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

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7. Ends and beginnings

7.1. The end of the LBR's legal mission

Of the many organizations that originated from the Dutch government's various 'ethnic minority' and 'integration' policies in the 1980s and 1990s, the Landelijk Bureau Racismebestrijding (LBR) was unique. It was one of the few organizations created to address the problem of racial discrimination as a cause of racialized economic and social inequality in the metropole and the only such organization tasked with using 'legal means' to combat that problem. As the LBR moved steadily away from both these aspects of its mandate throughout its first fifteen years of existence, downplaying the 'racial' element of discrimination and inequality in the Dutch metropole, and avoiding adversarial legal tactics to address it, its unique elements faded from view, as did the reason for its continued existence.

In 1996, the staff and board began to acknowledge symptoms of the larger problem, which they identified, not as strategic or programmatic failures, but a problem with 'visibility of the LBR and its activities.'[812] This symptom was not solved a year later, when an LBR workplan observed that the organization could not assume that government, legal aid providers, media or victims of discrimination would 'automatically' know what the LBR did or how to reach them when cases of racial discrimination occurred; the workplan called for an improved media strategy.[813] At the same time, LBR staff and board members acknowledged that its work overlapped with that of other national anti-discrimination organizations. They began considering a merger with two of these groups, the Anti-Discriminatie Overleg (ADO, Anti-Discrimination Consultancy), which focused on discrimination in media, and the Antiracisme Informatie Centrum (ARIC, Antiracist Information Center).[814] By the end of 1999, that merger was complete.[815] The LBR would continue to exist until 2007, but using to 'legal measures to combat racial

[812] "LBR Werkplan 1997," 3.

[813] "LBR Werkplan 1998," 1.

[814] "LBR Werkplan 1998," 2.

[815] Dionne Puyman, "Laatste LBR-Bulletin," *LBR Bulletin*, 1999.

discrimination' would no longer be central to its mandate. Instead, the organization came to describe itself as the 'national expertise center in the field of combatting racial discrimination.' It listed 'databases with jurisprudence' and 'legal consultation' as among its services, but focused much more on its ability to provide informational and educational materials.[816]

The ending of the LBR's incarnation as a legal advocacy organization coincided with the beginning of what many have called a harder, and more strident period of retrenchment of assimilationist policies in the Netherlands. Guno Jones describes the late 1990s and early 2000s as a return to the 1950s, complete with policies discouraging Dutch citizens racialized as non-white from entering the metropole, and then policing them when they did.[817] As evidence, Jones cites the implantation of the Wet Inburgering Nieuwkomers (Newcomers Civic-Integration Law, WIN), which replaced the 1989 *Allochtonenbeleid* (Foreigners Policy), which replaced the 1983 *Minorities Policy Note* as the policy aimed at reducing social inequalities between differently racialized groups in the metropole. The WIN required Dutch citizens moving to the metropole from Dutch territories in the Caribbean to attend civic-integration courses (*inburgering*), where they would learn the skills needed to become 'judicious and competitive members of Dutch society.'[818] With this act, Jones describes the WIN as giving 'legal sanction to a process of ethnic othering that had begun in regard to the Antillean Dutch in the 1980s,' declaring them legally 'newer, stranger and more problematic' than, for example, migrants from European countries who did not speak Dutch or have any historic connection to the Netherlands, but would not have to attend such courses.[819]

Rita Verdonk, Minister of Immigration and Integration at the time, was a champion of the WIN, and also proposed, though failed to pass, legislation that

[816] Description in the introduction to Najat Bochhah, 'Gediscrimineerd Op de Werkvloer En Dan...?' (Landelijk Bureau Racismebestrijding 2006).

[817] Jones, *Tussen Onderdanen, Rijksgenoten En Nederlanders*, 324.

[818] Jones, 323.

[819] Jones, 323, 328.

would have required speaking only Dutch on public streets in the Netherlands.[820] Author Paul Scheffer joined Verdonk as a shaper of Dutch public imagination about race and society with his 2000 opinion piece in the national newspaper *NRC,* describing Dutch society as a 'multicultural drama' where 'tolerance groaned under the burden of overdue maintenance' defined the politics of a decade,[821] as did populist politician Pim Fortuyn, who came to national attention, in part, by demonizing Islam as a threat to Dutch culture but also by blaming 'minorities policies' for failing to assimilate people more successfully.[822] After the murder of filmmaker, artist-provocateur, and vocal critic of Islam, Theo Van Gogh in 2004, open demonizing of Islam as a faith, and of people racialized as Muslim reached its zenith as a political and cultural trope,[823] one that continues through our current political era, embodied by the electoral success of Geert Wilders and the Partij voor Vrijheid (Party for Freedom) in the general election of 2024. Verdonk, Scheffer, Fortuyn and other openly anti-immigrant politicians and opinion-makers justified their actions as corrections to the overly generous, 'cuddly' politics toward

[820] Michiel Kruijt, "Verdonk: op straat alleen Nederlands," *de Volkskrant*, January 23, 2006, Online edition, sec. online, https://www.volkskrant.nl/nieuws-achtergrond/verdonk-op-straat-alleen-nederlands~bfeeb5af/.

