization intended to work closely with the Werkgroep R&R to build a national network of legal service providers. In 1985, as part of its first workplan, the LBR staff did express concern that most of the Werkgroep members came from the major cities in the Netherlands and hoped to expand its list of lawyers to include a 'balanced geographical distribution of legal aid workers in relation to the number of members of ethnic-cultural groups in a given area.' The LBR planned to reach this number first and foremost by 'active participation' in the Werkgroep R&R and 'encouraging its expansion'; they hoped to recruit additional members from the WRV.[745] The 1985 year-end report describes building a national network of legal service providers as a '*dringende noodzaak*' (an

[742] Overdijk-Francis, "Werkgroep Recht En Rassendiscriminatie" (an overview of the topics and speakers of the first 34 meetings of the Werkgroep R&R, through 1989.).

[743] Overdijk-Francis (ed.), "Discriminatie op de Arbeidsmarkt," 1.

[744] Overdijk-Francis, "Werkgroep Recht En Rassendiscriminatie," 289.

[745] "LBR Werkplan 1985-1986," 8.

urgent need), and planned ‘closer cooperation’ with the Werkgroep R&R as a way to get there.[746]

By year-end 1986, however, the LBR had changed its plans, deciding to build its network of legal practitioners exclusively through the WRV. The LBR year-end summary justified the choice for the WRV; it observed that the Werkgroep R&R members included 'jurists and non-jurists' and focused on a more 'general knowledge transfer' than on specific legal measures to combat racial discrimination. Experiences 'with among others the [WRV] and the NCB' led the LBR to believe that legal service providers had more need for 'specialist legal knowledge transfer, exchange of experiences working on cases, availability of legal decisions and a fixed advice bureau’.[747] ‘Other legal aid groups’ had also informed the LBR that creating a new and separate network would cost too much time and that they preferred to use existing channels. From this, the report declared, 'people unanimously advised the LBR’ to work closely with the WRV’.[748] The report did not identify the people who provided this advice or on what factors they based it. The report concluded by describing the formal agreement between the WRV and LBR. The LBR staff would comment on the WRV's monthly bundle of jurisprudence, and would organize four of the WRV’s nine meetings in 1987, and be available to answer questions and consult on cases involving racial discrimination. Through these actions it would reach the WRV’s 500 listed members.[749]

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[746] “LBR Jaarverslag 1985,” 12. (‘Het opzetten van een netwerk van rechtshulpverleners, die bereid en in staat zijn slachtoffers van discriminatie juridische bijstand te verlenen, is een dringende noodzaak. Op dit moment blijkt het voor iemand die gediscrimineerd is vaak moeilijk te zijn een advocaat te vinden die zijn zaak goed kan behartigen. De organisaties die het initiatief hebben genomen tot de oprichting van het LBR hebben, vooruitlopend op de totstandkoming van het Buro, de Werkgroep Recht en Rassendiscriminatie opgericht. Eind 1985 zijn met deze Werkgroep contacten gelegd, die in begin 1986 hebben geleid tot afspraken over nauwere samenwerking tussen het LBR en de Werkgroep. De verwachting is, dat uit het ledenbestand van de Werkgroep, rechtshulpverleners kunnen warden gerekruteerd die de basis zullen vormen van het eerder genoemde landelijk netwerk.’)

[747] “LBR Jaarverslag 1986.”

[748] “LBR Jaarverslag 1986,” 8.

[749] “LBR Jaarverslag 1986,” 8.

While the larger member base of the WRV might have made it a good choice from which to build a network of legal practitioners, most other aspects of the decision made less sense. In terms of legal expertise, for example, different laws and judges governed immigration than cases of racial discrimination. Immigration cases were dealt with by Dutch Department of Immigration and Naturalization, and were heard by special judges dedicated to hearing cases in that department. Cases of racial discrimination, by contrast, could be handled by regular judges in civil or criminal cases. Cases of racial discrimination often arose in the context of employment or housing discrimination, and therefore required lawyers to also have experience in these areas. Finally, and perhaps most significantly, immigration clients faced a different decision-making process when deciding to bring a case than those facing victims of racial discrimination.

People needing help with immigration cases often had no choice but to seek legal assistance. They had obtain legal residence permits or risk deportation and the only way to do so was through a court or administrative agency. [750] People experiencing racial discrimination, by contrast, did not have to pursue remedies in court and faced different hurdles when deciding to do so.[751] In the first place, they may have been unaware or unclear about what their legal options were to pursue such claims. Even if they were aware laws against racial discrimination, they may have doubted whether they had experienced it in a way that would be possible to prove in court. They may have feared retaliation from employers or landlords, or needed the job or apartment where the discrimination occurred too much to risk losing a case. They may have heard, or known from previous experience, that if they did file a complaint, the police would be unlikely to accept it, the prosecutors unlikely to pursue it, and a judge unlikely to find anyone responsible or offer any meaningful relief.[752] Handling these clients, and there cases, required a different skill set than those related to immigration cases.

It's not as if the staff and board of the LBR did not know about the hurdles facing victims of racial discrimination. Recognizing and reducing these burdens had been the subject of extensive reports and discussions in parliament, and was one of

[750] Groenendijk, interview.

[751] Biegel and Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie*.

[752] Biegel and Tjoen-Tak-Sen.

the reasons the LBR had been founded in the first place.[753] It was also a topic discussed at nearly every meeting of the Werkgroep R&R, which the staff legal advisers of the LBR often attended, and the subject of an entire session the year in which the above decision was made.[754] Even the *LBR Bulletin* had published an article in 1986 titled 'Few Complaints of Racial Discrimination'.[755] The hurdles facing potential complainants of racial discrimination, or how to address them, were not likely to be addressed at meetings of lawyers discussing immigration cases, but the LBR chose to prioritize its relationship with the WRV, instead of the Werkgroep R&R.

The LBR and WRV shared organizational origins; Arriën Kruyt had been instrumental in starting both. At the same time, the Werkgroep R&R had its own reasons for being cautions of closer cooperation with the LBR. Former Werkgroep R&R chair, Joyce Overdijk-Francis, recalled receiving the suggestion, shortly after the LBR began operating, that the LBR take over the Werkgroep R&R. Neither she nor POA director Anco Ringeling found this suggestion appealing, having already invested time and resources into the project and decided to keep running the group independently with administrative support form POA.[756]

The LBR reports do not contain any explanation of why the LBR staff did not choose to work with both the WRV and the Werkgroep R&R, but decided to prioritize one instead of the other. By January 1987, however, the LBR and Werkgroep R&R had formalized a 'delineation of territory' defining separate areas in which they would address legal strategies to combat racial discrimination, memorialized in a document crafted by both groups. This document looks like the product of minimal cooperation; it contains two different type-faces representing the contributions of the Werkgroep R&R and the LBR, giving the appearance that the sections were literally cut and pasted together as opposed to cooperatively

753 See e.g. Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras* and Chapter 4 of this dissertation.

754 Overdijk-Francis (ed.), "De Levensloop van Klachten"; Biegel and Tjoen-Tak-Sen, *Klachten over Rassendiscriminatie*.

755 Fike van der Burght, "Weinig aangiften van rassendiscriminatie," *LBR Bulletin*, 1986.

756 Overdijk-Francis, interview, 1.

drafted.[757] To the extent that the two groups would work together, the document promised 'regular discussion between the staff legal advisers of the LBR and the chair of the Werkgroep Recht en Rassendiscriminatie'. The document was not signed, but indicated that it was drafted by Joyce Overdijk-Francis, and LBR staff legal advisers Leo Balai and Anne Possel.[758] The LBR year-end report of 1987 indicated that 'the LBR ha[d] participated' in the Werkgroep R&R but made no further reference to the substance of that cooperation.[759]

As its relationship with the Werkgroep R&R was deteriorating, the LBR also began experiencing problems with the WRV. The LBR had chosen to build a network through the WRV because it was made up exclusively of lawyers, but these lawyers were not necessarily skilled or interested in the legal areas where racial discrimination was likely to occur.[760] The LBR's solution to this problem was not to reestablish ties with the Werkgroep R&R but to solicit all legal aid offices in the country (*bureaus voor rechtshulp*) and ask which of their members had experience with housing and employment law.[761] The workplan for 1989 addressed the same problem, suggesting that the WRV be 'expanded' with specialists in housing and employment cases, an expansion the LBR intended to encourage via 'introductory courses and publications'.[762] Focusing on housing and employment discrimination, instead of interest in racial discrimination as a topic itself, is another sign of the reluctance of the LBR to call attention to race or racial discrimination. This 1989 year-end report expressed plans to publish more articles in the WRV newsletter, *Migrantenrecht,* though it did not clarify why LBR staff expected readers of a publication dedicated to immigration law to have any more affinity to issues of racial discrimination than those who attended the WRV meetings in person. By late 1991, the WRV took the initiative to end its formal relationship with the LBR,

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[757] Published in Overdijk-Francis (ed.), "Civiel- en Strafrechtprocedures," 105–7.

[758] Overdijk-Francis (ed.), 107.

[759] "LBR Jaarverslag 1987," 9.

[760] "LBR Jaarverslag 1988," 4. ('One problem is that the [WRC] reaches legal aid workers in immigration cases for the most part and only a small number in labor and tenancy cases.')(translation mine)

[761] "LBR Jaarverslag 1988."

[762] "LBR Werkplan 1989" (Landelijk Bureau Racismebestrijding, 1989), 6, IDEM Rotterdam Kennisbank.

informing the latter that it would focus on work 'more in line with the information needs' of its own members. Unfortunately, by this time, options for building networks of legal service providers who were concerned with racial discrimination had shrunk; the Werkgroep Recht en Rassendiscriminatie ceased operation in 1992.[763]

From the early 1990s on, the LBR continued trying to build and maintain a network of legal service providers, but never seemed to gain traction on the idea. In 1992, for example, it 'cleaned up' its existing lists of legal service providers and offered a free subscription to the LBR Bulletin to any who responded with a willingness to remain on the list.[764] The 1994 LBR workplan prioritized 'creating and maintaining an infrastructure of professional (legal) service providers, lawyers and others with an eye to adequate assistance on victims of discrimination', and stated plans to hold discussions on the form a network 'of legal service providers specialized in cases related to discrimination on the basis of race' might take; the plan suggested building such an organization through the then-growing National Association of Anti-Discrimination Bureaus.[765] By the end of 1994, however, that plan had also proved fruitless; the national ADB leadership informed the LBR that it was 'not satisfied with its cooperation with the LBR and requested more clarity in the content of their relationship.'[766] In its 1996 Workplan, the LBR again stated the importance of a national network of legal service providers both to assisting victims of racial discrimination and to inform the LBR of important issues or concerns,[767] and in 1998 it published a nine-point plan to form one.[768] The LBR Workplan of 1999, its last before formally merging with two other, non-legally focused, anti-discrimination and antiracist organizations, echoed this nine-point plan almost to the word, but contained no explanation or evaluation of why the organization had failed to accomplish the goal throughout the previous fifteen years.[769]

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[763] "LBR Werkplan 1992," 5.

[764] "LBR Werkplan 1993," 5.

[765] "LBR Werkplan 1994," 8,9.

[766] "LBR Jaarverslag 1994," 16.

[767] "LBR Werkplan 1996," 6.

[768] "LBR Werkplan 1998," 1998, 8.

[769] "LBR Werkplan 1999," 10–11.

