BEING HUMAN AND HAVING RIGHTS

HUMAN RIGHTS EDUCATION AND RACISM AT THE UNITED NATIONS AND IN CURAÇAO

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Mens zijn en rechten hebben: mensenrechtenonderwijs bij de Verenigde Naties en in Curaçao

(met een samenvatting in het Nederlands)

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***Heritage*[1]**

Heritage, heritage, heritage

Me, me, me

You, you, you

What is yours, what is mine? Is it ours?

Heritage, heritage, heritage

We, we, we

You, you, you

What is theirs, what is ours? Or, is it ours?

[1] Poem published in NUC Unchained: Words Spoken, 2014 [retrievable via https://issuu.com/nucunchained/docs/nuc_words_spoken__issuu_]

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PREFACE

A longing to understand the world is what has led me to do this research. After having completed this research, of course, I do not understand the world. Still, I am convinced that I have come to understand it way more than I did before. At least in regard to the (non-)sense of racialization and racial discrimination (including racism), and the role human rights education plays in regard to racism.

I cannot possibly thank everyone who and everything that had an influenced on me, and consequently this work. However, I would like to acknowledge the following people.

First of all, prof. Barbara Oomen and prof. Rose Mary Allen. An ocean apart from each other (one living in the Netherlands, and the other living in Curaçao) they supported my work in a number of ways. Not only with their academic knowledge, time, dedication and other means, but also – which I appreciate immensely – by believing patiently in me, my work, and the importance of my work. I am forever grateful.

I started this dissertation when I was working at the University of Curaçao (UoC), as a lecturer in Constitutional and Administrative Law at the School of Law. I could not have done this work the way I have if it were not for my time at the UoC. My gratitude thus goes out to my former colleagues and students of the University of Curaçao. Including more specifically dr. Annemarie Slot-Marchena LLM, who as then acting dean, observed and stimulated my intrinsic motivation to work on this research. Not only by explicitly believing in me but also by providing – where possible – the means I needed for this research. With regards to means and time made available I also thank the Rector Magnificence of the University of Curaçao, dr. Francis de Lanoy. I also thank former colleagues of the UoC who introduced me to (aspects of) Constitutional law and Administrative law in the Caribbean parts of the Kingdom, more specifically prof. dr. Arjen van Rijn, prof. dr. Lodewijk Rogier, prof. dr. Gerhard Hoogers, Franklyn Hanze LLM. As will be clear, this work is not a legal research. In my search for and research in skills and knowledge from other disciplines, it was also invaluable to have discussions with colleagues of other departments. I think of former colleagues such as dr. Margo Groenewoud, Aronnette Martis, Jacqueline Martis. Furthermore, I thank my other former colleagues at the School of Law, whom all played their parts in enabling me to have time to work on my dissertation. My gratitude also goes out to the University College Roosevelt, more specifically the dean, prof. dr. Bert van der Brink, for the financial support I received to do empirical research in Curaçao and to work on my dissertation in Middelburg.

Working on a dissertation, in many respects, feels like a solitary endeavour. However, throughout the process I have been lucky enough to share and exchange ideas, papers, successes and also frustrations with a number of academics from different disciplines and at different places, including – alphabetically – Richenel Ansano, Elif Durmus, Dr. Margo Groenewoud, Dr. Francio Guadeloupe, Jeanne Henriquez, Lianne Leonora, Aronnette Martis, Jacqueline Martis, Dr. Louis Philippe Romer, Sara Miellet, Lianne Mulder, Dr. Paola Pannia, Dr. Angela Roe, Dr. Ryçond Santos do Nascimento, and Ini Statia. Conversations with you in many moments led to a breakthrough, kept me on track or simply led to much needed relief. I sincerely thank you for that.

The person who experienced most of my contemplations, writings, breakthroughs, frustrations and insights, who patiently listened, who was a willing sparring partner and proofreader, who stood by me when we were physically close but also when our togetherness included the Atlantic Ocean between us, is my partner Angelino Sulvaran. You are an intrinsic part not only of my daily life but also in many ways, of this work. Words cannot express my gratitude for the role you play.

I also want to thank my parents and sister. Time and again they stand by me in any way possible, believing in the goals I set for myself and patiently supporting me in my journeys towards those goals. I dedicate this work to my parents, Maria Alice de Fatima Tolentino and José Pedro Delgado. I hope that – in some way – the completion of this work shows my gratitude for their support and the sacrifices they have made in giving me the best chances in life they could. But really, there is no way to fully show my gratitude for the roles you play in my life.

I want to close this part of with the following. The amount of time that it has taken me to write this work is connected to a number of things. Of these, I want to mention the fact that I often found myself falling back into legal reasoning, and that because of that, human rights (law) and thus human rights education appears to be an eminently legal subject. Or that I would fall back into the coloniality of concepts, blurring ways to reason through colonizing concepts. One other thing is that I am convinced that social justice requires one to be able to imagine what social justice looks like. Because to only be against, or anti-, means that the very thing which I am against, needs to further exist; it fuels it with life, gives it a reason to exist.[2] I finally came to understand that justice is already here, simultaneously with the many cruel and at times fatal injustices that are here. What if we turn to these justices, and let them lead our imagination?

[2] See also, for example Essed (2017 [1984], p. 10), who writes that she dislikes the word 'anti' in antiracism, and prefers to articulate what she is for; namely for a society where people treat each other with respect and where human dignity stands central. At the same time, she stresses the importance of knowing the mechanisms of discrimination, humiliation and dehumanization, in order to better understand freedom and human dignity.

1. INTRODUCTION TO THIS RESEARCH

1.1 RACE AS THE HUMAN QUESTION IN HUMAN RIGHTS EDUCATION

This research focuses on human rights education (HRE) and its relation to racism.[3] It will be argued that if human rights education is to contribute to the elimination of racial discrimination, it – at least – must have the potential to humanize (chapter 2). With this, I mean that human rights education should contribute to an understanding of the human in which humans are not relegated to essentialized hierarchical scales, while institutionalized racism should be taken seriously and undone. Formulating it positively, human rights education should contribute to an understanding of the human that acknowledges the changing and changeable ways in which humans understand, perform and create (in relation to) the (social) world, and thus also depending on time, place, and context (i.a. Fanon, 2008, [1952]; Wynter, 2003; Guadeloupe, 2010; also see chapter 2), while acknowledging people's positionality (i.a. Vázquez 2020).[4] It thus follows, that in researching human rights education and its relation racism, I understand that the Race Question really is the Human Question (cf. Wynter, 2003, also see chapter 2).

Humanizing the category of the human, as will be argued, will thus not only tackle the centuries-long existing problem of essentialization in the form of racialization (categorizing humans into races, so that humans are historically naturalized as fixated into being of a certain race or a mixture of races). It will also contribute to tackling other issues that involve creating, attributing and perpetuating seemingly fixed identities (ways of being) to specific groups of humans, such as sexism, discrimination based on sexual orientation, class, age, ableness, national identity, and the ways in which these essentialized identities (categories of being human) intersect (i.a. Crenshaw, 1995; see chapter 2).[5] These other seemingly fixed identities and the ways in which they have been institutionalized are however not the focus of this work. What humanization does lead to is an understanding that humans (as non-essentialized beings - or rather, as becomings, see chapter 2 - are already there/here in their multiple ways, despite the fact that essentialized understandings of the category of the human have been hegemonically discursively conceptualized and institutionalized to exist as such (cf. Wynter, 2003; see chapter 2).

In this work I use the concept of discourse as a number of statements and images that make it possible to conceptualize, represent and discuss a topic in a certain way. It thus simultaneously limits other ways in which a topic can be imagined and discussed (cf. Hall, 1992 who also refers to Foucault). Discourses are always related to power, and when discourses are effective in organizing and regulating relations of power, they are called a 'regime of truth' (cf. Hall, 1992).[6] Discourses are

[3] Article 7 of the UN International Convention of the Elimination of all forms of Racial Discrimination, for example, relates human rights education to the aim of eliminating all forms of racial discrimination, see chapter 3. However, as we will see below racial discrimination is not necessarily the same as racism.

[4] Vázquez (2020) reminds us that positionality is a concept developed predominantly by Black Feminism. Think of bell hooks, Patricia Hill Collins and others.

[5] Crenshaw is known for coining the term intersectionality. See i.a. Lugones (2007) for references to other scholars who have conceptualized and analyzed intersectionality. The phenomenon of intersectionality has however been remarked long since. Think, for example, of the 1851 speech 'Ain't I A Woman'by Sojourner Truth.

[6] Throughout this work I will use 'regime of truth' and 'order of truth' interchangeably.

hegemonic when world views (epistemology and ontology) from the perspective of the ruling and governing power are normalized and naturalized,[7] and there is a significant level of consent from the subjugated masses even though people are aware of oppression or injustice. Knowledge is also intrinsically related to action, as action informs knowledge production and vice versa (Gramsci 2019).

Because hegemonic world views appear to be natural, self-evident, self-imposed, and self-created thoughts of individuals, it becomes harder to contest these world views and their naturalized hierarchies. However, neither hegemonic discourses, nor the (relation between) ruling and governing power and subjugated masses are static. They are both heterogenous and consist of different historically grown layers with shifting alliances in their aim to have a shared ideology remain hegemonic or to turn a shared ideology into hegemony (Gramsci, 2019; Roe, 2016). However, the normalization of the perspective and interests of the ruling and governing classes (the elite), and with it the colonizing of reality (and thus understandings of truth/being/power/freedom/change), is repeated and perpetuated through a myriad of images such as pictures, symbols, statues, stories, and the way they are institutionalized in for example academic fields, (legal) norms, literature, museums and education (i.a. Said, 2003; Gramsci, 2019; Roe, 2016; Fanon, 2008 [1958]; Ghosh, 2016). They thus create cultural archives (Said, 2003; see also Wekker, 2016) that socialize people into that which is portrayed as normal (Fanon, 2008 [1958]). Understanding hegemonic knowledge cannot be done in a vacuum or according to 'natural laws'. Instead, it requires knowledge (discourses and created regime of truths) to be historicized in order to understand its 'rules, how these rules came into existence, and how they frame what we might learn about reality' (Wallerstein, 2004; see also i.a. Gramsci, 2019).

Relevant to this research is that human rights education can educate learners into hegemonic understandings of human rights, and thus perpetuate the normalization and naturalization of hegemonic world views. After all, with human rights education, learners are educated into what human rights are, and consequently into what 'humans' and 'rights' are in 'human rights'. Since hegemonic Western discourses and institutions have divided and co-created the world hierarchically along the global color line (Du Bois, 2012[1903]; Lake and Reynolds, 2008; Wynter, 2003; Roe, 2016), human rights education has both the potential to unsettle the normalization of the global color line as well as the potential to continue to normalize it.

Du Bois (2012[1903]) is known for having coined the concept of the color line. Applied to the global order, it entails that race persists as a discursive and institutionalized structure that continues to overwhelmingly disproportionality allocate benefits and privileges to the advantage of the West and the disadvantage of 'the Rest', largely along the geopolitical and racial lines that characterized the European colonial project (Achiume, 2020; also see Quijano, 2007; Lake and Reynolds, 2008; Wynter, 2003; Roe, 2016).[8] As Achium (2020) puts it: it is 'the benefit of interconnection on unequal terms,' which is facilitated by neopolitical transnational and political association, and thus also through national borders and their accompanying political and legal institutions (Achiume, 2020). In order for race to be operationalized, race does of course depend on racialization of specific bodies. This makes that race is not only global in its power and the basis of political alliances but simultaneously affecting people's subjective understanding of Self (Achiume, 2020; also see Du Bois, 2012[1903]; Lake and Reynolds, 2008).

[7] Normalization is when something becomes common sense, naturalization is when something appears to naturally exist without the intervention of humans.

[8] As Achiume (2020) so aptly put it,

As Hall (1992) describes, the idea of 'the West' originated as a specific imagined geographic location (also see Said 2003) during a specific historical period, namely in Europe during the time of the Enlightenment and when Europeans – what they conceptualized as – 'discovered New Worlds'. Nowadays however, the word Western does not so much refer to a specific geographical location. Instead, the word is an idea, a social construct to describe a type of society. Types of societies called Western are normally described as developed, industrialized, urbanized, capitalist, secular and modern. Any society, wherever geographically located, can now be Western. The discursive way of presenting the world as Western and non-Western suggests an existing homogeneity and clearly bound unity. However, nor the West nor the non– West is, of course, homogeneous. Both within the West and the non-West, societies are always in exchange with each other and internally heterogenous. These heterogeneities and the power relations involved is what gets disguised by hegemonic discourses concerning 'the West' Hall (1992).

Hegemonic Western discourses and the way in which these have been institutionalized, have normalized and naturalized the socio-economic and political order based on White supremacy, or along the global color line. It is the structure of knowledge and representations that normalizes and naturalizes this institutionalized racist global order, that is called racism (cf. Roe 2016). In this regard it is important to distinguish racism from racial discrimination. Racial discrimination is discrimination on the basis of 'race' that does not consider the historical discursive and institutional subordination of races to Whiteness and is thus different from racism. That this work focuses on White supremacy and the global color line, does not deny that there are other racial and imperialist projects. These latter projects are simply not the focus of this work. Reasons to not include these other racial and imperialist projects, include that it would take the scope of the research way to far, and because of the fundamental impact that the European colonial project has had on race, racialization, national borders, legal doctrine, and geopolitics since the 15th century (cf. Quijano 2007 and Achiume 2020).

Since this research focuses on HRE and its relation to (eliminating) racial discrimination (including racism), the question then becomes if HRE contributes to or perpetuates the normalization and naturalization of the socio-economic and political order along the global color line and its accompanying forms of racialization.

This research looks both into human rights education as institutionalized at the United Nations (UN), and into human rights education as institutionalized and practiced in schools in Curaçao. The UN is an international organization of which only sovereign states can become members. Curaçao is a non-sovereign state, constituting one of the four countries of the Kingdom of the Netherlands. I therefore look into human rights education as institutionalized at an international (between sovereign states) level, and as institutionalized and practiced in a non-sovereign state. The United Nations and Curaçao are the two case-studies in this research that provides the opportunity to look into human rights education at an international and intrastate-level respectively. Relevant for this research, is that these case studies provide the opportunity to look into discursive and institutionalized intrastate differences, and ways in which this affects the role human rights education plays in either contributing to or perpetuating the normalization and naturalization of the socio-economic and political order along the global color line and its accompanying forms of racialization.

1.2 THE UNITED NATIONS AND HUMAN RIGHTS EDUCATION

The United Nations was created in the post WWII era, more specifically in 1945. It is an international organization constituted by international public law, with currently 193 Member States,

encompassing almost every internationally acknowledged sovereign state.[9] Significant for this work is that it brought about a shift from human rights law being primarily conceptualized as national, to human rights covering international issues too. Human rights were no longer intrinsically connected to national citizenship, but also to world citizenship or to 'being human'. The UN became an important organization in articulating, codifying and monitoring the implementation of human rights law. It also has the power to intervene in sovereign states. The post WWII era is also the time that witnesses a growing number of acknowledged sovereign states, due to decolonization. It was a time in which international public law acknowledged that colonized peoples have the right to self-determination, and a such could opt to become 'independent states'.

On 10 December 1948, the United Nations' General Assembly adopted the Universal Declaration of Human Rights (UDHR). The UDHR's preamble envisions a human family and proclaims that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Article 1 UDHR therefore reads:

> *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

As we will see, this definition of humans and their rights, can easily lead to the essentialized understandings of the human Self and subhuman Other that this work criticizes. Essentialized understandings of being human – on which I will further elaborate in chapter 2 – are further perpetuated when combined with essentialized understandings of the sovereign nation-state. This is of relevance within the UN framework, because it is not only an organization often conceptualized as having been established by sovereign nation-states, but it also formally relies on sovereign states as actors responsible for the implementation of human rights. Human rights education within the framework of the United Nations is thus intrinsically linked to the sovereign state as human rights actor and provider of human rights education. Significantly, sovereign states within the UN are not institutionalized as being equal, maybe most significantly within the UN Security Council. Within the very legal framework of the UN it thus matters of which country one is a citizen to have more or less equal rights and freedoms. Even if the UDHR proclaims equal rights and freedoms for everyone.

Because the UDHR is a declaration and not a convention, the UDHR is not legally binding.[10] However, the UN has subsequently adopted several legally binding human rights conventions. These subsequent conventions all refer to the UDHR. However, between the adoption of the UDHR and the adoption of the latest UN 'core human rights conventions',[11] the 2006 Convention on the Rights of Persons with Disabilities (CRPD), adopted on 13 Dec 2006, there have been significant changes in conceptualizing the category of 'human' in human rights. Within the UN human rights framework,

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[9] The United Nations has acknowledged Palestine as a sovereign state. However, it is not a UN Member State, but an Observer State see UN General Assembly resolution A/RES/67/19 of 29 November 2012. The Holy See has not explicitly been acknowledged by the UN as a sovereign state. However, many states deal with the Holy See as it being a sovereign state and the Holy See also has an Observer State status.

[10] There are scholars who argue that the UDHR or several provisions of the UDHR, by now, are part of *ius cogens* (see i.a. Acosta-López and Duque-Vallejo 2008).

[11] The United Nations has marked nine of its human rights conventions, as core human rights conventions, see https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

there thus exist different understandings of the human, and possibly also of human societies (see chapter 3).

Already in the UDHR there is attention for teaching and education related to human rights. The UDHR's preamble proclaims that 'every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms'. Furthermore, article 26(2) of the UDHR determines that 'Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.'. Teaching and education regarding human rights is thus explicitly connected to respect for human rights and freedoms. Subsequent UN human rights conventions and declarations include more detailed norms concerning what has been called human rights education.[12] The UN has also adopted international days, years, decades and world programs on human rights education.[13] Furthermore, different UN organs have different means of monitoring the implementation of human rights standards, such as the evaluation of state reports and the assessment of individual complaints.

In this work I look into the conceptions of the human and their equal rights and freedoms, as can be found in the written human rights norms set by the UN and the written documents related to the monitoring of human rights norms, as far as they are related to human rights education. I will also look specifically into UN norms and documents concerning human rights education that explicitly focus on the elimination of racial discrimination. This includes, most significantly, looking at the UN International Convention for the Elimination of All forms of Racial Discrimination (CERD). After all, this research looks into human rights education and its relation to racialization and racial discrimination.[14]

The CERD was adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 and entered into force on 4 January 1969. Upon signing the CERD, Member States commit themselves to adopting measures for the elimination of racial discrimination, including human rights education. Article 7 CERD which reads:

> *States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which*

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[12] I.a. art. 7 UN International Convention against all forms of Racial Discrimination, art. 13 UN International Covenant on Economic, Social and Cultural Rights, art. 10 UN Convention on the Elimination of All Forms of Discrimination against Women. Also, see chapter 3.

[13] Member States that have signed and ratified conventions have to implement them at the national level. The UN does not have the power to implement human rights education in its Member States' educational institutions without an express mandate from the Member States. However, the power of the UN to intervene in sovereign States does not always rely on whether or not States have signed international agreements such as conventions. This is justified based on the concept of *ius cogens*. See Koskeniemmi (2005) for a discussion on the dilemma between what he distinguishes as apologist and utopian arguments. Apologist arguments being those which favor state sovereignty and non-interference, and utopian arguments being those in favor of intervention for a proclaimed higher cause.

[14] 'Race' is only one 'category of the human' for which specific human rights conventions and declarations have been adopted. There are conventions and other standard setting and monitoring activities of the UN dedicated to other categories of the human, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Convention on the Rights of Persons with Disabilities (2006), and the United Nations Declaration on the Rights of Indigenous Peoples (2007).

lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Other practices within the United Nations include deliberations, diplomacy, lobbying and other (daily) practices performed by representatives of the different Member States and UN officers and staff. This work only includes analyses of these practices as far as they have been documented in *travaux preparatoires* (official records) of the UN.

Aside from the UN there are other international organizations based on public law that proclaim human rights norms, such as the African Union, the Association of Southeast Asian Nations, the Council of Europe, the European Union, the League of Arab States, and the Organization of American States. These international organization too include norms on human rights education. However, this work does not include these regional international organizations as it focusses on the UN as a global international organization with norms and activities regarding human rights education.

1.3 CURAÇAO AND HUMAN RIGHTS EDUCATION

This work does not only look into human rights education as institutionalized at the United Nations. Instead, it also analyzes human rights education as institutionalized and practiced in Curaçao.

Curaçao is an island in the Caribbean with currently a registered population of 156.223 people (Central Bureau of Statistics Curaçao 2020).[15] Along with other territories in the Caribbean and Asia, Curaçao was one of the formal colonies of The Kingdom of The Netherlands. During formal colonization, the populations and the territories in the colonies – other than those deemed Dutch – were conceptually and legally delinked from the 'Dutch population' in and the territory of the Netherlands, based on the Color line (cf. Hondius, 2011; Maingot, 2015; also see chapter 4). This led to differentiated rights and freedoms for the racialized Other compared to the Dutch Self, including – amongst others – slavery in the colonies, and exclusion from legal citizenship, and political and civil rights (cf. i.a. Chumanceiro, 1895; Da Costa Gomes, 1935; Hondius, 2011; Allen, 2014; Santos do Nascimento, 2016; Roe, 2016 referring to Paula, 1989; Karapetian, 2020, and see chapter 4).

The period during and immediately after World War II saw significant changes within The Kingdom of The Netherlands with regards to colonialism. After the proclamation of independence by Indonesia in 1945 and wars fought on Indonesian territories, the Netherlands acknowledged Indonesia's independence five years later, in 1949 by formally transferring sovereignty to Indonesia.[16] In 1954, a new legal document, the Charter of The Kingdom of the Netherlands (hereafter Charter of the

[15] This is the number of people registered at the population registry of Curaçao (*Kranshi*) (personal communication via e-mail with Central Bureau of Statistics on 6 May 2020). There is also a significant number of non-registered people on the island. At the time of writing this dissertation, the most remarkable is a growing number of Venezuelan citizens who reach Curaçao to escape the current crisis in Venezuela. Projections (made before measures related to Covid-19 were taken) for the end of 2020 are that there will be a group of around 20.000 Venezuelans in Curaçao, see https://www.knipselkrant-curacao.com/paradisefm-curacao-kan-aantal-venezolanen-niet-meer-aan/

[16] 1949 Deed of Transfer of Sovereignty Indonesia (*Akte van Sovereiniteitsoverdracht Indonesië*, or *Penjerahan Kedaulatan Indonesia*)

Kingdom) was adopted. With the Charter of the Kingdom, the Kingdom came to exist of three countries, namely The Netherlands (which thus became differentiated from the Kingdom of the Netherlands), Suriname and the Netherlands Antilles (cf. art. 6).[17] The Charter of the Kingdom (art. 41) codified Kingdom affairs have to be taken care of by the Kingdom, and that each of the countries had the power to autonomously (*zelfstandig*) take care of its own affairs (see chapter 4). Furthermore, it codified and that joint affairs had to be taken care of jointly and on an equal footing, and that the countries would have to provide each other mutual assistance (preamble).[18] Furthermore, and significant for Suriname and the Netherlands Antilles, which did not have a legislative body consisting fully of elected members, the Charter codified that all three countries had a legislative body consisting fully of members elected by the residents of the respective countries carrying the Dutch nationality.[19]

The Charter is commonly known for having granted autonomy to Suriname and the Dutch Antilles, based on the right to self-determination (i.a. Santos do Nascimento, 2017; Van Rijn, 2019; Bakker, 2020).[20] The sovereign state, however, is The Kingdom of the Netherlands as a whole. So-called Kingdom Affairs are governed by Dutch bodies, acting as Kingdom bodies, supplemented with state officials of the other countries. As we will see in chapter 4, it is in this organization of dealing with Kingdom Affairs that powers are distributed in a lopsided manner, still privileging the Netherlands.

After the 1954 changes, subsequent constitutional changes took place. Suriname became an independent country in 1975. Aruba, one of the six islands forming the Dutch Antilles, became a separate autonomous country within the Kingdom in 1986. And since 2010, the Kingdom has four autonomous countries: the Netherlands, Aruba, Curaçao and Sint Maarten.[21] Bonaire, Saba and Sint Eustatius, three of the five islands forming the former Netherlands Antilles, became part of the

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[17] The *Toelichting op het Statuut* (literally translated: Explanation of the Charter) also explicitly holds that 'Kingdom and the countries are no separate entities (grootheden), even though they are of course distinguishable' (translation by LD). The *Toelichting op het Statuut* is a document that sets out what had been agreed upon by the delegations of the Netherlands, Suriname and the Netherlands Antilles. The document was presented to the parliaments of the three (non-sovereign) states together with the draft Charter of the Kingdom of the Netherlands. It is generally accepted that the *Toelichting op het Statuut* is an authoritative source for the interpretation of the Charter of the Kingdom of the Netherlands (Van Rijn 2019).

[18] Article 38 and further of the Charter of the Kingdom provides possibilities for the countries to act jointly based on mutual agreements (for more details, see chapter 4).

[19] A significant part of the changes brought about by the 1954 Charter of the Kingdom was already codified in the 1951 Interim Arrangement. However, the Interim Arrangement was a Statutory law adopted by the Dutch legislator as the colonizer of the other two countries. The Charter of the Kingdom has a different status, amongst others because it cannot be changed without the involvement of the legislator of the other countries (see chapter 4).

[20] However, despite the explicit wishes of Surinamese representatives during the negotiations concerning the Charter of the Kingdom, the Dutch ruling powers refused to include any explicit reference to the right to self-determination in the Charter of the Kingdom. Also remarkable is that representatives of the Caribbean colonies argued that the right to self-determination also entailed that they could choose their own representatives in the negotiations leading to the Charter of the Kingdom, but that the ruling Dutch determined that it was the Queen who had the power to appoint representatives of the colonies (see Santos do Nascimento 2016).