[821] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 130 citing; Paul Scheffer, "Opinie | Het multiculturele drama," *NRC*, January 29, 2000, https://www.nrc.nl/nieuws/2000/01/29/het-multiculturele-drama-a3987586 (Underscoring how mainstream his ideas had become and would become, Scheffer was a member of the Dutch labor party at the time he wrote this piece, and went on to become a chaired professor at the University of Amsterdam.).

[822] See e.g. Witte, *Al Eeuwenlang Een Gastvrij Volk*, 133–36; Botman, Jouwe, and Wekker, *Caleidoscopische Visies*, 11; R. Witte and M. P. C. Scheepmaker, "De bestrijding van etnische discriminatie: van speerpunt tot non-issue?," *Justitiële verkenningen* 38, no. 6 (2012): 118.

[823] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 152, 162, 178–80; see e.g. Ian Buruma, *Murder in Amsterdam: Liberal Europe, Islam, and the Limits of Tolerance*, Reprint edition (Penguin Books, 2007) (as an example of popular political discourse on the era); Martijn de Koning, "The Racialization of Danger: Patterns and Ambiguities in the Relation between Islam, Security and Secularism in the Netherlands," *Patterns of Prejudice* 54, no. 1–2 (March 14, 2020): 123–35, https://doi.org/10.1080/0031322X.2019.1705011 (for a detailed explanation of the racialization of people who follow Islam); Lotfi El Hamidi, *Generatie 9/11: migratie, diaspora en identiteit*, Eerste druk. (Amsterdam: Uitgeverij Pluim, 2022).

'immigrants' and others racialized as 'ethnic minorities' in the 1980s and 1990s, policies which included the LBR.[824]

A theme throughout this dissertation has been the idea that 'Dutch culture,' specifically as it relates to the 'polder mentality' of politics and policy making, what Arend Lijphart calls 'the politics of accommodation'[825] is not sui generis. It originated for reasons and is put to work to achieve ends, namely preserving the social and economic status quo as it has existed for centuries. In this regard, Verdonk and others were correct in their claims that the policies of the 1980s and 1990s led to politics of the twenty-first century, but they wrong in asserting that this was because of the 'generosity' of policies aimed at people racialized as non-white. Instead, the state-sponsored mobilizations of law in the 1980s and 1990s made the harder political turn possible by reinforcing the impression that racializing practices and racialized inequality were not wide-spread, systemic or structural problems in the Dutch metropole, but instead aberrant practices only rarely exhibited by a few extreme 'racists'. Instead of acknowledging that people racialized as non-white in the metropole faced ongoing structural barriers to equality in employment, housing, law enforcement, and education, as well as racial discrimination by individuals, and that this inequality had deep historic and cultural roots which had never been sufficiently addressed, the LBR's practice of not filing court cases, not aggregating information at the national level, and not engaging in overt dialogues about racism and its colonial roots, allowed Verdonk to argue, with a straight face, that she had never seen evidence of racial discrimination in the Netherlands.[826] It meant that Paul Scheffer could portray the two prior decades as ones in which the Dutch government had funded generous efforts to

[824] The phrase 'dood geknuffled' actually originated in the 1980s with psychologist David Pinto, but was resurrected by Scheffer in 2000; David Pinto, "Etnische groepen zijn lanzamerhand doodgeknuffeld," *Volkskrant*, June 18, 1988, sec. Opinion, Delpher; see also Ghorashi, "Racism and 'the Ungrateful Other' in the Netherlands" (citing supporters of the PVV in 2010, and Dutch Prime Minister Mark Rutte's 2011 statement that his party would 'give this beautiful country back to the Dutch, because that is our project.').

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

[826] Witte (n 9) 17 (citing Verdonk's speech at a 2005 event celebrating the 20th anniversary of the founding of the LBR).

improve the social and economic status of racialized 'others' and then blame those 'others' for being 'ungrateful' and squandering those opportunities.[827]

The fact that these arguments were possible despite the thousands of pages or reports and articles produced by the LBR, speaks both to the limited audience for those reports and to the success of the nonperformative aspects of the LBR as an institution. The LBR had served its purpose of making it look like something had been done about racial discrimination in the Netherlands, while allowing the practice of that discrimination, and other racializing practices, to continue and even be vigorously defended; it allowed politicians in the early 2000s to portray their ideas as breaking from earlier policy, when in fact they were business as usual.

7.2. Question and Answers

History is often said to be characterized by overlapping processes of continuity and change. This case study of the LBR and other legal mobilizations argues that studying the ways in which continuity comes about is as important as studying change. It is also a study of how critical historiographic concepts like the silencing of history and postcolonial occlusion, as well as critical race theories like nonperformative antiracism and racist denial function in the Dutch context. Studying *how* a problem persists – especially a problem as difficult to talk about as white supremacy in Dutch society -- is an essential precursor to honest discussions of the *why* that problem persists, and then how it may eventually be solved. Questions of *how* are at the heart of this project: *How* did legal constructions of race differ in the colonial and postcolonial periods? *How* did legal mobilizations around racialized inequality and discrimination impact postcolonial memory and the shaping of the postcolonial Dutch metropole?