6.3.3.2. Anti-Discrimination Bureaus

As its plan to build a network of legal assistance providers via the WRV was falling apart, the LBR had increasingly focused its attention on local and regional hotlines where people could report instances of discrimination (*meldpunten)* and anti-discrimination bureaus (ADBs), where they could not only report but receive assistance with such complaints. The LBR initially saw ADBs as conduits both for gathering information on individual complaints of discrimination, and distributing information on how to handle such complaints. As time went on, however, supporting and maintaining local and regional ADBs became an independent ends and the focus of the increasing time and energy of LBR staff.

Discrimination hotlines began to appear in the Netherlands in the late 1970s and early 1980s, and were, at first, incredibly diverse in terms of their mission and organization. Some were set up by municipalities as part of their own 'minorities policies', others were maintained by groups representing people racialized as non-white, or by antiracist and anti-fascist action groups like AFRA in Amsterdam or RADAR in Rotterdam. Some hotlines were fully subsidized by municipalities or agencies, others were staffed entirely by volunteers; some even operated within police departments.[770] The various hotlines were an early target of the LBR, which identified all three as suffering from 'a lack of specific knowledge of legal measures to combat racial discrimination.'[771] One of the earliest priorities of the LBR was building a national network of these local and regional hotlines and one of its first actions was to organize a two-day education session for those associated with them. Roughly fifty people attended the session, which focused in discrimination in the housing and labor markets.[772]

As time went on, the LBR staff invested more staff hours in these local reporting points. In 1987, for example, while claiming it had no intentions to become an umbrella organization (*koepel*) for these groups, the LBR still prioritized

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[770] See e.g. Joyce Overdijk-Francis, "Meldpunten," Verslag Werkgroep Recht & Rassendiscriminatie Bijeenkomst (Utrecht: Plataforma di Organisashonnan Antiano, January 22, 1985), Nationaal Bibliotheek; Joyce Overdijk-Francis, "Meldpunten: Draaien slachtoffers op voor anti-racisme-onkosten?," *Plataforma*, November 1985.

[771] "LBR Jaarverslag 1985," 11–12.

[772] "LBR Jaarverslag 1985," 11.

'more structural contact with the hotlines in order to support them;[773] that same year, an entire issue of the *LBR Bulletin* was dedicated to covering hotlines.[774] In 1988, most of the hotlines changed their names to 'anti-discrimination bureaus' (ADBs), reflecting a goal to do more than just register complaints, but also to act on them.[775] In 1989, the various ADBs decided to meet regularly, a process that resulted in forming a separate entity, the National Association of Anti-Discrimination Bureaus (Landelijke Vereniging Anti-Discriminatie Bureaus*)*, in 1991.[776] This new national organization would be eligible to receive subsidies from the Dutch government (which allocated one million guilders to supporting ADBs that year).[777] The role of the LBR vis-à-vis this new national organization is difficult to summarize, and seems to reflect similar confusion on the part of the parties and groups involved at the time. For example, the LBR continued to allocate funds to supporting ADBs (15,000 guilders in 1998 and 1999, for example), but also employed staff handling a national publicity campaign on behalf of the National Association of ADBs.[778] Beginning in the late 1980s, 'ADB News' became a regular feature of the *LBR Bulletin*, as did free-standing articles featuring staff members of, or issues relevant to, various ADBs. But cooperation was not without its problems. In 1994, the National Association of ADBs' board reported to the LBR that it 'would like more clarity about the content of the support the LBR has to offer ADBs.'[779] A year later the LBR deemed the relationship improved, and planned to expand the cooperation by developing a national system to report incidents of racist violence.[780] This registration system never got off the ground, however, as the LBR eventually declared cooperation by individual ADBs uneven, sporadic or non-existent.[781] The LBR also attempted a project to 'regionalize' the ADBs, since many

[773] "LBR Werkplan 1987" (Utrecht: Landelijk Bureau Racismebestrijding, 1987), 8, IDEM Rotterdam Kennisbank.

[774] "Redactioneel," *LBR Bulletin*, 1987.

[775] "LBR Jaarverslag 1988," 13–14.

[776] "LBR Jaarverslag 1991," 19–20.

[777] "LBR Jaarverslag 1991," 20.

[778] "LBR Jaarverslag 1991," 20; "LBR Werkplan 1997," 3; "LBR Werkplan 1999," 20.

[779] "LBR Jaarverslag 1994," 16.

[780] "LBR Jaarverslag 1995," 1995, 15, IDEM Rotterdam Kennisbank.

[781] "LBR Werkplan 1999," 2.

were clustered in bigger cities or municipalities but non-existent in smaller ones. Mentioned throughout the mid-1990s, the project also suffered setbacks due to a lack of lack of investment by the local governments and organizations themselves, which saw the project as being 'pulled' but the LBR as opposed to desired from the ADBs themselves.[782] By 1997, the LBR placed the 'regionalization' project on hold, unless or until additional funding could be secured.[783]

Spending so much time and energy on the ADBs distanced the LBR from its stated goals of working to fight racial discrimination at both the individual and structural levels in several ways. In 1997, an internal strategy day raised the concern that the LBR needed to be 'more visible' and that staff and stake holders thought 'the LBR [wa]s active, but frequently in a reactive way.'[784] The organization planned, in response, to take a more proactive role in 'discussions', and 'be more willing to speak up on a variety of topics.'[785] However, this report does not contain reference to race or racial discrimination, or any concrete manifestation of discussion of these issues, as a 'terrain' or 'discussion' on which the LBR needed to be more active, except to include 'constituencies of ethnic minority organizations', after the 'general public' and before 'specific industry target groups', as communities in which the LBR needed to be more visible.[786] Instead of prioritizing working more closely with 'ethnic minority groups' or antiracist activist organizations, the LBR doubled down on prioritizing 'a better bond' with the ADBs.[787]

Assuming the ADBs were the best organizations through which to address racial discrimination conflated the causes of racial discrimination with the causes of discrimination on the basis of gender, citizenship, sexual orientation, language ability etc. While many ADBs got their start as hotlines dedicated to combatting racial discrimination, as time went on they became catch-all points for reporting a variety of discrimination, a situation made official by the passage of the General

[782] "LBR Jaarverslag 1996," 1996, 12, IDEM Rotterdam Kennisbank.

[783] "LBR Werkplan 1997," 6.

[784] "LBR Werkplan 1997," 3.

[785] "LBR Werkplan 1997," 4.

[786] "LBR Werkplan 1997," 3.

[787] "LBR Werkplan 1997," 4.

Law on Equal Treatment (Algemene Wet Gelijke Behandeling) in 1994 which prohibited discrimination on the basis of race, nationality, religion, political belief, sexual orientation and marital status.[788] While all these forms of discrimination may have had overlapping causes and effects, lumping them in one category suffered from and reproduced the colonial aphasia related to problems specifically related to racialization.[789]

The risk of this conflation would not have been unknown to the LBR staff and directors; Joyce Overdjik-Francis had pointed it out explicitly in the fall of 1985, just as the LBR was opening its doors and forming its initial priorities. In an article for *Plataforma* titled, 'Hotlines: do victims bear the costs of antiracism?' Overdijk-Francis observed that 'disadvantages' (*achterstanden)* caused by a lack of job training or education differed significantly from barriers (*achterstellingen*) imposed upon groups racialized as non-white by individual and structural instances of racism. 'The racist behavior of native [Dutch] society is a problem *for* foreigners,' she wrote, 'but not a problem *of* foreigners.'[790] Existing local 'minorities policies', under which many municipalities funded their hotlines, did not recognize this distinction and in doing so took funds from programs dedicated to improving the capabilities of 'ethnic minority' communities to pay for combatting racist actions against them. Another problem Overdijk-Francis observed was that institutional, government agencies like the police, public prosecutor's office, housing and employment agencies, universities, elementary schools, political parties etc. were often practicing discrimination against people racialized as non-white.[791] As such,

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[788] Inge Bleijenbergh, Marloes van Engen, and Ashley Terlouw, "Laws, Policies and Practices of Diversity Management in the Netherlands," in *International Handbook on Diversity Management at Work*, 2010, 184, https://www.academia.edu/18997805/Laws_Policies_and_Practices_of_Diversity_Management_in_the_Netherlands.

[789] A further complication of lumping racial discrimination along with that based on nationality in the present day is that European Union law allows for 'legal discrimination' among third-country nationals and between them and EU citizens….' Möschel, Hermanin, and Grigolo, *Fighting Discrimination in Europe*, 5–6.

[790] Overdijk-Francis, "Meldpunten: Draaien slachtoffers op voor anti-racisme-onkosten?" (emphasis mine).

[791] Overdijk-Francis, 15.

it was unlikely that victims of such discrimination would report instances of it directly to them; as such she emphasized, under no circumstances should a hotline be housed in a police department.[792] Added to these structural concerns, Overdijk-Francis observed, many workers at municipal hotlines had never experienced racism or discrimination themselves, and so were unable to empathize with those reporting it.[793] A few years later, the *LBR Bulletin* echoed these concerns. An interview with a former hotline worker titled 'Recognizing racism remains problematic' contained stories similar to those in the *Plataforma* article. However, the introduction to the issue in which that article ran, a special issue focusing on hotlines, didn't mention the words race or racism at all; instead it called 'attention for the difficult battle against discrimination and prejudice inside a municipal apparatus,'.[794] The erasure of race here may seem a semantic detail, but it was echoed in the practices of the LBR as it related to the hotlines, and later Anti-Discrimination Bureaus and is a symptom of what I have described above as racist denial and what Lentin calls not-racism.[795]

6.4. Erasure of race in LBR education and training practices

One way the LBR supported the hotlines and ADBs was to provide them with education and capacity building, one of the priorities outlines in its original organizational charter.[796] One way the LBR did this was by publishing a variety of handbooks, for example *Rassendiscriminatie Bestrijden: een praktische handleiding* (*Combatting Racial Discrimination, a practical handbook*), which began as a pamphlet created by RADAR and the LBR in 1989, and was revised and published in book form in 1994 and again in 1998.[797] The handbook is indeed

[792] Overdijk-Francis, 16–17.

[793] Overdijk-Francis, 14.

[794] Chan Choenni, "De Erkenning van Racisme Blijft Problematische: Astrid Elburg, Voormalig Meldpuntmedewerkster Te Amsterdam, Vecht Door," *LBR Bulletin*, 1987, ; "Redactioneel."

[795] Lentin, "Beyond Denial."

[796] Maurik, "LBR Akte van Oprichting," Artikel 2, para 1b ('the schooling and professional development of the legal service providers named in the previous paragraph).

[797] Lotje Behoekoe Nam Radga and Leyla Hamidi-asl, eds., *Rassendiscriminatie Bestrijden: een praktische handleiding*, 2d ed. (Utr: Landelijk Bureau Racismebestrijding, 1996).

practical, including advise on the various legal options and laws against discrimination, as well as examples from the labor, housing and consumer markets, political parties, police, media and sport. However, when it comes to identifying and describing the actual problem, racial discrimination, the book echoes the ahistorical, decontextualized definitions baked into Dutch law and other mainstream approaches to the subject. The opening chapter 'historic developments' begins with the passage of the United Nation's International Convention to Eliminate Racial Discrimination in 1966 and the Dutch obligation to comply with it in 1968, echoing the observation of the government at the time that compliance with the convention would be difficult in the Netherlands where racism had not been a problem.[798] Though the section goes on to counter this observation, it does so by citing Frank Bovenkerk's research into incidents of racist violence beginning in 1969.[799] No mention is made of racialized colonial practices of slavery throughout the Dutch empire until 1873, or racialized citizenship status in the Indonesian archipelago through 1949, or the then-ongoing racialized migration policies affecting people from former Dutch colonies in Suriname, the Dutch Caribbean, or the Moluccan Islands. While some may argue that such references are not to be expected in a handbook on legal treatment, the total absence of the colonial history or context contributes to the continued ignorance of many of those working at ADBs to conceive of the full nature of the problem of racial discrimination in the Netherlands and to respond to it effectively. A lack of historical context was similarly absent from other trainings and educational materials of the LBR.

