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## **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<sup>1</sup>

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’.<sup>2</sup>

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

<sup>2</sup> 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/>.

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For fifteen years, the LBR operated with a mandate to use ‘legal means’ to accomplish its goal.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> nor have they been the subject of theorization on how law

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<sup>3</sup> 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.

<sup>4</sup> “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.

<sup>5</sup> Centrum Democraten v HIFD, LBR, TZ en HTFD, online Art.1 Jurisprudentiedatabase (Rechtbank ’s-Gravenhage 1989).

<sup>6</sup> 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.<sup>7</sup>

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.’<sup>8</sup> 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.’<sup>9</sup> 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.’<sup>10</sup> 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.’<sup>11</sup> 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/ZTAwMHh3d19fMzg3NDAoX19BTg2?sid=6eb2831c-c661-4d42-9f3e-od56eda7db5a@sessionmgr101&vid=o&format=EB&lpid=lp\\_5&rid=o](http://web.b.ebscohost.com.ezproxy.leidenuniv.nl:2048/ehost/ebookviewer/ebook/ZTAwMHh3d19fMzg3NDAoX19BTg2?sid=6eb2831c-c661-4d42-9f3e-od56eda7db5a@sessionmgr101&vid=o&format=EB&lpid=lp_5&rid=o) (briefly citing LBR failures to aggregate incidents of racialized violence as one reason no such national-level data exists).

<sup>7</sup> 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.

<sup>8</sup> Alana Lentin, *Why Race Still Matters* (Cambridge, UK ; Medford, MA: Polity Press, 2020), 5.

<sup>9</sup> Hall, *The Fateful Triangle*, 45–46.

<sup>10</sup> Hall, 47 (emphasis in the original).

<sup>11</sup> 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>.

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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*.<sup>12</sup> 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.<sup>13</sup> *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.<sup>14</sup> Finally, and perhaps counterintuitively, *racialization* resists essentializing and homogenizing race as an aspect of human

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<sup>12</sup> 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 Folúké Adébiṣí, *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>.

<sup>13</sup> 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>.

<sup>14</sup> 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.<sup>15</sup> 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*.<sup>16</sup> 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.<sup>17</sup> Still, by the late 1970s, material differences

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

<sup>16</sup> 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).

<sup>17</sup> 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,

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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.<sup>18</sup> 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.<sup>19</sup> It's not that social and economic inequality among

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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).

<sup>18</sup> 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=JnNpdGU9ZWZvc3QtbGl2ZQ%3d%3d#AN=477951&db=e000xw> (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).

<sup>19</sup> 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=JnNpdGU9ZWZvc3QtbGl2ZQ%3d%3d#AN=477951&db=e000xw> ('[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)<sup>20</sup> and Social and Cultural Planning Office (Sociaal en Cultureel Planbureau) consistently disprove that wishful thinking,<sup>21</sup> 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.<sup>22</sup> But even these problems remain contested when framed as central to Dutch culture or history.<sup>23</sup> 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.’).

<sup>20</sup> CBS, “Samenvatting - Integratie en Samenleven | CBS,” webpagina, Samenvatting - Integratie en Samenleven | CBS, accessed August 19, 2024, <https://longreads.cbs.nl/integratie-en-samenleven-2022/>.

<sup>21</sup> 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>.

<sup>22</sup> “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>.

<sup>23</sup> 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.



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### 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’<sup>24</sup> 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

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<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> Chapter Four describes the legislative process of creating the LBR in that context. Chapters

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<sup>25</sup> 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.

<sup>26</sup> 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).

<sup>27</sup> 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.

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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.<sup>28</sup> 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.<sup>29</sup> This is what happened to sociologist Philomena Essed following her publications on 'everyday racism' in 1984 and 1993,<sup>30</sup> to Teun van Dijk following his book *Elite Discourse on Racism* in 1993,<sup>31</sup> 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.<sup>32</sup> 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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<sup>28</sup> M'charek, Schramm, and Skinner, "Technologies of Belonging."

<sup>29</sup> 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>.

<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 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,”<sup>33</sup> as well as a broader ‘disappearance of an antiracist perspective inside the academy’.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> 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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<sup>33</sup> Nimako, 47.

<sup>34</sup> 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.

<sup>35</sup> 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/gsb6556ed3>.

<sup>36</sup> 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/2211950720170070010006>; 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&>.

<sup>37</sup> 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).

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practices of slavery and colonial oppression, as an imaginary basis for irrational personal prejudice, or a prohibited aberrant practice.<sup>38</sup> 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*.<sup>39</sup> 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.'<sup>40</sup> In other words,

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<sup>38</sup> 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."