One version of answers to these questions is quite straight forward. In the colonial period, Dutch law constructed race formally and explicitly, first by creating categories of people and then using those categories to generate and protect wealth for people racialized as white. In the postcolonial period, Dutch law removed formal and explicit racial categories from most of its laws, but maintained a status-quo of substantive racialized social and economic hierarchies in the Dutch metropole,

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

while also working to conceal the racialized nature of those hierarches.[828] It did so by creating limited, and ultimately ineffective, legal tools to address racialized inequality, and then by actively diffusing grassroots efforts to use even these limited tools. These limits on legal discourse and tools related to racialized inequality resulted in a lack of archival material and public awareness which allowed the broader Dutch public, and political class, to systematically deny the relevance of race in the postcolonial Dutch metropole.

7.2.1. Racialization becomes legally untouchable

Unlike the seventeenth century, when legal categories of race had to be proactively created, or the eighteenth and nineteenth centuries, when they had to be affirmatively policed, by the late twentieth century, racial categories and their attendant social and economic advantages and disadvantages had become part of the fabric of life in the metropole and no longer required active legal intervention to be maintained. Legal scholar Kimberlé Crenshaw has described this transition as the difference between formal subordination, that which is maintained by state laws and explicit state violence, and material subordination, which occurs 'when Blacks are paid less for the same work, when segregation limits access to decent housing, and where poverty, anxiety, poor health care, and crime create a life expectancy for Blacks that is …shorter than for whites.'[829] While Crenshaw was writing about the material condition of people in the United States in the 1980s, she could have been writing about the Netherlands in the same decade, where people racialized as non-white experienced on average higher rates of unemployment, lower rates of achievement in secondary and higher education and lower representation in governing structures.[830]

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[828] Borrowing the framework from Kimberlé Williams Crenshaw, 'Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law' (1988) 101 Harvard Law Review 1331 (identifying categories of formal, material and symbolic racial inequality).

[829] Crenshaw, 1377.

[830] Penninx, *Etnische Minderheden. A*, see sections on employment and housing in; Bovenkerk's address in Overdijk-Francis (ed.), "Positieve Diskriminatie in Nederland; Ervaringen in de VS"; Boon and Es, "Racisme en overheidsbeleid."

Arend Lijphart observed in 1968 that a 'crucial component of [the Dutch politics of accommodation was] a widely shared attitude that the existing system ought to be maintained and not be allowed to disintegrate'.[831] Though Lijphart did not acknowledge it, a key component of the existing Dutch system was white supremacy, embedded in Dutch economic and social processes over centuries, but also in the beliefs about the inherent goodness of that system and the people who continued to benefit from it; maintaining the 'existing system' also involved maintaining that supremacy. As long as the numbers of people racialized as non-white and living in the metropole remained small, maintenance of white supremacy inside the metropole required relatively little intervention; the presences of small numbers of people racialized as non-white, and any upward social mobility they achieved, could be considered proof of Dutch tolerance and openness, as opposed to a threat to the established hierarchy.

When the numbers of people racialized as non-white and residing permanently in the metropole increased in the mid-1970s, the means by which law maintained white supremacy had also changed. At first, the material value of being racialized as white could be maintained in metropole through deeply ingrained, private preferences in hiring, housing, education and political choice, which manifested in widespread practices of racial discrimination. However, when groups of people racialized as non-white began to organize and increase calls for the Dutch government to do something about increasingly visible acts of racial violence, discrimination, and inequality in the metropole, the government had to respond. Instead of implementing programs like contract compliance, positive discrimination, immigration or educational reform which might get to the roots of racialized inequality in the metropole, the Dutch government responded with a program of nonperformative antiracism, a set of policies and programs which claimed to address discrimination and inequality, but in fact did the opposite. Rather than creating new legal categories or structures, or executing policies that would actively dismantle the old ones, Dutch law makers, and the legal actors they deputized, largely refused to act. Instead, they engaged in various practices of denial and obfuscation of the existence of racializing social practices in the metropole, first

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

by limiting the legal definitions of racism and racial discrimination that would make laws against these practices nearly impossible to enforce, and then by creating the LBR with limited powers to address those problems even under their limited legal definitions.

Chapter Three demonstrated how successive Dutch governments used laws ostensibly designed to combat racialized inequality to shield from legal sanction most of the social practices creating that inequality. First, they crafted 'ethnic minorities policies' that problematized the abilities and 'cultures' of people racialized as non-white and living in the metropole as the primary sources of their ongoing social and economic inequality, as opposed to the centuries of government-sanctioned oppression and violence that had enriched people racialized as white. Then, after the International Convention to Eliminate Racial Discrimination required the Dutch government to enact legislation again racial discrimination in the metropole, policy makers opted for a limited definition of that practice; they chose to criminalize actions motivated by irrational personal prejudice, instead of adopting legislation or programs that would address the wide-spread, historic and systemic social practices. By choosing criminal law as the means to prohibit these actions, the Dutch government also imposed the highest possible burden of proof on those claiming to be victims of racial discrimination; they had to prove that the accused offender had operated with the requisite 'racist' intent. As multiple reports would show across the decades, this burden almost always proved too much to bear. First police officers would refuse to make arrests; public prosecutors would then refrain from filing complaints. In the few cases that did make it to court, judges chose not to impose judgements or penalties. This high procedural and definitional burden had the effect of shielding the majority of racializing practices from legal scrutiny – they happened outside the criminally sanctioned definition of racial discrimination and so were not legally forbidden; they were, in effect, legally inscrutable. Criminal laws against racism and racial discrimination were also classic examples of nonperformative antiracism; they claimed an antiracist purpose, but failed to make any material impact in racializing practices.