In 1991, the LBR year-end report section describing 'courses' was divided into 'legal courses' which contained the 'basic course' for the legal aid practitioners on anti-discrimination law, and a section 'courses for ADB staff' which included six courses on topics including how to interact with victims of discrimination generally, 'publicity and public relations' and 'theme days' about the structure of the Central Employment Administration (Centraal Bestuur voor de Arbeidsvoorziening*)* and racial discrimination in the media.[800] Race and racial discrimination was not completely absent from the agenda, but was far from the central focus or theme. By

[798] Behoekoe Nam Radga and Hamidi-asl, 8.

[799] Behoekoe Nam Radga and Hamidi-asl, 8.

[800] "LBR Jaarverslag 1991," 30.

the end of 1993, there was a recognition that ADBs had a significant amount of staff turnover and therefore were in constant need of the same basic training courses.[801] The 1994 report includes similar courses for legal aid and beginning ADB staff, but shifts the title of the course from 'combatting *racial* discrimination' to 'combatting discrimination' generally.[802] Dropping the modifier here is emblematic of the general drift in organizational focus, a drift reflected in the audience for these training, which moved away from lawyers and discrimination hotline staff to include college students and visiting groups from Germany and Switzerland.

6.5. Erasure/limited definitions of race in *LBR Bulletin*

As discussed In Section 5.4.3. above, the *LBR Bulletin*'s target audience is difficult to identify. The selections described above are representative of most of the issues published in its first five years. Later issues published more jurisprudence, perhaps reflecting the less frequent publication of the *Rechtspraak Rassendiscriminatie* bundles, but they also focused much more on the activities of regional ADBs, and contained more coverage of anti-discrimination generally than racial discrimination specifically. For example, a series of articles by LBR staff member Olaf Stomp published between 1993 and 1994 focused on public information campaigns to decrease 'prejudice' towards 'foreigners'; only one of those articles focused on a campaign which specifically mentioned racism.[803] Stomp highlighted several media campaigns, and interviewed those who created the campaigns as well as several social scientists who studied the impact of those campaigns and concluded they were ineffective. This conclusion seems particularly

[801] "LBR Jaarverslag 1993," 22.

[802] 'LBR Jaarverslag' (n 428) 23 (emphasis mine).

[803] Olaf Stomp, "Voorlichtingscampagnes Tegen Racisme En Vooroordelen," LBR Bulletin 9, no. 2 (1993): 17–19; Olaf Stomp, "Theorieën over Vooroordelen En Het Ontstaan Ervan," LBR Bulletin 9, no. 6 (1993): 19–21; Olaf Stomp, " 'De Feiten Verslaan Het Sentiment Niet' Onderzoeker Kleinpenning over Campagnes Tegen Vooroordelen," LBR Bulletin 10, no. 1 (1994): 11–13; Olaf Stomp, "Voorlichtingscampagnes Tegen Vooroordelen Te Weinig Op Effecten Gemeten," LBR Bulletin 10, no. 2 (1994): 12–14; Olaf Stomp, "Hé, Dat Werkt," LBR Bulletin 10, no. 3 (1994): 5–8; Olaf Stomp, "Goede Bedoelingen En Mooi, Maar Niet Voldoende," LBR Bulletin 10, no. 4 (1994): 11–14; Olaf Stomp, "Anti-Racisme. Merchandisen Die Hap! GRRR: Genootschap van Roerige Reclamemakers Tegen Racisme," LBR Bulletin 10, no. 5/6 (1994): 9–12.

ironic when considering how much time and effort the LBR spent on engaging in similar efforts to educate away racial discrimination.

When the idea of race being grounded in Dutch history did appear in the LBR, it was often in the context of an interview, such as one with Joyce Overdijk-Francis in 1996. 'I enjoy having a history that the white Dutch person doesn't have,' said Overdijk-Francis then. 'You can't respond to a complaint of discrimination from a Surinamer by saying, "this one is too sensitive". You have to realize the background of what's happening. Our people have baggage that they can bring to commissions or boards of directors.... But then only on the basis of equality.'[804] Overdijk-Francis also wrote extensively for *Plataforma*, the monthly publication of the Antillean welfare organization, a publication that frequently also highlighted this view of history as relevant. In the *LBR Bulletin*, however, such a viewpoint was portrayed as personal, as opposed to institutional.

6.6. Conclusion

Chapter Five characterized the LBR's failure to engage in adversarial legal cases as a form of silencing historical facts of how material racialization continued to operate in the Dutch metropole after legal distinctions based on race had been formally abolished. This chapter has demonstrated another dimension of that practice of silencing. Instead of failing to memorize the fact that discrimination was a problem, the discourse the LBR spread through its non-adversarial projects such as network building, education and publicity, failed to engage with the 'racial' aspects of discrimination, and in doing so contributed to ongoing 'muteness' around problems of racialization in postcolonial Dutch society. The LBR never completely stopped talking about race or racial discrimination, but it did consistently deemphasize those terms and concepts, and move toward a more general approach to discrimination that reflected both the priorities of the government that created it, and the political sentiments of the decades. At the same time, however, the LBR's failure to engage with the form of discrimination it was specifically chartered to address also contributed to this shift in political sentiment, fed by earlier

[804] Leyla Hamidi-asl, "Wat Drijft... Joyce Overdijk-Francis? Alert Op 'Tokens,'" *LBR Bulletin* 12, no. 4 (1996).

postcolonial occlusion which separated 'racial discrimination' from its colonial origins.

This practice of silencing racial discourse also represented the violence of racist denial, as characterized by Alana Lentin; it allowed the status quo of racializing practices to exist, while removing the language to identify or challenge them.[805] As discussed in various sections above, this silencing was so complete that Rob Witte had to rely on media coverage to gather evidence on trends of racialized violence in the time period in which the LBR was active.[806] He cites that LBR as being particularly responsible for the fact that, despite being an organization dedicating to raising the consciousness of racism at the national level, 'the growing number of reported incidents [of racist violence] were characterized as a local problem [and] led to reactions where the local government denied their racist character.'[807] Witte observes that the denial of both the national and racial character of so many instances of physical violence further contributes to the 'denial that racist violence is a structural phenomenon throughout Dutch history.'[808] Chapter Five focused on the national scope problem Witte identified while this chapter focused on the 'racial character'.

As Lentin described discursive denial of racism, or racialized acts, as a form of violence, so did legal scholar Robert Cover describe inaction by judges or other state officials when they refused to take action against a particular injustice.[809] The LBR did not have the same type of state power as the judges Cover described, or even of the public prosecutors or police officers who failed to take actions against racial discrimination. But they were not powerless, nor were they totally independent of the state. The LBR had been created, founded and funded by the Dutch Ministry of Justice, and were as such agents of state power. In consistently defining 'discrimination' as a practice separate from race or racialization, the LBR committed a form of discursive erasure not unlike the 'jurispathy', the killing of law,

[805] Lentin, "Beyond Denial."

[806] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 193.

[807] Witte, 86.

[808] Witte, 193.

[809] Described in Section 1.2.2 above, and in Cover, "Violence and the Word Essays"; Cover, "Foreword."

which Cover described as occurring when judges choose to give legal force to one interpretation of the law over another. Trouillot also invoked the violent aspects of erasing or denying certain aspects of history. 'By silence,' he wrote' 'I mean an active and transitive process: one "silences" a fact or an individual as a silencer silences a gun.[810] In silencing, or remaining silent on, the relationship between race and discrimination, the LBR not only reflected the politics of the time, they helped enshrine' silence around ongoing racialization, what Dutch scholars of race would eventually call 'color muteness', as a norm of mainstream discourse that would last well into the twenty-first century.[811]

[810] Trouillot, *Silencing the Past*, Chapter 2.

[811] Essed and Trienekens, "'Who Wants to Feel White?," 59–60.

7. Ends and beginnings

7.1. The end of the LBR's legal mission

Of the many organizations that originated from the Dutch government's various 'ethnic minority' and 'integration' policies in the 1980s and 1990s, the Landelijk Bureau Racismebestrijding (LBR) was unique. It was one of the few organizations created to address the problem of racial discrimination as a cause of racialized economic and social inequality in the metropole and the only such organization tasked with using 'legal means' to combat that problem. As the LBR moved steadily away from both these aspects of its mandate throughout its first fifteen years of existence, downplaying the 'racial' element of discrimination and inequality in the Dutch metropole, and avoiding adversarial legal tactics to address it, its unique elements faded from view, as did the reason for its continued existence.

In 1996, the staff and board began to acknowledge symptoms of the larger problem, which they identified, not as strategic or programmatic failures, but a problem with 'visibility of the LBR and its activities.'[812] This symptom was not solved a year later, when an LBR workplan observed that the organization could not assume that government, legal aid providers, media or victims of discrimination would 'automatically' know what the LBR did or how to reach them when cases of racial discrimination occurred; the workplan called for an improved media strategy.[813] At the same time, LBR staff and board members acknowledged that its work overlapped with that of other national anti-discrimination organizations. They began considering a merger with two of these groups, the Anti-Discriminatie Overleg (ADO, Anti-Discrimination Consultancy), which focused on discrimination in media, and the Antiracisme Informatie Centrum (ARIC, Antiracist Information Center).[814] By the end of 1999, that merger was complete.[815] The LBR would continue to exist until 2007, but using to 'legal measures to combat racial

[812] "LBR Werkplan 1997," 3.

[813] "LBR Werkplan 1998," 1.

[814] "LBR Werkplan 1998," 2.

[815] Dionne Puyman, "Laatste LBR-Bulletin," *LBR Bulletin*, 1999.

discrimination' would no longer be central to its mandate. Instead, the organization came to describe itself as the 'national expertise center in the field of combatting racial discrimination.' It listed 'databases with jurisprudence' and 'legal consultation' as among its services, but focused much more on its ability to provide informational and educational materials.[816]

The ending of the LBR's incarnation as a legal advocacy organization coincided with the beginning of what many have called a harder, and more strident period of retrenchment of assimilationist policies in the Netherlands. Guno Jones describes the late 1990s and early 2000s as a return to the 1950s, complete with policies discouraging Dutch citizens racialized as non-white from entering the metropole, and then policing them when they did.[817] As evidence, Jones cites the implantation of the Wet Inburgering Nieuwkomers (Newcomers Civic-Integration Law, WIN), which replaced the 1989 *Allochtonenbeleid* (Foreigners Policy), which replaced the 1983 *Minorities Policy Note* as the policy aimed at reducing social inequalities between differently racialized groups in the metropole. The WIN required Dutch citizens moving to the metropole from Dutch territories in the Caribbean to attend civic-integration courses (*inburgering*), where they would learn the skills needed to become 'judicious and competitive members of Dutch society.'[818] With this act, Jones describes the WIN as giving 'legal sanction to a process of ethnic othering that had begun in regard to the Antillean Dutch in the 1980s,' declaring them legally 'newer, stranger and more problematic' than, for example, migrants from European countries who did not speak Dutch or have any historic connection to the Netherlands, but would not have to attend such courses.[819]

Rita Verdonk, Minister of Immigration and Integration at the time, was a champion of the WIN, and also proposed, though failed to pass, legislation that

[816] Description in the introduction to Najat Bochhah, 'Gediscrimineerd Op de Werkvloer En Dan...?' (Landelijk Bureau Racismebestrijding 2006).