[21] Article 1 Charter of the Kingdom.

Netherlands.[22] The distribution of powers between autonomous countries and the Kingdom stayed similar (not the same!) to the situation of 1954, and thus lopsided and privileging the Netherlands over the other countries. We will look into ways this differentiation affects the human rights (in human rights law) of citizens of Curaçao.[23]

Citizens of all the four current autonomous countries share the same legal nationality, namely the Dutch nationality (*Nederlanderschap*). They also have in common that they are members of the four countries within the Kingdom. However, all four countries have different hegemonic essentialized national identities (i.a. Essed and Hoving, 2014; Allen and Guadeloupe, 2016; Wekker, 2016; see, also chapter 4). An institutionalized and hegemonic discursive national identity on the Kingdom level, encompassing the citizens or peoples of all four countries, is non-existent, despite the fact that the Kingdom as a sovereign state does exist and that citizens of the four countries all carry the Dutch legal nationality.

Despite the fact that the populations and territory of the four countries within the Kingdom are intrinsically related, there thus appear to be a conceptualization and institutionalization of differentiated ways of being Dutch both in legal terms as well as in terms of hegemonic national identity, which still carry the historical legacies of racialization and colonialism, and which still play a role on the human rights and freedoms people within the Kingdom of the Netherlands have. In fact, in might be concluded that the embeddedness of Curaçao in the Kingdom of the Netherlands is a form of racism (see chapter 4). It remains to be seen how this is dealt with in human rights education in Curaçao. Especially if what human rights ought to mean (in human rights education) is that everyone has equal rights and freedoms (cf. Oomen and Vrolijk, 2010).

Since Curaçao – in contrast to the UN, which is the other case study of this research – can implement human rights education in schools, this research will not only look into the ways in which human rights and human rights education has been conceptualized and institutionalized in law and scholarly literature. Instead, this work will also look into the way human rights education is understood and practiced in schools in Curaçao. More specifically, in state-funded pre-university secondary schools. The choice for looking into understandings and practices within schools lies in possible findings, doings and undoings of human rights and racialization that cannot be found in existing written knowledge. The choice for formal state-funded education lies in the fact that states have a significant influence on formal education, and it is formal education that to a significant extent passes on knowledge, produces knowledge, and socializes learners into world views and accompanying norms. It is one of the areas that shapes how individuals think about themselves, of their (national) society and the world, and their place in it (Van der Pijl & Guadeloupe, 2015).

1.4 RESEARCH QUESTIONS

MAIN RESEARCH QUESTION

[22] Art. 132a Dutch Constitution jo. Statutory law public bodies Bonaire, Sint Maarten and Saba (*Wet openbare lichamen Bonaire, Sint Eustatius en Saba*).

[23] I use the word similar here, because as we will see, the main structure created by the Charter of the Kingdom of the Netherlands continuous to exist. However, as we will see in chapter 4, different changes have been introduced that limit the autonomous sphere of Aruba, Curaçao and Sint Maarten.

It follows that this research serves to give an answer to the following question:

> *How does HRE as conceptualized and institutionalized within the United Nations human rights framework, and as conceptualized, institutionalized and practiced in state funded secondary schools in Curaçao perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?*

SUB QUESTIONS

In order to answer the main research question, I will first answer the following three questions:

> *What is the relation between racism and human rights education, and to what extent does this perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?*
>
> *How are human rights and human rights education conceptualized and institutionalized within the UN human rights framework, and to what extent does this perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?*
>
> *How are human rights and human rights education conceptualized and institutionalized in Curaçao (the state) and practiced in state funded secondary schools in Curaçao, and to what extent does this perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?*

The answer to the three sub questions above enable me to also give an answer to the following sub question:

> *To the extent that human rights education does perpetuate the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization, what can be done for human rights education to (continue to) contribute (more) to eliminating racism?*

1.5 RELEVANCE AND AIM

This research aims to grasping the relation between racialization, racial discrimination, racism and human rights education. Moreover, it hopes to contribute to scholarship as well as to anyone concerned with human rights (education), with an answer to the question of if, and if so, in what ways human rights (education) can contribute to eliminate racism. A relevant topic considering the increasing attention drawn to human rights education (i.a. by the UN, academics, NGOs, and other individuals). Also relevant because of the continuing problem of racism and the world-wide uprisings that have demanded renewed attention for this problem.

As such, this research – essentially – aims to contribute to a world with more equal rights and freedoms for everybody. After all, at the current state of affairs, we are still far from the situation where everybody indeed has equal rights and freedoms. Most recently very noticeable – amongst others – during the current COVID 19-crises during which within the Kingdom of the Netherlands, the Netherlands is using the situation to impose far-reaching limitations of rights and freedoms of the people in the Caribbean part (the Caribbean Other) of the Kingdom of the Netherlands; in China,

where Uighurs are placed in re-education camps, are forcibly sterilized and otherwise treated differently because of not adhering to the 'Chinese way of being'; rising racist nationalism in different parts of the world; anti-Muslim racism; just to name a few.

This research tries to reach its aim by critically looking at what it means to be human (and to live in human societies) in human rights (education), and what it means to have rights in human rights (education), as hegemonically and counter-hegemonically conceptualized and institutionalized in human rights law and human rights education. It does so by looking at hegemonic discourses and conceptualization regarding human rights and human rights education, and as institutionalized at the UN and as institutionalized and practiced in state-funded schools in Curaçao.

The underlying aim is of this research is to contribute to human rights education, the ways in which it gets discursively institutionalized, and the way it is practiced in classrooms. This research does not only do this by critically analysing human rights education, the ways in which human rights education gets discursively institutionalized, and the way it is practiced in classrooms. The analysis in itself is expected to add to the body of knowledge on human rights education and racism, and offers policy makers, activists, educators, and learners conceptual tools to provide human rights education in a way that actually contributes to eliminating racism. Apart from that this research will include recommendations on human rights education and racism in the concluding chapter.

1.6 METHODOLOGY

DESK RESEARCH

This work looks into hegemonic metanarratives related to the 'Race questions' and thus the 'Human question' in human rights and human rights education (chapter 2). For these narratives, desk research is performed; it is based on scholarly work in the social sciences, anthropology, history, philosophy, law and political sciences, and scholarly work on decolonization which normally departs from the understanding that scientific fields cannot be clearly distinguished from each other (contrary to the Two culture divide, cf. Wynter, 2003; Wallerstein, 2004, and chapter 2). I am very well aware, and I hope that the reader will be aware, that such metanarratives sterilize reality into a coherent story, smoothing out inconsistencies. Historical moments and scholars that have often been referred to, are then referred to again and a myriad of other historical moments, scholars, and maybe most importantly daily life interactions are left mostly excluded. There is a danger in repeating such narratives because it reifies these sterilized stories about the past. However, I did choose to include these metanarratives as they will historicize and thus help to understand how discourses and conceptualizations concerning human rights in human rights education are not neutral nor innocent, but historical and related to power. Furthermore, I hope to circumvent some of the above-mentioned perpetuation by including these words here, and by also offering in the following chapters, counter-narratives.

When looking into human rights education as institutionalized at the United Nations (chapter 3) desk research is performed into scholarly work, UN legal norms, and UN documents such as *travaux preparatoires* (the official records of negotiation), and general recommendations of UN human rights bodies in which legal norms are interpreted and in documents generated by different UN bodies. The focus lies with UN human rights treaties and the way they are interpreted by Treaty bodies.[24] In

[24] Treaty bodies are the monitoring bodies established for the UN international human rights conventions.

analyzing these works and documents, insights of the above described 'general metanarratives and counter-narratives' are used.

When looking into human rights education in Curaçao (chapter 4 and 5), this research does not only include a study of existing scholarly work and legal norms. Instead, in order to understand how human rights education is understood and provided in practice, it includes empirical research based on participant observation in classrooms, interviews with headmasters, teachers and pupils, and analysis of educational material. This form of empirical research was performed in the second grade of state-funded pre-university secondary schools in Curaçao during a three-month period in the school year 2018-2019, from March until the end of June. The choice for these schools lies in the fact that it is state-funded schools that have to meet all educational requirements set by the state), and it is pre-university schools that educate learners into intellectuals (cf. Gramsci 2019). The choice for the second-grade can be explained as follows: pre-university in Curaçao is divided into three phases.[25] The first phase consists of *basisvorming* (freely translated: basic education) and is taught in the first two years of secondary school. It is a two-year transitional period after primary school in which a foundation is laid for the subsequent years of secondary school. It is on the last year of basic education (the second-grade) that this work focusses.[26]

EMPIRICAL RESEARCH

Participant observation serves as a method to gain an understanding of how participants act in a specific context and in interaction with others, other than through the subjective reporting of the participants themselves (Musante and DeWalt 2010). Participant observation in schools leads to a better understanding of what is taught in school and how this plays out in the interaction between pupils and teachers. Participant observation was performed at two out of the four state-funded secondary pre-university schools in Curaçao. These two schools are Kolegio Alejandro Paula (KAP) and Albert Schweitzer Havo VWO (ASHV). KAP is the only non-confessional state-funded secondary pre-university school in Curaçao, has pupils of a variety of ethnic, and religious/non-vocational backgrounds, but from higher social/economic classes (appendix 1). ASHV is a protestant school. As respondents explained, ASHV has the reputation of being an elite school. According to its head of school, ASHV's school population has a significant number of Dutch pupils (see appendix 1).[27] Considering the role of hegemony (see above), the differences in school population and vocation

[25] Pre-university is divided into two tracks: HAVO and VWO. The HAVO track (literally translated: higher general secondary school) aims to prepare pupils for higher professional education. VWO (literally translated: preparatory scientific education) aims to prepare pupils for academic education.

[26] The basic education phase also functions as one to assess the pupils' capabilities; the pupils are assigned to one of the different tracks after the two-year *basisvorming*. All but one (ASHV) of the state-funded secondary pre-university schools do not make a distinction between the pupils in their first two years. ASHV appoints pupils to (in principal) either the HAVO or VWO track after the first grade. The basic education phase is followed by one year of *profielvoorbereidend onderwijs* (literally translated: profile preparatory education). After this, pupils choose one out of four available profiles. Each profile consists of a distinguished set of courses. HAVO and VWO pupils take the same courses in the first two years of basic education, before choosing a specific profile in their fourth year.

[27] Remarkably, the administration of the school is Dutch. The headmaster of ASHV, in the context of trying to explain the significant number of Dutch pupils at ASHV and why – according to him – if Dutch people chose for local schools, they chose for ASHV, he – amongst others – explained that the administration of the school (schoolleiding) is Dutch. Seemingly to further explain, he added that he is a white male.

might be relevant as historically, it was Dutch protestants that formed the ruling and governing class in Curaçao.

Textbooks have a considerable influence in education (see De Kort (2018) for the role of textbooks in human rights education). That is why textbooks used in the second grade of the state-funded pre-university secondary schools, are included in the analysis.

Schools and classrooms are sociocultural arenas in which not only teachers, parents and/or caretakers have a role to play, but where children too are key actors (Van der Pijl and Guadeloupe 2015). Therefore, apart from participant observation where I could observe the interaction between teachers and pupils, focus groups were conducted with pupils. Focus groups have the advantage of both giving pupils space and time to talk about their own subjective understandings of and experiences with these matters, while also providing for an environment in which pupils discuss the subjects amongst themselves. The latter potentially causes moments in which pupils have to further explain and/or nuance their views, leading to a better understanding of what they are sharing (cf. Van Heydoorn 2017).

Teachers were not included in the focus groups. The reason for this is that the hierarchical power relations between teachers and pupils might influence both the responses of the pupils as well as those of the teachers. I did not conduct focus groups with teachers. The number of teachers who might have any relation with human rights education in the second-grade was so small that I could perform individual interviews with teachers in which I could gather an understanding of their views, experiences and practices. Interviews were held with teachers of all four state-funded secondary pre-university schools. Interviews were also held with human rights trainers in out-of-school human rights education initiatives, teachers in other schools, and with national government educational policy makers in order to know if these would lead to significant insight into human rights education in state-funded pre-university schools.

Both the one-on-one interviews and the focus groups were semi-structured and in principle only included open-ended questions. Semi-structured interviews provide data on individuals' personal histories, experiences and perspectives. Open-ended questions leave maximum room for respondents to explain their views. That is why, whenever possible, open-ended questions were asked. These questions are sometimes followed by closed-ended questions to confirm if an answer was justly understood.

A list of respondents participating in the interviews and focus groups is included in appendix 1. To safeguard their privacy, the names of the respondents are not included in the list. The list explains the abbreviations used in this work. In this place it suffices to explain that T stands for teacher, P for pupil, O for officer of the policy organization of the Ministry of Education of Curaçao, and G for respondents providing human rights education through non-formal education.

1.7 REFLECTION ON POSITIONALITY

As I argue that what humans produce – including knowledge – is partly produced by human consciousness (even if consciousness is still in many ways an unresolved puzzle) (cf. Wynter 2003; Gramsci 2019), it makes sense for me to reflect on my positionality, as I am the researcher and author of this work. I highlight some of the processes I went through before and during the research, and understandings I have gained through these processes, as they – I am convinced – have contributed to shaping this work.

I have always been concerned with social justice. Even if I did not know exactly what social justice was supposed to mean, I did judge that there was too much (human) suffering. I felt like I wanted, in some way, contribute to less suffering and more social justice. My concern with justice led me to study law at the Erasmus University of Rotterdam, where I was trained in what I now call legal reasoning. Legal reasoning did not provide me the satisfaction that I had been looking for; it felt as if the way one reasons about law (and the often-implicit underlying assumptions that grounded those reasonings), did not resonate with how I experienced life. I did not, however, lose faith in law and decided to focus on human rights law.

My interest in human rights lead to me doing the master on constitutional and administrative law at the same university. I took as many human rights courses as I could. Instead of feeling that I was obtaining tools that I could use for more justice, I became disillusioned. Human rights, while being portrayed as a natural good, to me seemed to be more and more political tools that were paired with a story that projected the image that that natural good comes from Europe or the West and that it has to be implemented in the rest of the World for a good world to exist. That did not make any sense. Where was the rest of the world in this story? Was I to believe that the rest of the world, that human beings in the rest of the world, did not have an idea, or no proper idea of what justice, equality, and human dignity means? I felt ungrounded.

Feeling ungrounded in law, did not mean I was not capable of performing legal reasoning. I knew and still know very well how to make legal arguments and write legal documents. Knowing what type of reasoning was expected or wanted in law studies, made me use my capability of legal reasoning to finish my master's cum laude. That, however, did not change the fact that I felt ungrounded, and that I, by then, had lost my faith in law. Which I later regained, but in a different way.

I remember well that towards the end of my master's I was watching a tv-documentary on human trafficking of women who were to become sex slaves. The pain and damage done by human beings to other dehumanized human beings, hurt me immensly and I started crying uncontrollably. It was the last straw. It led me to actively search for another vocabulary, another way of reasoning. A way of understanding how what I was learning in law school, was not making any sense. My search led me to Middelburg.

In Middelburg I joined the 2011 summer course called the decolonial option. There I started learning a vocabulary that equipped me to speak of what I had been feeling all along, namely that I had been trained to look at the world that was narrowed down in a manner that could not capture the world in the way I experienced it. I learned about different epistemologies. The rest of the world suddenly came into being in academics too. Not as something different (a hobby, art, something eccentric or what not), but as something intrinsically linked to what I had learned before. Without being fully aware of it, I started to learn different ways of reasoning.

When I decided to embark on this research, I finally learned how the way we reason is influenced by ourselves (our human selves). To really look at a problem, and to really affect change, then means trying to reason through the different rationalities that lead people to think and act the way they do. With people, I obviously, also include myself. That is why I include this paragraph with a reflection on myself in the context of this research and on my positionality.

What furthered my understandings in the research was the very fact that I moved to Curaçao to live there and to teach law at the University of Curaçao. Having experienced being too easily labeled as non-Western and non-Dutch in the Netherlands, I suddenly experienced in a more obvious manner that I was not so easy to label, and that I was being labeled in constantly different manners by the same people. I also learned, in close relations, how I sometimes use essentialized understandings of

for example national identity, and that a *Curaçoleño* would explain to me that they saw it differently. That they could use the *Yu di Korsou* identity and feel a sense of belonging and pride, whilst at the same time acknowledging change. Change in the composition of the population in Curaçao, change in their own lives, and change in how territories are divided. I also learned ways in which the *Yu di Korsou* identity is related to obtaining more political rights. These things I learned while living in Curaçao, and by reading the Caribbeanists (people who do research in and on the Caribbean) and others who understand that there always is forced and voluntary, predictable and unpredictable (ex-)change, and who acknowledge the relevance of the everyday.

What I want to add here is that although I experienced to not to be so easily labeled in Curaçao, in my interactions with respondents (pupils, teachers, school-principles, policy makers) my appearance (female, brown skinned, coily hair, adult) and my use of language (Dutch with adults, and both Papiamentu (with a heavy Dutch/Cape Verdean accent) and Dutch with pupils), as well as that I was an outsider doing research (an outsider within the schools that I visited, but also an outsider in the sense that I have lived in Curaçao for only four years in total) might have in some ways influenced the ways in which respondents interacted with me.

1.8 CHAPTER OUTLINE

In order to set out to research how HRE – as conceptualized and institutionalized within the United Nations human rights framework, and as conceptualized, institutionalized and practiced in state funded secondary schools in Curaçao – perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization, this research is divided into six chapters.

This first chapter serves as an introduction to the research, a number of key concepts, the research questions and research aim, the methodology used, a reflection on my positionality, and this chapter outline.

Chapter 2 further elaborates on some of the key concepts introduced in this chapter, namely the 'Human Question,' racialization, Christian, Man_1, Man_2, (de-)essentialization, human rights and human rights education. Humanization as opposed to essentialization plays a key role in this analysis. It also sets out alternatives to essentialization and thus for humanization in both the category of the human, and rights in human rights (education). With this, it sets out to answer the question of what the relation is between racism as the Human Question and human rights education.

Chapter 3 focuses on the relation between racial discrimination and human rights education as conceptualized and institutionalized at the United Nations. Considering the focus of this research on racism, it will explicitly look into the UN International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). However, this will be placed within the broader UN human rights framework and the (different) understandings of 'human' and 'rights' within that human rights framework. In this way, it looks into the relation between racialization, racism and human rights education as conceptualized and institutionalized by the United Nations.

Chapter 4 introduces the context of Curaçao, more specifically ways in which human rights, race and education have been conceptualized and institutionalized in Curaçao. Since Curaçao continues to be part of the Kingdom of the Netherlands, the analysis includes the analysis of Curaçao within the Kingdom of the Netherlands.

Chapter 5 then analyses the data of empirical research into human rights education in state-funded pre-university schools in Curaçao. Together with chapter 4, chapter 5 aims to answer the question of what the relation is between racism and human rights education as conceptualized, institutionalized and practiced in Curaçao.

Chapter 6 then includes a summary of the preceding chapters and gives the conclusions that can be drawn from this research. It then articulates recommendations for human rights education that can contribute to eliminating racism.

2. RACISM AND HUMAN RIGHTS EDUCATION

2.1 INTRODUCTION

This chapter delves into the relation between racism and human rights education. Before getting to this, the chapter starts off with explaining how the 'race question' really is the 'human question' and how it is related to knowledge production (paragraph 2.2). It argues that conceptualizations of 'being human' are not neutral nor innocent, but the result of knowledge production, and related to questions of truth, power and freedom. Because Western conceptualizations have been discursively and institutionally dominant and hegemonic for the last five centuries (i.a. Quijano 2007 and Wynter 2003), paragraph 2.2 sets out a metanarrative concerning Western conceptualizations of being human, how these are related to having rights and being a member of a nation or state (see chapter 1 for what I mean with 'Western'), and touches upon the continuing legacy of these conceptualizations. Paragraph 2.3 shows how these Western conceptualizations essentialize understandings of humanity, citizenship, national identity, law, rights, culture, sovereignty, autonomy and nationhood by relegating the order of truth to a suprahuman level. Thus, to a divine or natural level that disregards the human aspect in knowledge production and thus also the creation of reality (see chapter 1 for an explanation on orders of truth and knowledge production). It shows how essentialization is not only discursively institutionalized and shapes axes of power, including the global order, but that it also affects personal feelings and understandings of the Self and belonging. Paragraph 2.4 suggests ways to move beyond essentialized understandings of the human. Having explained the relation between racism and human rights, and how to move beyond essentialization (paragraph 2.4), the chapter shows how these matters play out in human rights education in paragraph 2.5. The chapter ends with a short summary and conclusion in paragraph 2.6.

2.2 THE RACE QUESTION AS THE HUMAN QUESTION; A METANARRATIVE

2.2.1 INTRODUCTION

In different cultural systems one can find that what it is to 'be human' – human identity - is related to what is considered the Self and the Other. Anything or anyone identified as belonging to the Self, becomes identified with and is represented as part of the Self, or 'Us'. In that sense, human identity thus becomes an existential issue. Human identity calls one into being, into existence. Anything or anyone identified as not belonging to the Self, becomes the Other. A dualism is created. A danger arises when these dualisms describes essential differences between the Self and the Other. With essential differences, I hereby mean that these differences are thought to be merely observed and not (co-)created or ascribed by humans themselves. These essential differences thus appear to be supranatural or natural. In other words, it appears as if humans had nothing to do with the categorizing of humans into these definite categories.

The answer to the question of what it is to be human has been dominated – discursively and institutionally – by hegemonic Western concepts since the 15th century (i.a. Fanon, 2008[1952]; Wynter, 1999 and 2003; Mignolo, 2009; Maldonado-Torres 2017; Quijano, 2007).[28] As Wynter (2003) describes, these concepts went through a shift from Christian, to the currently still hegemonic

[28] See chapter 1 for a description of what is meant with 'Western' and 'hegemony' in this work.

concepts of Man_1 and Man_2.[29] As we will see in paragraph 2.3, Christian as human was founded on an order of truth based on degrees of spiritual perfection and imperfection and centered on the Church. Whilst Man_1 and Man_2 were founded on a regime of truth based on the natural and the biological. Both these conceptualizations of Christian and Man are thus based on orders of truths that thus rely on supracultural truths. As we will also see in paragraph 2.3., Christian and Man (in its both renditions) are racialized conceptualizations of the human. It is why race is not about blood or skin color – an understanding that flows from Christian and Man as human – but about what or who counts as human (Wynter, 2003; Mignolo, 2009).[30]

Non-Western conceptualizations of what it is to be human – different from hegemonic Western conceptions of Christian and Man – have existed and continue to exist. Such as amongst the Greeks and Romans for whom their own core areas formed an exemplary center beyond which lived Barbarians. According to the Greeks and Romans, the Barbarians were not quite human because they did not live in cities where the only true and beautiful life could exist (Wolff et al, 1994). In contrast to Man, these conceptualizations had nothing to do with race as we know now which involves the idea of cognitive, moral and physical differences which can be read from the body, most notably skin color.[31] Or think of Teruel (1663–1664 refered to by Wynter (1999), who wrote that for the dark-skinned indigenous peoples of the Congo, the one who's skin is the darkest is held by them to be the most beautiful. However, as said, it has not been these non – Western categories of being (fully) human that have been hegemonic. In the following paragraph (2.3) a metanarrative is set out that explains how categories such as 'human' and 'rights' have been conceptualized in the hegemonic orders of truths have influenced the conceptualization of human, rights and a number of relevant concepts. It also explains how they have been constitutive of the global color line and in normalizing and justifying racism.

The metanarrative below regarding Christian and $Man_{(1and2)}$ are simplified (or essentialized ones, see 2.3) as it does not consider the different internal and external counter-narratives and contradictions, nor every single influential event, person, idea and the way in which these interact(ed). Furthermore, shifts from one hegemonic world view into another does not occur on one specific place and point in time, as they are results of ongoing processes throughout space and time. Nor does a shift mean that the former dominant and hegemonic worldview disappears (see paragraph 2.2) . On the contrary, in case of the Christian and Man_{1and2}, the older world view moves to the background but is still part of the newer world view.

2.2.2 WESTERN METANARRATIVE

[29] In using the terms Christian, Man_1 and Man_2, Wynter also draws on Jacob Pandian (see Wynter, 1995 and Wynter, 2003).

[30] Tellingly, and related to Man1 and Man2 conceptualization of human, see paragraph 2.3, the Online Etymology Dictionary writes: the genus of human beings, 1802, in William Turton's translation of Linnæus, coined in Modern Latin from Latin homo "man" (technically "male human," but in logical and scholastic writing "human being;" (…) + sapiens, present participle of *sapere* "be wise" (…).

[31] See the segment 'White at the Museum' of the Full Frontal show, for a satirical take on the normalized idea of Whiteness and the non-sense of using Greek and Roman statues to perpetuate Whiteness (https://youtu.be/TkwUCUwt3Rs).

2.2.2 CHRISTIAN

In the Christian conceptualization of the human of Medieval Europe, it was a supernatural entity – God – who constituted humans. Human was defined as the religious subject of the Church (Wynter 2003), and temporal inequalities were reasoned to be God's will (i.a. Kop, 2009). This theocentric conception drew a line between the clergy and the laity (Wynter, 2003).

The clergy was able to know God's will and thus the truth; they owned the Word, namely having the power to construct the order of knowledge (Wynter, 2003). It was therefore the clergy that articulated the norms that humans and human communities have to adhere to.[32] For as far people, other than the clergy, were educated this was thus dealt with from a religious point of view and by the clergy (Chisick, 1981).

