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

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2. Colonial constructions of race (1596-1974)

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

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

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

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

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

2.1. Racialization and the (legal) construction of Europe

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

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

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

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

[177] Nimako and Willemsen, 20.

[178] Nimako and Willemsen, 20.

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

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

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

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

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

2.1.1. Race creates material benefits for people racialized as white

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

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

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

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

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

2.1.2. Creating the material value of whiteness

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

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

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

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

[187] Harris, "Whiteness as Property."

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

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

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

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

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

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

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

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

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

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

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

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

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

[198] Allen, *Di Ki Manera?*, 132–38.

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

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

2.1.3. Protecting the material value of whiteness in the colonies

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

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[200] Harris, "Whiteness as Property."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[212] Captain, 163.

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

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

2.1.4. Protecting the material value of whiteness in the metropole

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2. Protecting the value of whiteness in the postcolonial metropole

2.2.1. Limiting access to the metropole

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.2. Hiding race from the metropole

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

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

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

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

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

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

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

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

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

[247] Wekker, *White Innocence*.

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

[249] Adébísí, 8.

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

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

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

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

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

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

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

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

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

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

2.3. Postcolonial racialization changes means but not ends.

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

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

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

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

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

2.3.1. Condemning racism while protecting other racializing practices

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

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

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

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

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

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

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

[262] Hesse, 22.

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

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

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

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

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

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

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

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

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

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

2.3.1.1. Discourse changes and identifying race

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

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

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

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

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

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

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

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

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

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

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

[276] Bleich and Schumacher, 15.

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

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

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

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

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

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

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

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

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

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

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

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

[283] Essed and Trienekens, 57.

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

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

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

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

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

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

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

[289] Grijsen, 33–34.

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

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

2.4. Conclusion

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

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

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