[817] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 324.

[818] Jones, 323.

[819] Jones, 323, 328.

would have required speaking only Dutch on public streets in the Netherlands.[820] Author Paul Scheffer joined Verdonk as a shaper of Dutch public imagination about race and society with his 2000 opinion piece in the national newspaper *NRC,* describing Dutch society as a 'multicultural drama' where 'tolerance groaned under the burden of overdue maintenance' defined the politics of a decade,[821] as did populist politician Pim Fortuyn, who came to national attention, in part, by demonizing Islam as a threat to Dutch culture but also by blaming 'minorities policies' for failing to assimilate people more successfully.[822] After the murder of filmmaker, artist-provocateur, and vocal critic of Islam, Theo Van Gogh in 2004, open demonizing of Islam as a faith, and of people racialized as Muslim reached its zenith as a political and cultural trope,[823] one that continues through our current political era, embodied by the electoral success of Geert Wilders and the Partij voor Vrijheid (Party for Freedom) in the general election of 2024. Verdonk, Scheffer, Fortuyn and other openly anti-immigrant politicians and opinion-makers justified their actions as corrections to the overly generous, 'cuddly' politics toward

[820] Michiel Kruijt, "Verdonk: op straat alleen Nederlands," *de Volkskrant*, January 23, 2006, Online edition, sec. online, https://www.volkskrant.nl/nieuws-achtergrond/verdonk-op-straat-alleen-nederlands~bfeeb5af/.

[821] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 130 citing; Paul Scheffer, "Opinie | Het multiculturele drama," *NRC*, January 29, 2000, https://www.nrc.nl/nieuws/2000/01/29/het-multiculturele-drama-a3987586 (Underscoring how mainstream his ideas had become and would become, Scheffer was a member of the Dutch labor party at the time he wrote this piece, and went on to become a chaired professor at the University of Amsterdam.).

[822] See e.g. Witte, *Al Eeuwenlang Een Gastvrij Volk*, 133–36; Botman, Jouwe, and Wekker, *Caleidoscopische Visies*, 11; R. Witte and M. P. C. Scheepmaker, "De bestrijding van etnische discriminatie: van speerpunt tot non-issue?," *Justitiële verkenningen* 38, no. 6 (2012): 118.

[823] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 152, 162, 178–80; see e.g. Ian Buruma, *Murder in Amsterdam: Liberal Europe, Islam, and the Limits of Tolerance*, Reprint edition (Penguin Books, 2007) (as an example of popular political discourse on the era); Martijn de Koning, "The Racialization of Danger: Patterns and Ambiguities in the Relation between Islam, Security and Secularism in the Netherlands," *Patterns of Prejudice* 54, no. 1–2 (March 14, 2020): 123–35, https://doi.org/10.1080/0031322X.2019.1705011 (for a detailed explanation of the racialization of people who follow Islam); Lotfi El Hamidi, *Generatie 9/11: migratie, diaspora en identiteit*, Eerste druk. (Amsterdam: Uitgeverij Pluim, 2022).

'immigrants' and others racialized as 'ethnic minorities' in the 1980s and 1990s, policies which included the LBR.[824]

A theme throughout this dissertation has been the idea that 'Dutch culture,' specifically as it relates to the 'polder mentality' of politics and policy making, what Arend Lijphart calls 'the politics of accommodation'[825] is not sui generis. It originated for reasons and is put to work to achieve ends, namely preserving the social and economic status quo as it has existed for centuries. In this regard, Verdonk and others were correct in their claims that the policies of the 1980s and 1990s led to politics of the twenty-first century, but they wrong in asserting that this was because of the 'generosity' of policies aimed at people racialized as non-white. Instead, the state-sponsored mobilizations of law in the 1980s and 1990s made the harder political turn possible by reinforcing the impression that racializing practices and racialized inequality were not wide-spread, systemic or structural problems in the Dutch metropole, but instead aberrant practices only rarely exhibited by a few extreme 'racists'. Instead of acknowledging that people racialized as non-white in the metropole faced ongoing structural barriers to equality in employment, housing, law enforcement, and education, as well as racial discrimination by individuals, and that this inequality had deep historic and cultural roots which had never been sufficiently addressed, the LBR's practice of not filing court cases, not aggregating information at the national level, and not engaging in overt dialogues about racism and its colonial roots, allowed Verdonk to argue, with a straight face, that she had never seen evidence of racial discrimination in the Netherlands.[826] It meant that Paul Scheffer could portray the two prior decades as ones in which the Dutch government had funded generous efforts to

[824] The phrase 'dood geknuffled' actually originated in the 1980s with psychologist David Pinto, but was resurrected by Scheffer in 2000; David Pinto, "Etnische groepen zijn lanzamerhand doodgeknuffeld," *Volkskrant*, June 18, 1988, sec. Opinion, Delpher; see also Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands" (citing supporters of the PVV in 2010, and Dutch Prime Minister Mark Rutte's 2011 statement that his party would 'give this beautiful country back to the Dutch, because that is our project.').

[825] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*.

[826] Witte (n 9) 17 (citing Verdonk's speech at a 2005 event celebrating the 20th anniversary of the founding of the LBR).

improve the social and economic status of racialized 'others' and then blame those 'others' for being 'ungrateful' and squandering those opportunities.[827]

The fact that these arguments were possible despite the thousands of pages or reports and articles produced by the LBR, speaks both to the limited audience for those reports and to the success of the nonperformative aspects of the LBR as an institution. The LBR had served its purpose of making it look like something had been done about racial discrimination in the Netherlands, while allowing the practice of that discrimination, and other racializing practices, to continue and even be vigorously defended; it allowed politicians in the early 2000s to portray their ideas as breaking from earlier policy, when in fact they were business as usual.

7.2. Question and Answers

History is often said to be characterized by overlapping processes of continuity and change. This case study of the LBR and other legal mobilizations argues that studying the ways in which continuity comes about is as important as studying change. It is also a study of how critical historiographic concepts like the silencing of history and postcolonial occlusion, as well as critical race theories like nonperformative antiracism and racist denial function in the Dutch context. Studying *how* a problem persists – especially a problem as difficult to talk about as white supremacy in Dutch society -- is an essential precursor to honest discussions of the *why* that problem persists, and then how it may eventually be solved. Questions of *how* are at the heart of this project: *How* did legal constructions of race differ in the colonial and postcolonial periods? *How* did legal mobilizations around racialized inequality and discrimination impact postcolonial memory and the shaping of the postcolonial Dutch metropole?

One version of answers to these questions is quite straight forward. In the colonial period, Dutch law constructed race formally and explicitly, first by creating categories of people and then using those categories to generate and protect wealth for people racialized as white. In the postcolonial period, Dutch law removed formal and explicit racial categories from most of its laws, but maintained a status-quo of substantive racialized social and economic hierarchies in the Dutch metropole,

[827] Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands."

while also working to conceal the racialized nature of those hierarches.[828] It did so by creating limited, and ultimately ineffective, legal tools to address racialized inequality, and then by actively diffusing grassroots efforts to use even these limited tools. These limits on legal discourse and tools related to racialized inequality resulted in a lack of archival material and public awareness which allowed the broader Dutch public, and political class, to systematically deny the relevance of race in the postcolonial Dutch metropole.

7.2.1. Racialization becomes legally untouchable

Unlike the seventeenth century, when legal categories of race had to be proactively created, or the eighteenth and nineteenth centuries, when they had to be affirmatively policed, by the late twentieth century, racial categories and their attendant social and economic advantages and disadvantages had become part of the fabric of life in the metropole and no longer required active legal intervention to be maintained. Legal scholar Kimberlé Crenshaw has described this transition as the difference between formal subordination, that which is maintained by state laws and explicit state violence, and material subordination, which occurs 'when Blacks are paid less for the same work, when segregation limits access to decent housing, and where poverty, anxiety, poor health care, and crime create a life expectancy for Blacks that is …shorter than for whites.'[829] While Crenshaw was writing about the material condition of people in the United States in the 1980s, she could have been writing about the Netherlands in the same decade, where people racialized as non-white experienced on average higher rates of unemployment, lower rates of achievement in secondary and higher education and lower representation in governing structures.[830]

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[828] Borrowing the framework from Kimberlé Williams Crenshaw, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law' (1988) 101 Harvard Law Review 1331 (identifying categories of formal, material and symbolic racial inequality).

[829] Crenshaw, 1377.

[830] Penninx, *Etnische Minderheden. A*, see sections on employment and housing in; Bovenkerk's address in Overdijk-Francis (ed.), "Positieve Diskriminatie in Nederland; Ervaringen in de VS"; Boon and Es, "Racisme en overheidsbeleid."

Arend Lijphart observed in 1968 that a 'crucial component of [the Dutch politics of accommodation was] a widely shared attitude that the existing system ought to be maintained and not be allowed to disintegrate'.[831] Though Lijphart did not acknowledge it, a key component of the existing Dutch system was white supremacy, embedded in Dutch economic and social processes over centuries, but also in the beliefs about the inherent goodness of that system and the people who continued to benefit from it; maintaining the 'existing system' also involved maintaining that supremacy. As long as the numbers of people racialized as non-white and living in the metropole remained small, maintenance of white supremacy inside the metropole required relatively little intervention; the presences of small numbers of people racialized as non-white, and any upward social mobility they achieved, could be considered proof of Dutch tolerance and openness, as opposed to a threat to the established hierarchy.

When the numbers of people racialized as non-white and residing permanently in the metropole increased in the mid-1970s, the means by which law maintained white supremacy had also changed. At first, the material value of being racialized as white could be maintained in metropole through deeply ingrained, private preferences in hiring, housing, education and political choice, which manifested in widespread practices of racial discrimination. However, when groups of people racialized as non-white began to organize and increase calls for the Dutch government to do something about increasingly visible acts of racial violence, discrimination, and inequality in the metropole, the government had to respond. Instead of implementing programs like contract compliance, positive discrimination, immigration or educational reform which might get to the roots of racialized inequality in the metropole, the Dutch government responded with a program of nonperformative antiracism, a set of policies and programs which claimed to address discrimination and inequality, but in fact did the opposite. Rather than creating new legal categories or structures, or executing policies that would actively dismantle the old ones, Dutch law makers, and the legal actors they deputized, largely refused to act. Instead, they engaged in various practices of denial and obfuscation of the existence of racializing social practices in the metropole, first

[831] Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 103.

by limiting the legal definitions of racism and racial discrimination that would make laws against these practices nearly impossible to enforce, and then by creating the LBR with limited powers to address those problems even under their limited legal definitions.

Chapter Three demonstrated how successive Dutch governments used laws ostensibly designed to combat racialized inequality to shield from legal sanction most of the social practices creating that inequality. First, they crafted 'ethnic minorities policies' that problematized the abilities and 'cultures' of people racialized as non-white and living in the metropole as the primary sources of their ongoing social and economic inequality, as opposed to the centuries of government-sanctioned oppression and violence that had enriched people racialized as white. Then, after the International Convention to Eliminate Racial Discrimination required the Dutch government to enact legislation again racial discrimination in the metropole, policy makers opted for a limited definition of that practice; they chose to criminalize actions motivated by irrational personal prejudice, instead of adopting legislation or programs that would address the wide-spread, historic and systemic social practices. By choosing criminal law as the means to prohibit these actions, the Dutch government also imposed the highest possible burden of proof on those claiming to be victims of racial discrimination; they had to prove that the accused offender had operated with the requisite 'racist' intent. As multiple reports would show across the decades, this burden almost always proved too much to bear. First police officers would refuse to make arrests; public prosecutors would then refrain from filing complaints. In the few cases that did make it to court, judges chose not to impose judgements or penalties. This high procedural and definitional burden had the effect of shielding the majority of racializing practices from legal scrutiny – they happened outside the criminally sanctioned definition of racial discrimination and so were not legally forbidden; they were, in effect, legally inscrutable. Criminal laws against racism and racial discrimination were also classic examples of nonperformative antiracism; they claimed an antiracist purpose, but failed to make any material impact in racializing practices.