Chapter Four demonstrated that the Lubbers I Cabinet's creation of the LBR continued this practice of non-performativity. The cabinet refused to invest the LBR with any enforcement power; it declined to grant the LBR the power to adjudicate

allegations of racial discrimination under the existing law, limited as it was, or to compel compliance with information requests, or represent individuals on a large scale in court. It declined to grant these powers to the LBR despite clear advice from its own researchers that, without such enforcement, anti-discrimination norms and policies were nothing but 'dead letters'.[832] In this way, it is reasonable to conclude that the legislative purpose of the LBR was less to combat racial discrimination, than to relieve political pressure different groups were placing on the cabinet to do something against racial discrimination. Chapters Five and Six go on to demonstrate the success of the cabinet's gambit. In its fifteen years as an organization dedicated to using legal measures to combat racial discrimination, the LBR engaged in a series of visible actions nominally intended to address these problems; it commissioned reports, lobbied members of parliament, published jurisprudence and sponsored educational activities. It did not, however, engage in adversarial legal mobilization to enforce or compel compliance with non-discrimination policies. Nor did it use its non-adversarial educational or publicity activities to frame racism or racial discrimination as deeply rooted, widespread problems facing Dutch society.

Sara Ahmed points out that one of the goals of nonperformative antiracist policies is to diffuse the energy of groups or movements attempting to change practices of racialization like discrimination or harassment. In this regard, the LBR was incredibly effective. By the time the LBR merged with ADO and ARIC in 1999, national and local groups dedicated to combatting racial discrimination, including the Workgroup on Law and Racial Discrimination, SARON, Quater and JOSH had all disbanded. Tansingh Partiman, who had been active both as a student and young professional expressed little doubt that the LBR 'killed activism' around race and racial discrimination in the 1980s and 1990s. People didn't feel they had to volunteer their evenings and weekends, he explained, when the Ministry of Justice was funding an agency to address the same problems around which they were organizing.[833] SARON lawyer Gerrit Bogaers's recollections corroborated this impression; he said that once Hilversum had an anti-discrimination bureau, he and other lawyers found it less necessary to organize volunteer legal services or conduct

[832] Van Duijne Strobosch, *Bestrijding van Discriminatie Naar Ras*, 86.

[833] Partiman, interview.

independent investigations for people who had been turned away from restaurants or discos because of their racialized identity.[834]

During the lifetime of the LBR, anti-discrimination bureaus (ADBs) had sprung up around the Netherlands, and they existed after the LBR shut its doors. But few of these focused on racial discrimination and even fewer had the capacity to represent individuals in legal cases or controversies.[835] The local nature of the ADBs meant that the reports of racism or discrimination they received remained framed as local problems, incidents as opposed to phenomena, and that their 'racist character' was still ignored as a national problem.[836] By the mid-1990s, the national Commission for Equal Treatment and its successor, the College for Human Rights fulfilled similar roles to the LBR, both in the imaginations of antiracist and anti-discrimination activists, and nonperformative interests of advocates for the status quo. They were, and remain, places individual victims of racial discrimination could take their claims, but not institutions that had the authority to enforce judgements or impose penalties based on these claims.

To be sure, the LBR and ADBs were not the only reasons members of grassroots and activist organizations shifted their work. As Partiman also acknowledged, at some point many of them had children and families and wanted to pursue their careers. They did not cease to care about racial justice, but engaged with the issue in different ways.[837] But the existence of a national movement to

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[834] Bogaers, interview (According to Bogaers, Quater also got the municipality of Hilversum to agree to engage in contract compliance, a policy that continues to the present day and that activists still invoke in intervening decades when confronting discriminatory business practices there.).

[835] An exception to this observation is RADAR, which began as the Rotterdam Anti-Discrimination and Anti Racism bureau and has retained a visible focus on racial discrimination to this day.

[836] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 86.

[837] Partiman, interview (Partiman remained active on organizational boards and in promoting diversity and inclusion policies for businesses). Other activists and advocates mentioned above also stayed engaged in issues of racial justice in their own ways. After leaving POA, Overdijk-Francis worked setting up the integration policy for the municipality of Utrecht and later did similar work in the corporate world; she retired in 2011 and is now involved with the creation of a national museum dedicated to Dutch slavery. Gerrit Bogaers continued working in private legal practice and advocacy, and stayed involved in addressing incidents of racial discrimination. Former LBR staff members Leo Balai and Chan Choenni both went on to publish academic and popular works focused on slavery and colonial history.

address racial inequality or racial discrimination disappeared largely from view until it was revived by activists protesting the blackface tradition of Zwarte Piet in 2011.[838]

7.2.2. Racializing practices become historically illegible

In *The Fire Next Time,* his 1963 collection of essays on race in the United States, James Baldwin observed that people racialized as white were 'still trapped in a history which they do not understand; and until they understand it, they cannot be released from it.'[839] In the postcolonial Dutch metropole, failure to connect ongoing racialized inequality in the metropole to its historic origins 'trapped' both the government in its creation of the LBR, and the strategies chosen by LBR directors. As Paul Bijl has written, 'the Dutch aphasiac condition produce[d] an inability to see the nation as the former metropolis of a colonial empire and to acknowledge the lasting racial hierarchies stemming from this past, leading to a structural inhibition of the memorability of colonial violence a failure to reckon with colonial afterlives.'[840] At the same time, the nonperformative legal strategies adopted by the LBR directors and staff and their consistent downplaying of the role of racism in the discrimination the organization addressed, contributed to this aphasiac condition regarding the ongoing role of racializing practice in the Dutch metropole.