<sup>39</sup> 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.').

<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> While there are undoubtedly 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

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<sup>41</sup> 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>.

<sup>42</sup> 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).

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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).<sup>43</sup> 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.<sup>44</sup> 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-

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

<sup>44</sup> 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?)).<sup>45</sup> 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.’<sup>46</sup> 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.’<sup>47</sup>

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.’<sup>48</sup> 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

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<sup>45</sup> Bonilla-Silva, “More than Prejudice,” 75–76.

<sup>46</sup> Bonilla-Silva, “Rethinking Racism,” 473.

<sup>47</sup> Lentin, *Why Race Still Matters*, 5.

<sup>48</sup> 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).



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which we live are foundationally sound and fundamentally fair.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup>

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.<sup>52</sup> 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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<sup>49</sup> 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).

<sup>50</sup> 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’.).

<sup>51</sup> Gloria Wekker, *White Innocence: Paradoxes of Colonialism and Race* (Durham: Duke University Press, 2016).

<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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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<sup>53</sup> 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/>.

<sup>54</sup> 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).

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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 D. Mignolo, they argue that racialization is part of how Europe created itself.<sup>55</sup> 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.'<sup>56</sup> 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.<sup>57</sup> 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"'.<sup>58</sup>

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.<sup>59</sup> He identifies three types of

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<sup>55</sup> 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".

<sup>56</sup> 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>.

<sup>57</sup> 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.

<sup>58</sup> Lentin, "'Eurowhite Conceit,' 'Dirty White' Ressentiment," 306 (citing Hesse directly and Aimé Césaire and Etienne Balibar generally).

<sup>59</sup> 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.').

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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.’<sup>60</sup>

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.<sup>61</sup> 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.<sup>62</sup>

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<sup>60</sup> Hesse, 656.

<sup>61</sup> Crenshaw, “Race, Reform, and Retrenchment.”

<sup>62</sup> 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.<sup>63</sup> CRT has been slow to catch on in European legal academia, though that has been changing in recent years.<sup>64</sup> 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.<sup>65</sup> Thomas Spijkerboer and Karen de Vries have published on the colonial origins and racializing effect of international border-control and mobility policy,<sup>66</sup> and Guno Jones has examined legal

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<sup>63</sup> 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?”

<sup>64</sup> 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).

<sup>65</sup> 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).

<sup>66</sup> 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,

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

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.<sup>69</sup> 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.)

<sup>67</sup> 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>.

<sup>68</sup> 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.

<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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

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<sup>70</sup> 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/>.

<sup>71</sup> 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."



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Netherlands', which did not include the (former) overseas empire.<sup>72</sup> 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',<sup>73</sup> 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

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<sup>72</sup> Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*.

<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> At the same time, discourse around race as a factor in Dutch society all but disappeared.<sup>77</sup> 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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<sup>74</sup> 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.

<sup>75</sup> 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.’).

<sup>76</sup> Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 324; See e.g. Paul Scheffer, “Het Multiculturele Drama,” *NRC Handelsblad*, January 29, 2000.

<sup>77</sup> M’charek, Schramm, and Skinner, “Technologies of Belonging”; Essed and Trienekens, “Who Wants to Feel White?”

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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.<sup>78</sup> 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).<sup>79</sup> 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.<sup>80</sup> 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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<sup>78</sup> 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 gezicht 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).

<sup>79</sup> 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>.

<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> 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 19<sup>th</sup> 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.<sup>83</sup>

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

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<sup>81</sup> 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>.

<sup>82</sup> Jones, “‘Activism’ and (the Afterlives of) Dutch Colonialism.”

<sup>83</sup> 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/>.

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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.<sup>84</sup> 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.<sup>85</sup> Jones and De Hart's work, referenced above, are notable exceptions.

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<sup>84</sup> 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>.

<sup>85</sup> Sarah van Walsum, Guno Jones, and Susan Legêne, “Belonging and Membership: Postcolonial 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,<sup>86</sup> or focused on the aftermath of less legally focused aspects of programs related to the Dutch ethnic minorities and integration policies.<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup> 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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<sup>86</sup> 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."

<sup>87</sup> 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>.

<sup>88</sup> 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](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>.

<sup>89</sup> Peter Rodrigues and Maartje van der Woude, "Etnisch profileren door de overheid en de zoektocht naar adequate remedies," *Criminatie & 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>.

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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.’<sup>90</sup> 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.<sup>91</sup> 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

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<sup>90</sup> Saidiya Hartman, “Venus in Two Acts,” *Small Axe* 12, no. 2 (2008): 1–14.