Chapter Four demonstrated that the Lubbers I Cabinet's creation of the LBR continued this practice of non-performativity. The cabinet refused to invest the LBR with any enforcement power; it declined to grant the LBR the power to adjudicate

allegations of racial discrimination under the existing law, limited as it was, or to compel compliance with information requests, or represent individuals on a large scale in court. It declined to grant these powers to the LBR despite clear advice from its own researchers that, without such enforcement, anti-discrimination norms and policies were nothing but 'dead letters'.[832] In this way, it is reasonable to conclude that the legislative purpose of the LBR was less to combat racial discrimination, than to relieve political pressure different groups were placing on the cabinet to do something against racial discrimination. Chapters Five and Six go on to demonstrate the success of the cabinet's gambit. In its fifteen years as an organization dedicated to using legal measures to combat racial discrimination, the LBR engaged in a series of visible actions nominally intended to address these problems; it commissioned reports, lobbied members of parliament, published jurisprudence and sponsored educational activities. It did not, however, engage in adversarial legal mobilization to enforce or compel compliance with non-discrimination policies. Nor did it use its non-adversarial educational or publicity activities to frame racism or racial discrimination as deeply rooted, widespread problems facing Dutch society.

Sara Ahmed points out that one of the goals of nonperformative antiracist policies is to diffuse the energy of groups or movements attempting to change practices of racialization like discrimination or harassment. In this regard, the LBR was incredibly effective. By the time the LBR merged with ADO and ARIC in 1999, national and local groups dedicated to combatting racial discrimination, including the Workgroup on Law and Racial Discrimination, SARON, Quater and JOSH had all disbanded. Tansingh Partiman, who had been active both as a student and young professional expressed little doubt that the LBR 'killed activism' around race and racial discrimination in the 1980s and 1990s. People didn't feel they had to volunteer their evenings and weekends, he explained, when the Ministry of Justice was funding an agency to address the same problems around which they were organizing.[833] SARON lawyer Gerrit Bogaers's recollections corroborated this impression; he said that once Hilversum had an anti-discrimination bureau, he and other lawyers found it less necessary to organize volunteer legal services or conduct

[832] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 86.

[833] Partiman, interview.

independent investigations for people who had been turned away from restaurants or discos because of their racialized identity.[834]

During the lifetime of the LBR, anti-discrimination bureaus (ADBs) had sprung up around the Netherlands, and they existed after the LBR shut its doors. But few of these focused on racial discrimination and even fewer had the capacity to represent individuals in legal cases or controversies.[835] The local nature of the ADBs meant that the reports of racism or discrimination they received remained framed as local problems, incidents as opposed to phenomena, and that their 'racist character' was still ignored as a national problem.[836] By the mid-1990s, the national Commission for Equal Treatment and its successor, the College for Human Rights fulfilled similar roles to the LBR, both in the imaginations of antiracist and anti-discrimination activists, and nonperformative interests of advocates for the status quo. They were, and remain, places individual victims of racial discrimination could take their claims, but not institutions that had the authority to enforce judgements or impose penalties based on these claims.

To be sure, the LBR and ADBs were not the only reasons members of grassroots and activist organizations shifted their work. As Partiman also acknowledged, at some point many of them had children and families and wanted to pursue their careers. They did not cease to care about racial justice, but engaged with the issue in different ways.[837] But the existence of a national movement to

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[834] Bogaers, interview (According to Bogaers, Quater also got the municipality of Hilversum to agree to engage in contract compliance, a policy that continues to the present day and that activists still invoke in intervening decades when confronting discriminatory business practices there.).

[835] An exception to this observation is RADAR, which began as the Rotterdam Anti-Discrimination and Anti Racism bureau and has retained a visible focus on racial discrimination to this day.

[836] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 86.

[837] Partiman, interview (Partiman remained active on organizational boards and in promoting diversity and inclusion policies for businesses). Other activists and advocates mentioned above also stayed engaged in issues of racial justice in their own ways. After leaving POA, Overdijk-Francis worked setting up the integration policy for the municipality of Utrecht and later did similar work in the corporate world; she retired in 2011 and is now involved with the creation of a national museum dedicated to Dutch slavery. Gerrit Bogaers continued working in private legal practice and advocacy, and stayed involved in addressing incidents of racial discrimination. Former LBR staff members Leo Balai and Chan Choenni both went on to publish academic and popular works focused on slavery and colonial history.

address racial inequality or racial discrimination disappeared largely from view until it was revived by activists protesting the blackface tradition of Zwarte Piet in 2011.[838]

7.2.2. Racializing practices become historically illegible

In *The Fire Next Time,* his 1963 collection of essays on race in the United States, James Baldwin observed that people racialized as white were 'still trapped in a history which they do not understand; and until they understand it, they cannot be released from it.'[839] In the postcolonial Dutch metropole, failure to connect ongoing racialized inequality in the metropole to its historic origins 'trapped' both the government in its creation of the LBR, and the strategies chosen by LBR directors. As Paul Bijl has written, 'the Dutch aphasiac condition produce[d] an inability to see the nation as the former metropolis of a colonial empire and to acknowledge the lasting racial hierarchies stemming from this past, leading to a structural inhibition of the memorability of colonial violence a failure to reckon with colonial afterlives.'[840] At the same time, the nonperformative legal strategies adopted by the LBR directors and staff and their consistent downplaying of the role of racism in the discrimination the organization addressed, contributed to this aphasiac condition regarding the ongoing role of racializing practice in the Dutch metropole.

As observed throughout this project, racialization and white supremacy are primarily practices but they are also deeply held beliefs, albeit often unconscious ones. As such, they relate to the question of intent to engage in these practices, which has been a recurring theme throughout this project. As described in Chapter Two, ideologies of white supremacy, which may have begun as religious and political propaganda to justify colonial conquest and enslavement, transformed over centuries; they became 'race science' in the nineteenth century, ideas about 'primitive' as opposed to 'modern' societies in the twentieth and ongoing critiques of 'cultural deficiencies' of 'foreigners' in the twenty-first. Consistent across the

[838] Gario, "On Agency and Belonging."

[839] James Baldwin, *The Fire next Time*, Penguin Modern Classics (London: Penguin books, 2017), 16–17.

[840] Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia," 451.

centuries, however, is the idea that Europe and Europeans (people racialized as white) represent the ideal model, and that incorporation into (or expulsion from) this model is the goal of any social or legal program to address 'others' within it. This belief in the fundamental soundness, and fairness, of the Dutch social, political and economic systems informed the politicians who created the LBR and the staff who executed their vision. I do not believe anyone involved consciously intended to maintain practices of white supremacy, but many did intend to uphold the existing order of Dutch society, which they believed to be fundamentally sound and just.

Conversations with people involved in the LBR, or surrounding projects, and documents I have reviewed have not indicated any conscious desire to maintain white supremacy in the Netherlands. In fact, the opposite is true; everyone I spoke with expressed the belief that they were engaged in solving the problem of racial discrimination in the metropole. What these conversations and documents often also revealed, however, were frequent concurrent beliefs that racism or white supremacy were practices foreign to the Netherlands and Dutch culture. For example, people I spoke to who were racialized as white often identified their motivations to get involved against racial discrimination in the metropole as being inspired by family members involvement in resistance to the Nazis during the occupation of the Netherlands in the 1940s, or through solidarity actions with youth movements against authoritarian foreign governments in the 1970s and 1980s. These examples of fascism or oppression were imposed on, or exterior to, the Dutch nation. None of the people I spoke with who were racialized as white identified colonial history as being part of their understanding of racism at the time, though some had become more aware of the connections in the decades since. As shown in Chapters Four and Five, this assumption that racism and white supremacy were not inherently Dutch, or that Dutch society was fundamentally not racist, contributed to LBR practices that preferred dialogue, education and negotiation over adversarial legal confrontation. After all, if the problem of racism and resulting racial discrimination was not structural, than the solutions did not need to be either.

By contrast, as addressed in Chapter Three, publications of communities racialized as non-white frequently connected struggles for social and economic equality inside the metropole to histories of slavery and (ongoing) colonial struggles. Staff of these more colonially-conscious organizations worked with, and

in some cases joined the staff or board of the LBR, so it's not as if these ideas were unknown or unknowable. The overlap in staff and board is circumstantial evidence for some element of willful ignorance, not wanting to know and choosing not to learn. The assumption that people racialized as white were best suited to craft policy and executive strategies to combat racialized inequality is circumstantial evidence of confidence that the way things have been is the best way, a level of confidence bordering on arrogance, that is part and parcel of centuries of an ideology of European white supremacy. Colonial aphasia and racist denial in the input leads to aphasia and denial in the output.

The failure to bring legal cases and controversies in national courts contributed to silencing the existence of such practices in the legal archive. In *Silencing the Past*, Michel-Rolph Trouillot observed that the act of silencing occurs at four moments: those related to 'fact creation (the making of *sources*)…fact assembly (the making of *archives*)…fact retrieval (the making of *narratives)*..retrospective significance (the making of *history* in the final instance).'[841] This case study of the LBR illustrates one version of *how* those silences around racialization and its role in Dutch history came to be. The LBR's preference for dialogue and education, as opposed to bringing cases in Dutch courts, impacted the making of sources and archives. In failing to bring legal complaints and cases, the LBR failed to create records that would have memorialized the facts of employers who refused to hire people racialized as non-white, or landlords who refused to rent to them; they failed to create court records against banks who charged higher interest rates, telephone companies or constructions equipment lessors who charged higher deposits, or airlines who refused to promote people racialized as non-white. These facts would have been assembled in police reports, court filings and judicial decisions, all of which make up parts of the legal archive. The records of jurisprudence the LBR did collect and publish in its recurring collection, *Rechtspraak Rassendiscriminatie*, are a sort of archive, but one whose access depends on prior awareness of its existence, as its not part of a general public archive like those containing court records. While the methods the LBR did prefer, alternative dispute resolution tactics like dialogue, voluntary codes of conduct or

[841] Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Kindle, Beacon Press 2015) Ch 1 (emphasis in the original).

educational seminars, may have been effective in resolving individual disputes in the short term, but they did not leave publicly accessible records or change legal culture.

By accepting the ahistoric definition of racism and racial discrimination as defined by Dutch criminal law, and then by systematically downplaying the role of race in the discrimination it did address, as illustrated in Chapter Six, the LBR contributed to making narratives about the role of racialization in the Netherlands more difficult to tell. Instead, as observed by Rob Witte in 2010, delegating the problem of racial discrimination to local anti-discrimination bureaus allowed for the impression that ongoing racialized violence (and I would add other ongoing forms of racialization and white supremacy) was incidental and local, as opposed to national and endemic.[842] These practices are not unique to the Netherlands, and may be worth exploring in the European context where sociologist József Böröcz has observed the discursive strategy around race is 'by and large all about trying to forget "race" into oblivion.'[843] Examining the legal mobilization of the Dutch government, and specifically those of the LBR, reveals that the strategy in the Netherlands is not so much about 'forgetting' as it is actively choosing to deny.