As observed throughout this project, racialization and white supremacy are primarily practices but they are also deeply held beliefs, albeit often unconscious ones. As such, they relate to the question of intent to engage in these practices, which has been a recurring theme throughout this project. As described in Chapter Two, ideologies of white supremacy, which may have begun as religious and political propaganda to justify colonial conquest and enslavement, transformed over centuries; they became 'race science' in the nineteenth century, ideas about 'primitive' as opposed to 'modern' societies in the twentieth and ongoing critiques of 'cultural deficiencies' of 'foreigners' in the twenty-first. Consistent across the

[838] Gario, "On Agency and Belonging."

[839] James Baldwin, *The Fire next Time*, Penguin Modern Classics (London: Penguin books, 2017), 16–17.

[840] Bijl, "Colonial Memory and Forgetting in the Netherlands and Indonesia," 451.

centuries, however, is the idea that Europe and Europeans (people racialized as white) represent the ideal model, and that incorporation into (or expulsion from) this model is the goal of any social or legal program to address 'others' within it. This belief in the fundamental soundness, and fairness, of the Dutch social, political and economic systems informed the politicians who created the LBR and the staff who executed their vision. I do not believe anyone involved consciously intended to maintain practices of white supremacy, but many did intend to uphold the existing order of Dutch society, which they believed to be fundamentally sound and just.

Conversations with people involved in the LBR, or surrounding projects, and documents I have reviewed have not indicated any conscious desire to maintain white supremacy in the Netherlands. In fact, the opposite is true; everyone I spoke with expressed the belief that they were engaged in solving the problem of racial discrimination in the metropole. What these conversations and documents often also revealed, however, were frequent concurrent beliefs that racism or white supremacy were practices foreign to the Netherlands and Dutch culture. For example, people I spoke to who were racialized as white often identified their motivations to get involved against racial discrimination in the metropole as being inspired by family members involvement in resistance to the Nazis during the occupation of the Netherlands in the 1940s, or through solidarity actions with youth movements against authoritarian foreign governments in the 1970s and 1980s. These examples of fascism or oppression were imposed on, or exterior to, the Dutch nation. None of the people I spoke with who were racialized as white identified colonial history as being part of their understanding of racism at the time, though some had become more aware of the connections in the decades since. As shown in Chapters Four and Five, this assumption that racism and white supremacy were not inherently Dutch, or that Dutch society was fundamentally not racist, contributed to LBR practices that preferred dialogue, education and negotiation over adversarial legal confrontation. After all, if the problem of racism and resulting racial discrimination was not structural, than the solutions did not need to be either.

By contrast, as addressed in Chapter Three, publications of communities racialized as non-white frequently connected struggles for social and economic equality inside the metropole to histories of slavery and (ongoing) colonial struggles. Staff of these more colonially-conscious organizations worked with, and

in some cases joined the staff or board of the LBR, so it's not as if these ideas were unknown or unknowable. The overlap in staff and board is circumstantial evidence for some element of willful ignorance, not wanting to know and choosing not to learn. The assumption that people racialized as white were best suited to craft policy and executive strategies to combat racialized inequality is circumstantial evidence of confidence that the way things have been is the best way, a level of confidence bordering on arrogance, that is part and parcel of centuries of an ideology of European white supremacy. Colonial aphasia and racist denial in the input leads to aphasia and denial in the output.

The failure to bring legal cases and controversies in national courts contributed to silencing the existence of such practices in the legal archive. In *Silencing the Past*, Michel-Rolph Trouillot observed that the act of silencing occurs at four moments: those related to 'fact creation (the making of *sources*)…fact assembly (the making of *archives*)…fact retrieval (the making of *narratives)*..retrospective significance (the making of *history* in the final instance).'[841] This case study of the LBR illustrates one version of *how* those silences around racialization and its role in Dutch history came to be. The LBR's preference for dialogue and education, as opposed to bringing cases in Dutch courts, impacted the making of sources and archives. In failing to bring legal complaints and cases, the LBR failed to create records that would have memorialized the facts of employers who refused to hire people racialized as non-white, or landlords who refused to rent to them; they failed to create court records against banks who charged higher interest rates, telephone companies or constructions equipment lessors who charged higher deposits, or airlines who refused to promote people racialized as non-white. These facts would have been assembled in police reports, court filings and judicial decisions, all of which make up parts of the legal archive. The records of jurisprudence the LBR did collect and publish in its recurring collection, *Rechtspraak Rassendiscriminatie*, are a sort of archive, but one whose access depends on prior awareness of its existence, as its not part of a general public archive like those containing court records. While the methods the LBR did prefer, alternative dispute resolution tactics like dialogue, voluntary codes of conduct or

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

educational seminars, may have been effective in resolving individual disputes in the short term, but they did not leave publicly accessible records or change legal culture.