The laity was born with Original Sin. For the laity, freedom therefore meant redeeming oneself from Original Sin, which was only possible through salvation by primarily adhering to the norms of the Church. In this conceptualization, the Untrue Other, in contrast to the True Christian, consisted of the Leper, heretics, Enemies-of Christ infidels and pagan idolaters, Jews and Semites.[33] Even more so were the Indians and Negroes the Untrue Other,[34] as they were considered 'beasts in human form' (i.a. Hall, 1992; Wolf et al., 1994; Wynter, 2003; Orovio et al. 2020).[35] The Untrue Other with – from the perspective of the European Christian – features other from their own somatic norm became racialized; their degree of enslavement to Sin – and thus their supposedly backwardness, and their having or not having civilized culture, history, and socio-political and economic structures of their own – were thought to be readable from the body. At its most extreme was the Negro imagined as the descendants of Ham who were cursed with blackness (thus reasoned to be blackness in the sense of dark skin color) and condemned to slavery. The Untrue Other's ascribed role served to actualize the realization of the effects of mankind's enslavement to Original Sin (Wynter, 2003).[36] The expansion of

[32] Like in any hegemonic discourse, discourses are created in relation to the classes that are subjugated by the ruling and governing classes. It is one of the strengths of hegemony because it leads to the subjugated to more readily consent to the order of things (cf. Gramsci 2019).

[33] Semites is a category that first included both Jews and Muslims, see Said 2003.

[34] I want to stress here again – even though it should follow from what I have described about knowledge production – that this categorization was (and for many still is not) how for example 'Indians' and 'Negroes' categorized themselves. See, for example, Mignolo (2009) who criticizes the category of 'Indians' used by European scholars: '"Indians"—and not for them Náhuatl, Aymara, Quechua, Tojolabal, etc. speaking people'.

[35] The racialized Other were thought to be more inclined to incest, sodomy, and licentiousness. That they had no sense of justice, were bestial in their customs, inimical to religion, had no sophisticated social organizations. At its most extreme they were thought to be cannibals (i.a. Hall, 1992; Wolf et al., 1994; Wynter, 2003; Orovio et al., 2020). This is one of the categorization of humans based on a conflation of 'where one is from', physical traits and biases regarding temperament, and political-moral behavior: 'Americans, reddish, obstinate, and regulated by custom; Europeans, white, gentle, and governed by law; Asians, sallow, severe, and ruled by opinion; and Africans, black, crafty, and governed by caprice' (Wolf et al., 1994).

[36] The Leper and the mad served as the intra-Christian-Europe signifier of the still Christian but 'significant ill'. Jews served as '*the boundary-transgressive "name of what is evil" figures, stigmatized as Christ-killing deicides*' (Wynter, 2003). Muslims served as believers of a misguided version of Christianity, namely the Islam (Said, 2003). The Negro, relegated to the bottom of the hierarchy, served as the figure representing the descendants of Ham. After all, it was the descendants of Ham who were cursed with blackness and condemned to slavery. Blackness was thus rationalized to mean the dark skin of the Negro. The Negro became a cursed people nearest of all peoples to the ape (Wynter, 2003).

Europeans throughout the world also fortified a Christian identity across Europe, with the concepts of Europe and Christianity being virtually identical (Hall 1992).

Within Christian Europe, land rights and economic rights were based on feudalism. Feudalism created a class of land lords and serf, with serfs producing a surplus for the benefit of lords. The construction of these two classes was justified by reasoning that feudal property rights ultimately (through 'higher' lords, and kings) originated with God (Roemer 1988).[37] The conceptualization of the Christian and its racialized Untrue Other also served as a justification for the expropriation of lands outside of Europe and most notably in the New World (current day Americas), the division of Oceans and lands in Africa, Asia, and the New World) amongst European Christian Royals (most notably the Spanish and Portuguese), and the enslavement of indigenous peoples of the New World and Africans (Wynter 2003; Hall 1992; Thornberry 2016).[38]

The Christian Self and its racialized Other is also a sexualized and gendered conceptualization of the human. It is the bachelor clergy who was closer to God as opposed to the laity who were sexually active and married. And it was male clergy who held important positions within the Church, while within marriages of the laity (heterosexual marriages that is), it was men who were the heads of the family. While the laity was subordinated to the clergy, women, together with children, were subordinated to both clerical and laity men. The Untrue racialized Indians and Negro too were sexualized and gendered, but in a different way from the Untrue Christian in Europe, and different understandings of family relations, gender, sex amongst them deemed uncivilized.[39]

2.2.3 MAN_1 (HOMO POLITICUS)

During the Renaissance, a shift occurred which served as a way for the laity to detach itself from the control of the Catholic Church. It created for the laity freedom from the Catholic Church (Mignolo 2009; Wynter 2003), or to not be Catholic – albeit Christian or based on Christianity – (Kop 2009; Green and Witte 2013). The sixteenth century Protestant Reformation was pivotal in this (Green and Witte 2013), as was the colonial encounter (Wynter 2003; Anghie 2015), and was enabled by reliance on classical and pre-Christian texts significantly made available through translations by Muslims (i.a. Said 2003). It brought about a shift from Christian to semi-secularized Man (Man_1).

The new dominant and hegemonic order of truth held that since God had created nature for man, nature and the laws governing nature – including the ways in which humans and human societies

[37] This is, to the extent that such a justification was attempted (Roemer, 1988). This note by Roemer is probably made because lords owning lands were strongmen and were thus capable of exerting violence against its peasantry (cf. Roemer, 1988).

[38] When Spanish and Portuguese reached – what was for them – the New World, the lands in what is now called the Americas were defined as terra nullius as they did not belong to a Christian prince. The pope conceded these lands to Christian kings, more specifically Spanish and Portuguese royals in exchange for the promise that they would help further the evangelizing mission of Christianity. Lands in Africa were also expropriated using similar reasonings, but at that time more limitedly so than in the case of the New World. Non-Christian indigenous people and Africans in the New World were forced to convert to Christianity (regarding Africans, either already in Africa or after arrival in the New World) and were enslaved. First the indigenous peoples of the New World and Africans were enslaved, but later only Africans.

[39] For example, women in the New World were hypersexualized (i.a. Hall 1992) as was the Negro (i.a. hooks, 1987) and were expected to be promiscuous, while White women were expected to be 'pure' (i.a. hooks, 1987). In analyzing gender, one thus has to consider how gender intersects with other social constructs such as race. Here, the study of intersectionality is important, see i.a. hooks (1987), Crenshaw (1995).

function – had to be knowable to men through rational reason. With this shift, Man_1 became related to rational and bodily perfection (Mignolo, 2009). This means that through the use of rational reason (meaning: supracultural reason because according to the laws of nature), people could master their own sensory irrational nature and become free, or in contrast give into their passions and fall to the level of beasts (Wynter, 2003; Quijano, 2007). The clergy/laity line of the Christian thus shifted towards a rational/irrational line (Wynter, 2003). Salvation was now possible by subduing private interests (such as can be found in the 'state of nature')[40] and adhering to the laws of the state and thus the 'common good'. In this order or truth, religious subjects thus become primarily subjects of the semi-secular state.

The internal Other to Man_1 are those constructed as by nature less or non-rational, that is to say: women, children, sexual deviant, and – as the significant ill representing the enslavement to irrationality – the Mad.[41] Inside Europe there were also a number of (descendants of) Jews and Muslims that before had accepted conversion to Christianity under the Inquisition. These converts – Moriscos (Muslim converts) or Marranos (Jewish converts) – were now rejected (as not being Man_1) because of impurity of blood and of being descendants of people who had practiced Judaism or the Islam (Wynter, 2003; see also Said, 2003 who writes about how Semites were discursively and institutionalized made into Other). The former Enemies of Christ or Untrue Christians in the New World, the mass enslaved peoples from Africa, and those in Asia were made to reoccupy the racialized physical referent of Otherness (also with specific ascribed gender roles, and roles concerning sex and sexuality (cf. paragraph 2.3.2)). These racialized Others were now called Indigenous, Negroes and Asians. The prior inferiority ascribed as a lack of religion, culture, and social organization in combination with physiognomy was thus now thought to be a by nature irrationality and uncivility which could be read from people's non - White phenotype.[42] The now by-nature different categories of humans also brought about a continuum of new categories, namely 'mixed' people, such as Mestizos and Mulattos, to which their human/subhuman value difference gave rise (Wynter, 2003).

Sovereignty becomes to be understood as European state government's supreme and absolute power over citizens and subordinates within its territory (cf. philosophers such as Bodin and Hobbes; see also i.a. Gans, 2017).[43] For scholars such as Hobbes, government has sovereign power based on the social contract that humans have freely entered before God. Scholars as De Groot reasoned that because European national governments have supreme authority over their internal affairs, other states can in principle not intervene. The state government is only bound by natural law and thus

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[40] The state of nature is one where humans live prior to the establishment of a sovereign government. This state of nature is imagined differently by different scholars. For example, for Hobbes it is a state of war, and for De Groot an unwanted state.

[41] To be female was to be European female, an inter Europe irrational human. This was thus different from being the female version of the Other, for example a female 'Negro'. This is what the scholarship on intersectionality deals with. See i.a. hooks (1987), Crenshaw (1995).

[42] Even though 'Whiteness' – like any other category – is not static (think of the 18th century when Irish migrating to the USA had been categorized low on the hierarchical scale in Europe, were not categorized as being of the White race but later became White in the USA (Ignatiev, 1995), it is thus Whiteness that is normalized, made the norm.

[43] The idea of a sovereign state – with a singular and absolute power over citizens and subordinates in a specific territory – is often associated with the 1648 Treaty of Westphalia which ended religious wars in Europe (Gans, 2017).

ultimately God's will which can be known by Man (cf. Kop, 2009, Van der Vijver, 2013). The Church is thus no longer the interpreter of God's will but instead the Church too becomes bound by state legislation. The idea of Man as having free will, being able to act autonomously, thus became transcribed to the state as a human community that has an absolute power over itself and can act autonomously without interference by other states.[44]

The 16th century onwards also sees the nation constructed as membership by birth whilst at the same time the nation becomes conflated with the political state (power over a specific territory and its citizens and subordinates), creating nation-states (i.a. Mignolo, 2009). Citizenship thus becomes related to both 'blood and soil'. Furthermore, within this frame, political citizenship within the state is dependent on being Man – the ethno-class commonly known as the European bourgeoisie (cf. Wynter, 2003; Mignolo, 2009) – but also on birth. The shift from Christian towards Man_1, thus made the powers related to sovereignty accessible to a more inclusive (but still very exclusive) category of humans, namely Man. The King's power was now based on a social contract and elite European men who obtained political rights. The latter's access to political power was justified based on the assumed rationality of Men. After all, what is needed to rule is rational reason to know God's natural law.

Conceptualizing non-Europeans as the irrational, subrational or rational in their own, and not living in sovereign states (according to European conceptualization), made it possible for Europeans to reason that the further expropriation of lands in the New World, turning indigenous people into landless, rightless, work force, the accelerated mass slave trade out of Africa, the enslavement of Asians, the instituting of large-scale slave plantations, was indeed just and legitimate.[45] The papal division of the world amongst Christian Kings for the evangelizing mission, shifted into an imperializing mission of the state based on its territorial expansion conquest, and exploitation, under the guise of world civilization. Leading thus to '"the rise of Europe", African enslavement, Latin American conquest, and Asian subjugation' (cf. Wynter, 2003; Mignolo, 2009). The territories outside of Europe that were dominated by European states, were considered as different, as not part of the nation-state, as colonies. They were thus not part of the sovereign state as such, nor could they be sovereign states of their own. Citizenship thus becomes related to both 'blood and soil' and is racialized as is the racialized external Other who is excluded from sovereignty, nationhood and political citizenship.

The nation-state is thus a mechanism of inclusion and exclusion which simultaneously justifies its particular in- and exclusion. Man_1 as the normalized Self is included in the nation-state and also as forming the ruling and governing class. Simultaneously, the internal Other is included in the nation as the class over which the state (and thus the ruling and governing class) rules but excluded from political power, whilst the external Other is excluded from the nation and is ruled by the state as an external entity.

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[44] Remarkably, the Catholic Church in contrast to any other religious center of power, acts as and is recognized as a sovereign state up until this day.

[45] Hugo Grotius (1583-1645), sometimes referred to as the founding father of international law, thus conceptualized law in a time when it no longer sufficed to ground international law only on religious authority. He constructed an international order based on natural law instead (Anghie 2015), which was then still grounded in Christianity. Van Ittersum (2015) analyzed De Groot's works in the context of his life and concludes that De Groot was a man 'who apparently cared more for the unity of the Christian churches than anything remotely resembling 'a system of international law'. Grotius considered it his God-given task to heal the religious divisions of Christendom,' and Van Ittersum argues that considering De Groot's conceptualization of the world and power relations, might as well be called 'the godfather of Dutch imperialism'.

The shift from Christian to Man (in its both versions, see below for Man_2) facilitated the shift from feudalism and control sanctioned by the Church, to individual property rights and capitalism. Power exercised over land in and outside of Europe and power of the related products and wealth produced on that land by (forced) labour, which outside of Europe were gained through – amongst others – genocide, mass murder, expropriation, enslavement and slavery, were no longer justified by that land being allocated through the divine rights of Kings or the pope (and thus God). Instead, labour and accumulation of wealth became just titles to individual property independent of the Church (Kop, 2009).

Democratization thus took place, in the sense that is was no longer the clergy who had the power of the Word. Seeing the shifts that took place – with Man suddenly having not only access but the natural individual right to governance, property, knowledge production – it only makes sense that for the learned men of that time, the right to property and freedom of religion[46] became rights of central importance, as did rights to be able to participate in government (political rights). At the end of the 17th century, this also brought about the codification of rights and liberties for Man_1 vis-à-vis the state, such as 1688 British Bill of Rights (Mignolo, 2009), which declared 'the Rights and Liberties of the Subject' and settled the 'Succession of the Crowne'.[47]

2.2.4 MAN2 (HOMO SAPIENS, ECONOMICUS)

In the Enlightenment's hegemonic order of truth, nature is no longer created by Christian God. Instead, now there is a degodded, secularized, conception of nature. Nature, in this conceptualization, is known through physics and biology. The Enlightenment introduced the idea that the animal world can be studied through a rationally understandable and ordered system and that *homo sapiens* is only a species of the animal world. Consequently, with the Enlightenment came the idea that human body and mind are biological phenomena which can also be studied through a rationally understandable and ordered system (Solomos and Back, 1996).[48] With Darwin, humans become to be understood, just like any other natural organism, as evolving through evolution and natural selection. No longer the extrahuman agency of God but that of evolution and natural selection determines what human is; a "mere mechanism" driven in its behavior by its genetic programs— and,

[46] See Green and Witte's (2013) explanation of the importance of the freedom of religion in the light of the Protestant Revolution, and how Calvinists democratic church polities were used as prototypes for democratic state polities with separation of powers, democratic election, term limits, town hall meetings and the right to petition.

[47] See for a transcript of the original text of the 1688 Bill of Rights, https://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction

[48] Linnaeus is most known for his division of human beings into different naturalized races, based on color in combination with assumed moral character. One of his divisions was: 'α: American: red, bilious, straight (…) is governed by customs. ß. European: white, sanguine, muscular (…) is governed by laws. γ. Asian: basan, melancholic, stiff (…) is governed by opinion. δ. African: black, phlegmatic, relaxed (…) is governed by chance. ε. Monstrous (…)' (Hoquet, 2014). Others who made similar taxonomies – even if different regarding for example monogenesis of polygenesis of different 'races' – are Immanuel Kant, Johann Friedrich Blumenbach, John Locke, Thomas Hobbes, Voltaire, Henry Home, Lord Kames (Bernasconi 2008; Hoquet 2014). Of course, like any hegemonic conceptualization, this was to was met internally and externally with counter-hegemony, as can be seen – for example – in the 1885 work by Haitian scholar Anténor Firmin's titled *De l'égalité des races humaines*. Remarkably in the context of this chapter is also that it is Linnaeus who is known for having coined 'homo sapiens' in Modern Latin, which is derived from the word *homo* which literally means man, and the word sapiens which is the present form of the verb *sapere*, meaning to be wise: https://www.etymonline.com/word/Homo%20sapiens

as such, subject to the processes of natural causation. With this conceptualization also came the 'Two Culture' divide, a divide between the natural sciences and the social sciences as if natural sciences (in studying humans and human relations) is not influenced by social sciences and social sciences is not influenced by natural sciences (Snow, 1959; Wynter, 2003; Wallerstein, 2004; Snow, 2014). The conceptualization of the human became mapped on environmentally and climatically determined phenotypical differences between human hereditary (later understood as genotypical) variations. Differences which were thought to determine levels of morality and character.[49]

This biocentric understanding of nature and human introduced the order of being based on scarcity of fully genetically selected human beings and scarcity of material resources. Man_2 – presented as fully human – is an evolutionary selected jobholding Breadwinner or more optimally, a successful master of natural scarcity (an investor, or capital accumulator). Relying on evolutionary selectedness the idea of rationality of Man_1 shifted towards intelligence based on IQ.[50] In the Man_2 conceptualization, freedom is therefore ultimately defined in economic terms (accumulation of economic wealth) but limited by hereditary trades (Wynter, 2003). Furthermore, freedom increasingly becomes understood as freedom from state intervention (De Dijn, 2020).

In the shift from Man_1 to Man_2 a new extrahuman line was thus created that marked the difference between differential degrees of evolutionary eugenicity and dysgenicity (Wynter 2003). The differential degree of the eugenicity/ dysgenicity line was applied analogically to differences between socio-economic classes (and thus between capital and labor), men and women, and heterosexual and homosexual preferences. In terms of physiognomy, like the Christian and Man_1, Man_2 is represented by what is deemed European White physiognomy (i.a. Wynter 2003; Bernasconi 2008; Leonard 205; Thornberry 2016). The internal and external Other to Man_2 is embodied by the dysselected Poor. The Poor is jobless, homeless, criminalized and/or underdeveloped, because of their own incapability of overcoming or dealing with (genetic and material) scarcity.[51] The racialized Other is no longer seen as fallen to the status of the ape, but as barely evolved from that status, with at its extreme those classified as having a Negroid physiognomy and/or as Niggers (Wynter, 2003; Mignolo, 2009).[52]

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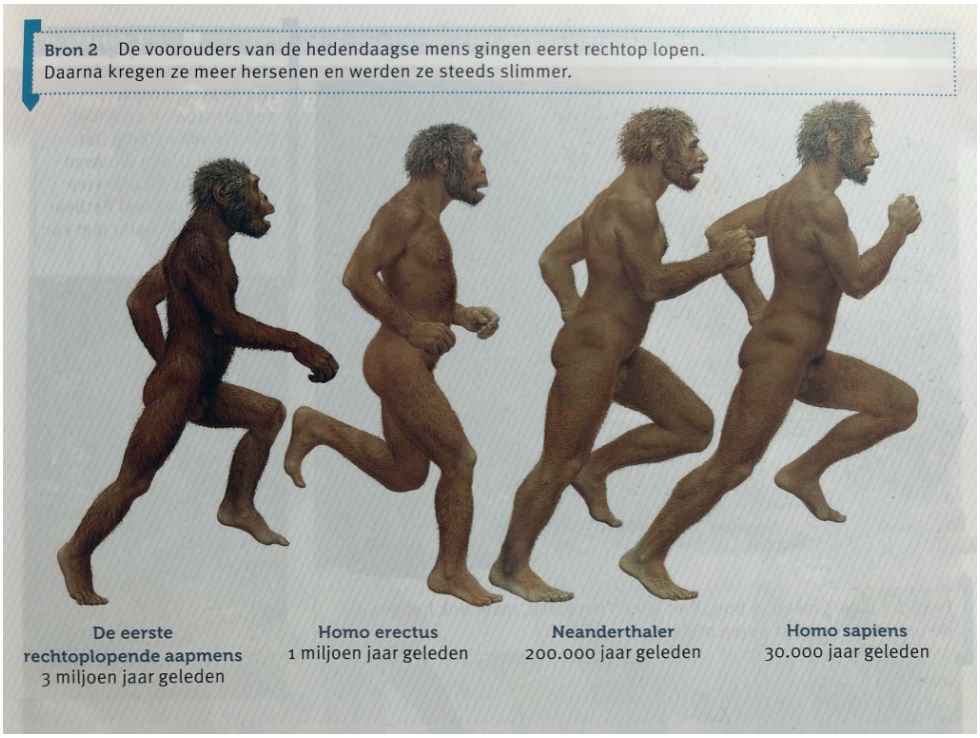
[49] Linnaeus is most known for his division of human beings into different naturalized races, based on color in combination with assumed moral character. One of his divisions was: 'α: American: red, bilious, straight (…) is governed by customs. ß. European: white, sanguine, muscular (…) is governed by laws. γ. Asian: basan, melancholic, stiff (…) is governed by opinion. δ. African: black, phlegmatic, relaxed (…) is governed by chance. ε. Monstrous (…)' (Hoquet, 2014). Others who made similar taxonomies are Immanuel Kant, Johann Friedrich Blumenbach, or John Locke and Thomas Hobbes see Hoquet (2014).

[50] See i.a. Mensh and Mensh (1991) who show how IQ tests have been used as 'proof' that different races, classes, and genders are of superior and inferior intelligence, but that from the beginning IQ tests have been fundamentally biased. Mensh and Mensh argue that while IQ tests are offered as a means for seeking solutions to social problems, they actually have been used to maintain the status quo.

[51] In Europe, amongst the Poor too there is a hierarchy between Whites versus Brown people and Blacks living in these territories. This is also true for the newly emerging states in the Americas (in accordance to Western conceptualization of the state), that obtained formal political independence from the British (USA), Spanish (Argentinian, Chili, Colombia etc.) and Portuguese (Brazil). The independence of these emerging states was in the hand of – again – Man (in its two varieties) as opposed to the significant Brown and Black populations within their territories. See i.a. Wynter (2003) and Mignolo (2009).

[52] Racialization also led the theme of miscegenation; the idea of race mixing. In this context, eugenicity is perceived as a manner to positively affect hereditary traits for descendants. Eugenecity led to programmes of forced sterilization, genocide, and dangerous scientific research performed on racialized bodies. In the same way, dysgenecity is perceived as a manner to negatively affect these traits. Scholars such as Gobineau argued



A picture from a History textbook, published by Dutch educational textbook publisher MEMO. The book is used in the first grade of secondary schools within the Kingdom of the Netherlands. Relevant for chapter 4 and 5 of this work, the textbook is also used in Curaçao. Natural Evolution of the human is commonly represented in similar images as an evolution from apes towards homo sapiens. The legend accompanying the picture explains that the ancestors of contemporary human evolved into having 'more brains' and 'becoming smarter'. Considering the image used, this evolution into having more brains and becoming smarter includes a lightening of the skin, changes of facial features towards resembling those associated with European phenotype, and growing taller. Furthermore, these representations commonly depict able-bodied males. A simple but powerful imagery of human as racialized and gendered Man$_2$.

It is thus also the time that sees the further development of the conceptualization of social contracts as the basis of state government (i.a. Rousseau and Locke). Theories of social contracts that came into being were reasoned to be freely entered by free individuals (before God) for the common good. The common good being the protection of the enjoyment of property in peace and safety (Kop 2009). The social contract accords certain fundamental rights to citizens (!). Amongst these rights, most notably the right to property, freedom of religion and political and civil rights (see i.a. Kop 2009 and cf. paragraph 2.3.3). These fundamental rights become codified in documents such as the 1776 American declaration of Independence[53] and the 1789 French Declaration of the Rights of Man and of

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that superior races, most notably the white race, denigrate while inferior races, most notably the black race, improve when intermixing (Leonard, 2015; Bernasconi, 2008). According Gobineau racial mixing broke natural barriers, and that although there were no pure Aryans, it was the aristocrats of the white nations who had sufficient Aryan blood to claim the right to rule (Thornberry, 2016, p. 7). Relevant for chapter 4 and 5, see i.a. Eickhoff, Henkes and Van Vree (2000) for eugenics in the Netherlands in 1900-1950.

[53] Remarkably, a significant motive for the political independence of America from the British Empire was what was captured with the slogan 'no taxation without representation'.

the Citizen (Hunt, 2008).[54] These declarations are based on the conceptualization of Man as a rational and morally free being, who is thought to be born naturally endowed with rights. A conceptualization of good law and rights as product of natural law which was typical of the Renaissance, and which thus continued to exist in the shift towards the Enlightenment version of the human, Man_2 (Kop, 2009). Where it was first God who was the ultimate sovereign (his will uncovered either by the clergy or by rational man), with the secularization of Man, it became the will of free Man, and analogically the free will of peoples that was the true sovereign of the nation-state. Full citizenship including fundamental rights thus became accessible only to Man, excluding both the internal and external Other. The internal Other – the Poor, pagans, women, people with non-normative sexual preferences – based on the rationale that with the social contract they also accepted their place in the hierarchy which was still imagined to be rather fixed (Chisick, 1981).[55]

The external Other – in contrast to Man – was deemed unfit to express its free will and have sovereignty. Within this conceptualization, states or other human societies in non-European territories were thus considered to not meet the requirements of being (full) sovereign states. However, the colonized territories outside of Europe did not become integral to the territory related to the sovereign state. Instead, they became colonies; territories with a different status. Non-European territories thus had a different status from the territories in Europe, as well as that the inhabitants of these non-European territories had a different status from people and citizens within the territory of the European nation-state. Added to this is that European nation-states from their emergence tried to hold off entry of non-White people with practical and legal measures.[56] The imperial mission of the state based on its territorial expansion, conquest, and exploitation including trans-Atlantic slave trade and slavery, under the guise of world civilization – portrayed as the White Man's burden[57] – thus continued in the lands of the Other who inhabited 'Other places' thus creating White, free societies (for Man) in Europe and unfree societies for the Other elsewhere.[58] It is then no surprise that the newly emerging states in the Americas in the late 18th and beginning of the 19th century,[59] significantly remained in the hands of Man – and thus not the racialized Other over whom they ruled – and were eventually accepted as sovereign states (cf. Mignolo, 2009). By this time, in Europe, Spanish and Portuguese were already considered second class Europeans as opposed to the (religio-)secular thinkers of France, Germany, England, the Netherlands (Mignolo, 2009). The 19th century was when large portions of Africa also became colonized by Europeans states. Unlike the colonization of the Americas where colonization had significantly taken place by Spain, Portugal and

[54] Note how this declaration does not even speak of 'human' but of 'man'.