7.3. New beginnings

It's impossible to know what changes in racializing practices or their resulting material inequality might have occurred had the LBR adopted different strategies and pursued more adversarial legal mobilization, or if they had put the same financial and staff resources dedicated to supporting ADBs into networks of legal practitioners like the Workgroup Law and Racial Discrimination (*Werkgroep Recht en Rassendiscriminatie*). Some hint may be found in the strategies activists and advocates addressing racialized inequality and discrimination in the Netherlands have started using in recent decades.

In 2013, for example, as mentioned in the introduction to this dissertation, artist and activist Quinsy Gario filed a lawsuit with an administrative court in the City of Amsterdam, seeking to block the mayor of Amsterdam from issuing a permit

[842] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 86.

[843] Böröcz, "'Eurowhite' Conceit, 'Dirty White' Ressentment."

to the annual Sinterklaas parade, which at the time featured many people dressed as *Zwarte Piet* (Black Pete), a clown-like assistant to St Nicolas, portrayed by people in blackface.[844] Twenty additional parties eventually joined his complaint. The court's initial decision yielded mixed results; first, it determined that neither the parade nor the issuance of the permit violated the plaintiffs' rights under Article One of the Dutch Constitution, because they had not experienced unequal treatment because of their race. Both the parade and permit process, the court reasoned, were accessible to everyone. However, with somewhat contradictory logic, the court also recognized that the blackface practice featured in the parade could have negative impacts on the rights to family and private life of plaintiffs racialized as Black, as protected under Article Eight of the European Convention on Human Rights. It required the mayor of Amsterdam to weigh the impact on these rights before issuing the permit. Acting on appeal, a higher court reversed even this decision and the parade went on. What could have been described as a failure of legal mobilization in the short term, however, generated momentum for growing grassroots opposition to using blackface as part of Sinterklaas celebrations. The number of participants in protests against blackface increased in every subsequent year, coordinated by the grassroots group, Kick Out Zwarte Piet (KOZP).[845] Protestors faced violent reprisals from pro-blackface factions, including having their meetings attacked with fireworks, their cars vandalized, and their bodies pelted with eggs and other projectiles.[846] In 2017, thirty-four supporters of the

[844] Gario, "On Agency and Belonging," 85, footnote 2; Patricia Schor, "Race Matters & The Extractive Industry of Diversity in Dutch Academia," *Dis/Content* (blog), June 9, 2020, https://discontentjournal.wordpress.com/2020/06/09/race-matters-the-extractive-industry-of-diversity-in-dutch-academia/.

[845] KOZP had its origins in the artistic interventions of Gario, and of poet Jerry Afriye, who were arrested at the 2011 Sinterklaas parade for wearing shirts painted with the slogan "Zwarte Piet is Racisme." See e.g. Gario, "On Agency and Belonging," 85, footnote 2; The physical violence of the arrest, which left Gario with chronic back, neck and shoulder pain, illustrates Lentin's concept of 'not racism as racist violence', described in Chapters Two and Six above. In this case, the violence of the state was direct and active, in other instances, it was passive withholding of state protection that allowed private citizens to engage in violence against protestors alleging racism. See Lentin, "Beyond Denial."

[846] Rik Wassens and David van Unen, "Activisten vernielen ruiten en auto's bij bijeenkomst Kick Out Zwarte Piet," *NRC*, November 8, 2019, internet edition,

Zwarte Piet tradition forced a bus of KOZP supporters off the highway on the way to a protest of a blackface parade in Dokkum, Friesland. Then, as in the 1980s, police were slow to bring charges against the 'blockade Frisians', though fifteen people eventually received ninety hours of community service for inciting violence.[847] But the KOZP activists persisted and eventually achieved success. By 2020, a majority of people surveyed agreed that blackface was no longer acceptable in public Sinterklaas parades.[848] In 2024, KOZP declared that it planned to disband in 2025, having achieved its goals.[849]

The use of legal mobilization in the 2013-2024 campaign against Zwarte Piet illustrates Michael McCann's observation that 'triumph in court is not always necessary to either short- or long-term successful legal leveraging.'[850] The process of going to court forces public and institutional recognition of social movements and their claims in ways that can be leveraged into political and social power. Environmental activists have demonstrated this willingness to go to court in recent years by the Dutch environmental movement[851] as have the next generation of racial justice advocates, led by the Public Interest Law Project (PILP). In 2018, PILP and several other public interest groups brought a complaint that the Royal Military Police (KMAR, Koninklijke Marechaussee) used impermissible racial profiling when it stopped their client, human rights advocate Mpanzu Bamenga, as he arrived at the Eindhoven airport.[852] Despite losing the case in the first instance,[853] PILP was

https://www.nrc.nl/nieuws/2019/11/08/bijeenkomst-kick-out-zwarte-piet-in-den-haag-bestormd-a3979715.

[847] "'Blokkeerfriezen' ook in hoger beroep veroordeeld, wel lagere straffen," news, NOS.NL, October 31, 2019, https://nos.nl/artikel/2308424-blokkeerfriezen-ook-in-hoger-beroep-veroordeeld-wel-lagere-straffen.

[848] Wietse van Engeland, "Nederland accepteert verandering (Zwarte) Piet," Ipsos I&O Publiek, December 2, 2020, https://www.ipsos-publiek.nl/actueel/zwarte-piet/.

[849] Vié, "Kick Out Zwarte Piet houdt er eind 2025 mee op."

[850] McCann, "Law and Social Movements," 29.

[851] ECLI:NL:HR:2019:2007, State of the Netherlands v Stichting Urgenda.

[852] "Ethnic Profiling," *PILP* (blog), accessed October 24, 2024, https://pilp.nu/en/dossier/ethnic-profiling/.

[853] *Bamenga Case* [2021] Rb Den Haag ECLI:NL:RBDHA:2021:10283. The case was also sponsored by Amnesty International, RADAR, the Nederlands Juristencomité voor de Mensenrechten and

able to negotiate with the KMAR to end the policy of racial profiling at the Dutch borders; the coalition government agreement reached that same year also included the statement against racial profiling.[854] When, on appeal, the court reversed its decision in 2023, declaring 'race or ethnicity' impermissible reasons on which to base a security stop, it was more a confirmation of the change achieved by PILP and others than a driver of that change, and a confirmation of the role legal mobilization could play as part of a broader social movement strategy. In 2024, Mpanzu Bamenga began serving as a member of parliament.

Of course, movements for social justice, and perhaps especially for racial justice, rarely proceed in an exclusively forward direction. When the Rutte IV government publicly condemned racial profiling, it was not responding to the Bamenga case, but a scandal that led to the fall of the previous cabinet, which had collectively resigned in January 2021 over its handling of the *toeslagenaffaire* (subsidy affair). That affair revealed that the Dutch tax office had used ethnic and racial profiling to falsely identify and accuse roughly 26,000 parents of fraud with regard to subsidies they received for childcare.[855] As of this writing, the process of compensating those parents, some of whom lost custody of their children as a consequence, has been criticized for being slow and insufficient.

7.4. Looking back and moving forward

In general, the racial justice activists of the twenty-first century seem to be heeding the warnings of critical race scholars and legal mobilizations scholars alike, not abandoning rights rhetoric, or the pursuit of formal legal protections in the forms of court decisions or new laws, but using those strategies as part of broader, multi-faceted campaigns for change. Many of these movements have also been successful at connecting the drivers of present-day racial discrimination and

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Controle Alt Delete, an organization founded to address racial profiling and police violence in the Netherlands.

[854] Ashley Terlouw, "Controles op grond van huidskleur," *Ars Aequi*, mei 2022, 383.

[855] Rodrigues and Van der Woude, "Etnisch profileren door de overheid en de zoektocht naar adequate remedies," 112; "Nieuws | Herstel Toeslagen (UHT)," Toeslagen Herstel, accessed September 2, 2024, https://herstel.toeslagen.nl/nieuws/ (as of the writing of this chapter, the Dutch government officially recognized 37,482 'duped' parents injured by the tax agency's practices.

racialized inequality to their historical roots.[856] The correlation between groups who make these connections, and those who do or do not receive subsidies from the Dutch government, would be an interesting avenue for further study.

Perhaps this new generation of activists has learned from the losses and successes of their predecessors. Perhaps, as several people with whom I have spoken for this project have suggested, it has more to do with the passage of time, the different attitudes of second and third generations of people racialized as non-white, and born here who consider themselves more entitled to equal treatment than their parents who still saw themselves as immigrants or newcomers.[857] Regardless of the reason, many of those involved with movements for racial justice in the Netherlands in the 2010s and 2020s seem to be practically engaging with the ambivalence scholars like Crenshaw and McCann and Lovell have expressed about the relationship between social change and legal mobilization.[858] These scholars, and activists, recognize that formal legal changes, and the legal strategies that seek them, are not sufficient to change the course of centuries of substantive white supremacy, but that they are often necessary components in broader, and longer term, strategies to do so. McCann and Lovell reflect my own thoughts on the matter, when they write that they remain 'warily optimistic' that:

> even in the current era of retrenchment in the racial capitalist order, law still provides one of the most important institutionalized sites and discursive resources for subaltern group resistance to and contestation over hegemonic policies, practices and relationships in both state and society.[859]

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[856] Jones, "The Shadows of (Public) Recognition: Transatlantic Slavery and Indian Ocean Slavery in Dutch Historiography and Public Culture," 281.

[857] See e.g. Leo Balai and his son Raul discussing their different approaches to issues of racialized inequality in Thijs Niemantsverdriet, "Deze vader en zoon voeren een 'eeuwig debat' over het slavernijverleden, de excuses en racism" *NRC* (16 December 2022) <https://www.nrc.nl/nieuws/2022/12/16/deze-vader-en-zoon-voeren-een-eeuwig-debat-over-het-slavernijverleden-de-excuses-en-racisme-mensen-van-kleur-kan-ik-niets-mee-2-a4151775> accessed 3 September 2024.

[858] Crenshaw, "Race, Reform, and Retrenchment," 1387–88; McCann and Lovell, *Union by Law*, 391.

[859] McCann and Lovell, *Union by Law*, 391.

What is necessary to maintain this 'wary optimism' is the continued exploration of the connections between formal law and its substantive and material implications, not just in terms of 'law in theory' vs 'law in practice', but also law in a context that includes histories of white supremacy. Rather than leaving these questions as aspirational or emotional, I am interested in conducting further research on how history can be effectively incorporated into what is often called 'diversity and equity' education and training outside traditional academic spaces.[860]

At the beginning of this project, I argued that an in-depth case study of an organization like the LBR can help us understand one way racialization was practiced in an era when many people preferred to deny the existence or relevance of race at all. Having completed the study, it's fair to inquire about the value of this understanding. In their essay about researching 'afterlives of colonialism', Jones, Jouwe and Legêne observe that knowledge about the past doesn't easily translate into policy recommendations; instead, they argue 'valorization [of this type of research], in an ideal sense, implies that power structures change, ways of living together are affected, and through the impact of education and research even value systems change.'[861] While I share the sentiment deeply, the passive voice in the sentence leaves a lot of unanswered questions. Power structures rarely change of their own accord, and after the critique I have leveled above of the LBR strategy to 'educate racism away', I cannot say that education alone does either. The value of research on the afterlives of colonialism, among which is racialized inequality and white supremacy, is how we use that knowledge to impact the society in which we live. We need to be sure our research – however halting, however incomplete – is something we are sharing in our classrooms, and not just at the masters or elective level, but along with the basics and 'classics'. This responsibility to teach colonial context is especially acute for those of us working in law faculties, where many of our students will go on to yield the state power I have described above as judges,

[860] One example of a program that incorporates history in its training is the Racial Equity Institute in Greensboro, North Carolina. See Bayard Love and Deena Hayes-Greene, 'The Groundwater Approach: Building a Practical Understanding of Structural Racism' <https://www.racialequityinstitute.com/>.