By accepting the ahistoric definition of racism and racial discrimination as defined by Dutch criminal law, and then by systematically downplaying the role of race in the discrimination it did address, as illustrated in Chapter Six, the LBR contributed to making narratives about the role of racialization in the Netherlands more difficult to tell. Instead, as observed by Rob Witte in 2010, delegating the problem of racial discrimination to local anti-discrimination bureaus allowed for the impression that ongoing racialized violence (and I would add other ongoing forms of racialization and white supremacy) was incidental and local, as opposed to national and endemic.[842] These practices are not unique to the Netherlands, and may be worth exploring in the European context where sociologist József Böröcz has observed the discursive strategy around race is 'by and large all about trying to forget "race" into oblivion.'[843] Examining the legal mobilization of the Dutch government, and specifically those of the LBR, reveals that the strategy in the Netherlands is not so much about 'forgetting' as it is actively choosing to deny.

7.3. New beginnings

It's impossible to know what changes in racializing practices or their resulting material inequality might have occurred had the LBR adopted different strategies and pursued more adversarial legal mobilization, or if they had put the same financial and staff resources dedicated to supporting ADBs into networks of legal practitioners like the Workgroup Law and Racial Discrimination (*Werkgroep Recht en Rassendiscriminatie*). Some hint may be found in the strategies activists and advocates addressing racialized inequality and discrimination in the Netherlands have started using in recent decades.

In 2013, for example, as mentioned in the introduction to this dissertation, artist and activist Quinsy Gario filed a lawsuit with an administrative court in the City of Amsterdam, seeking to block the mayor of Amsterdam from issuing a permit

[842] Witte, *Al Eeuwenlang Een Gastvrij Volk*, 86.

[843] Böröcz, "'Eurowhite' Conceit, 'Dirty White' Ressentment."

to the annual Sinterklaas parade, which at the time featured many people dressed as *Zwarte Piet* (Black Pete), a clown-like assistant to St Nicolas, portrayed by people in blackface.[844] Twenty additional parties eventually joined his complaint. The court's initial decision yielded mixed results; first, it determined that neither the parade nor the issuance of the permit violated the plaintiffs' rights under Article One of the Dutch Constitution, because they had not experienced unequal treatment because of their race. Both the parade and permit process, the court reasoned, were accessible to everyone. However, with somewhat contradictory logic, the court also recognized that the blackface practice featured in the parade could have negative impacts on the rights to family and private life of plaintiffs racialized as Black, as protected under Article Eight of the European Convention on Human Rights. It required the mayor of Amsterdam to weigh the impact on these rights before issuing the permit. Acting on appeal, a higher court reversed even this decision and the parade went on. What could have been described as a failure of legal mobilization in the short term, however, generated momentum for growing grassroots opposition to using blackface as part of Sinterklaas celebrations. The number of participants in protests against blackface increased in every subsequent year, coordinated by the grassroots group, Kick Out Zwarte Piet (KOZP).[845] Protestors faced violent reprisals from pro-blackface factions, including having their meetings attacked with fireworks, their cars vandalized, and their bodies pelted with eggs and other projectiles.[846] In 2017, thirty-four supporters of the

[844] Gario, "On Agency and Belonging," 85, footnote 2; Patricia Schor, "Race Matters & The Extractive Industry of Diversity in Dutch Academia," *Dis/Content* (blog), June 9, 2020, https://discontentjournal.wordpress.com/2020/06/09/race-matters-the-extractive-industry-of-diversity-in-dutch-academia/.

[845] KOZP had its origins in the artistic interventions of Gario, and of poet Jerry Afriye, who were arrested at the 2011 Sinterklaas parade for wearing shirts painted with the slogan "Zwarte Piet is Racisme." See e.g. Gario, "On Agency and Belonging," 85, footnote 2; The physical violence of the arrest, which left Gario with chronic back, neck and shoulder pain, illustrates Lentin's concept of 'not racism as racist violence', described in Chapters Two and Six above. In this case, the violence of the state was direct and active, in other instances, it was passive withholding of state protection that allowed private citizens to engage in violence against protestors alleging racism. See Lentin, "Beyond Denial."

[846] Rik Wassens and David van Unen, "Activisten vernielen ruiten en auto's bij bijeenkomst Kick Out Zwarte Piet," *NRC*, November 8, 2019, internet edition,

Zwarte Piet tradition forced a bus of KOZP supporters off the highway on the way to a protest of a blackface parade in Dokkum, Friesland. Then, as in the 1980s, police were slow to bring charges against the 'blockade Frisians', though fifteen people eventually received ninety hours of community service for inciting violence.[847] But the KOZP activists persisted and eventually achieved success. By 2020, a majority of people surveyed agreed that blackface was no longer acceptable in public Sinterklaas parades.[848] In 2024, KOZP declared that it planned to disband in 2025, having achieved its goals.[849]

The use of legal mobilization in the 2013-2024 campaign against Zwarte Piet illustrates Michael McCann's observation that 'triumph in court is not always necessary to either short- or long-term successful legal leveraging.'[850] The process of going to court forces public and institutional recognition of social movements and their claims in ways that can be leveraged into political and social power. Environmental activists have demonstrated this willingness to go to court in recent years by the Dutch environmental movement[851] as have the next generation of racial justice advocates, led by the Public Interest Law Project (PILP). In 2018, PILP and several other public interest groups brought a complaint that the Royal Military Police (KMAR, Koninklijke Marechaussee) used impermissible racial profiling when it stopped their client, human rights advocate Mpanzu Bamenga, as he arrived at the Eindhoven airport.[852] Despite losing the case in the first instance,[853] PILP was

https://www.nrc.nl/nieuws/2019/11/08/bijeenkomst-kick-out-zwarte-piet-in-den-haag-bestormd-a3979715.