<sup>91</sup> 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.’<sup>92</sup>

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.<sup>93</sup> 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;<sup>94</sup> 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.<sup>95</sup>

Even when research into the afterlives of slavery and colonialism is commissioned and funded, problems persist.<sup>96</sup> 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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<sup>92</sup> Hall, *The Fateful Triangle*, 101.

<sup>93</sup> 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/>.

<sup>94</sup> 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*.

<sup>95</sup> See various authors in *Doorwerking van slavernijverleden: Meervoudige perspectieven op de relatie tussen verleden en heden*.

<sup>96</sup> 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].<sup>97</sup>

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.<sup>98</sup>

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-

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<sup>97</sup> Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek," 279.

<sup>98</sup> 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.<sup>99</sup> 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’.<sup>100</sup> 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.<sup>101</sup> Much of the work they cite,

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<sup>99</sup> 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/>.

<sup>100</sup> “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.

<sup>101</sup> 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

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along with the essay collection *Caleidoscopische Visies*,<sup>102</sup> 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.<sup>103</sup> 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.’<sup>104</sup> They further explained that progressive control ‘does not mean *no change*; but rather a change that maintains and regulates existing dominant-dominated relations,’<sup>105</sup> 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.’).

<sup>102</sup> 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.).

<sup>103</sup> 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.

<sup>104</sup> 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.

<sup>105</sup> 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.<sup>106</sup> 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.’<sup>107</sup> Though Nimako and Willemsen’s ‘abolition without emancipation’ concept mirrors that of Crenshaw and other CRT scholars’ critiques of ‘formal without material equality’,<sup>108</sup> Nimako and Willemsen largely ignore laws or legal mobilization around racial discrimination in this ‘unfinished business’ of emancipation in the metropole.<sup>109</sup> 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

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<sup>106</sup> Nimako and Willemsen, 99–110.

<sup>107</sup> Nimako and Willemsen, 13–133, 148.

<sup>108</sup> Crenshaw, “Race, Reform, and Retrenchment.”

<sup>109</sup> Nimako and Willemsen, *The Dutch Atlantic*, 166.

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often remark on absence, using terms like ‘aphasia’, ‘occlusion’ or ‘lack of memorability.’<sup>110</sup> 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).’<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> 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.<sup>114</sup> 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.<sup>115</sup> Pattynama’s observation is reflected in other Dutch scholarship around colonial history and the history of

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<sup>110</sup> Bijl, “Colonial Memory and Forgetting in the Netherlands and Indonesia.”

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

<sup>112</sup> 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>.

<sup>113</sup> 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>.

<sup>114</sup> Trouillot, *Silencing the Past*.

<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup>

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’.<sup>118</sup> 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.<sup>119</sup> 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

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<sup>116</sup> 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).

<sup>117</sup> See e.g. Brandon et al., *De Slavernij in Oost En West*; Allen and Captain, *Staat en slavernij*.

<sup>118</sup> Ann Laura Stoler, ‘Colonial Aphasia: Race and Disabled Histories in France’ (2011) 23 *Public Culture* 121; cited by Bijl (n 69) 449.

<sup>119</sup> Wekker, *White Innocence*, 2.

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violent colonial practices have led to what Wekker calls a sense of ‘white innocence’ with regard to race.<sup>120</sup>

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.’<sup>121</sup> 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*.<sup>122</sup> 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.<sup>123</sup> 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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<sup>120</sup> Wekker, *White Innocence*.

<sup>121</sup> Trouillot, *Silencing the Past*, Chapter Two.

<sup>122</sup> 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](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.’).

<sup>123</sup> 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<sup>124</sup> or shouted in the streets by protestors or revolutionaries. The problem is not a lack of sound, but a failure to listen.<sup>125</sup> 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.<sup>126</sup>

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

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<sup>124</sup> 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*.

<sup>125</sup> 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).

<sup>126</sup> 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>.



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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.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup>

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.<sup>130</sup> It was also the case for other enslaved or

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

<sup>128</sup> 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.

<sup>129</sup> De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie," 360.

<sup>130</sup> 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, 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.<sup>131</sup>

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

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

<sup>131</sup> 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'.<sup>132</sup> 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.<sup>133</sup> It is also a strategy having a contemporary resurgence by both climate<sup>134</sup> and antiracist activists, the latter of whom recently won a judgement forbidding Dutch border police to use racial profiles in their border stops.<sup>135</sup>

### 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.<sup>136</sup>

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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<sup>132</sup> 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.

<sup>133</sup> 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.

<sup>134</sup> 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).