[861] Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek," 278.

prosecutors and advocates.[862] We also need to investigate ways to bring this knowledge out of classrooms, not just through museums and memorials, but into workplace policies and practices.

7.5. Conclusion

In 1983, Tansingh Partiman expressed his fears that the efforts to create a national institute dedicated to using legal measures to address racial discrimination in the Dutch metropole would degenerate into a round of shadowboxing. Shadowboxing is a display of action in which boxers bounce on their feet, jabbing forcefully and repeatedly into the air, sweating, panting, but never landing a punch. Throughout this book I have presented a critique that largely agrees with Partiman's metaphor. I have judged most of the actions and methods of the Landelijk Bureau Racismebestrijding to be nonperformative ones, giving a display of activity, but failing ultimately to connect with their target, a fifteen-year round of shadowboxing.

This assessment hardly applies only to the LBR. I would also suggest that neither my birth country, the United States, nor my adopted one, the Netherlands, has yet to engage in fighting racialized inequality with a national, institutional commitment that has engaged a fully realized opponent. We have never fully connected *why* racialization and white supremacy exist to *how* we engage public laws and resources to try to combat them. Instead, we have preferred to swat at narrowly drawn shadows like racism or racial discrimination, underlined by ideas like aberrant, individual prejudice, while ignoring the deep-seated white supremacist foundations and practices on which our societies were built and at many levels still continue to operate. To be sure, people have always resisted these systems; as long as there has been racialized oppression, there have been rebels, revolutionaries, activists and allies who have landed punches, some causing more damage than others. But the full power of the state has never been engaged on the level necessary to undo those shadow-casting structures, those persistent colonial

[862] I have expanded on this argument about the responsibility of law teachers in Fischer, "Colonialism, Context and Critical Thinking"; see also Adébísí, *Decolonisation and Legal Knowledge*; Joel Malesela Modiri, "The Time and Space of Critical Legal Pedagogy," *Stellenbosch Law Review* 27, no. 3 (2016): 507–34; De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie," 359.

afterlives. Perhaps it helps to think of these earlier resistance actions in the context of a much longer match where shadowboxing is part of the training routine. It builds endurance, exposes weaknesses, strengthens muscles and readies the fighter for a return to the ring. I am under no illusion that even under this already strained metaphor this work leads to something like a knock-out punch. I can only hope it better prepares us for the next round of the fight.

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Appendix A – Interviews

Name	Relevant Organizational Affiliation
Ahmad-Ali, Hamied	Nationaal Federatie Surinaamse Welzijnsinstellingen
Balai, Leo	Landelijke Bureau Racismebestrijding
Bogaers, Gerrit	Advocate and organizer, Quater and Samenwerkende Antiracisme Organisaties Nederland (SARON)
Bovenkerk, Frank	Author and researcher; Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst
Choenni, Chan	Landelijke Bureau Racismebestrijding
Fernandes-Mendes, Hugo	Ministerie van Binnenlandse Zaken; Landelijk Bureau Racismebestrijding
Giessen, Wijnand van der	Inspraakorgaan Welzijn Molukkers
Groenendijk, C.A. (Kees)	Nederlands Centrum Buitenlanders; Landelijk Bureau Racismebestrijding
Hessels, Thomas van	Government researcher; author *Minderheid, Minder-recht?*
Joppe, Ingrid	Assistant and friend to Professor William Lemaire
Kruyt, Arriën	Landelijk Bureau Racismebestrijding; Nederlands Centrum Buitenlanders
Overdijk-Francis, Joyce	Plataforma di Organisashonnan Antiano; Werkgroep Recht & Rassendiscriminatie
Partiman, Tansingh	Jongeren Organisatie Sarnami Hai (JOSH), Samenwerkende Antiracisme Organisaties Nederland (SARON)
Ringeling, Anco	Plataforma di Organisashonnan Antiano
Rodrigues, Peter R.	Landelijk Bureau Racismebestrijding; Anne Frank Stichting
Santi, Usman	Inspraakorgaan Welzijn Molukkers; Landelijk Bureau Racismebestrijding
Schumacher, Peter	Journalist and author; Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst
Serkei, Carmelita	Anti-Discriminatie Overleg

Appendix A

Zwamborn, Marcel	Landelijk Bureau Racismebestrijding

Appendix B – Legal Cases and Controversies

Accessible via rechtspraak.nl

ECLI:NL:GHDHA:2023:173, Gerechtshof Den Haag, 200.304.295, No. ECLI:NL:GHDHA:2023:173 (Hof Den Haag February 14, 2023) (appellate level decision forbidding racial profiling at Dutch border).

ECLI:NL:HR:2022:1058, Hoge Raad, 21/01196, No. ECLI:NL:HR:2022:1058 (HR July 8, 2022) (reversing burden of proof in civil cases under certain circumstances).

ECLI:NL:RBDHA:2021:10283 (Rb. Den Haag September 22, 2021)(trial court decision upholding use of racial profiling at Dutch border).

ECLI:NL:HR:2011:BO6106, voorheen LJN BO6106, Hoge Raad, 10/00698, No. ECLI:NL:HR:2011:BO6106 (HR January 28, 2011) (reversing burden of proof in civil cases under certain circumstances).

ECLI:NL:HR:2019:2007, State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda, 19/00135 (Engels) (Supreme Court of the Netherlands (Civil Division 2019).

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Centrum Democraten v HIFD, LBR, TZ en HTFD, online Art.1 Jurisprudentiedatabase (Rechtbank 's-Gravenhage 1989).

LBR e.a. v Burgemeester van (gem. pol.) Zeist, online Art.1 Jurisprudentiedatabase (De Nationale Ombudsman 1988).

LBR en D.R. v Ministerie van Defensie, online Art.1.Jurisprudentiedatabase (De Nationale Ombudsman 1987).

LBR en RADAR v Ohra Financiering NV, Art.1 Jurisprudentiedatabase (Cie van toezicht Financierders 1994).

LBR, RADAR, A.M.K. v Hygro Uitzendbureau BV |, online Art.1 Jurisprudentiedatabase (Scheidsgerecht ABU (Vz.) 1989).

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Siegfried Verbeke v Centrum voor Informatie en Documentatie Israël (CIDI), Anne Frank Stichting, Landelijk Bureau Racismebestrijding, No. 92/2009 (Gerechtshof Den Haag June 16, 1994).

Vereniging Centrum Democraten v HIFD, LBR, Van der Zwan HTFD, online Art.1 Jurisprudentiedatabase (Gerechtsof 's-Gravenhage 1993).

Woningbouwvereniging Lelystad v Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), online Art.1 Jurisprudentiedatabase (Rechtbank Utrecht 1993).

Appendix C – Parliamentary Records

Kamerstukken II 1982/1983, 16102, nr. 21, https://zoek.officielebekendmakingen.nl/0000143005.

Kamerstukken II 1983/1984, 16102, nr. 26, https://zoek.officielebekendmakingen.nl/0000134235.

Kamerstukken II 1983/1984, 16102, nr. 29, https://zoek.officielebekendmakingen.nl/0000134238

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Kamerstukken II 1984/1985, 16102, nr. 91, https://zoek.officielebekendmakingen.nl/0000124484.

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Kamerstukken II 1999/2000, 26815, nr. 2 (Rapportage Integratiebeleid Etnische Minderheden 1999), https://zoek.officielebekendmakingen.nl/kst-26815-2.html.

Appendix D – Abbreviations

ADB	Anti-Discriminatie Bureau (Ant-Discrimination Office)
ADO	Anti-Discriminatie Overleg (Anti-Discrimination Consultancy)
ARIC	Antiracisme Informatie Centrum (Antiracist Information Center)
CBS	Centraal Bureau voor de Statistiek (Bureau of Statistics)
CIDI	Centrum Informatie en Documentatie Israel (Israel Information and Documentation Center)
CRT	Critical Race Theory
D'66	Nederlanders Democraten '66
ICERD	International Convention on the Elimination of Racial Discrimination in all its forms
ICM	Interdepartmental Coordination Commission on Minorities Policy
JOSH	Jongeren Organisatie Sarnami Hai (organization of Surinamese students)
KITLV	Koninklijk Instituut voor Taal-, Land- en Volkenkunde (Royal Netherlands Institute of Southeast Asian and Caribbean Studies)
KNAW	Koninklijke Nederlandse Akademie van Wetenschappen (Royal Netherlands Academy of Arts and Sciences)
LBR	Landelijk Bureau Racismebestrijding (National Office to Combat Racism)
MP	Member of Parliament
NCB	Nederlands Centrum Buitenlanders (Dutch Center for Foreigners)
POA	Plataforma di Organisashonnan Antiano (Platform of Antillean Organizations)
SARON	Samenwerkende Antiracisme Organisaties Nederland (Society of Antiracist Organizations in the Netherlands)

VTDR	Vereniging Tegen Discriminatie op Grond van Ras en Etnische Afkomst (Association Against Discrimination on the Basis of Race or Ethnicity)
VVD	Volkspartij voor Vrijheid en Democratie (People's Party for Freedom and Democracy)
Werkgroep R&R	Werkgroep Recht en Rassendiscriminatie (Workgroup on Law and Racial Discrimination)
WIN	Wet Inburgering Nieuwkomers (Newcomers Civic-Integration Law)
WODC	Wetenschappelijk Onderzoek- en Documentatiecentrum (Ministry of Justice's Research and Documentation Centre)
WRR	Wetenschappelijk Raad voor Regeringsbeleid (Scientific Council on Government Policy)
WRV	Werkgroep Rechtsbijstand Vreemdelingenzaken (Workgroup on Legal Representation in Immigration Cases)
ZMV	Zwarte, Migranten-, en Vluchtelingenvrouwen (Black, Migrant and Refugee Women's Movement)

Dutch Summary

Schaduwboksen: juridische mobilisatie en de marginalisatie van ras in de postkoloniale Nederlandse metropool, 1979-1999

Waarom bestaan racisme en rassendiscriminatie nog steeds in Nederland, een land dat deze praktijken in 1971 al strafrechtelijk heeft verboden? In navolging van socioloog Eduardo Bonilla-Silva is dit onderzoek gebaseerd op de stelling dat het voortbestaan van racisme in bepaalde contexten alleen kan worden begrepen door de 'mechanismen en praktijken… die verantwoordelijk zijn voor raciale overheersing' te onderzoeken.[863] De focus van dit onderzoek ligt met name op juridische mechanismen en praktijken. Deze worden zichtbaar gemaakt aan de hand van een diepgaande casestudy van het Landelijk Bureau Racismebestrijding (LBR) en andere initiatieven voor juridische mobilisatie tegen rassendiscriminatie in Nederland in de jaren 1978 tot en met 1999. In dit proefschrift wordt *ras* gedefinieerd als een sociaal geconstrueerde categorie in tegenstelling tot een biologische of fysieke eigenschap, en *recht* als regels die door mensen in samenlevingen worden gecreëerd om gedrag te regelen, inclusief wat in Nederland soms *beleid* wordt genoemd. De titel is geïnspireerd op een uitspraak uit 1983 van de studentenactivist Tansingh Partiman: 'Etnische groepen staan in de schaduw van het recht. We zullen ons dan ook moeten bezinnen op extra-juridische middelen om de strijd tegen het racisme niet te laten verworden tot een partijtje schaduwboksen.'[864]

Het proefschrift stelt de volgende onderzoeksvragen:

1. Hoe wordt recht gebruikt (gemobiliseerd) om raciale hiërarchieën aan te pakken in de postkoloniale metropool Nederland?