[847] "'Blokkeerfriezen' ook in hoger beroep veroordeeld, wel lagere straffen," news, NOS.NL, October 31, 2019, https://nos.nl/artikel/2308424-blokkeerfriezen-ook-in-hoger-beroep-veroordeeld-wel-lagere-straffen.

[848] Wietse van Engeland, "Nederland accepteert verandering (Zwarte) Piet," Ipsos I&O Publiek, December 2, 2020, https://www.ipsos-publiek.nl/actueel/zwarte-piet/.

[849] Vié, "Kick Out Zwarte Piet houdt er eind 2025 mee op."

[850] McCann, "Law and Social Movements," 29.

[851] ECLI:NL:HR:2019:2007, State of the Netherlands v Stichting Urgenda.

[852] "Ethnic Profiling," *PILP* (blog), accessed October 24, 2024, https://pilp.nu/en/dossier/ethnic-profiling/.

[853] *Bamenga Case* [2021] Rb Den Haag ECLI:NL:RBDHA:2021:10283. The case was also sponsored by Amnesty International, RADAR, the Nederlands Juristencomité voor de Mensenrechten and

able to negotiate with the KMAR to end the policy of racial profiling at the Dutch borders; the coalition government agreement reached that same year also included the statement against racial profiling.[854] When, on appeal, the court reversed its decision in 2023, declaring 'race or ethnicity' impermissible reasons on which to base a security stop, it was more a confirmation of the change achieved by PILP and others than a driver of that change, and a confirmation of the role legal mobilization could play as part of a broader social movement strategy. In 2024, Mpanzu Bamenga began serving as a member of parliament.

Of course, movements for social justice, and perhaps especially for racial justice, rarely proceed in an exclusively forward direction. When the Rutte IV government publicly condemned racial profiling, it was not responding to the Bamenga case, but a scandal that led to the fall of the previous cabinet, which had collectively resigned in January 2021 over its handling of the *toeslagenaffaire* (subsidy affair). That affair revealed that the Dutch tax office had used ethnic and racial profiling to falsely identify and accuse roughly 26,000 parents of fraud with regard to subsidies they received for childcare.[855] As of this writing, the process of compensating those parents, some of whom lost custody of their children as a consequence, has been criticized for being slow and insufficient.

7.4. Looking back and moving forward

In general, the racial justice activists of the twenty-first century seem to be heeding the warnings of critical race scholars and legal mobilizations scholars alike, not abandoning rights rhetoric, or the pursuit of formal legal protections in the forms of court decisions or new laws, but using those strategies as part of broader, multi-faceted campaigns for change. Many of these movements have also been successful at connecting the drivers of present-day racial discrimination and

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Controle Alt Delete, an organization founded to address racial profiling and police violence in the Netherlands.

[854] Ashley Terlouw, "Controles op grond van huidskleur," *Ars Aequi*, mei 2022, 383.

[855] Rodrigues and Van der Woude, "Etnisch profileren door de overheid en de zoektocht naar adequate remedies," 112; "Nieuws | Herstel Toeslagen (UHT)," Toeslagen Herstel, accessed September 2, 2024, https://herstel.toeslagen.nl/nieuws/ (as of the writing of this chapter, the Dutch government officially recognized 37,482 'duped' parents injured by the tax agency's practices.

racialized inequality to their historical roots.[856] The correlation between groups who make these connections, and those who do or do not receive subsidies from the Dutch government, would be an interesting avenue for further study.

Perhaps this new generation of activists has learned from the losses and successes of their predecessors. Perhaps, as several people with whom I have spoken for this project have suggested, it has more to do with the passage of time, the different attitudes of second and third generations of people racialized as non-white, and born here who consider themselves more entitled to equal treatment than their parents who still saw themselves as immigrants or newcomers.[857] Regardless of the reason, many of those involved with movements for racial justice in the Netherlands in the 2010s and 2020s seem to be practically engaging with the ambivalence scholars like Crenshaw and McCann and Lovell have expressed about the relationship between social change and legal mobilization.[858] These scholars, and activists, recognize that formal legal changes, and the legal strategies that seek them, are not sufficient to change the course of centuries of substantive white supremacy, but that they are often necessary components in broader, and longer term, strategies to do so. McCann and Lovell reflect my own thoughts on the matter, when they write that they remain 'warily optimistic' that:

> even in the current era of retrenchment in the racial capitalist order, law still provides one of the most important institutionalized sites and discursive resources for subaltern group resistance to and contestation over hegemonic policies, practices and relationships in both state and society.[859]

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[856] Jones, "The Shadows of (Public) Recognition: Transatlantic Slavery and Indian Ocean Slavery in Dutch Historiography and Public Culture," 281.