<sup>135</sup> ECLI:NL:GHDHA:2023:173, Gerechtshof Den Haag, 200.304.295, No. ECLI:NL:GHDHA:2023:173 (Hof Den Haag February 14, 2023).

<sup>136</sup> 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.<sup>137</sup> 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.<sup>138</sup>

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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<sup>137</sup> 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.

<sup>138</sup> 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.’).

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epistemically violent.<sup>139</sup> 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.’<sup>140</sup> Judicial violence is also epistemic in that choosing one interpretation of the law over another kills the unchosen version as a form of law.<sup>141</sup> 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’<sup>142</sup> ‘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.<sup>143</sup> 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

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<sup>139</sup> Robert M. Cover, “Violence and the Word Essays,” *Yale Law Journal* 95, no. 8 (1986 1985): 1601–30.

<sup>140</sup> Cover, 1601, 1607.

<sup>141</sup> Robert M. Cover, “Foreword: Nomos and Narrative,” *Harvard Law Review* 97, no. Issue1 (1984 1983): 42–44.

<sup>142</sup> 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>.

<sup>143</sup> 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.<sup>144</sup>

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,<sup>145</sup>

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<sup>144</sup> Bonilla-Silva, “Rethinking Racism,” 465-469.

<sup>145</sup> 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’.<sup>146</sup> 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.<sup>147</sup> 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<sup>148</sup>, and the Van Vollenhoven Institute for Law and Governance, named after Cornelius van Vollenhoven who catalogued ‘native’ legal practices in the Dutch East Indies.<sup>149</sup> 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.<sup>150</sup> 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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<sup>146</sup> Poeze, *In Het Land van de Overheerser Deel I*; Harry Poeze, “Indonesians at Leiden University,” in *Leiden Oriental Connections*, 250–79.

<sup>147</sup> 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*.

<sup>148</sup> Kuitenbrouwer and Poeze, *Dutch Scholarship in the Age of Empire and Beyond*; Kuitenbrouwer, *Tussen oriëntalisme en wetenschap*.

<sup>149</sup> 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).

<sup>150</sup> 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.<sup>151</sup> 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.<sup>152</sup>

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

<sup>151</sup> 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 H  l  ne Lemaire, also a jurist and active on projects of gender equality, died in 2013.

<sup>152</sup> 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.<sup>153</sup> 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.<sup>154</sup> 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.<sup>155</sup>

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 to 1997 contained 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.<sup>156</sup> 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

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<sup>153</sup> 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/](http://arsaequi.nl/pt_webboek/webboek-de-balie-een-leemte-in-de-rechtshulp/15/).

<sup>154</sup> Westerveld, “40 jaar zwarte nummer, 40 jaar sociale rechtshulp: Oude kwesties in een modern jasje.”

<sup>155</sup> 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.

<sup>156</sup> 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,<sup>157</sup> 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.<sup>158</sup> Meghji explains that meso-level racializing practices may occur at the

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<sup>157</sup> 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>.

<sup>158</sup> Meghji, *The Racialized Social System*, 23, 99–101.

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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.<sup>159</sup> 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.<sup>160</sup>

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 Organisasashonnan Antiano). The challenge with researching my topic

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<sup>159</sup> 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.

<sup>160</sup> “Officiële Bekendmaking,” n.d., <https://www.officielebekendmakingen.nl/>.

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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.<sup>161</sup> 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.

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<sup>161</sup> 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

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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.<sup>162</sup> 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.<sup>163</sup> 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

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<sup>162</sup> 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>.

<sup>163</sup> 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.<sup>164</sup> 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.<sup>165</sup> 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.<sup>166</sup> 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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<sup>164</sup> Nimako, “About Them, But Without Them: Race and Ethnic Relations Studies in Dutch Universities.”

<sup>165</sup> 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.”).

<sup>166</sup> Adébisí, *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’ Ressentiment,” 16.



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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.<sup>167</sup> 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.<sup>168</sup> 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’

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

<sup>168</sup> Young.

in the legal and academic spheres.<sup>169</sup> 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.<sup>170</sup> 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

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<sup>169</sup> On how the label *activist* can discredit scholarship in the Netherlands, see Jones, “‘Activism’ and (the Afterlives of) Dutch Colonialism.”

<sup>170</sup> See e.g. Meghji, *The Racialized Social System*; Garner, *Whiteness*, 3; Adébiśi, *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>.

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

### 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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<sup>171</sup> Adébisí, *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](https://doi.org/10.1016/S1059-4337(07)00003-8); Fischer, “Colonialism, Context and Critical Thinking.”

<sup>172</sup> 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.’).