[55] European women did obtain political rights in the course of the beginning of the 20th century, but were still subordinated to Man.

[56] See for example Hondius (2011) for the ways in which the Dutch were able to a large extend to exclude the presence of blacks ('almost', because there was still a 'black presence') from their European territories from the 16th century onwards through highly selective practical and legal processes of enabling and restricting access.

[57] See for example Murphy (2010) who writes about Kipling's 1899 poem 'The White Man's Burden'.

[58] Man often remained citizen with fundamental rights even if he moved to the 'Other territories', whilst the less free legal regime in 'Other territories' was often not applicable to the 'Other' when they reached Europe. Again, see Hondius (2011). Being Man or Other was thus embodied.

[59] States in the Americas that obtained formal political independence from the British (USA), Spanish (Argentinian, Chili, Colombia etc.) and Portuguese (Brazil).

Britain with fewer territories being colonized by other European states, Africa was mainly colonized by France, Britain and to a lesser extent by European states such as Germany, Portugal, Belgium.[60]

Radical equality was thus not the outcome of the shifts during the heights of the Enlightenment. Instead, the ruling and governing elites made the Enlightenment claims of equality work to sustain societal hierarchies. And even if education became accessible for all, the idea was still that it was only certain types of education that was appropriate for the masses, as it was the ruling and governing elites that still had to govern the masses (Chisick, 1981).[61]

2.2.5 CONTINUING LEGACIES OF CHRISTIAN AND MAN POST WWII

The post WWII era is one in which a geopolitical shift took place, where instead of the British and French, it is now most notably the United States of America, and to a lesser extent Russia and China that exert imperial powers. Relevant to this work is that racism, including scientific racism,[62] of before and during WWII exhibited within Europe some of the worst horrors of racism. Horrors that had taken place in the name of eugenicity, and thus against not only the racialized Other – most notably Jews – but also internal Others such as the Poor. Of course, outside of Europe, similar horrors had been taking place already. Think of for example the German concentration camps and genocide in current Namibia (Schaller, 2013), annihilation and genocide of different peoples by the British in Australia and Tasmania (Breen, 2013), and other colonial mass murder around the world (Schaller, 2013), forced sterilisations and medical experiments on racialized people (Essed, 2017 [1984]).

After the 1920 League of Nations that had been established after WWI, WWII brought about the establishment of the United Nations in 1945. The Charter of the United Nations proclaims that the purposes of the UN are maintaining international peace, developing friendly relations among nations, achieving international cooperation in – amongst other – promoting and encouraging respect for human rights, and being a center for harmonizing the actions of nations in the attainment of these ends.

In 1948 the UN adopted the Universal Declaration for Human Rights (UDHR), which proclaims 'that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Note here already that the declaration thus appears to continue in the tradition of the idea of 'natural law'. After all, humans are claimed to have inherent dignity and equal and inalienable rights (see chapter 3). With the adoption of human rights as a matter of the United Nations, and the United Nations as representative

[60] At the Berlin Conference in 1884-1885 European states decided amongst themselves how Africa should be divided amongst them and how trade in and with these territories should take place.

[61] In fact, despite efforts for radical equality worldwide (also see the paragraphs below) during the high tide of the Enlightenment, and despite insurgencies in 1848, Europe currently still knows a remarkable number of monarchies which still (partly) rely on the regimes of truth underlying Christian and Man.

[62] According to scientific race theory, race was the key to understanding biological variation amongst human beings including intellectual and moral potentials of its members (Wade, 2004). In this understanding, races manifested by distinct physical characteristics and cultural attributes and [were] arranged in a hierarchy of value and ability' (Thornberry, 2016). Although the term race in some circles has become less used out of political correctness, the notion of race persists in discourses of ethnicity and culture (Wade 2004). In these discourses, differences between people can still be seen as both physical and cultural, and each realm acts as a signal for the other. This means that 'different appearances are thought to indicate different cultures and different cultures seem to suggest different natures'(Wade 2004). The persistence of the idea of race is also seen as related to its use in anti-racist political struggles and identity politics' (Wade, 2004).

of the international community, human rights became codified in international law. In ways, this thus created a possibility to go beyond the conflation of the category 'human' with the category 'citizen' and 'Man', and thus to go towards a more inclusive understanding of who it is that is human and has rights. However – as we have seen – international law, carries legacies of racism and colonialism and in real ways has justified and continues to justify and perpetuate the global color line (see for example Thornberry, 2016; Anghie, 2015; Achiume, 2020). The evangelizing mission based on the Church, which later became the civilizing mission of nation-states that perpetuates the global color line, did thus not disappear after WWII (Anghie, 2015; Bonilla, 2017; Achiume, 2020). Not even with the formal independence' of the newly created states, or newly introduced semi-sovereign statuses of former colonies. On the contrary, postcolonial sovereignty most often resulted in enduring forms of non-sovereignty (Bonilla, 2017). And whereas colonized subjects were formerly not or not fully citizen of the colonial state, after independence, people in the newly emerged states instead became citizens of these new states and simultaneously non-citizen foreigners of their former colonial states (Mignolo, 2009).[63] Furthermore, within the newly emerged nation-states, nation-building brought about its own in- and exclusions, and marginalization of the most disadvantaged (Angie, 2015). To the extent that they sustain the global color line through the workings of racialized nation-state borders and citizenship, and more human rights for citizens of Western nation-states, both the nation-state and international organizations such as first the League of Nations, and now the United Nations and International Financial Institutions, perpetuate and serve the 'civilizing mission' of imperialism (cf. Anghie, 2015).[64]

Anticipating the next chapters, it makes sense to point out here already that it is thus no coincidence that the UDHR – a general international human rights document – was followed with human rights documents for qualified categories of human corresponding the Other to Christian and Man as explained here above. Namely, human rights for racialized people, women, children, migrants, indigenous people (Mignolo 2009). In chapter 3 we will turn to how this plays out at the United Nations and its human rights norm setting activities. In chapter 4 and 5 we will turn to how this plays out in Curaçao, an autonomous country of the Kingdom of the Netherlands.

2.3 ESSENTIALIZATION

[63] Within their own territories, European nation-states were mainly confronted with non-citizen foreigners, both European and non – European foreigners, that is. The nation-states in the Americas – which had become independent from the British, Spanish and Portuguese in the 19th century – but whose independence remained mainly in the hands of Man, have a significantly larger number of brown and black populations within their territories (as compared to the European nation-states).

Hondius (2011) writes that people from Europe travelled the world while restricting travel of people from elsewhere to Europe. She makes a parallel with current 'Fort Europe'; short after WWII there was a period in which immigration into Europe was less restricted. It became restricted again after former colonies obtained political independence.

Considering the continuation of the global color line, it is no surprise that Dembour (2015) concludes that the ways in which European (legal) citizenship in its relation to restrictions of access to Europe of non-citizen foreigners in our current 'postcolonial era' is a form of institutional racism.

[64] See Duranti (2017) regarding the influence of Catholicism, and the civilizing mission on the genealogy of the European Convention for Human Rights, a European regional human rights law.

The conceptualization of 'being human' as described above, and the ways in which this is related to conceptualization of 'rights', 'state', 'citizenship' etc. are founded upon regimes of truth that ascribe authorship to an extrahuman agency, namely God and/or biology and nature. This makes the role of humans themselves in creating conceptualizations and creating reality, invisible (Wynter 2003, see also chapter 1). Related to extrahuman realities as the sole creator of things, is the question of who can *know* that extrahuman creative force. It is here that in the shift from Christian to Man in its two variants, the 'power of the Word', or power to determine truth or what is real, shifts from the clergy to the rational and the scientist. As Guadeloupe (2010) puts it: 'truth reveals itself to scientists in the same way that God revealed itself to a select group of prophets'.

The conceptualizations I set out here above have been hegemonically backed discursively and institutionally. Thus, they inform human behavior and also the ways in which institutions including law, education, and science are shaped. With this, the underlying regimes of truth actually create and perpetuate realities – including those of systemic stigmatization, social inferiorization, and dynamically produced material deprivation – that not only seem to confirm the very conceptualizations that cause those realities to come into being, but which also continue to justify the underlying inequalities. In other words, they invert cause and effect (Wynter 2003). These regimes of truth, and the discursive concepts of 'human' and 'rights' and related concepts such as sovereignty, citizenship, nationhood has historically been grounded in the creation and perpetuation of legal regimes of difference (Bonilla, 2017; Leonard, 2015) that depend on essentialization.

Essentialization means that, whether through a theological, religio-secular or biocentric rationality, humans are thought to be and act the way they do, because of a suprahuman cause. Christian and its Non-Christian Other, rational Man and its irrational Other, and Man as eugenically selected master of scarcity and its dysgenically selected Other, are ultimately simply that; their being and thus their behavior can be traced back to them inherently – because of God and/or because of nature – being Christian, non-Christian, rational, irrational, eugenically selected or dysgenically selected. The Other is thought to be backward, irrational, emotional, uncivilized, living in the past, because not caught up with supracultural (either Christian divine or secular) way of knowing reality. Man (in its two versions, and before that, Christian), however, is not stuck in such backward cultures. He lives in the present based on universal truth. He is understood to have individual agency and free will, as opposed to the Other. Furthermore, it is Man that is conflated with being fully citizen. Moreover, supposedly supracultural and cultural difference between Man (in its two versions) and its Other is mapped on the body and geography. With regards to mapping these differences on the body, this was first based both on appearance and phenotype, later also based on genotype.[65] Creating the human in their own

[65] Genetically, human beings have more in common (99.9%) than they differ (0.1%) and the diversity within one constructed group of people is at least as vast as between groups of people. However, contemporary biological research on gene diversity and population genetics, such as the Human Genome Diversity Project suggest that human beings can be traced back to different populations. The problem with these types of studies is that their approaches, methodology and assumptions tend to be founded upon *a priori* notions of what counts as a population and which groups of people make up indigenous populations. These projects on genetic diversity thus rely on *a priory* produced knowledge about similarities and differences, and of migration and isolation. This knowledge includes the presupposition that populations in the West are mobile and mix and mingle, whereas indigenous populations stay put and live more isolated lives. The results found in these projects therefore come to reify the base that they are founded upon, and thus reify the idea of stable and fixed natural categories that cluster differences into biological (and cultural) clusters. (M'charek 2009). This manner of thinking of population differences are not innocent or less essentializing than racial differences. In that sense, genetic research has alarming parallels to scientific racism of the 20th century, which unjustly claimed on the basis of body measurements, that different human races existed and that they represented hierarchical scales of being human. Gene diversity researchers have been called upon to counter-act this essentializing tendency by

image, ruling and governing Europeans attached a racialized, gendered, classicist, sexualized image of themselves to their category of human (opposed to the not quite fully human or subhuman). Man, – represented as it were the human itself – is thus ultimately white European (later Western), male, elite and heterosexual. It is he who is the ultimate citizen and carrier of rights and freedoms, and who can express his sovereignty in free will. He obtains the right to property and to dominate and exploit other humans, namely those humans considered not fully human because being the internal or external Other, in order to civilize the world.

As Frantz Fanon (2008[1952]) described when dealing with being Black in Martinique and France, the categories into which Western and Westernized people become socialized, educate Blacks into being both Man/Self/normal and Man's Other, non-Self, abnormal. Or, as Du Bois (2018[1903]) described earlier, Blacks obtain a double consciousness. Thus, into both being and non-being, into having Black skins but White cultural masks.

The hegemonic ways of being able to talk about and represent the world are so much normalized that their degrees of non – sense become perceivable not only through double consciousnesses but also when showed reversely or differently. This is also the case with the normalization of Whiteness – Whiteness as a system and not as a skin colour. The non – sense of White dolls as the standard doll around the world (even if, of course met with counter – hegemony), becomes powerfully visible in this picture of a White girl in a shop that only sells Black dolls. The picture is taken by Chris Buck.

Man is also portrayed as belonging to specific bounded geographical locations, namely most notably the imagined geographies (Said, 2003) Europe and North America. The global line drawn between Man and its non-human or less human Other, is then the global color line (cf. Du Bois, 2018 [1955];

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acknowledging that genetic data enables scientists to cluster individuals in endless ways, depending on what the researcher is looking for. This acknowledgement would reveal the fact that 'contemporary genetics has the capacity to denaturalize biological categories because of the excessive numbers of objects that it is producing' (M'charek, 2009). So even if one would assume that humans are mere 'genetic machines,' essentializing human populations is really impossible if one lets go of presuppositions related to similarities, differences, migration and isolation.

Cesaire, 2000 [1955]; Wynter, 2003; Quijano, 2004; also see chapter 1).[66] The global color line is dominant and hegemonic in the world system. Within countries, race – in its different renditions - also plays out dependent on its context and underlying orders of truth. What they have in common is a reliance on a suprahuman order of things (where degrees of being or non-being is hereditary). An order of things that can only be known by some. It also makes sense to stress here that Whiteness, as well as Blackness or Brownness is not static but dependent on place, time and context.[67] By essentializing people into being or not-being, the underlying order of truth, can thus limit the choices people have in what they can become according to hegemonic discourses and institutions.

Not only Man, citizen and its Other is essentialized. Related to human rights, conceptualizations of law, sovereignty, nationhood and national identity, culture, and political (in)equality, freedom and oppression are also essentialized. What adherents of natural law or legal positivism since the Middle Ages have in common is that they argue to know what the very 'essence' of law is (for natural legal scholars: the word of God, that which can be uncovered through right reason, or something immanent in the natural state of affairs, and for legal positivists: law as norms consented to by a state-centered sovereign, which is either God, the free will of the people, or the state's legal procedures.[68] A consequence is that these understandings turn law – including international law, and human rights (law) – into something static, supracultural and universally applicable (Boyle 1985) and a-historical (Kop, 2009). Law, including human rights law thus becomes essentialized as a supracultural phenomenon, whilst cultures that are regarded as deviant to the universal supracultural, become essentialized as primitive and backwards.[69] This explains the universalism versus cultural relativism debates in human rights law, theory and practice (see for example Donnelly, 2013) or the idea that there are three generations of human rights (Vasak 1977).[70] It also explains the

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[66] Wynter (2003) speaks of the Color cum Colonial Line, which Color Line in the 'postcolonial' era becomes rearticulated as the difference between the developed First World and the communist Second World on the one hand, and the underdeveloped Third and Fourth Worlds on the other hand.

[67] See for example Ignatiev (1995) who argues that 18th century Irish immigrants in antebellum America fled Europe where they were the internal Other, only to become the internal Other in the USA too. Eventually, however, Irish were able to climb up the hierarchical scale towards becoming Man, and thus White, by oppressing African Americans.

[68] Dembour (2010) distinguishes four 'schools of thought' on human rights, namely natural scholars and the protest school which do rely on a transcendental basis of human rights, with human rights law only having the potential to codify human rights. A third school she distinguishes is what she calls the deliberative school which claims that political consensus is what matters, and that human rights (which thus only exists in codified law) can become universal if they are agreed upon by all states. The fourth 'school' she distinguishes, the discourse school, might come closest to what this work is about, but is significantly different. For discourse scholars, she argues, human rights are talked about and consist in whatever you put into them. They are based on language. They should be for those who suffer but aren't. HR law exists but does not embody anything grand. HR are a failure and their supposed universality is a pretence.

[69] With essentializing culture, it thus becomes understood as to be singular. With regards to this and the Islam, Abdullahi An-Na'im, argues that the framing of the discussion in terms of the compatibility of human rights with Islam is both problematic and counterproductive. The compatibility argument 'assumes that there is a verifiably identifiable monolithic "Islam" to be contrasted with a definitively settled preconceived notion of "human rights"', when in light of the diversity and decentralized leadership structure of Islam, the 'most anyone can legitimately speak of is his or her view of Islam, never Islam as such, and of human rights as they are accepted around the world, including by Muslims' (Green and Witte, 2013)

[70] Current dominant discourse regarding the history and content of human rights uses Vasak's (1977) categorization of human rights into three fixed categories called 'generations' (Jensen 2017). The discourse of

idea that because international human rights have been agreed upon by sovereign states in free will, local cultures have to comply with them (whether or not through translation). Paradoxically, in these understandings, human rights are both undoubtedly universal, as well as simultaneously undoubtedly a Euro-American Enlightenment concept (i.a. in the works of Hunt 2007; Donnelly 2003; Zwart 2014), and in this conceptualization it is especially the Global South that has a long way from reaching the norms set out in this Euro-American universal good. With this, hegemonic human rights discourses deny that human rights are actually rooted in a particular history, and thus particular historical knowledge production concerning – amongst others – what it means to be a human being and what it means to have rights, and how inequalities have been discursively and institutionally been set into place. Because these discourses are particularities turned universal, they do not describe the world: they offer historically charged visions of the world and with that continue to create the world along those visions.

Relevant to this work is that the silencing of the historicity of human rights also silences the ways in which human rights disguises and misconstrue the many Others it creates (cf. Trouillot 1997; 2002; 2015). Based on that, hegemonic human rights discourses and the way in which they have been institutionalized, misleadingly justify and normalize unequal rights and unequal freedoms for its many (internal) Others. It is then no wonder that amongst others Mutua (2001), and Okafor and Agbakwa (2001) argue that the current main authors of the human rights discourse, including the United Nations, Western States, international non-governmental organizations, and senior Western and Westernized academics, portray and institutionalize human rights as a final set of truth, and as a promise of salvation.[71] Salvation, and thus symbolic life, is understood as freedom from non-fulfillment of human rights. Indeed, in dominant and hegemonic human rights discourses and their

three generation of human rights has remained dominant up until this day. First generation human rights, are thought to be civil and political rights of which the roots can trace back to the French Revolution. Second generation human rights are economic and social rights which can be associated with the Russian Revolution, Social Democracy in Europe, and the establishment of the International Labour Organization. And third generation human rights, which are collective or solidarity rights such as the right to self-determination, the right to development, environmental rights and the right to peace, and are significantly associated with decolonization in the mid-twentieth century (Barreto 2012; Jensen 2017). In this discourse, not only can these rights be categorized as such, they also represent a hierarchy, which has had a real effect on how human rights norms have been approached and implemented with classical liberalism, civil liberties, economic freedoms and democratic rights being privileged over social aspirations (Vasak 1977; Barreto 2012; Jensen 2017), and collective rights have to a great extent been disregarded by empires and multinationals, whilst paradoxically been upheld by dictatorships to reject foreign criticism (Barreto 2012).However, the categorization of human rights in those three generations does not at all correspond to a historical sequence, and denies how categories of human rights have always been porous. Using the discourse of three generations of human rights privileges the normative dimensions of human rights, while obscuring histories of struggles and contestations and socio-political and economic developments worldwide. For example, by relating first generation human rights to the French Revolution would be to adhere to a winner's discourse since not only were the absence of socio-economic rights contested in these periods, but also the exclusion of people on the basis of – for example – race and gender. And not only in France and Europe but worldwide as attest for example the Haitian revolution and the revolutions in the wider Caribbean (Barreto, 2012; Bogues, 2012; Jensen, 2017).

[71] For similar arguments, see also the work of other Third World Approaches to International Law (TWAIL) scholars, such as Anghie, Baxi, Chimni, Michkelson, Rajagopal (Okafor & Agbakwa 2001).

institutionalization, human rights become essentialized as a fixed set of morally good norms.[72] Human rights law therefore become seductive. After all: how could anyone not want human rights?[73]

> It is something that I also encountered during my field work in Curaçao; a children's rights teacher frustrated with problems in the community expressed that if only all human rights would be implemented, then the current problems would be solved.

The Global South – where the racialized Other lives – is essentialized into enacting the role of symbolic death because of absence of human rights,[74] whilst it is the Global North – which is depicted as the sole location of the emergence of human rights, and as being best in fulfilling human rights – enacts the role of symbolic life. Salvation thus requires change towards the promise of human rights under the guidance of the West with its White people, or more accurate: Man. So much so that it justifies human rights violations by the West in order to guide the non-West.[75] The discourse thus exerts Western superiority (Okafor & Agbakwa, 2001).

Whilst human rights – for example as institutionalized at the United Nations (see chapter 3) – aims to contribute to peace and to prevent violence, one thus has to conclude that dominant and hegemonic human rights discourses and the way these are institutionalized (in human rights law), is violent in itself as well as that it is used to justify violence.

As for state sovereignty, the centrality of a singular sovereign God(-like) power is still very existential, even if not admitted. As such, the state is still often conceptualized as having sovereign power in the sense that sovereignty means a singular, absolute power (rooted in a social contract) over a specific people, and bounded territory, which is free from external power. The way in which the United Nations is structured also shows a reliance on this understanding – it is then understood that the United Nations, under certain circumstances, can interfere in this in principle absolute power. Member States of the United Nations are – analogous to the Westphalian understanding of state sovereignty – understood as having, if not equal power, then at least as having equal sovereignty (Bonilla, 2017).[76]

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[72] Boyle (1985, p. 358) writing of essentialization of law, entrusts: 'There is something demeaning, something evil, about blindly obeying the imagined "dictates" of some social construct, whether it is the portrayal of women as sex objects, the ethnocentric circularity of positivist legal arguments, or the restrictive set of roles for "partner and associate," "child and parent."

[73] This question is inspired by Trouillot (2002, p. 848) who asks: How could anyone not want to be modern?

[74] As Preis (2009) argues, the West is portrayed as the only locus in which the idea of codifying moral values in law originated. She provides various counter arguments to this discourse (Preis, 2009).

[75] Also see chapter 4 on Curaçao, where it is described how the Netherlands justifies measures taken by the Netherlands that further breaches democracy, the *rechtsstaat*, and human rights by arguing that it is going to take care of the *rechtsstaat* in Curaçao. See also Delgado and Römer, 2020.

[76] This also leads to discussions between 'positivists and natural law theorists who find themselves dealing with a tension between two concepts: state consent and some general normative background (i.a. natural law). This tension cannot be resolved if one stays within the dichotomy of positivism and natural law, but resolution is exactly what their theorizing demanded. This contradiction plays itself out on each successive theoretical level, in discussions of the "nature" of law and in discussions of the source of its normative authority (Boyle, 1985).

Dominant and hegemonic renditions of national identity and nationhood too, often become static conceptions determining who belongs to the nation (who can be identified with or who can identify as). National identity and nationhood are then understood as finished products in which oldcomers who belong to the nation can be distinguished in a seemingly clear-cut fashion from newcomers who do not belong (as much) to the nation (Van der Pijl and Guadeloupe 2015). Moreover, the conceptualizations of the state and citizenship, often become conflated with nationhood and national identity. This thus adds to the static singularity of essentialized understandings of the nation and the state. A similar dynamic exists with the idea of the right to self-determination of (formerly) colonized peoples, since here too it is imagined that a clearly distinguishable people in a specific territory has the right to self-determination.[77] Similar, because as we just saw, it is Western states that are deemed 'normal', moving in the sphere of symbolic life.

If racism in the global order, is the structure of knowledge and representations that normalizes and naturalizes normalized and naturalized the socio-economic and political order based on White supremacy and thus along the global color line, then the global color line has been justified and perpetuated by the afore described discursively and institutionally backed orders of truth and thus – amongst others – conceptualizations of human, citizen, nation, national identity, sovereignty, rights, freedom and power. As must have become clear in this chapter, racism relies on racialization of specific bodies, making racism something that shapes institutions, global and political alliances, but also subjective understandings and feelings of the Self and belonging (see also chapter 1).

To move towards the end of racism in this sense thus requires de-essentializing of hegemonic (scientific) concepts (Guadeloupe 2010) and the way in which these concepts are institutionalized, are used discursively, and have become common sense or normalized.[78] Below, we will see what an acknowledgement of this can contribute to a shift towards human – instead of Man as human.

2.4 TOWARDS LIFE; DE-ESSENTIALIZING

What we saw above with regards to essentialization, is the reliance on an extrahuman reality as the source of all in the domain of interhuman relations. What this reliance fails to do is to consider the interaction between nature and socialization and also (human) consciousness(es), historicity, and power in the creation of human conceptualizations (i.a. Fanon, 2008 [1952]; Wynter, 1997; Wynter, 2003; Guadeloupe, 2010; Bonilla, 2017; Gramsci, 2019 cf. chapter 1; for accounts on essentialized knowledge production in literature and science see also Said, 2003; Ghosh, 2016). This includes conceptualizations of what it means to be human and to have rights. It thus obscures self-authorship, or the 'human aspect' in knowledge production and how this relates to human behavior. The struggle

[77] This leads to paradoxical discussions when discussing the right to self-determination of ethnic, religious and linguistic minorities within sovereign states. Their right to self-determination – as opposed to the right to self-determination of (formerly) colonized peoples does not include the right to secession. This is also true for for example indigenous peoples. The right to secession in the case of these minorities, it is argued, is only possible based on the 'free will' of the people, people meaning inhabitants of the entire state and not only the people with the right to self-determination, or parties of a peace settlement after an armed conflict (Van der Vijver 2013, p. 390). The idea of former colonized peoples as a distinct set of humans, clearly distinguishable for other human communities, reinforces this imagined community as a preeminently existing community/entity.