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[863] Eduardo Bonilla-Silva, "More than Prejudice: Restatement, Reflections, and New Directions in Critical Race Theory," *Sociology of Race and Ethnicity* 1, no. 1 (January 1, 2015): 75; Eduardo Bonilla-Silva, "Rethinking Racism: Toward a Structural Interpretation," *American Sociological Review* 62, no. 3 (1997): 465–69.

[864] Hansje Ausems-Habes, ed., *Congres Recht En Raciale Verhoudingen: Verslag van Een Op 21 Januari 1983 Gehouden Congres* (Congres Recht en Raciale verhoudingen, Arnhem: Gouda Quint, 1983), 133. Schaduwboksen is een trainingsoefening waarbij boxers sparren met een denkbeeldig partner.

    a. Op welke wijze verschillen de postkoloniale juridische constructies van ras van vergelijkbare juridische en institutionele praktijken uit de koloniale periode?
2. Hoe hebben postkoloniale juridische mobilisaties met betrekking tot raciale hiërarchieën de publieke herinnering aan de koloniale erfenis beïnvloed en bijgedragen aan de vorming van de Nederlandse metropool als een postkoloniale gemeenschap?
    a. Welke invloed hadden deze mobilisaties op het publieke debat over racialisering en raciale ongelijkheid?

Tijdens de koloniale periode golden er wetten in de overzeese kolonies die mensen in expliciet raciale categorieën indeelden. De Nederlandse staat keurde deze categorieën goed en gebruikte geweld om ze af te dwingen. Het juridisch definiëren van raciale categorieën had als doel rijkdom te genereren voor mensen die als wit werden geracialiseerd, ten koste van mensen die als niet-wit werden geracialiseerd — voornamelijk via koloniale verovering en slavernij. Dit onderzoek toont aan dat de juridische benadering van ras veranderde na het einde van de Tweede Wereldoorlog en de Nederlandse erkenning van de Indonesische onafhankelijkheid.

Voortaan verboden wetten en beleid 'rassendiscriminatie', dit werd deels gedaan door rassendiscriminatie te definiëren als gemotiveerd door irrationele, individuele vooroordelen. Structurele en materiële belangen werden hierbij weggelaten. Dit betekent dat deze postkoloniale wetten en daarop gebaseerde juridische mobilisaties de geschiedenis van racialisering in de Nederlandse context negeerden. De wetten werden daarnaast zelden gehandhaafd door instellingen en individuen die daarvoor verantwoordelijk waren. De combinatie van een ahistorische definitie van rassendiscriminatie en een gebrek aan wetshandhaving droeg er enerzijds aan bij dat de Nederlandse geschiedenis van racisme werd verzwegen, en anderzijds dat voortdurende en hardnekkige raciale ongelijkheden in de Nederlandse samenleving tijdens het postkoloniale tijdperk werden verhuld.

Het proefschrift maakt gebruik van interdisciplinaire methodologieën die gebruikmaken van geschiedschrijving, rechten en de politieke wetenschappen. De analyse is gebaseerd op een breed scala aan empirische bronnen en maakt gebruik van kritische juridische en sociologische benaderingen van ras. Om het recht in de

koloniale periode te onderzoeken, baseer ik me voornamelijk op secundaire bronnen van historici en politicologen. Voor de casestudy gebruikte ik primaire bronnen uit verschillende bibliotheken en archieven, waaronder de in opdracht van de overheid geschreven onderzoeks- en adviesdocumenten, parlementaire verslagen, werkplannen en jaarverslagen van organisaties, nieuwsartikelen, en opiniestukken uit zowel nationale kranten als publicaties van organisaties. Daarnaast sprak ik met personen die actief betrokken waren bij de betreffende organisaties en activiteiten, en vroeg hen naar hun herinneringen en reflecties op de juridische mobilisaties.

Het proefschrift bestaat uit de volgende delen:

Hoofdstuk één gaat dieper in op de definities van *ras* en *recht* die hierboven zijn gebruikt, en introduceert de kritisch theoretische benaderingen van recht, geschiedschrijving en sociologie van ras die het onderzoek ondersteunen. Het biedt een overzicht van de stand van het onderzoek naar deze onderwerpen binnen de Nederlandse context, licht toe hoe dit proefschrift daaraan bijdraagt, en bespreekt zowel de gehanteerde methodologie als de positie van de onderzoeker.

Hoofdstuk twee beschrijft hoe ras in de Nederlandse wet en haar antecedenten tijdens de koloniale periode is geconstrueerd. Het betoogt dat de motieven voor het creëren en in stand houden van raciale hiërarchieën van materiële aard waren. Zo waren er wetten die - op basis van expliciet raciale categorieën - slavernij vanuit Afrika en dwangarbeid vanuit Nederland-Indië mogelijk maakten. Op deze wijze werden de arbeidskrachten van de Nederlandse koloniën gecreëerd, gelegitimeerd en gecontroleerd. Deze wetten golden alleen in de koloniën en niet in de metropool, maar dat betekende niet dat de metropool een vrij gebied was voor alle mensen. In dezelfde periode handhaafden de Nederlandse Staten-Generaal consequent praktijken die toegang tot de metropool beperkten voor mensen die werden geracialiseerd als niet-wit. In de postkoloniale periode werden raciale migratiebeperkingen gebaseerd op nationaliteit en staatsburgerschap, die vaak dienden als vervanging voor expliciete raciale categorieën, en die vandaag nog steeds bestaan. Hoofdstuk twee eindigt met een analyse van hoe de veroordeling van het 'racisme' van Nazi-Duitsland na de Tweede Wereldoorlog het publieke en juridische discours over racialisering veranderde, en welke invloed dit had op postkoloniale Nederlandse praktijken van racialisering

Hoofdstuk drie bespreekt de jaren zeventig en onderzoekt hoe juridische constructies van ras werden aangepast op het moment dat een toenemend aantal mensen uit Suriname, Turkije en Morocco, waarvan de meerderheid als niet-wit werd geracialiseerd, zich permanent in de Nederlandse metropool vestigde. Het plaatst de in die jaren aangenomen wetten tegen rassendiscriminatie binnen de context van een breder beleid gericht op groepen die door de Nederlandse overheid werden aangeduid als 'etnische minderheden', en situeert dat beleid op zijn beurt binnen het bredere kader van de Nederlandse 'politiek van aanpassing'[865] en het 'poldermodel'. Het hoofdstuk richt zich in het bijzonder op de rol van het strafrecht en de beperkingen ervan bij de aanpak van rassendiscriminatie. Het betoogt dat het aanhoudende gebruik van het strafrecht door de regering, ondanks deze beperkingen, wijst op een gebrek aan daadwerkelijke ambitie om de raciale status quo fundamenteel te doorbreken

Hoofdstuk vier richt zich op de wetgevende en administratieve processen die hebben geleid tot de oprichting van het Landelijk Bureau Racismebestrijding (LBR), met name op de interacties tussen ministers, onderzoekers van de regering en vertegenwoordigers van gemeenschapen die te maken hadden met rassendiscriminatie. Deze interacties laten zien dat de ministers adequaat en herhaaldelijk geïnformeerd werden dat bestaande strafwetten niet effectief waren om rassendiscriminatie aan te pakken. Ze werden er ook op gewezen dat het oprichten van een organisatie als het LBR zonder de bevoegdheid om deze wetten te handhaven weinig invloed zou hebben op het bestrijden van rassendiscriminatie zoals die in Nederland bestond. Het feit dat deze ministers standvastig bleven in hun plannen om een nationaal bureau ter bestrijding van racisme op te richten zonder enige bevoegdheid om antidiscriminatiewetten en -normen te handhaven, ondersteunt de conclusie dat zij niet van plan waren om racialisering of rassendiscriminatie zoals die in postkoloniale Nederlandse metropool bestond, wezenlijk aan te pakken.

Hoofstukken vijf en zes bestuderen de activiteiten van de LBR gedurende een periode van vijftien jaar waarin haar oprichtingsakte het mandaat bevatte om 'juridische middelen' te gebruiken om rassendiscriminatie te bestrijden. Hoofdstuk

[865] Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands*, 1st ed. (Berkeley and Los Angeles: University of California Press, 1968).

vijf illustreert de terughoudendheid van de organisatie om deze juridische middelen te gebruiken, en in plaats daarvan koos voor educatieve strategieën, dialoog en vrijwillige naleving van anti-discriminatie normen. Hoofdstuk zes onderzoekt de neiging van de LBR om de unieke aspecten van rassendiscriminatie te bagatelliseren of te negeren zowel in hun publicaties als in hun praktijken. Het bevat een analyse van publicaties van het LBR evenals keuzes die het LBR maakte om prioriteit te geven aan samenwerking met belangengroepen die zich richten op vreemdelingenrecht of algemene discriminatie in plaats van met groepen die zich richten op rassendiscriminatie. Het hoofdstuk beschrijft ook hoe antiracistische juristen en activistische groepen uit die tijd het LBR beoordeelden en bejegenden.

Hoofdstuk zeven sluit het proefschrift af met een onderzoek naar de impact van het LBR en andere juridische mobilisaties op de voortdurende discussies over rassendiscriminatie en rassenongelijkheid in de postkoloniale Nederlandse metropool. Deze mobilisaties hadden onder andere tot gevolg dat lokaal en onafhankelijk antiracistisch initiatieven, dat streefden naar een meer tegendraads beleid, aan momentum verloren. Tegelijkertijd droegen zij bij aan de verspreiding van het idee dat rassendiscriminatie in Nederland ofwel geen urgent probleem vormde, ofwel inmiddels adequaat was aangepakt. Het hoofdstuk zet de juridische mobilisatietactieken van het LBR en anderen in de jaren tachtig en negentig af tegen die van hedendaagse activistische en belangengroepen die zich inzetten voor raciale rechtvaardigheid. Het besluit met de observatie dat huidige antiracistische activisten en advocaten lessen hebben getrokken uit het verleden, en met overwegingen over hoe deze inzichten kunnen worden doorgegeven aan toekomstige generaties.

Curriculum vitae

Alison Fischer (Orange Park, 1977) grew up in Miami, Florida, where she graduated from Miami Palmetto Senior High School in 1995. She completed her bachelor's degree in political science and creative writing in 1999 at the University of North Carolina, Chapel Hill, which she attended as a Morehead scholar. After working for three years as a grassroots organizer on issues of access to higher education and prison reform, Alison attended Columbia Law School in New York City where she received her doctorate in jurisprudence in 2005. She practiced law, first as a public defender in Miami and New York City, and then in private practice, before moving to the Netherlands in 2011, and working briefly at the Special Court for Sierra Leone both in The Hague and Freetown, Sierra Leone. From 2012 through 2020, Alison taught at the University of Amsterdam Faculty of Law and College of Politics, Psychology, Law and Economics, and the IES Abroad Program in Amsterdam.

In April 2020, Alison joined the Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV), an institute of the Royal Netherlands Academy of Arts and Sciences (KNAW), and the Van Vollenhoven Institute for Law and Governance at the Leiden University Faculty of Law as a PhD candidate, under the supervision of dr. Esther Captain, prof. dr. Rosemarijn Höfte and prof. dr. Maartje van der Woude. While working on her dissertation, Alison has given guest lectures on the history of racialization in Dutch law, co-designed and co-taught a course on race, gender and law for the Leiden Honors College of Law, and served on the organizing committee of Inward Outward, a semi-annual symposium addressing coloniality in archival research. As of July 2025, she is continuing her work as an assistant professor at the Department of Legal History and Legal Theory at the Vrije Universiteit Amsterdam Faculty of Law.