[857] See e.g. Leo Balai and his son Raul discussing their different approaches to issues of racialized inequality in Thijs Niemantsverdriet, "Deze vader en zoon voeren een 'eeuwig debat' over het slavernijverleden, de excuses en racism" *NRC* (16 December 2022) <https://www.nrc.nl/nieuws/2022/12/16/deze-vader-en-zoon-voeren-een-eeuwig-debat-over-het-slavernijverleden-de-excuses-en-racisme-mensen-van-kleur-kan-ik-niets-mee-2-a4151775> accessed 3 September 2024.

[858] Crenshaw, "Race, Reform, and Retrenchment," 1387–88; McCann and Lovell, *Union by Law*, 391.

[859] McCann and Lovell, *Union by Law*, 391.

What is necessary to maintain this 'wary optimism' is the continued exploration of the connections between formal law and its substantive and material implications, not just in terms of 'law in theory' vs 'law in practice', but also law in a context that includes histories of white supremacy. Rather than leaving these questions as aspirational or emotional, I am interested in conducting further research on how history can be effectively incorporated into what is often called 'diversity and equity' education and training outside traditional academic spaces.[860]

At the beginning of this project, I argued that an in-depth case study of an organization like the LBR can help us understand one way racialization was practiced in an era when many people preferred to deny the existence or relevance of race at all. Having completed the study, it's fair to inquire about the value of this understanding. In their essay about researching 'afterlives of colonialism', Jones, Jouwe and Legêne observe that knowledge about the past doesn't easily translate into policy recommendations; instead, they argue 'valorization [of this type of research], in an ideal sense, implies that power structures change, ways of living together are affected, and through the impact of education and research even value systems change.'[861] While I share the sentiment deeply, the passive voice in the sentence leaves a lot of unanswered questions. Power structures rarely change of their own accord, and after the critique I have leveled above of the LBR strategy to 'educate racism away', I cannot say that education alone does either. The value of research on the afterlives of colonialism, among which is racialized inequality and white supremacy, is how we use that knowledge to impact the society in which we live. We need to be sure our research – however halting, however incomplete – is something we are sharing in our classrooms, and not just at the masters or elective level, but along with the basics and 'classics'. This responsibility to teach colonial context is especially acute for those of us working in law faculties, where many of our students will go on to yield the state power I have described above as judges,

[860] One example of a program that incorporates history in its training is the Racial Equity Institute in Greensboro, North Carolina. See Bayard Love and Deena Hayes-Greene, 'The Groundwater Approach: Building a Practical Understanding of Structural Racism' <https://www.racialequityinstitute.com/>.

[861] Jones, Jouwe, and Legêne, "Over de (on)mogelijkheid van opdrachtonderzoek," 278.

prosecutors and advocates.[862] We also need to investigate ways to bring this knowledge out of classrooms, not just through museums and memorials, but into workplace policies and practices.

7.5. Conclusion

In 1983, Tansingh Partiman expressed his fears that the efforts to create a national institute dedicated to using legal measures to address racial discrimination in the Dutch metropole would degenerate into a round of shadowboxing. Shadowboxing is a display of action in which boxers bounce on their feet, jabbing forcefully and repeatedly into the air, sweating, panting, but never landing a punch. Throughout this book I have presented a critique that largely agrees with Partiman's metaphor. I have judged most of the actions and methods of the Landelijk Bureau Racismebestrijding to be nonperformative ones, giving a display of activity, but failing ultimately to connect with their target, a fifteen-year round of shadowboxing.

This assessment hardly applies only to the LBR. I would also suggest that neither my birth country, the United States, nor my adopted one, the Netherlands, has yet to engage in fighting racialized inequality with a national, institutional commitment that has engaged a fully realized opponent. We have never fully connected *why* racialization and white supremacy exist to *how* we engage public laws and resources to try to combat them. Instead, we have preferred to swat at narrowly drawn shadows like racism or racial discrimination, underlined by ideas like aberrant, individual prejudice, while ignoring the deep-seated white supremacist foundations and practices on which our societies were built and at many levels still continue to operate. To be sure, people have always resisted these systems; as long as there has been racialized oppression, there have been rebels, revolutionaries, activists and allies who have landed punches, some causing more damage than others. But the full power of the state has never been engaged on the level necessary to undo those shadow-casting structures, those persistent colonial

[862] I have expanded on this argument about the responsibility of law teachers in Fischer, "Colonialism, Context and Critical Thinking"; see also Adébísí, *Decolonisation and Legal Knowledge*; Joel Malesela Modiri, "The Time and Space of Critical Legal Pedagogy," *Stellenbosch Law Review* 27, no. 3 (2016): 507–34; De Hart, "'Ras' en 'gemengdheid' in Nederlandse jurisprudentie," 359.

afterlives. Perhaps it helps to think of these earlier resistance actions in the context of a much longer match where shadowboxing is part of the training routine. It builds endurance, exposes weaknesses, strengthens muscles and readies the fighter for a return to the ring. I am under no illusion that even under this already strained metaphor this work leads to something like a knock-out punch. I can only hope it better prepares us for the next round of the fight.