[78] In this regards it is worth making explicit that essentialization in the form of racialization and racial thinking cannot only found in the scientific field of biology, but also in social sciences (Goldberg in Back & Solomos, p. 154-159). In case of the latter, the concept of race is not challenged. Instead, the concept of race as biological inheritance is merely replaced with an anti-concept of race as culture (Guadeloupe 2010; Trouillot 2015).

against the overrepresentation of Man – a struggle that includes struggles against discrimination on the basis of race, nationality, gender, sexuality, able-bodiedness, and struggles against climate change and unequal distribution of resources, thus the struggle for equality –, is one towards the Human (Wynter, 2003). With regards to racial discrimination and racism, it is thus not only about fighting discrimination by continuing to articulate the problem in terms of race as suprahuman and essentialized category. Rather it is a reconsideration, a changing of what it means to be human in a manner that does not solely rely on the extrahuman. Relying on, amongst others, Wynter (2003), Fanon (2008 [1952]), and Guadeloupe (2010), I therefore argue that it is needed that one reflects on and becomes conscious of the multidirectional ways in which one's behavior is motivated by individual and collective (un)consciousness(es) and knowledge production and its interaction with nature.[79] As Wynter (2003) writes: 'between phylogeny and ontogeny there stands sociogeny'. It acknowledges that socialization influences not only our consciousness but also our emotional behaviour, as well as our biological bodies (Wynter, 1999).

It is when one becomes aware/conscious of ways in which essentializing world views have been created, used, perpetuated and institutionalized, and thus becomes aware of what has been normalized, that one can consciously choose action or passivity towards essentializing world views, and the ways in which they have been backed by discourses and their institutionalization (cf. Fanon 2008 [1952]).[80] We then have the choice to consciously create a redescription of the category of the human. A redescription that is inclusive to all humans, and thus is for human self-interest, instead of for Man's (or any other exclusive category of human's) interest. A redescription that therefore, humanizes by opening up to possibility, or the choice to become, for everybody. With it we thus also recognize creation in existence. In other words, we decolonize from the colonization of our understandings of the world by orders of truth that relegate authorship (or creative power) solely to an extrahuman realm. It is to undo from the coloniality of being/power/truth/freedom by one culture made universal, and by offering the possibility to recognize that humans have a creative power.[81] The category of the human then becomes democratized (because not only open to a specific category of the human – as in Christian, Man1 and Man (see paragraph 2.3), and de-essentialized (because human is then not conceptualized as one singular being but a constant and plural becoming, see below).

With regards to questioning or reflecting on dominant and hegemonic Western conceptualizations of 'human' and 'rights', this can include showing their incoherencies, but also the interrogation of 'how they have become hegemonic, what the consequences of that normative dominance are, and what social conditions maintain and reproduce this dominance' (Bonilla, 2017). As we have seen with regards to dominant and hegemonic Western conceptualizations, this also means considering how

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[79] According to Fanon, collective unconsciousness is: 'the sum of prejudices, myths, collective attitudes of a given group' or 'the unreflected imposition of a culture' and thus acquired rather than inherent.

[80] As Fanon (2008 [1952]) writes on racism in Martinique and France, the latter is as much true for the 'Negro enslaved by his inferiority [the essentialized identity which is discursively and institutionally ascribed to them and which can unconsciously be the motivation of their behavior], as it is for the white man enslaved by his superiority'.

[81] This brings to mind Essed's (2017 [1984]) argument that we can see change of opinion and behavior after becoming aware of the negative impacts of our initial opinion or behavior, as a strength and not a weakness. Also, because humiliation and dehumanization of other humans unavoidably goes hand in hand with dehumanization of the Self (Essed 2017 [1984] p. 39). This thus creates a responsibility towards both the Self and the Other, and thus Human (Essed 2017 p. 20, 42).

these conceptualizations were not a product of historical processes in Europe and later America alone, but instead significantly in relation to what was for them New Worlds and in relation to creating and sustaining hierarchical differences between individuals and societies. The latter also requires an inquiry into contra-hegemonic knowledge production, experiences and efforts that have influenced hegemonic conceptualizations of the conceptualization of humanity and 'rights' in non-hegemonic knowledge production and experience. It thus requires knowledge of Other Universals (cf. Trouillot, 1997, 2002, 2004, 2015; Römer 2020) – since all Atlantics are the product of multiple entangled histories (cf. Cañizares-Esguerra and Breen, 2013) – in a way in which these non-hegemonic knowledges are not an *a priori* hierarchical less valid regime of truth. Instead, it also includes a realization of how non-hegemonic knowledges and experiences have been in relation to hegemonic knowledges and experiences (and thus the relevance of positionality). Also important is positionality. Everyone is related to the global color line and the modern/colonial order (with Western hegemonic epistemes being modernity, and the colonial difference being the colonial side of the order (cf. Vázquez 2020)) and that perpetuates this line. In order to understand and relate to each other, it is important to acknowledge the positionalities from which one speaks, acts and from which knowledge is produced (cf. Vázquez, 2020).[82]

On the subject of conceptualization of the human, a conceptual tool that might help to overcome essentialized understandings is a shift from human as 'being', towards humans and human societies as 'becoming' (Guadeloupe, 2010). It acknowledges that humans are chemical and biological processes without a fixed racial core or end goal. And it acknowledges that (self-)consciousness, mimesis/alterity, and multidirectional processes of individualization and communalities (and thus not only repetition of patterns but simultaneously innovation) play a role in what humans and human societies become (Guadeloupe, 2010).

Similarly, human rights law are sites of constant contestation in which power plays a role. And as Okafor and Agbakwa (2001) also contend, human rights (instruments) are and remain contested sites. In this sense it is a realization that North Atlantic Universals and Other Universals have thus also always been part of the 'human rights story'. And it shifts into interrogating whose interpretations or models of moral codes prevail over those of others and under what conditions this takes place (Preis 2009). Consistent with the above-described understanding of human as becoming, it acknowledges that individuals - within the limits of information, uncertainty, and other constraints (for example, physical, normative, or politicoeconomic) - have the capacity to process social experience and to devise ways of coping with life, even under the most extreme forms of coercion (Preis, 2009).

The idea of a sovereign state as a singular entity having free and absolute power has also been criticized as being more of a myth or an organized form of hypocrisy rather than a political reality or unequivocal idea (Bonilla, 2012, 2017). That the state acts, does thus not mean that it has, or ever had, sovereignty (Bonilla, 2017). With regards to sovereignty as institutionalized at the United Nations, Alberti and Goujon (2020)[83] argue not only that there is a significant number of territories with ambiguous political statuses. Probably more significantly, they argue that the concept of sovereignty uses for United Nations (UN) membership is significantly limited, if not mistaken, because

[82] As Vázquez (2020) explains, positionality is a concept developed predominantly by Black feminism, i.s. bell hooks.

[83] Also see Alberti and Goujon (2020) for references to work on exceptions on sovereignty. As such, exceptions to sovereignty as absolute and singular power over a people and territory actually seem to be the rule rather than the exception.

according to their index some territories which are not UN members have a higher sovereignty score than some UN members. Similarly, Bonilla (2012) argues, that it is really not that far-fetched to think of 'non-sovereign' states or social movements as possible UN Member States. Especially if one considers that non-sovereign state actors such as nongovernmental organizations, military contractors, security firms and others are increasingly taking on duties typically ascribed to nation-states.

Furthermore, the idea of sovereign power over a distinct people and territory fails to grasp the reality of constant and multidirectional migrations of people, and thus also their ways of understanding the world, and how their regimes of truth influence other regimes of truth.
Moreover, like Bonilla's (2012) ethnographic research in Guadeloupe and Römer's (2017) ethnographic research in Curaçao show (also see chapter 4 and 5), sovereignty and the right to self-determination is not always understood and lived through these categories in daily life nor in collective political projects against inequalities, exploitation, and racialization that people take up. Instead, people question who profits from the way in which power is institutionalized and contest the inequalities it brings about. As such, people cope with life and their political agendas in strategic and different manners (cf. Bonilla 2013). Considering colonial relationships specifically – and also relevant for chapter 3, 4 and 5 – Bonilla argues that anticolonial contestation is thus certainly not aimed exclusively at a colonizing power. The same as that the right to self-determination is not necessarily understood as a status in a linear process from colonization to independence (Bonilla 2012). Or, as anthropologist Louise Philip Römer put it: people want to make a living and use independence as a tool for that (personal communication 15 October 2020).

The same applies to nations whether they are or not conflated with the state. Nation-states and national borders - just like other imagined geographies (Said, 2003) such as continents (Hall, 1992)– are typically much more porous than often portrayed. Instead, like ascribed above there is movement across borders which are not only influenced by nation-state borders but also by – amongst others – networks of trade, culture, and religion (Cañizares-Esguerra and Breen, 2013).[84] And as been known about nationhood and national identity, these are cultural (learned) concepts that bind people on the basis of shared identifications or feelings of belonging. A strong sense of belonging to this imagined community is constructed through a shared [standardized national] language and carefully chosen national symbols such as notable historical figures, events, flags, anthems, passports, flora and fauna' (Roe, 2016; Guadeloupe, 2014). States, nations and nation-states are, just like individuals, are thus always becoming, in multidirectional relations to and interdependent of other individuals, human communities, and the rest of the world which they are related to, and in which power plays a role.

If one thus moves beyond essentialized understandings, these concepts can then be reconceptualized for the improvement and safeguarding of the welfare, economic prosperity and democratic governance for those who live in the nation and in the world, which is not based on racialization, but

[84] In critiquing the hegemonic narrative that the shift from – what above is described as Christian to Man – including certain religious toleration, and free market capitalism - occurred due to Protestant efforts in nations of Northwestern Europe (such as Britain and the Netherlands in contrast to Iberia, Latin America and Iberia, Cañizares-Esguerra and Benjamin Breen (2013) contend that this is a much too simplistic narrative of history as it is too much bound by national borders and thus fails to observe transnational networks and efforts that have contributed to change.

acknowledges that imagined communities are products of transmigracy (Bonilla 2012; Guadeloupe 2014; Van der Pijl and Guadeloupe 2016).[85]

I draw on Van der Pijl and Guadeloupe (2016) who write that transmigrancy encourages us to include in transnational theorizing an open, chaotic relationality that invites entropy as well as a continuing newness, and asks us to embrace a full sense of what it means to 'consent not to be a single being'.[86] This is thus true for being human, being a nation, as well, I would argue, should have a place in our reasoning about the state, state sovereignty, and human rights.

So, in the metanarratives set out above in paragraph 2.2 and its essentializations reflected upon in paragraph 2.3, one might be easily tempted for example, to consider the French Revolution as a European matter, involving white men. This makes it almost unimaginable that for example, Jean Baptiste Belley, was a member of the French National Convention and aspired for universal equality – meaning amongst others that no distinction on the basis of race would be made – and a French republican citizenship. Jean Baptiste Belley was a black man who had been born in current day Gorée in Senegal, had been enslaved and forced to work as a slave in Saint Domingue (current day Haiti). He had made his way up to the political epicentre of the French metropole where he contributed to the abolition of slavery in all French territories (Levecq, 2019; Römer, 2020) before Napoleon reinstalled slavery in the colonies. Or Sojourner Truth, the black female abolitionist who mocked American democracy because of the institutionalized and discursive inequalities. She was a – what we might now call – feminist who took intersectionality into account (Washington, 2009). Sojourner Truth (between 1797 and 1800 until …)[87] was an African American born into slavery in New York in America, had African, Dutch, and American cultural heritage and had been able to assert influence on people and decision-making across classes (Washington 2009). Or, across time and place, figures such as 'Bartolomé de las Casas, Antonio Vieira, Guamán Poma, Otobah Qugoano, Olauda Equiano, Toussaint L'Ouverture, Sojourner Truth, W.E.B. du Bois, Gandhi, Martin Luther King, the Dalai Lama, Nelson Mandela, Rigoberta Menchú, Aung San Suu Kyi and Upendra Baxi' (Barreto, 2012) and innumerable people across borders – even with all odds against them – have exerted influence on what the world is becoming.

It unsettles the order or truth that divides history (and thus present) along national lines, as it instead makes it more conceivable that the dynamics of early modern world was not as much circumscribed by national, imperial, or linguistic boundaries as often portrayed (Cañizares-Esguerra and Breen, 2013).[88] It unsettles the normalized sharp separation of Northwest Europe from other parts of Europe, Asia, Africa, and the waters and airs through which places are also connected.

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[85] With regards to the nation, Guadeloupe (2014) writes that nations can be build for those 'born to be here [now], home is where the heart is'.

[86] In this regard, a conceptual tool could be to start thinking in 'we' instead of an 'I' that is imagined to be a singular entity and being (Vazquez 2020).

[87] Her date of birth as near as she can calculate, see Truth 2017.

[88] Cañizares-Esguerra and Breen 2013 write that the 'complexities of emerging political, economic, and religious institutions that did not cleanly diverge according to Iberian Catholic and Northern Protestant styles of governance, trade, or indigenous relations'.

It, for example, relinks the French Revolution not only with revolution across Europe but also world-wide such as with the Haitian Revolution. Unveiling these interconnections, also unveils how these interconnections have been connections of inequality that benefit some to the disadvantage of others (cf. Achiume, 2020).

Remarkably, the Haitian revolution – which took place at the backdrop of slavery and colonialism – resulted in the independence of Haiti from France and the codification thereof in the 1805 Haitian Constitution. The 1805 Haitian Constitution explicitly categorizes its citizens as black. The category 'black' in the sense of the Haitian Constitution breaks loose from any biological and racialized distinctions. Instead, it is a political category which both implicitly and explicitly included various ethnic groups (including Ibos, Aradas, Hausas, French, Germans, and Polish) that had been involved in the struggle against the Western understanding of 'being human' (i.a. Gaffield, 2015; James, 2001 [1938]).[89] It thus shows that institutionalization of de-essentialization does not have to be something new.

In the course of doing this research two incidents happened that for me showed how inconceivable this way of understanding the world still is. One is that I once told an acquaintance of Anténor Firmin, a black Haitian scientist who had travelled to Paris in the 1880's and who's work exposed the fallacies employed by advocates of racial inequality. My acquaintance's first reaction to my story was outright surprise that there even existed black Haitian scientist in that time. Instead of discussing the fact that race and racism has been contested since its inception – something I had expected – we instead discussed the fact that there were black scientists in the 19th century.

Another incident happened during a six-month stay in Middelburg. Middelburg is known to have been a centre in the trans-Atlantic slave trade. It is also home to the Royal Zeeland Society of Sciences (*Koninklijk Zeeuwsch Genootschap der Wetenschappen*). A fellow academic told me of academic articles that had been written in the time of the trans-Atlantic slave trade. One article focused on how ships should be designed for them to carry as much slaves as possible. Another article contested trans-Atlantic slavery by stressing that the humanity of 'slaves' should be acknowledged. My fellow academic had found it remarkable that contestation had happened, in Zeeland, in that time too. I struggled in reacting properly as I had was surprised that my colleague had been surprised to learn about such contestation.

I understood these incidents as showing that the racist Western orders of truth (see paragraph 2.2) have been normalized and institutionalized in such a way that one forgets (or finds it inconceivable) that the fact that racism exist, does not mean that there is not life before, beyond, through it (a point I make in this paragraph).

De-essentialization as described above unsettles the inconceivable, and rather turns it into normal sense again, that of course in and beyond Europe too there were scholars who argued that trans-Atlantic slavery was inhumane. After all, non-hegemonic knowledges, experiences and institutions

[89] As has been thoroughly documented, Haiti from that moment on had had to deal with embargos and having to pay France indemnification for the economic loss of French slave owners because of the enslaved people that had freed themselves/had been freed from slavery. Historical facts that continue to have its effects on Haiti today.

have always existed (in relation to) hegemonic knowledge and institutions. But since they were and are not hegemonic, they are not normalized nor naturalized.

The point is not to include every person or any order of truth (Other Universal) possible from across the globe that has had any influence on what human rights have been throughout the centuries. The point is not to exclusively look at persons that are thought to belong to one specific geographical location. The point is that from the very beginning of modernity, there have been intellectual and historical traditions of resistance to oppression, imperialism, violence of the state, and sectarian faith, and efforts for equality and social justice, including thus resistance against racism (Barreto 2012). It is also an acknowledgement of the intrinsic relation between modernity and coloniality; how the West has been centered for its own benefit and to the disadvantage of the non-West (cf. Vazquez 2020). It also to acknowledge that these interconnections include the multidirectional movement over lands, waters, and air of goods, and people and their ideas and knowledges of truth (cf. Cañizares-Esguerra and Benjamin Breen, 2013). Ideas that thus have been influenced by different sources and knowledges of truth, and (institutionalized) power. It is thus about being aware of these relations or links of that which has been delinked in dominant and hegemonic renditions of what human rights are. As Okafor and Agbakwa (2001) also contend, human rights (instruments) are and remain contested sites. Not at all to romanticize the past, present or future. It is a way to unsettle and open up for new understandings that also unveil how historic discursive and institutionalized inequalities continue to shape the global order. As well as that it reminds people that indeed, they are not singular and static beings, but constantly becoming.

In other words, it is to realize that what human rights have been is not only constantly changing, and depends on place, time and context, but also that human rights are constantly and fundamentally shaped by people from across the globe, motivated in their actions by different reasons, who not only rely on different orders of truth, but also inhibit specific positionalities along different axes of power, of which the global color line is one. This realization will also bring about the realization of the non – sense of human rights as a fixed truth, symbolic life, necessary salvation, and a good of the West (a specific geographical location) and Whites (a biological or cultural race). And thus, also the non-sense of non-fulfilment of human rights as being behind on a linear path towards human rights fulfilment, symbolic life, a necessary good associated with the non-West and non-Westerners. To understand thus that human rights never become what they are without efforts from and contact amongst people and institutionalized societies (states, companies, networks of trade, culture and religion, etc.) around the globe. Instead of only North Atlantic Universals thus also Other Universals (cf. Trouillot 1997, 2002, 2004, 2015). Including people and societies with their own (changing) identities, motivations, interest and power positions. It thus brings back into knowledge production and consciousness, every changing and connected life around the globe, and awareness of positionality in understanding reality (Vázquez, 2020). Acknowledging positionality thus includes an awareness of hegemonic discourses and institutions in place and how they affect reality, perspective, chances and options.

2.5 HUMAN IN (HR) EDUCATION

2.5.1 HUMAN AND EDUCATION

Education plays a key role in socializing humans into social norms of societies. Seeing the dominance and hegemony of Christian and Man, people are often socialized in formal education into finding Man – portrayed as European, White, male, and the epitome of rational and intelligent (see chapter 1 and the paragraphs above) – as the normal. The Other to Christian and Man who is socialized in this way,

has, what has been termed, a double consciousness. This is to say that the Other is socialized into the normal and can identify with it, whilst at the same time – to some extent – is aware that they are the embodiment of the 'abnormal' Other. To put it into Fanon's words (who deals with socialization in Martinique and France), the Other wears white masks even if having a black skin (Fanon, 2008 [1985]; see also Wynter 1999). The Other, it then seems, can become more Man if they try to speak Man's language and act like Man, but can never fully become Man. People categorized as the Other and their realities are often invisible in education (including curriculums and textbooks), or appear only to play the specific role of the Other, namely the one who needs to be saved, the one without history, the one who needs to be civilized. At the same time, when the Other attempts to become more Man (confused with being human), the Other renounces their own being and realities (Fanon, 2008 [1985]; see also Wynter 1999).

Education in this way can become motivating for people who are able to identify/be identified with Man, but demotivating for those who do not. This is true for the 'internal Other' of Man such as white women and non-normatively sexual, and for the 'external Other' of Man (Wynter, 2003).[90] And as the intersectionality scholarship shows, for example being female and white has another role to play in this order of truth, compared to for example being female and black (also see paragraph 2.3).

> *With this thereby "verifying," by its systemic production of the constant of the 15 percent school achievement gap between white and Black students, the selected-by-Evolution status of the one, the dysselected- by-Evolution nature of the other, …, thereby enabling the subjects of our orders to continue to experience it as the realization of a true, because ostensibly extrahumanly determined, order.*

Socialization and normalization that has been challenged throughout the centuries. In most recent decades amongst others with the social movements during the sixties and eighties, which included anticolonial movements, feminist movements, Gay Liberationists, anti-black racist movements. It is worth noting that these movements did not only contest the curriculums of formal education, but also the limited access to education. As, for example, generally speaking, colonial powers did not only exclude or limit their colonial subjects in democratic participation, but also created only rudimentary education systems in the colonies (Oomen and Timmer, 2018; also see paragraph 2.3). And within Europe for a long time, access of women to education was almost impossible, as has access to education for lower class populations been. 'Access and equity continue to be enduring concerns in education' (Zajda, 2020).

Strong voiced contestation is currently visible at worldwide Black Lives Matter movements, decolonization movements, feminist movements (Getachew, 2020), indigenous movements, and efforts for what has been called diversity and inclusion. Within these movements, intersectionality appears to have a significant currency. These may ignite types of identity politics that essentialize and in itself become worrisome too.

2.5.2 HUMAN AND HUMAN RIGHTS EDUCATION

Education is also one of the means in which people can be socialized into the logics of human rights. With an increase in number of international declarations, conventions, thematic years, decades and

[90] Wynter also refers to Virginia Woolf's 'A Room of One's Owns', regarding the symbolic representation of women as inferior, and Woodson's 1933 'Miseducation of the Negro', regarding the symbolic representation of Africans and Afro-Americans.

action plans proscribing HRE, a growing body of scholarly work on HRE, and HRE increasingly featuring in national and NGO policy discussions and curriculum review, HRE to appears to play an increasing role in socializing learners (Bajaj 2011; Tibbitts 2012).

Human rights education – as currently often understood – requires education about human rights, through human rights and for human rights (Osler, 2016). Human rights education is thought to normally take a critical stance towards governments and abuse of government power (Tibbitts, 2012), but there appears a lack of a similar critical gaze towards 'human rights' itself in human rights education. For example, Tibbitts (2002) argues that HRE is ultimately about building human rights cultures in our own communities for social change. In explaining social change, she refers to the UN framework that envisions HRE as a tool to strengthen respect for human rights and fundamental freedoms, for the full development of the human personality and the sense of its dignity, to promote understanding and tolerance, and to enable persons to participate effectively in a free society. Other than this, and then referring to different human rights struggles in different nations, she does not critically inquire what is meant with human rights or what a human rights culture precisely entails. It is as if human rights (culture) which she argues should be part and parcel in HRE, is necessarily good for social change towards just societies.

Bajaj (2011) looked into the ideologies discernable in HRE and distinguishes three other human rights education models. These are HRE for Global Citizenship, HRE for coexistence, and HRE for Transformative Action. Baja too argues that such models can help analyzing the impact of HRE and the experiences of participants. She suggests that the mutability of HRE is its strength and that the fact that different organizations with distinct social bases and worldviews ground themselves in the HRE discourse, suggests the richness and possibility of HRE.

What the above-mentioned scholars seem to have in common is their view that human rights education can lead to desirable social change (either with or without the critical observation that state actors can act in a way that limits social change or can turn human rights into something that strengthens state power). What is unclear is how these conceptions of human rights education deal with the ways in which human rights have the potential to both counter or perpetuate the normalization of racism, nor what social change is ultimately desirable or just in these scholars' conceptions of human rights education and the human rights education models they describe or criticize (as we have seen, stating that every human should have equal rights can mean different things to different people, so merely claiming that equality in this sense should be the/ a main goal does not suffice). This is remarkable because, as we have seen above, conceptualizations of human rights are not neutral nor innocent. As we will see in chapter 3 this is also true with regards to human rights within the United Nations human rights framework. Neither is the way in which teachers and pupils understand human rights that straightforward (see chapter 5).

Ahmed (2017) distinguishes three types of human rights education scholars. (1) Diffusion scholars who are concerned with the incorporation of universal human rights discourses into national curricula and textbooks, (2) classification scholars who construct typologies of human rights education, and (3) critical scholars who point out that the revolutionary power of human rights education can become undermined by state powers that use the human rights (education) language to strengthen their state credibility and/or make them eligible for international aid, cooperation or communities (Ahmed,

2017). Ahmed himself suggests that HRE scholars should be attentive to HRE that does not conform to legally sanctioned human rights education as it will then lose its revolutionary potential.[91]

There have been scholars who warn for the danger of a 'declarationist' approach in HRE in which human rights truths are presented as neutral and universal truths, and human rights law as forever stable texts (i.a. Osler, 2016; Okafor & Agbawa, 2001).[92] HRE then appears to be (re-)education of learners into the promise of salvation by adherence to human rights (Okafor & Agbawa, 2001; cf. paragraph 2.3.5). Indeed, scholars in the field of HRE speak of the 'the promise of human rights education as the new civics education for the new world order' (Zajda, 2020). It is then no surprise that Osler (2016) argues that such an approach in HRE might parallel the 19th century civilizing mission of the Catholic Church. Insightful, in this regard, is research performed by Coysh (2014) in Tanzania focusing on human rights education provided by NGOs. She concludes that educators in this context see it as their task to teach learners about human rights as something that is external to learners, and thus not in interaction with the lived experiences and knowledges of learners.[93] Coysh's research shows how human rights are presented as factual, and as readily available and accessible demands and claims against the state. A critical stance understanding of human rights conceptualizations that include historicity of discourses and the question of positionality are thus absent in knowledge production in these forms of HRE. It does not include anything on human rights as contested sites (of struggles over power)[94] or how human rights and related institutionalized concepts might perpetuate inequalities.

2.5.3 TOWARDS THE HUMAN IN HRE

Human rights education that moves toward the human is one that takes into account that current dominant and hegemonic notions of human rights are the outcome of specific historical processes, and that they are based on specific epistemes. Bringing these epistemes out in the open already opens up to teaching in a way that does not contribute to the coloniality of being/truth/freedom/power. As well as showing how human beings, and human communities (including nations and states) are constant in relation and are not single beings.

More concretely, this means that when discussing human rights as a product of the French revolution, this should not only be done as in the context of freedom from the ancient regime. It should be done as discussing a shift in what it means to be human, and how this historical shift continues to play a role in the present. This then immediately brings to the fore the fact that the proclaimed equality was only for a specific category of the human internal to Europe. Entire categories of humans inside Europe, and even more so outside of Europe were relegated to a subhuman sphere.

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[91] To exemplify non-conformity with state or international sanctions, Ahmed (2017) points to specific non-state actors, social movements and social activism in the global South who, as a response to state sovereignty and disillusionment with universal human rights, have adopted HRE centered on disrupting power (Ahmed 2017).

[92] In warning against this type of HRE, Osler, and Okafor and Agbawa also refer to what Paolo Freire's conceptualized as 'banking system'. That is, education in which the learner is imagined as a depository of fixed sets of truth.

[93] See Okafor & Agbawa (2001) for references to research with similar findings in Thailand, Ghana and non-West.

[94] cf. Engle Merry 2006 on human rights as struggles over power.

Just as human rights education that draws on the developments during and after WWII should include the understanding of the human that has found its way in the post WWII UN human rights framework and national constitutions. Again, a very essentialized understanding of the human, excluding humans from both Europe as well as – as the external Other – people in other lands. Human rights in this era was thus also intrinsically linked to entire categories of humans (Colonized) wanting to be included in the category of the human. Not as racialized beings, but as humans.

In this way, human rights education does not become a world civilizing mission originated in the West, but instead shows how not only have Man and human rights always been in relation to the rest of the World.

But human rights education should also show that there was and is life despite the coloniality of being/truth/power/freedom. A way to do this is to bring into consciousness the fact that humans are always in relation and are able to experience themselves and act outside of the Westernized conceptions of being human. This is where daily life experiences play a role. Since humans and thus also learners are neither one single being, including their own (in or outside of the educational) experiences, in human rights education can become a way of making more tangible the idea of relationality in not only being, but also truth, power and freedom.

Human rights education that is to contribute to eliminating racial discrimination, ideally, has to be human rights education that shows how humans have agency, instead of only portraying Man (white Europeans North Americans) has having agency. It also has to include the reality of agency not being limited to relations within human communities, but instead also across human communities; constantly reminding learners that no social group is homogeneous. This can be done both by bringing into consciousness how European histories were related to world histories, and that humans in other lands too articulated their own ways of being. As well as this can be done by bringing to the fore, the experiences – and thus also agency – of the learners themselves.

2.6 CONCLUSION

Human rights. These words often evoke a sense of consent. However, in this chapter I argued that human rights are actually a changing site of contestation, despite the fact that they are hegemonically discursively portrayed and institutionalized as North Atlantic truths turned Universal (see Trouillot, 2002 and 2015 on how North Atlantic Universals are not neutral nor innocent). I thus argue that not only these North Atlantic Universals matter but also Other Universals. So much so that incorporating this in human rights discourses, norms, practices, and thus also in human rights education is indispensable in eliminating racial discrimination. In order to turn to the relation between racism and human rights education, I first turned to the Race question.

I argued that the race question – and, indeed issues concerning gender, sexuality, (dis)able-bodiedness, climate change, and equal distribution of resources – really concerns the human question. I showed this by setting out a metanarrative on how Western hegemonic understandings of being human (human identity). As explained in paragraph 2.2, these hegemonic Western conceptualizations of human identity have been racialized since the 16th century. Whilst it was first Christian that occupied the space of symbolic life, this shifted towards Man. Man_1 in its first religio-secular rendition, and later also Man_2 in its secularized rendition. Man_1 is portrayed as rational and therefore closest to God, whilst Man_2 is he portrayed as eugenically selected and master of scarcity. What these renditions of Christian and Man_{1and2} have in common, is that they rely on suprahuman orders of truth (based on God and/or biology and nature alone). They thus do not include a need to reflect on 'the human aspect' in knowledge production (see chapter 1 and paragraph 2.3 and 2.4).

Both Man and its non or less-human Others are then ascribed a seeming essence, they become essentialized. And seeing that the Other is racialized, both Man and even more so its Other are ascribed a racial unchanging and hereditary essence.

Racialization of human beings is thus founded upon knowledge production that claims to rely on the suprahuman solely. It does not only bring forth an essentialized understanding of humanity but – relevant for this research – also essentialized understandings of human communities. States, nations, nation-states and even continents are hegemonically conceptualized and institutionalized as bounded, finished human communities. Similarly, sovereignty has been conceptualized as a singular and absolute power over such a bounded human community and territory. Finally, law, and relevant for this research, human rights law is also discursively and institutionally portrayed as fixed moral norms. These forms of essentialization have and continue to justify the discursively institutionalized global color line. As must have become clear in this chapter is that because racism relies on racialization of specific bodies, racism does not only shape institutions, global and political alliances, but also subjective understandings and feelings of the Self.

Regarding human rights and the global color line specifically, Man and his nation-states are normalized and naturalized as symbolic life because of adhering to human rights norms. Human rights being the promise for salvation which can be obtained with the help of organizations such as the United Nations, Western and Westernized NGOs and scholars, and overall, the West. In this discursively institutionalized reality, it is those confined to symbolic death, namely the Other to Man in the non-West who are portrayed as needing to be saved. Change towards the Universal good that comes from the West is then thus portrayed as symbolic life. Looking at them, Western hegemonic human rights, are rights of Man. This understanding of human rights of Man, is thinly veiled by the discourse that human rights are for all human beings (paragraph 2.2 and 2.3). A discourse that thus accompanies institutionalized inequalities.

If racism in the global order, is the structure of knowledge and representations that normalizes and naturalizes the socio-economic and political order based on White supremacy and thus along the global color line, then the global color line has been justified and perpetuated by the afore described discursively and institutionally backed orders of truth and thus – amongst others – conceptualizations of human, citizen, nation, national identity, sovereignty, rights, freedom and power. To move towards the end of racism in this sense thus requires de-essentializing of hegemonic (scientific) concepts and the way in which these concepts are institutionalized, are used discursively, have become common sense or normalized, and affect subjective feelings of Self and belonging (see paragraph 2.4). The end of racism thus requires humanization.

One of the tasks set before us is thus to historicize hegemonic conceptualizations and to consider the human aspect in knowledge production. This thus includes taking the role of identity and power seriously. It also includes de-essentialization, leading to a remembering that life is not that which becomes solidified in essentializing discourses and institutions. As we have seen, a conceptual tool that could contributes towards this is the conception of becoming, in the sense that individuals nor human societies are singular beings but a constantly and plural becoming (see paragraph 2.4). From there one can take seriously the ways in which human lives are shaped by identity and power, and thus positionality.

Concerning human rights specifically, it leads to understanding human rights (law) as changing and contested sites. In this sense it is a realization that North Atlantic Universals and Other Universals have – from different perspectives and different positions of power – thus always been part of the 'human rights story'. This brings about a shift away from portraying human rights norms as

necessarily good or evil, but instead towards interrogating whose interpretations or models of moral codes prevail over those of others and under what conditions this takes place (see paragraph 2.4).

Education is one of the key ways in which people become socialized. All the above thus also bring us to the relation between racism and human rights education.

If human rights education should contribute to humanization and consequently the end of racism – which I argue it should – human rights education too should contribute to unveiling the ways in which Western hegemonic discursively institutionalized human rights falsely normalize and naturalize racialization and the global color line. Human rights education can therefore not take human rights and related conceptualizations for granted. Declarationist approaches in human rights education – in which human rights are presented as fixed truths – are not the way to go as they are bound to contribute to the normalization of inequalities that are based on Western hegemonic conceptualizations. Instead, human rights education too should bring back the human aspect back into the equation as ascribed in this chapter and conclusion. This will unsettle the Western coloniality of reality and bring about de-essentialization. It opens up to something different. Something that does allow everybody to be equally human (democratization and de-essentialization of human and human societies) in discourses and institutions. It is a chance we can choose to make particularity universal (paragraph 2.5).

Ultimately, human rights education that contributes to humanization and the elimination of racism thus also provides learners with tools to change the very institutions that contribute to the normalization and naturalization of racism into institutions that normalize and naturalize equality. It also provides learners with tools to remember that they themselves are not singular beings, with singular understandings of self and belonging.

In the following chapter we will turn to how human rights and human rights education is conceptualized and institutionalized at the United Nations (UN). More specifically, the chapter analyzes UN human rights conventions and the way in which these have been interpreted by treaty bodies. It does so by considering the conceptual framework set out above which is related to the ways in which racism in the form of the global color line has been normalized and naturalized, and the ways in which human rights (education) can contribute to or perpetuate racism.

3. HRE AND THE UNITED NATIONS

3.1 INTRODUCTION

This chapter looks into the ways human rights and human rights education are conceptualized and institutionalized at the United Nations. More specifically, it focusses on human rights conventions and the way in which these have been interpreted by UN Treaty bodies.[95] Since this work analyses the relation between human rights education and racism, the chapter mainly focuses on the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the work of its Treaty Body, the Committee on the Elimination of All Forms of Racial Discrimination (CERD). However, this chapter does place the ICERD in a broader analysis of the UN human rights education framework in order to better understand its place in it. Therefore, this chapter includes analysis of the 1948 Universal Declaration of Human Rights (UDHR) which was the first UN legal document that codified a human rights bill, and of the nine UN core international human rights instruments.[96] The nine UN core human rights instruments consist of the abovementioned ICERD, and the following human rights conventions:[97]

- The 1966 International Covenant on Civil and Political Rights (ICCPR);
- The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);[98]
- The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- The 1989 Convention on the Rights of the Child (CRC);
- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW);[99]
- The 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CED); and

[95] Treaty bodies are the bodies established by UN international human rights conventions and are tasked with monitoring the protection and implementation of human rights, and state-compliance to their human rights obligations.

[96] The UN has marked a number of conventions as its core human rights instruments, see https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx. For an overview of more UN human rights declarations and conventions, see: https://ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx. It would exceed the limits of this work to include every and any UN human rights document.

[97] The conventions are enumerated chronologically based on the year of adoption by the UN General Assembly.

[98] The Convention followed a period of 30 years in which the United Nations Commission on the Status of Women (established in 1946) monitored the situation of women ('s rights). The Commission highlighted that in various areas, women were not treated equally to man. Think of restricted legal capacity, lack of voting rights, restricted reproductive rights, and unequal rights to choices with regard to marriage, command over property, and parenthood, see https://ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx.

[99] Compared to the other 8 core instruments, The ICMW has a remarkable low number of signatures and ratifications, see https://indicators.ohchr.org.

- The 2006 Convention on the Rights of Persons with Disabilities (CRPD).

The following paragraph will briefly – and (as also follows from the logic in chapter 1 and 2) non-exhaustively introduce the UN human rights framework and, more elaborately, the ICERD. Paragraph 3.3 analyses the different understandings of what 'rights' are within the UN human rights framework. Paragraph 3.4 is an analysis of the conceptualization of the 'human' in the UN human rights framework. The aim of the analysis in paragraphs 3.3 and 3.4 is to first have a better understanding of the ways in which rights and humans are discursively institutionalized within the UN human rights framework. This opens the road for the analysis in paragraph 3.5 which focuses on how the UN human rights framework deals with these issues with respect to human rights education. The chapter ends with a conclusion in paragraph 3.6 in which the findings of the previous paragraphs are taken together.

3.2 INTRODUCING HUMAN RIGHTS AT THE UN AND THE ICERD

3.2.1 HUMAN RIGHTS AND THE UNITED NATIONS

The geopolitical momentum created during and after WWII was one that responded to the effects of the totalitarianism of Nazi Germany in Europe, the tensions between capitalism and communism, and the uprisings for independence in the global South. It caused a geopolitical shift in the relations between sovereign states – with the US coming out of the war as the most powerful and imperial state – and the establishment of a still increasing number of sovereign nation states. It also created the momentum for the establishment of the United Nations; an international organization by international public law with the power to intervene in sovereign states. The establishment of the UN was led by the United States, and with significant roles played by Russia, China, and also France and Britain. Like Mignolo (2009) observed, in its role, the United States politics of foreign relations had in mind regarding its global design, 'a) the rebuilding of Europe after the Holocaust and World War II; b) the "communist menace," which was added to the old list of pagans, Saracens, Indians, Blacks, and now communists; and c) the uprisings in the Third World'.[100]

We currently still live in the era where these shifts and the establishment of the UN play a significant role. Regardless of what this shift has brought about, the way in which human rights have been discursively institutionalized post WWII cannot be seen as standing apart from the discursive institutionalization of rights before WWII. It is therefore with due reason that theories, discourses and practices of human rights, and actual human rights norms are traced back to the pre-WWII era (i.a. Barreto, 2012).

Before the end of WWII, earlier attempts had been made to include human rights in international law. For example, after WWI several proposals to include human rights were made in the context of the

[100] As we will also see below, the motives for the USA and the USSR to support for self- determination of colonial locales were not so much the recognition of the right to self-determination as such, but their politics of foreign relations and global design. As Mignolo (2009) writes: 'very much like the "independence" of South Americans from Spain and Portugal, to build a nation-state that under the fiction of sovereignty depended on France in knowledge, culture and politics and from England in the economy, de- colonized countries in Asia and Africa sooner or later moved under the arm of uncle Sam'. See also Baumgärtel et. al (2008), and Oomen and Timmer (2018).

League of Nations.[101] In the end however, the League of Nations was established in 1919 with the treaty of Versailles without any reference to human rights. The historic Western discourse of portraying racialized people as natural children in need of guidance did continue its way into the League of Nations, which was a hierarchical international institution with among others the Mandates System. The Mandate System classified non-self-governing territories as A-, B-, and C-class mandates. According to the Mandates System, the guidance of peoples in these territories should be entrusted to advanced nations. The difference in Mandate status differed based on the stage of development of the people in these territories, including their geographical situation, economic conditions, and similar circumstances (Thornberry, 2016).[102] The civilizing mission (see chapter 2.2) underlain by its racist worldview thus continued within the Mandate System.

With the adoption of the 1945 United Nations Charter – an international convention based on public international law – the United Nations institutionalized a new system of global governance (Whelan 2014). This post- World War II legal framework, was one of the international sites in which human rights became codified in international conventions.[103] During the drafting process of the United Nations Charter, states that had declared war on Germany and Japan and had subscribed to the United Nations Declaration, were invited to participate in the preparation of the UN Charter.[104] This

[101] In 1919 Japan, as one of the 'winners' after WWI, pushed for the inclusion of a clause on human rights and racial equality in international law (Thornberry, 2016; Lauren, 1988). A majority of the League of Nations Commission voted for a proposed amendment on this matter, but this vote was unilaterally overturned by the Commission's chairman, USA president Woodrow Wilson; a true display of power. Among the concerns of USA politicians was that 'equal rights cannot be accorded to Oriental peoples without imperilling our own national existence and destroying western civilization', and that the USA ''race issue' would be raised throughout the world' (Lauren, 1988). Remarkably, the USA ended up not being part of the League of Nations because the US Senate did not ratify the Treaty of Versailles. There were also proposals on freedom of religion, equality of nations and equality of nationals. These proposals were all rejected. What was included was a system of minority protection within Europe (Thornberry, 2016).

[102] Remarkably, these grounds continue to be used as a justification to systemically grant people in certain territories less human rights (protection). Relevant to this work (see chapter 4 and 5) is that within the Kingdom of the Netherlands, Bonaire, Saba and Sint Eustatius (three Caribbean countries) were initially integrated within the Netherlands in 2010 with a differentiation clause based on which people on these islands had unequal rights compared to those in Europe because of 'economic and social conditions, the big distance to the European part of the Netherlands, their insular character, small size and population size, geographical conditions, climate and other factors that make these islands substantially different from the European part of the Netherlands'. Differentiation is now based on a differentiation clause that determines that 'rules can be established and specific measures can be taken with a view of special circumstances that make these public bodies substantially different from the European part of the Netherlands' (134(4) Dutch constitution). The way in which this differentiation clause is applied appears to be rather arbitrary. See chapter 4.3.

[103] Apart from human rights within the United Nations, one can also think of human rights documents adopted within the African Union, the Association of Southeast Asian Nations, the Council of Europe, the European Union, the League of Arab States, and the Organization of American States. Again, this does not consider counter-hegemonic or non-hegemonic forms of norms on amongst others equality and freedom within and between other types of human societies. It however considers the sovereign states as conceptualized in Western hegemonic conceptualization, see chapter 2.

[104] The UN Charter was preceded by the Atlantic Charter, signed on August 14, 1941 by the then president of the USA, Roosevelt, and the then prime ministers of the UK, Churchill. Churchill and Roosevelt hoped the Atlantic Charter would contribute to swing USA opinion into involvement in the war. This, however, did not happen until the Japanese bombing on Pearl Harbor on December 7, 1941, see https://www.thoughtco.com/eight-points-of-the-atlantic-charter-105517. See also the 'Four Freedoms Speech' held by Roosevelt for his 1941 State of the Union on January 6th that year, https://www.roosevelt.nl/fdr-four-

therefore did not include the colonies as they were not considered sovereign states. They were not included despite the fact that decisions were made by colonial states on behalf of the population in these colonies. Strikingly, racialized men and women in the colonies and in the USA had been deemed fit enough to participate in the 'liberation of Europe' in World War II in combat, at oil refineries and other sectors in the war industry (i.a. Amoetmoekrim, 2018).[105] However, they were apparently not deemed fit to participate – in an institutionalized manner – in decision making processes concerning themselves (!) and the world at large. That the drafting processes leading to the UN Charter knew these institutionalized forms of in- and exclusion did of course not keep people from around the world from trying to influence these drafting processes (see chapter 2.4 and also below).

During the drafting process discussions took place regarding – amongst others – the relation between the United Nations and already existing regional organisations such as the Inter-American System and the Arab League. Another significant topic was the veto right of China, France, Russia, the USA, and the UK in the Security Council. That these latter states eventually became permanent members of the Security Council with each having a veto right (see below) not only reflects the power dynamic of the post-WWII era but also perpetuates it. Other significant topics were the International Court of Justice, and the establishment of the UN Trusteeship that governed a number of non-self-governing territories and their peoples.[106]

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freedoms-speech-1941 in which he argues for the involvement in the war, and in which he sets out his four freedoms.
The Atlantic Charter included eight main points, of which the third was: "*they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.*" The principle was promptly used by British colonies to enforce claims for self-rule and independence. This led the British cabinet to explicitly interpret the third point of the Atlantic Charter as being applicable to Europe only. Roosevelt however, publicly interpreted the point as being applicable to 'all humanity' (Baumgärtel e.a. 2008, p. 64-65).
The Atlantic Charter was followed by the United Nations Declaration, referring to the Atlantic Charter, which was signed by twenty six states (the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, Union of South Africa, Yugoslavia). Subsequent member states were Mexico, Philippines, Ethiopia, Iraq, Brazil, Bolivia, Iran, Colombia, Liberia, France, Ecuador, Peru, Chile, Paraguay, Venezuela, Uruguay, Turkey, Egypt, Saudi Arabia, Syria, Lebanon, see https://www.un.org/en/sections/history-united-nations-charter/1942-declaration-united-nations/index.html .

[105] Amatmoekrim (2018) concludes in her analyses that deliberate and extensive efforts were made to keep the presence of non-White people out of narratives on WWII. Relevant to chapter 4 and 5, Aruba and Curaçao (both Caribbean islands and part of the Kingdom of the Netherlands) had oil refineries that delivered oil to the Allies. Curaçao still has to deal with the natural disaster that was left behind due to the oil refinery activities of that time. The refinery activities left an enormous amount of toxic substances behind which still lies in one of its bays. The pollution is known locally as *the Asfaltmeer* (Asphalt Lake). For Curaçao, see i.a. Esajas (2020) and Amatmoekrim (2018), but also the documentary Geographies of Freedom by Egbert Alejandro Martina and Miguel Peres dos Santos (https://research-development.hetnieuweinstituut.nl/geographies-freedom).

[106] https://www.un.org/en/sections/history-united-nations-charter/1945-san-francisco-conference/index.html.
The League of Nations had a system of territorial trusteeship for non-self-governing territories. The United Nations trusteeship system was to deal only with the territories that had fallen under the League of Nations trusteeship system. Other non-self-governing territories (colonies) were placed under Chapter XI of the UN Charter. According to DuBois, the latter disregarded the issue of colonial self-government and independence (Baumgärtel e.a. 2008, p. 65-66).

The UN Charter and the Statute of the International Court of Justice were signed on 26 June 1945 during the San Francisco Conference by 51 Member States.[107]

The United Nations was established with the following principal organs: the General Assembly, the Security Council,[108] the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat (article 7 UN Charter). The General Assembly consists of all the Member States of the United Nations (article 9 UN Charter) with each one vote (article 18 UN Charter) and is vested with the power to discuss any question or matter within the scope of the UN Charter (art. 10 UN Charter). It is also the organ that adopts (human rights) declarations and conventions, which can subsequently be signed and ratified by UN Member States.

According to the UN Charter, the purpose of the UN is to maintain international peace and security, to develop friendly relations among nations, to achieve international co-operation, and to be a center for harmonizing the actions of nations in the attainment of these common ends (article 1 UN Charter).[109] The UN Charter does include references to human rights in its preamble:

> *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*

And in its article 1(3):

> *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*

However, the UN Charter does not further specify what human rights are.[110] Within the framework of the UN, a first human rights bill was later created with the Universal Declaration on Human Rights

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[107] Poland (one of the 51 states) signed the charter on June 28 because it had not been able to send a representative to the San Francisco Conference. The other 50 states were China, Soviet Union, United Kingdom, USA, France, Argentina, Australia, Belgium, Bolivia, Brazil, Byelorussia, Canada, Chile, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Saudi Arabia, Syria, Turkey, Ukraine, South Africa, Uruguay, Venezuala, Yugoslavia, see https://treaties.un.org/doc/Publication/CTC/uncharter.pdf for a pdf file of the original Charter.

[108] The Security Council is primarily responsible for the maintenance of international peace and security (article 24 UN Charter), and consists of only fifteen Member States (article 23 UN Charter). China, France, Russia, the UK, and the USA are permanent members. The other ten seats of the Security Council are for non-permanent members which are elected every two years (article 23 UN Chapter). Each Member State of the Security Council has one vote, but the five permanent members have veto rights (article 27 UN Charter).

[109] Remarkably, the UN Charter thus envision friendly relations amongst nations, but membership is open to states. The UN Charter thus does not clarify if the words nation and state are assigned different or the same meanings, making them seemingly interchangeable or conflated, cf. chapter 2 on the conflation of nation and state.

[110] Stating that men and women have equal rights, contrasts starkly with national human rights declarations from the 18th century, see chapter 2 of this work. In this context also see article 8 UN Charter, which reads: *the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs*.

(UDHR), adopted by the UN General Assembly on December 10, 1948. After the UDHR multiple human rights declarations and conventions have been adopted by the UN General Assembly, which have been signed and ratified by numerous states.[111]

Colonized people, those subject to colonial rule, saw the post WWII geopolitical shift and human rights talk it stirred as a chance to also claim human rights for themselves. They thus co-opted human rights discourses in an effort to have themselves included in the category of human (instead of sub-human, second class subject and subordinates). This raised difficulties for European colonial powers, as they normally gave their colonial subjects none, or at the most few, opportunities of democratic participation, excluded them from sovereignty, political and national citizenship and rights, and created only rudimentary education systems in the colonies (i.a. Oomen en Timmer, 2018, also see chapter 2).

As European colonial states did initially not want to grant colonized people the same human rights as their own citizens, colonized peoples claimed that they – as peoples – needed the group right to self-determination to be able to grant themselves human rights. With this, the right to self-determination eventually became articulated as a *sine qua non* for human rights and therefore a human right in itself (Burke, 2010). The right to self-determination became conceptualized as the right of colonized peoples (thus a group right instead of an individual right) to choose their own political status, with as the ultimate aim becoming an independent sovereign state. A sovereign state, equally sovereign to all other sovereign states. The latter being the premise of a Westphalian understanding of sovereignty (Anghie, 2015; Bonilla, 2017; see also chapter 2). Understanding imperialism as official colonialism, in terms of international law, imperialism ended with the emergence of colonized populations as peoples with the right to self-determination (whether or not leading to those peoples forming their own sovereign states) (Anghie, 2015).[112]

As many commentators have observed there thus lay a real hypocrisy in the post-WWII turn to international human rights. Césaire therefore wrote that it was not the crimes of Hitler that the humanistic Christian bourgeois of the twentieth century could not forgive, namely the crime against and the humiliation of human kind. What the humanistic Christian bourgeoisie could actually not forgive, was 'the crime against the white man, the humiliation of the white man, and the fact that he applied to Europe colonialist procedures which until then had been reserved exclusively for the Arabs of Algeria, the coolies of India, and the blacks of Africa' (Césaire, 2000 [1955]). Whereas Nazism and anti-semitism was unforgiveable, colonialism and racism were justified as they were a means of civilizing the colonized. It is thus no humanism, but a racist pseudo-humanism (Césaire, 2000 [1955]; Maldonado-Torres, 2017).

3.2.2 INTRODUCING THE ICERD

[111] Declarations are not legally binding, conventions are. Whereas Member States of Declarations declare themselves committed to the norms of the declarations, with conventions Member States can actually be held legally responsible for violation of the norms in the conventions.

[112] By now it has been accepted that the ultimate aim of the right to self-determination is not necessarily becoming an independent sovereign state.

The ICERD was adopted on 21 December 1965. [113] According to its preamble, the ICERD aims to eliminate all forms of racial discrimination. It does so through the rights included in its substantial (articles 1-7) and through its procedural provisions which include monitoring mechanisms (articles 8-16).[114] ICERD was the first UN human rights convention that created an entity – a Treaty Body – tasked with monitoring the implementation of human rights (article 8) and that provided the possibility for individuals to complain about the violation of human rights (article 14 ICERD).

The Treaty Body to the ICERD is the Committee on the Elimination of Racial Discrimination (CERD). It consists of eighteen experts, elected by Member States for a term of four years (article 8 ICERD).[115] Member States report to the CERD on their progress regarding the implementation of the CERD. [116] The CERD on its part assesses those so-called State reports and delivers concluding observations (art. 9(1) CERD). The CERD also makes general recommendations (art. 9(2) CERD), has the power to receive and assess complaints of States about other States (art. 11 CERD) and individual complaints (Art. 14 CERD).[117] Furthermore, the ICERD includes the provision that if two or more Member States have a dispute about the interpretation of the ICERD, the matter can be referred to the International Court of Justice (art. 22 ICERD).

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[113] The convention has been signed and ratified by 182 State Parties, and signed without ratification by another three other states. Perhaps relevant for this research in the case of Curaçao (see Chapter 4), the Kingdom of the Netherlands signed the convention in 1966.

[114] Articles 17-25 ICERD determine the terms under which the ICERD can be signed by states, is circulated, enters into force, and determines the authenticity of the Chinese, English, French, Russian and Spanish versions of the ICERD.

[115] According to article 8 ICERD, these experts are 'of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.' CERD General Recommendation 9 stresses that states are to respect the independent status of the CERD experts. The General Recommendation was adopted after CERD expert had been confronted with pressure from representative states, organizations and groups (Thornberry 2016, p. 44).

[116] The CERD was the first United Nations human rights treaty that established a committee competent to monitor the implementation of the same treaty by member states, see Henrard, 2008; and Keane and Waughray (2017).

[117] The recognition of the Committee's competence to receive individual complaints, is facultative for the State members. The CERD was the first UN Convention with individual's right of petition. There had been much to do about the inclusion of a right to petition in human rights convention within the UN framework. Debates on this matter started in 1947. Opposition to the right of individual communications was formed by 'western' states and a Soviet block. Burke points out the role of the USA and the UK. According to Burke USA was against the right of petition because it would suffer embarrassment due to institutionalized racism prevalent in that country, and that the UK was an opponent because of the discrepancy between the rights proclaimed and the situation in the colonies; it was fearing petitions from its own colonies (Burke 2016, p. 68). 'Third world' countries played a pivotal role in turning the UN into an organization that can deal with individual complaints, notably by the powers granted to and the work of the Special Committee of 24, Special Committee on Apartheid, and through innumerous debates on this matter (Burke 2016, p. 60). Notable pro petition 'Third World voices' are Lebanese Charles Malik, Indian Hansa Mehta, and Philippine Carlos Romulo (Burke, p.61). The right to petition eventually made its way because of a significant number of 'third world' countries persistence and subsequent reactive attitude of 'western' states. But this did not happen in a straight-forward fashion. Interests shifted constantly. Regarding the ICERD's right to petition, Ghanian George Lamptey was central to the success of the ICERD in general and the adoption of the ICERD's optional petition system (Burke 2016, p.60-61 and 68).

The ICERD was drafted and adopted in the 1960's, a time in which the Race Issue was prominently set on the agendas worldwide: there were ongoing struggles for political freedom from colonization,[118] a number of former colonies obtained legal sovereignty and thus formed new independent states, the 1955 Bandung Conference took place (where human rights too was accorded a prominent place on the agenda), Pan African congresses took place, different uprisings related to class and race struggles took place world-wide such as the Mau- Mau uprisings (1952-1960), the continued Malayan Emergency (1948 – 1960), and uprisings in Curaçao (1969). It was the time when Nelson Mandela called upon Black South Africans to strike in order to oppose the decision of White South Africans to turn South Africa into a White nationalist Republic,[119] the time of the Black Power movement in the USA and similar movements world-wide[120].

Within the UN this was a time in which the UN General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples. This resolution is often simply called Resolution 1514 (XV) and was adopted by the UN General Assembly in December 1960.[121] The UN also undertook action because of the 'Swastika epidemic'[122] with the UN General Assembly by passing a resolution condemning all manifestations of racial, religious and national hatred. It was this resolution, which had been a reaction to anti-semitism in Europe, that was to eventually lead to the drafting and adoption of the ICERD.[123]

After the resolution, the topic of racial, religious and national hatred was placed on the 1961 agenda of the General Assembly. The topic was not actually dealt with in 1961 other than that three African states ensured that the topic be put on the agenda for 1962. In 1962, deliberations in the Third Committee of the General Assembly started off with taking together racial and religious discrimination. Eventually however, these two topics were separated (Thornberry, 2016). Within the Third Committee a resolution was presented by Central African Republic, Chad, Dahomey (Benin), Guinea, Ivory Coast, Mali, Mauritania, Niger and Upper Volta calling for a convention on the

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[118] With respect to South Africa, the British government wanted to establish a Central African Federation where white political leadership would continue to rule. Decolonization thus went hand in hand with continued ideas of White supremacy.

[119] In the case of South Africa, independence was not accompanied with significant formal power and freedom for non-Whites. Instead, it was Whites who had political powers and the socio-economic privileges that came with it. And although the system of apartheid – institutionalized (in law) racial segregation and oppression of non-Whites – is acknowledged to be set into place after the 1948 elections, racial segregration and oppression, both informal and formal segregation and oppression already existed for centuries. Think only of the mere fact that so classified Asians, Coloreds and Africans were almost all excluded from voting rights for the 1948 election.

[120] See for example Quinn (2014) for (the influence of) Black power movements in the Caribbean.

[121] In the first years of the 1960's, the full effects of Resolutions 1514 (XV) were still unclear. For example, in 1960 (and thus before the adoption of Resolution 1514 (XV)), eleven countries had obtained political independence. But in 1961 only one other former colony had obtained political independence (Jensen 2016).

[122] This was a term used for the significant outbursts of anti-Semitism which mainly took place in Europe in 1959 and 1960 (Jensen 2016; Thornberry 2016).

[123] It is remarkable that it took anti-Semitism for the UN to take such an explicit stance against racial discrimination. It brings to mind the words of Césaire (2000 [1955]), who stated that, witnessing the attitude of many Europeans and Americans after WWII, what they were really outraged about was not necessarily racism in general and against any racialized person, but only anti-Semitism and Nazism within Europe, see paragraph 3.2.1.

elimination of racial discrimination. After debates, Mauritania together with 32 co-sponsors presented a resolution calling for a declaration and subsequently a convention on the elimination of all forms of racial discrimination. This resolution was adopted unanimously by the Third Committee and later by the General Assembly (Thornbery, 2016; Jensen, 2016).

The UN Declaration on the Elimination of all forms of Racial Discrimination was adopted in 1963.[124] During the drafting process of the ICERD – which took place first in the Sub-Commission, then the Commission on Human Rights, the Economic and Social Council, the Third Committee of the General Assembly and finally, the General Assembly – was provided with input of not only other UN bodies, UN specialized agencies, and state representatives, but also the input of non-governmental organizations.[125] Aiming to have a legally enforceable instrument to combat racial discrimination, delegates of Ghana and the Philippines, with backing of delegates from the so-called Afro – Asian group, tried their best to reach consensus on the text of the Convention. Their aim was to have as many states possible to endorse the anti-discrimination principles in the forthcoming legal document (Jensen 2016). This also lead state representatives to agree to not include specific forms of racial discrimination in the ICERD.[126] Instead, the preamble of the ICERD articulates in more general terms that its aim is to speedily eliminate 'racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination'.[127] However, the connection between colonialism and racial discrimination is specifically mentioned in the ICERD. The preamble to the ICERD namely mentions Resolution 1514 (XV) and confirms that the UN condemns colonialism and all practices of segregation and discrimination associated therewith.[128]

In multiple ways, the ICERD was revolutionary; it was the UN's first legally binding human rights document, targeted racial discrimination as a human rights issue in international law, targeted racial discrimination and its manifestation in the form of colonialism, was the first UN human rights document with the possibility of State complaints, individual complaints, and the possibility for States

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[124] During the drafting and adoption process of the UN Declaration on the Elimination of all forms of Racial Discrimination (DERD), repeated reference was made to the connection between racial discrimination and colonialism, South African apartheid, USA racial segregation, anti-Semitism and Zionism.

[125] See for the role of non-state actors on human rights processes at the UN, and also how a disbalance exists between actors that are and those that are not allowed to provide input (Engle Merry 2006).

[126] Specific forms were not included in the substantive articles of the ICERD, even if it was proposed that some specific forms be included, such as anti-Semitism, Nazism, and neo-Nazism, Zionism, see Yearbook of the United Nations 1965, p. 434. See also Jensen (2016) on how the topic of the inclusion of specific forms of racial discrimination was paired with strategic political attacks by the delegates of some countries to other countries.

[127] Like during the drafting process, the adoption speeches for the adoption of the ICERD by the UN General Assembly, displayed how the ICERD had different meanings and that different issues were at stake for different states. In varying degrees state representatives emphasized ICERD as a step to combat forms of racial discrimination such as anti-Semitism, Nazi-ideology, Zionism and/or manifestations of racial discrimination like colonialism and apartheid (Jensen 2016 p. 122; Thornberry 2016, p. 1-2). The interrelation between colonialism and racial discrimination was repeatedly and persistently emphasized by many delegates (Thornberry 2016, p. 9).

[128] On 20 December 1965 (one day before the adoption of the ICERD), the General Assembly adopted Resolution 2105 (XX) on The Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

to start a case before the ICJ. Finally, it was also the first UN human rights document that established a treaty body for the implementation of the human rights document. However, as we will see, some of its revolutionary potential was also quickly limited; in the text of the convention through the ways in which it sustains racial borders (Achiume, 2020; Foster and Baker, 2020), and in the application of the ICERD right after its adoption.[129]

The time of the creation and adoption of the ICERD was thus a time of significant changes. Significant changes which cannot be seen apart from the wider geo-political context. The wider geo-political context included the continuing Cold War. Within this context the USA and USSR played considerable roles in struggles for independence and subsequent civil wars in former colonies. It was a way to keep capitalism and communism, respectively, out of (potentially) newly independent states (Mignolo 2009; Kattan 2015).[130] Supporting the right to self-determination of colonized peoples was also a way to detract territories, people, and thus also resources from under the direct power of formal colonial states, making it more accessible for other imperial world powers, most notably the USA (Mignolo 2009).[131]

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[129] The struggle of non-European peoples to self-determination and the geo-political context in which European colonial powers were losing its colonies due to the right to self-determination being granted to its colonies and European powers pushing against this, also played out in ICJ court-cases concerning the right to self-determination, notably in the South West Africa cases. Kattan (2015) writes about these cases: '*the 1966 Decision, raises uncomfortable questions about the politics of international law within the Court in the 1960s. In many ways, Judge Zafrulla's struggle with Sir Percy at the ICJ can be analogized to the struggle of non-European peoples to self-determination. The internal ''legal'' struggle within the Court paralleled the larger ''political'' struggle outside the Court.*'
The South West Africa cases concerned the case of Ethiopia and Liberia against South Africa. Ethiopia and Liberia challenged the continuing presence of apartheid South Africa in South West Africa. Contrary to the ICJ Advisory Opinion of 1956 on the admissibility of the case, the 1966 ICJ judgement held that the case was inadmissible. Relying on this procedural argument, the ICJ thus refrained from assessing the merits of the case. Even though the 1966 decision was overturned in 1971, South Africa continued its presence in South West Africa for many years to come. The 1966 ICJ judgement did tremendously add to the geopolitical momentum that created the need for self-determination as a human right. As we will see in the following paragraph, this also impacted the content of the two UN human rights conventions that were adopted in 1967, namely the ICCPR and the ICESCR (Jensen 2016). The South West Africa cases: International Status of South-West Africa, Advisory Opinion, [1950] I.C.J. Rep. 128; South-West Africa—Voting Procedure, Advisory Opinion of 7 June 1955, [1955] I.C.J. Rep. 67; Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion of 1 June 1956, [1956] I.C.J. Rep. 23; South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment of 21 December 1962, [1962] I.C.J. Rep. 319; South West Africa, Second Phase, Judgment, [1966] I.C.J. Rep. 6; and Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, [1971] I.C.J. Rep. 16.

[130] Also see the documentary Cuba An African Odyssey 2007 directed by Jihan El Tahri, that shows how struggles for independence of colonized peoples were never only struggles for independence in the sense that other world power exercised significant influence on when, how and by whom power was established in these territories and in newly independent states.

[131] In contrast, European (colonial) states, were quick to argue for people in the colonies to be exempted from international rights to self-determination and international human rights norms, both within during the pre-UN era (think of Churchill's argument that the right to self-determination mentioned in the Atlantic Charter applied only to European states) to within the UN-framework with so-called colonial clauses (see Jensen (2016), Burke (2010) and paragraph … below) to within European international regional organizations such as the Council of Europe and the EU (Oomen and Timmer 2018). It came to be understood that without the right to self-determination, large numbers of people would be denied (equal) access to human rights, most notably people in colonies. This justified arguing that the right to self-determination is not only a human right but also a sine qua

3.3 HUMAN 'RIGHTS' AND THE UN

After having introduced human rights instruments and the ICERD more specifically (paragraph 3.2), we will now go a layer deeper by considering what is meant by 'rights' within the UN human rights framework (paragraph 3.3).

3.3.1 NATURAL RIGHTS

As can be found time and again in the preambles of UN human rights conventions, human rights are articulated as inalienable rights that derive from the human.[132] Human rights, if one would rely solely on these preambles, could thus be understood as naturally deriving from human beings; they are birth rights. Furthermore, the 1948 UDHR – to which practically all preambles of subsequent UN human rights declarations and conventions refer to – includes the following in article 1:

> *All human beings are born free and equal in dignity and rights.*

It can be concluded that according to the texts of the UDHR and subsequent UN human rights conventions, human rights are essentially natural rights and as such universal.[133] Furthermore, human rights are portrayed that is necessarily good. We can find this in the preamble of the UDHR which reads:

> *… THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. …*

The UDHR's human rights are thus natural rights,[134] and are proclaimed by the General Assembly as a common standard of achievement for the entire world. It thus seems like the representatives of the Member States that were part of the General Assembly in 1948 articulated, in a neutral and universal fashion, a natural good for humanity as a whole.[135] A natural good that appears to be a fixed set of norms. Within the discourse presented by the UDHR, UDHR human rights thus form a common standard defined by some for all. In this same line of reasoning it is a common standard which has

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non for the realization of other human rights. The same is true for the context of the Council of Europe (Burke 2010).

[132] See for example the preambles of the UDHR, ICCPR, ICESCR, CAT, CEDAW, CRC, CPED, and CRPD.

[133] The UN Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993 reaffirmed human rights to be birthrights and universal, and that the protection of these rights is the first responsibility of Governments; also see the interpretation of the UDHR in the 1996 UN Fact Sheet published on the website of the United Nations Human Rights Office of the High Commissioner (United Nations 1996).

[134] Also see the 1996 United Nation Fact Sheet no.2 which asserts that: '… the right to liberty and equality is man's birthright and cannot be alienated'. See https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf

[135] As Whelan (2014) articulates, the aim of the UDHR was to translate moral obligations into legal ones.

later been agreed upon by close to all (new) sovereign states as these states have signed and ratified the UDHR.[136] Put like this, it could be said – and it is often said – that UN human rights are indeed universal since almost all sovereign states have signed and ratified the UDHR and other main declarations and treaties. It is a type of reasoning that depends on the idea (or rather the illusion) that all states are equally free and sovereign, and that human rights are neutral, universal and somehow a fixed set of norms (see chapter 2).

The UDHR thus does not in any way acknowledge that human rights standards (and the way they are interpreted and applied) are not neutral or normal nor natural, but rely on different epistemological and ontological understandings, and are influenced by historic power struggles (hegemony and counter-hegemony, see chapter 2). This is the discursive understanding institutionalized by the UDHR, and to which subsequent human rights conventions and declarations refer to. Any form of oppression, inequalities, and injustices perpetuated by UN human rights standards therefore also become normalized and naturalized. And thus, again it becomes inconceivable to be against human rights (cf. Trouillot 2015 and chapter 1).

This work does not analyze all forms of oppression, inequalities and injustices that are perpetuated by UN human rights standards, but we will encounter some of them in the following paragraph. However, I do already want to point out some forms of oppression that can be said to be normalized and naturalized by the UDHR. We can find this in the quote above from the preamble of the UDHR. The UDHR sets out to secure the right of people, including the rights of people in non-self-governing territories. However, the existence of non-self-governing people is not problematized. The UDHR preamble appears to merely acknowledge that there are Member States with own peoples and Others, namely peoples under their jurisdiction. The inequalities inherent in Member States having own peoples and Other peoples in other territories are thus now not only perpetuated in the UDHR, but the UDHR also contributes to normalizing and naturalizing it.[137]

Moreover, human rights declarations and conventions are actually drafted within the UN framework and adopted by the UN General Assembly, before Member States decide on signing and ratifying these declarations and conventions. The UN framework however – as we have seen in paragraph 3.2 - has historically been very unequal and excluding in its very structure. One could for example, point out the power imbalance within the Security Council, with a number of member states being permanent members and having veto rights, in contrast to the overwhelming majority of states that have to rotate the other seats in the Security Council and do not have a veto right (see paragraph 3.2).

Furthermore, the drafting and adoption of the UN human rights do not occur in a neutral a-historical manner in which power, different interests and strategies, negotiations and different epistemological

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[136] The UDHR has now been signed and ratified by close to 200 states.

[137] The UDHR does not include the right to self-determination nor an explicit right to equal treatment. According to Oomen and Timmer (2018) this is an indication of the dominance of Western (colonial) powers in the negotiating process. Inclusion of the phrase '*to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction*' does also reflect the need for the securing of human rights of Other people in Other places but, does not question, criticize, or otherwise reflect that people in these different places should indeed be equal. Instead, as stated, it naturalizes hierarchies. Not only by categorizing peoples and territories in this way but even more so by integrating it in the discourse of natural rights and a common standard of achievement.

and ontological understandings do not play a role.[138] On the contrary. If we look at the UDHR's human rights, for example, they were formulated in the geo-political context and within the unequal and excluding structure of the UN as briefly described above. Including the fact that in 1948 – the year of the adoption of the UDHR – there were only a limited number of Member States, with millions of peoples around the globe still colonized by a number of these Member States. The UDHR was drafted by the UN Human Rights Commission under the leadership of Eleanor Roosevelt[139] – not coincidentally of the USA – and further consisted of René Cassin of France, Peng-Chun Chang of China, Hernán Santa Cruz of Chile, Colonel William Roy Hodgson of Australia, Vladimir Koretsky of the USSR and Charles Malik of Lebanon who all participated in negotiations about the text of the UDHR (i.a. Oomen and Timmer, 2018). Throughout the drafting and adoption process, the text was modified and influenced by a large range of individuals, governmental and non-governmental organizations, and UN specialized agencies such as the International Labour Organization and UNESCO (i.a. Baumgärtel et al., 2008; Jensen, 201 ; Burke, 2010; Whelan, 2014). Significantly, a large range of individuals and organizations – including those arguing for radical equality, and those wanting to end racism and the Global color line – did not find their ideals codified in the UDHR. Furthermore, there were of course also individuals and organizations who remained unheard.[140]

Relevant for this work is that, not only is the self-proclaimed (by the UN General Assembly) common standard of human rights deceivingly normalized and naturalized, the UDHR itself already explicitly stressed the need for teaching and educating people into *these* human rights. It raises the question if human rights education should then consist of education in a natural law, a-historicized, neutral understanding of human rights.[141] We will look at this in paragraph 3.5.

For now we will turn our gaze towards other understandings of 'rights' within the UN human rights framework. Because, although – as we have seen – the UDHR and other human rights declarations and conventions referring to the UDHR seem to rely on a natural law understanding of human rights, if we look closely, we will find other understandings permeated in the UN human rights framework too.

3.3.3 INTERPRETATION

While preambles of UN human rights conventions suggest a natural law understanding of human rights, the UN framework does acknowledge that the interpretation of human rights standards is not a given. Interpreting legal documents in an evolutionary manner, can already be found in the 1971

[138] The influence that individuals, organizations, and Member States can exert on the formulation of human rights norms also depend on the means available such as financial and material means, human capacity, networks, and skills such as command of language, diplomacy etc. etc.

[139] Eleanor Roosevelt has become the beacon of the UDHR. However, considering racism in relation to the UDHR, this picture shows another side. She namely contributed to Afro-Americans not being able to formulate their claims as international human rights (Anderson, 1996).

[140] See for example Baumgärtel et al., 2008 for a number of accounts of influences of different state and non-state actors in the process of the formulation and adoption of the UDHR, and see for example Engle Merry (2006) for an analysis of how certain individuals and NGOs (especially from the global north and the elites in the global south) are granted significantly more agency (in influencing human rights norms) at the United Nations than others.

[141] Think of Osler's (2016) and paragraph 3.5 of this work for a critique of the declarationist approach in human rights education.

Advisory Opinion of the International Court of Justice (ICJ) in the South West African cases.[142] Considering the interpretation of international conventions the ICJ determined that:

> *the Court is bound to take into account the fact that the concepts embodied in Article 22 of the Covenant [Covenant of the League of Nations] – "the strenuous conditions of the modern world" and "the well-being and development" of the peoples concerned – were not static, but were by definition evolutionary, as also, therefore, was the concept of the "sacred trust". … the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law. Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation.*

Interpretation in an evolutionary manner then was limited to explicitly considering changes in law, and the overall legal system. By now, interpretation in an evolutionary manner has extended to a type of interpretation that goes beyond solely relying on the (changing) legal framework as if it were a system detached from (daily) life, the grammatical meaning of legal texts such as the actual human rights norms in conventions, and *travaux preparatoires*.[143] UN human rights monitoring bodies, including Treaty bodies such as the CERD and CEDAW, now explicitly consider human rights conventions to be living or dynamic instruments (i.a. Thornberry 2016; Freeman, Chinkin and Rudolf 2015).[144] This means that human rights norms are not considered to be a (quasi-) fixed set of norms, but are interpreted in the 'context of the circumstances of contemporary society' (i.a. OHCHR 2015; Keane and Waughray 2017). The meaning of words and norms in legal documents are therefore not treated as a-historical, but instead as historical and thus carrying changing meaning according to time and societal changes.

The concept of human rights conventions as living instruments could be a way to include the social reality that the texts of UN human rights instruments are the changing outcomes of competing hegemonic and counter-hegemonic ontologies and epistemologies, and thus different interests, agency, negotiations and power relations.[145] With this I therefore do not refer to what is often

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[142] ICJ Advisory Opinion on Legal Consequences For States Of The Continued Presence Of South Africa In Namibia (South West Africa), 21 June 1971, retrieved from https://www.icj-cij.org/en/case/53. This ICJ Advisory Opinion held that the continued presence of South Africa in South West Africa (Namibia) was illegal and that South Africa legally obliged to immediately withdraw its administration. Also see paragraph 3.2.2.

[143] The *travaux preparatoires* are the official records of the negotiations concerning the creation and adoption of the conventions. In interpreting UN human rights conventions, UN Treaty bodies such as the ICERD, have on different occasions invoked the *travaux preparatoires*. However, the practical use of the *travaux preparatoires* within the UN HR framework has diminished over time as human rights instruments are increasingly treated as living instruments (Thornberry, 2016).

[144] For CERD see CERD General Recommendation 35. For CEDAW see CEDAW General Recommendation 28 par. 2 and CEDAW General Recommendation 25 par. 3. The European Court of Human Rights is acknowledged for coining the term 'living instrument' in its work (Keane and Waughray, 2017, p. 14-15).

[145] Scholarship on the UN human rights framework increasingly explicitly shows how actors (both state actors and non-state actors, individuals and organizations) from around the world have contributed in shaping human rights conventions. For example, Barreto (2012) shows that the way in which human rights have developed cannot be seen apart from the relation between imperial powers and their colonies, and the different actors from both the global North as the global South. Burke (2010) and Jensen (2016) show the impact of mainly state representatives from the global South. I would argue that this is a welcome alternative to scholarship that narrates human rights norms as being both neutral and universal, but at the same time deriving from the West.

understood as the debate on universality versus cultural relativism, because this debate itself already assumes a specific ontology and epistemology where human rights norms are portrayed as not being part of culture (see chapter 2).

Apart from human rights documents being understood as living instruments, the concept of dialogue has also entered the work of the CERD. In fulfilling their monitoring tasks within the State reporting system of their respective human rights conventions, UN Treaty bodies have State-Committee dialogues and General Assembly dialogues (concerning State-Committee dialogues of the CERD, see Thornberry, 2016 and Keane and Waughray, 2017). CERD's understanding of the State reporting system as an ongoing dialogue between CERD and Member States received criticism for not being sufficiently neutral (see for example Bayefsky ,2001). In a reaction to this criticism, CERD (2001) explicitly stated that it understands the results of the work of the CERD as a dynamic pluralism.[146] This, the CERD argued, is due to the fact that:

> *each member of the Committee brings to its work personal and professional expertise in the light of a particular background and experience. … The decisions of the Committee are the products of many individual views subsumed into a common view. The risks of political "bias" in the outcomes of such a system of "checks and balances" are reduced to a minimum. And that States parties … present differing circumstances and approaches to the implementation of their obligations under the Convention. The Committee's responses … must necessarily adapt to the circumstances before it. The principles of objectivity, equality and fairness to States are not violated by this approach; on the contrary, they are vindicated.*

Apparently, the universality that the CERD envisions is not a false illusion of neutrality and singularity (cf. paragraph 3.3.1 and chapter 2). Instead, it is a universality that is a dynamic pluralism that the CERD adheres to (cf. chapter 2). A dynamic pluralism that thus acknowledges that there will always be competing understandings.

In interpreting and applying human rights conventions, Treaty bodies use different sources. These are not limited to human rights conventions, UN documents, State reports and individual complaints. Instead, they use all available sources of information. For the CERD in particular the use of sources had been an issue in its first years. The ICERD did not state anything concerning other sources than State reports and individual complaints. The CERD therefore had difficulties deciding how to treat information from other sources (Thornberry, 2016). This changed in the 1990's when the CERD decided that in addition to State reports, it must have access to all other available sources of information. With this, the range of information officially available to Treaty bodies is not a priori

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The West then being specific geographical locations (and not a project), namely Europe and North America (see for example Donnelly 2013 and Risse, Ropp, & Sikkink, 1999). It is the latter type of scholarly work and discourse that enables the binary between 'heavenly' Western nations and 'hellish' countries of the Global South which has been challenged by a number of human rights scholars (cf. Mutua 2001). The narrative presents a promise of freedom. Freedom from the tyrannies of the state, tradition, and culture provided for by a saviour. In this narrative, the saviour is the human rights corpus itself, with the United Nations, Western governments, INGOs, and Western charities, whites as the actual rescuers, redeemers of a benighted world whereas savages and victims are generally non-white and non-Western. (Mutua 2001). Mutua (2001) argues that 'human rights norms become defined by those in more powerful states, and that they are thus indeed Eurocentric due to lopsided power relations.

[146] The 2001 'Comments of The Committee on a Report on the United Nations Human Rights Treaty System' of the CERD was written as a reaction to Bayefsky's 2001 critical report. The latter had been with made with the cooperation of the High Commissioner for Human Rights.

limited but instead democratized and diversified in a far-reaching way. Recently, Treaty bodies have also opened up calls for public comments on draft recommendations.[147] This was the case with, for example, the CERD draft of general recommendation 36. This general recommendation on racial profiling was concluded on May 10 2019, and subsequently published online with an open call for contributions.[148] It thus appears that the CERD has allocated a formal role to the influence of different actors from around the world (individuals, organizations, states, etc.) to contribute to the ongoing making of the ICERD. This appears to be in line with what the CERD expressed during an event of the CERD's 50th anniversary in 2015. That is that CERD expressed that it perceives the engagement of civil society to be an integral part of strengthening its efforts.[149] Introducing special decades to combat racism and racial discrimination and thematic discussions, are other ways in which the CERD has engaged in discussions with a wider field of actors other than with only Member States, NGOs accredited by the UN, and any individual complainants.

Also different from understanding human rights as singular and universal, is the acknowledgement that human rights documents are interpreted in context specific ways. The CERD (1978) for example, expressed that the question of racial discrimination should be examined in the context of the state concerned.

Over time, UN human rights monitoring bodies, including the CERD, have thus introduced forums and procedures that democratize and diversify. The CERD has also increasingly opened up its decision-making processes to actors other than Member States, NGOs accredited by the UN and individuals in the individual complaint procedure. Furthermore, it has widened its possibilities to receive information from all available sources. The extent to which democratization and diversification takes place is of course – amongst others – also dependent on access the monitoring bodies (procedures and forums). For example, an online open call is much more accessible for those with an internet connection readily available than for those who have limited or no access to internet. Furthermore, it will also still be dependent on the extent to which individuals, groups and organizations are able to translate their concerns into the human rights language (cf. Engle Marry, 2006). And as Dias and Tomé (2018) remark there lies a real danger in putting an extra burden on most, whilst it is precisely the lived realities of these people that might need to be brought to the attention of UN Treaty bodies even more. Additionally, it is then of course still up to the monitoring bodies to decide on the value attached to and how to deal with all the information they receive in relation to the changing human rights norms. Decisions that are the result of what the CERD calls a dynamic pluralism, which pluralism is however also limited by inequalities institutionalized within the very human rights framework itself (see for example paragraph 3.4 concerning who 'has the right to be human'). A dynamic pluralism that is also affected by lopsided power structures in the geopolitical context.

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[147] Until recently it was not CERD practice to call for public comments on draft recommendations (Thornberry 2016).

[148] The call was open until 30 June 2019, and was acted upon by UN working groups and UN independent experts, States, National human rights institutes, civil society organizations, and regional human rights organizations. See https://ohchr.org/EN/HRBodies/CERD/Pages/GC36.aspx

[149] See https://ohchr.org/EN/HRBodies/CERD/Pages/ConsultationwithCivilSocietyNov2016.aspx . In its effort to better engage with civil society, the CERD held a consultation day on 23 November 2016 '*to explore new and innovative ways for the CERD to work with civil society organizations to increase the implementation of the Convention*.'

3.3.4 EDUCATIONAL MEANS AND ENHANCEMENT OF SENSE OF BELONGING

So far, we have seen that within the United Nations human rights framework, different understandings of human rights have been discursively institutionalized. We have seen the singular, natural law understanding of human rights, human rights as evolutionary, and human rights as the outcome of a dynamic pluralism. Alongside these understandings, is the understanding that human rights themselves are educational means, or as at least having an expressive function (Thornberry, 2016). According to the CERD (2013), the norms in the ICERD have an expressive function in underlining what is approved and disapproved in society (CERD, 2013).

The CRPD is the only convention (of the ones included in this research, see paragraph 3.1) that also articulates that the full enjoyment of human rights will result in an enhanced sense of belonging to society. It does so in the specific context of persons of disabilities. Human rights – or at least their fulfillment – is thus connected to a sense of belonging, and is perceived as a means for inclusion in a wider community.

3.3.5 A FIXED HIERARCHY OF RIGHTS?

After the UDHR was adopted, the UN created and adopted the first UN human rights convention, namely the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Having witnessed the genocides that took place during WWII, the Convention turned genocide punishable by law. After this, the UN took up the task to create a general and legally binding human rights document.[150] Such a document would turn the human rights proclaimed in the UDHR into legally enforceable norms. Initial attempts to make such a document started in the early 1950s and focused on creating one all-encompassing legal instrument. However, significantly influenced by the context of the Cold War and the emergence of an increasing number of new (because decolonized) UN Member States (Whelan, 2014), attaining consensus proved to be rather difficult. The years that passed by without reaching consensus on this general human rights convention, did witness the creation and adoption of the CERD which makes the adoption of the CERD an even more remarkable milestone (see paragraph 3.2.2).

Seeing the difficulties that it presented, it was eventually decided that there would not be one all-encompassing human rights instrument. Instead, it was decided to create two distinct conventions, namely the International Covenant on Civic and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR) (Oomen and Timmer, 2018). The ICCPR and the ICESCR were both adopted by the UN General Assembly on 16 December 1966 – more than a decade after the first attempts to create a binding general human rights convention.[151] Dividing human rights into two distinct categories, easily makes the hegemonic understanding work that human rights can be categorized, and that there is a hierarchy between different types of human rights (see chapter 2).[152] Even more because of the language used in the two covenants regarding the

[150] The UN Commission on Human Rights in 1947 had initially planned to draft both a human rights declaration and a binding human rights convention. It however, put the task of drafting a convention aside to first draft a declaration (Whelan, 2014).

[151] According to Whelan (2014) this was not only due to the context of the Cold War but also because within the UN, more specifically the Third Commission, priority was given to other issues during that period.

[152] About the UDHR too, it is said that it prioritized civil and political rights at the expense of economic and social rights, see Whelan (2014).

legal obligations they entail.[153] It suggests a hierarchy that entails that civil liberties, economic freedoms and democratic rules trump social aspirations. Indeed some go as far as arguing that – contrary to civil and political rights – economic, social and cultural rights are not really rights, but mere aspirations (for critique on this understanding, see Barreto, 2012; Whelan, 2014, also see chapter 2). However, from the 1990's onwards, UN treaty bodies have increasingly and repeatedly asserted both the indivisibility and the interdependence of the different categories of human rights.[154] With the emphasis on indivisibility Treaty bodies deny fixed categorization and therefore hierarchization of human rights. With their invocation of interdependence of human rights, Treaty bodies acknowledge that the realization of one human right depends on the fulfillment of other human rights. Thus, on 14 December 1990, the CESCR – the entity that monitors the implementation to the ICESCR[155] – adopted General Comment no. 3 on *The Nature of States Parties' Obligations* in which it stated that:

> *the rights recognized in the Covenant are susceptible of realization within the context of a wide variety of economic and political systems, provided only that the interdependence and indivisibility of the two sets of human rights [the ICCPR and the ICESCR]… is recognized and reflected in the system in question.*[156]

Whilst within the UN framework it was first significantly Treaty bodies that asserted that human rights are indivisible and interrelated, the assertion was later also codified in the last of the nine UN core human rights conventions.[157] The 2006 CRPD, namely reaffirms in its preamble that:

> *… the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination. …*[158]

Whereas the text of earlier human rights conventions arguably suggests a hierarchy of rights, treaty bodies, and also the latest UN core human rights convention, stress that there is no such hierarchy, by stressing the indivisibility, interdependence and interrelatedness of all human rights.

3.3.6 INDIVIDUAL AND GROUP RIGHTS

At the time of the UDHR, human rights were first codified as individual rights. However, the concept of group rights also quickly entered the UN human rights framework. Most notably first in the 1966

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[153] The ICCPR contains directive language with regards to the implementation of human rights, while the ICESCR contains remedial language.

[154] This is sometimes expressed by Treaty bodies, such as the CERD, as having to interpret human rights in a holistic manner.

[155] In part IV of the ICESCR it is decided that the UN Economic and Social Counsel (ECOSOC) is to monitor the implementation of the ICESCR. The ECOSOC established the CESCR on 28 May 1985 with ECOSOC Resolution 1985/17.

[156] Note that the CESCR adopted this General Comment in 1990 and thus only a few months after the fall of the Berlin Wall. It seems that the geopolitical arena of that year provided momentum for the CESCR to adopt this interpretation of what human rights are.

[157] See paragraph 3.1. on the UN core human rights conventions.

[158] It thus also proclaims the universality of human rights. With regards to universality see paragraph 3.3.1.

International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). These two Covenants codified the group right to self-determination. Article 1(1) of both the ICCPR and ICESCR read:

> *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. …*

That the right to self-determination became a human right can be explained by looking at the empire-colony relation. As Burke (2010) argues it was the persistent reluctance of France, the United Kingdom, Belgium, and the Netherlands to guarantee the application of human rights in their colonies, that made the link between self-determination and human rights more plausible. European delegations were namely set on including so-called colonial clauses in human rights conventions.[159] These clauses would make it possible to exclude hundreds of millions of people in their colonies to claim human rights for themselves. The attitudes of these colonial powers were fueled with references to 'the backward indigenous inhabitants' of their colonies (Burke, 2010). By the time it was decided to not include a colonial clause in the UDHR, Arab, Asian and Latin America representatives had openly challenged the notion that human rights could be respected under a colonial regime.[160] The right to self-determination was therefore turned into a human right and the sine qua non for equal human rights (Burke 2010).[161]

The UN human rights framework thus knows both individual rights as well as group rights.[162] What constitutes a group that has group rights is discussed in paragraph 3.4.

3.3.7 EQUALITY BEFORE THE LAW AND DE FACTO EQUALITY

Article 7 UDHR provides that *all are equal before the law and are entitled without any discrimination to equal protection of the law*. And that *all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*. It only protects against discrimination before the law, as if law itself is neutral. Similar provisions can be found in the CEDAW, CRC, and CRPD. They provide that women, children, migrants and people with disabilities, respectively, may not be discriminated against on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status

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[159] Within European regional human rights law too, colonial states were set to exclude colonized people from access to human rights, or to phrase it differently, from being human with human rights, see Dembour (2015), Duranti (2017) and Oomen and Timmer (2018). Indeed, a colonial clause was included in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), see article 56 ECHR (former article 63 ECHR). Continuing the logic of a White free society in Europe and a non-White non-free society in other territories.

[160] Outside of the official arena of deliberations on the UDHR, the inherent antidemocratic aspect of colonialism was highlighted by people such as Du Bois in his treatise Colour and Democracy, see Burke (2010).

[161] Remarkably in October 1949, the British Colonial Office decided not to publish the Universal Declaration in Gambia, Ghana (Gold Coast), or Sierra Leone because of the discrepancy between international rhetoric and colonial reality. One memorandum notes that "we can hardly expect to win the confidence of Africans by making statements of 'ultimate aims' while in practice we take steps in precisely the opposite direction." (Simpson, 2001 quoted in Burke, 2010).

[162] As we will see, the right to self-determination of minorities (as opposed to the right to self-determination of peoples) is constructed as individual rights for members of minority groups. This is then thus not a group right.

(art. 1 CEDAW, art. 2 CRC, art. 2 and 5 CRPD). With regard to children this includes protection from discrimination on the basis of its parent's or legal guardians' race, colour, sex, etc.

Article 1 ICERD defines racial discrimination as *any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life*.[163] This has been interpreted by the CERD as any *unjustifiable* distinction, exclusion, restriction or preference CERD 2009, par. 7). Racial discrimination in the ICERD's thus appears to be limited to racial discrimination that forms an impairment of human rights and fundamental freedoms.[164] According to the CERD, this covers racial discrimination in any field of human rights regulated by the public authorities in the State party (CERD 2009, par. 9).[165]

Racial discrimination is not limited to discrimination that takes place purposefully. Instead acts also constitute racial discrimination when they have the mere effect of unjustifiable unequal restriction of human rights and fundamental freedoms (CERD 2009, par. 7). Consequently, indirect discrimination and unintentional[166] discriminatory acts also fall within the scope of article 1 of the Convention. The CERD later also considered structural and institutional discrimination to fall within the scope of the ICERD (Thornberry, 2016).

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[163] Incorporation of the words 'or any other field of public life' has led to the discussions on whether the ICERD deals with discrimination within the relation between States and individuals only or with relations between individuals as well (Schwelb, 1966). However, it can be concluded that despite the usage of the term public life, the Convention's definition of discrimination also covers relations between private persons. This can be concluded based on travaux preperatoirs, the text of the Convention's preamble (most notably the fourth, sixth and ninth paragraph of the ICERD's preamble, which refer to racial discrimination in all its forms and manifestations and in inter-human relations, and its reference to other international measures taken to combat racial discrimination), the substantive provisions of the ICERD (most notably articles 2 and 5 which also deal with acts performed by persons, groups and organizations), and the CERD's interpretation. Scholars too agree on the point that despite the term 'public life', private relations fall within the scope of the Convention, see Schwelb (1966 p. 1003–1006).

[164] This focus on human rights and fundamental freedom in the formulation of racial discrimination can be contrasted with what UNESCO understands to be racism. According to UNESCO, racism 'includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally 'and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security' (1978).

[165] The ICERD (1993) also explicitly stated that the rights included in the UN Charter, the UDHR, the International Covenants of Human Rights are all relevant. Meron (1985, p. 286) argues that it is all rights or freedoms falling within the political, economic, social, cultural or any other field of public life, irrespective of their source. Thornberry (2016, p. 99) writes of human rights and fundamental freedoms enshrined in international instruments applicable to the States parties.
Although racial discrimination is defined as restricting human rights and fundamental freedoms on the basis of race, the ICERD did expressly state that it believes that it is often underestimated to what degree acts of racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation, see CERD 2000.

[166] Meron (1985, p. 278 and 288) and Lerner (2015, p. 28) do not necessarily agree on this.

The CERD first articulated that it looks into whether an act has as unjustifiable disparate impact upon a group distinguished on the basis of race, colour, descent, or national or ethnic origin (CERD, 1993, par. 1). It later articulated that when it assesses the justifiability of difference in treatment, the CERD examines if there is a legitimate aim and if the difference in treatment is proportionate to the legitimate aim. This needs to be judged against the objectives and purposes of the Convention. When objective and reasonable justification exists, discrimination is considered to be justifiable. Objective and reasonable justifications are thought to exist when there are significant differences in situations between one person or group and another (CERD, 2009, par. 8). Racial discrimination is thus not per se prohibited. It is prohibited when it is unjustifiable judged from the above described formula. To be clear, this not an assessment of affirmative actions. This idea of justifiability of racial discrimination stands in stark contrast to understandings of racial discrimination and racism as understood in social sciences which wants to overcome race and racism (see chapter 2).

The UDHR does not include any provision on affirmative action in order to reach de facto equality, but a number of subsequent human rights documents do. These include the ICERD, the CEDAW and the CRPD.[167] Article 1(4) ICERD reads:

> *Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.*

Furthermore, based on the ICERD, the CERD has established positive obligations for Member States. Meaning that Member States have to actively take measures with the aim of de facto equality (Thornberry 2016).

3.4 'HUMAN' RIGHTS AND THE UN

As we have seen in paragraph 3.3 it is not at all possible to indicate what 'rights' are within the UN human rights framework. The reason for this is that within the human rights framework, different meanings of what 'rights' are appear to exist simultaneously. In this paragraph, paragraph 3.4, we will turn to the meaning of what a human being is according to the UN human rights framework.

3.4.1 RATIONAL AND MORAL BEINGS

The Universal Declaration of Human Rights (UDHR) was the first human rights document of the UN that included a human rights catalogue. As said (see paragraph 3.3.), subsequent UN human rights declarations and conventions refer to the UDHR. The preamble to the UDHR reads:

> *… recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. …*

[167] See Thornberry (2016) for references to cases of the Permanent Court of International Justice of the League of Nations, where positive action was also acknowledged as a manner to reach de facto equality (instead of only equality before the law).

And the first two articles of the UDHR read:

> *Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*
>
> *Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

According to the UDHR, all human beings are thus born free and equal in dignity and rights and are part of one human family. Stated as a matter of fact, the UDHR also defines human beings as being endowed with reason and conscience. It also includes an explicit normative element: human beings should act in the spirit of brotherhood.[168] Reading the article seems to imply that only beings that meet these qualifications are fully human, and as such are born free and equal in dignity and rights. The United Nation's Fact Sheet no.2 (1996) puts it more bluntly:

> *… the basic assumptions of the Declaration: that the right to liberty and equality is man's birthright and cannot be alienated: and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.*

Article 1 UDHR thus couples humanity and the rights people have, to rationality and morality. It raises the question whether people who do not (or are thought not to) fully meet these qualifications of rationality and morality, are not fully human and are less free and equal in dignity and rights. The UDHR does not provide for the philosophical underpinnings of defining human as rational and moral. Nor does it alternatively indicate who or what decides what it means to have reason and conscience, and what it means in terms of being fully human if one does not meet the meaning of reason and conscience.

This leaves the door wide open for categorization and hierarchization of humans as Man (in its two categories) as discussed in chapter 2, despite the fact that article 2 UDHR expressly codifies equal rights and freedoms without distinction based on race, color, sex, and other grounds. It brings to mind the different declarations from the past that are often associated with current day human rights, in which equality was proclaimed but actually helped sustain certain hierarchies (see chapter 2, see also Mignolo, 2009). What is clear is that the term 'human being' is not neutral, and that what is indeed also at stake is 'the right to be human'.

That the definition of human beings leaves the door wide open to conceptualizing human as Man and the inequalities based on that conceptualization, can help explain the proliferation of human rights conventions that target the human rights of specific categories of the human. Categories of the human that are – not surprisingly – not Man. These are conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965), the

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[168] Because Indian Hansa Mehta (one of the drafters of the UNHDR) had successfully argued for gender-neutral language, article 1 UNHDR speaks of 'all human beings' and not 'all men'. This gender-neutral language apparently had not found its way into the use of the word 'brotherhood'. Kinship could have been an alternative gender-neutral term.

Convention on the Elimination of All Forms of Discrimination against Women (18 December 1979), the Convention on the Rights of the Child (20 November 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990), and the Convention on the Rights of Persons with Disabilities (13 Dec 2006).

In the following paragraphs, we will look into the different categories of humans and human societies that are employed within the UN human rights framework.

3.4.2 RACE, CITIZENS, NON-CITIZENS AND MIGRANTS

The ICERD aims to tackle racial discrimination by continuing to employ the concept of race. This is done without there being a clear conceptualization of 'race' (Thornberry, 2016). Moreover, within the UN human rights framework, the term 'race' has been used in different ways.

The first inclusions of the term race in international conventions were paired with drafters contesting the idea of race. For example, when article 2 of the UDHR was drafted, delegates reasoned that there was no scientific definition of race, and that therefore the term 'colour' should be added (Thornberry, 2016).[169] Furthermore, the preamble of the 1963 UN Declaration on the Elimination of all forms of Racial Discrimination (IDERD) states that 'any doctrine of racial differentiation or superiority' is 'scientifically false, morally condemnable, socially unjust and dangerous'.[170] Drafters of the ICERD agreed that such a thing as race does not exist, but agreed that the term had to be included in the ICERD (Lerner, 2015).[171] According to its preamble, ICERD's aim is to eliminate racial discrimination in all its forms and manifestations. The denunciation of racial differentiation – like had happened in the IDERD - did however not find a place in the ICERD. The preamble of the CERD namely merely condemns racial *superiority* based on racial differentiation, and not also racial differentiation in itself:

> *Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere*

And whilst, according to its preamble, the ICERD aims to secure 'understanding of and respect for the dignity of the human person' (which at least leaves the possibility of a non-essentialized understandinsg of the human), it is also 'resolved … to promote understanding between races'. Using

[169] According to Thornberry (2016) this tilted the 'text words to a general or 'folk' – as opposed to a 'scientific' – notion of race'.

[170] The IDERD was adopted before the ICERD, see paragraph 3.2.

[171] The Convention's drafters expressed that there is no such thing as race, and referred to UNESCO's findings on this matter (E/CN.4/Sub.2/SR.411, p. 6). The *travaux preparatoir*es do not explicitly point out to which of UNESCO's findings drafters specifically referred. Considering the time when the ICERD was drafted, it is however probable that reference was made to UNESCO's 1950 'Statement on Race' and UNESCO's 1951 'Statement on the Nature of Race and Race Differences'. UNESCO, has been somewhat ambivalent in their four statements on race (the 1951 statement was followed by two other statements, namely the Proposals on the Biological Aspects of Race, 1964; and the Statement on Race and Racial Prejudice, 1978. The 1950 statement explicitly stated that men [sic!] belongs to the same species. The 1951 statement holds that there is no scientific evidence for the racialist position on purity of race and the hierarchy of different races, but does not deny the existence of race and even seems to establish a hierarchical ranking of cultures and their associated peoples by distinguishing literate and civilized peoples. The 1964 statement introduces the term racism. The 1967 statement includes reference to law and education as means to combat racial prejudice. Thornberry (2016) indicates that all four statements have influenced the practice of the CERD.

the term race in such an unqualified manner might easily lead to an essentialized understanding of race. Especially because the ICERD does not include any definition of what race is.

The ICERD does determine that race includes: race, colour, descent, and national or ethnic origin.[172] This can be found in article 1 of the ICERD, which gives a definition of racial discrimination. Article 1 (1) ICERD reads:

> *In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

In the drafting process of the ICERD, the words race, colour, and ethnic origin did not stir up much discussion (Lerner, 2015; Thornberry, 2016; Schwelb, 1966). Tellingly, one of the ICERD's drafters argued that race, colour, and ethnic origin all meant much of the same thing (Thornberry, 2016). The terms 'national origin' and 'descent' did lead to discussions. Eventually it was agreed that national origin does not mean nationality or citizenship. Instead, it refers to people *having a certain culture, language and traditional way of life peculiar to a nation, but who lived in another State*.[173] The term national origin thus does not refer to a current politico-legal status (Schwelb, 1966). The issue of discrimination between citizens and non-citizens is dealt with in article 1(2) and 1(3) ICERD.

> *2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.*
>
> *3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.*

Based on these provisions, differentiation between citizens – and non-citizens does not fall under the scope of the ICERD. This is remarkable if one considers the ways in which the Global color line has been perpetuated in the application of the right to self-determination (see paragraph 3.4.3), and construction of nationality laws that perpetuate racial borders (Dembour, 2015; Achiume, 2020; Foster and Baker, 2020). Whilst the right to self-determination became a human rights *sine qua non* for other human rights (see paragraph 3.4.3), people in newly established sovereign states were now citizens of these new states, and ex-colonial subjects-turned non-citizen-migrants if they sought access at the borders of the former colonial state.

Due to the exceptions of article 1(2) and 1(3) ICERD, the CERD has struggled offering human rights protection against racial discrimination when it relates to nationality (Foster and Baker, 2020). However, in later years, the CERD made a significant move concerning non-citizens in its general recommendations XXX of 2000 and XXXI of 2005. It explicitly held that non-citizens, *including*

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[172] This fits what Wade sees as a trend in which the notion of race is simply being broadened (Wade, 2004, p. 162). 'Differences between people can still be seen as both physical and cultural, and each realm acts as a signal for the other. Different appearances are thought to indicate different cultures and different cultures seem to suggest different natures.'(2004, 162). Race thus also includes other social constructs which cast divisions between peoples as natural, fixed and absolute through 'racism's two registers of biology and culture'(Hall referenced in Skinner, 2007, 938).

[173] E/CN.4/Sub.2/SR.411, p.3.

migrants, refugees, asylum seekers and stateless persons, and other vulnerable groups which are particularly exposed to exclusion, marginalization and non-integration in society, should all be seen as distinguishable groups falling within CERD's definition of race.[174]

With regard to discrimination based on descent, the CERD concluded that this *includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights*.[175] With this, the CERD thus explicitly acknowledges the role of socialization into racializing people. Descent does thus not merely mean differentiation on the basis of biological descent or other types of seemingly inherited statuses, but the meaning society attaches to biological descent and differentiations based on these meanings. This fits the line of reasoning that the CERD has employed on racial discrimination in general. It namely expressed that racism can be the product of, inter alia, indoctrination or inadequate education[176] and that doctrines or ideas of racial superiority, and doctrines of racial segregation are root causes of racial prejudice and racial discrimination. It is thus not nature that defines races, but instead it is human made ideas and doctrines that leads to racial discrimination and racism.

Within this understanding, the CERD distinguishes people of Asian descent and people of African descent.[177] It also acknowledges indigenous people,[178] Roma and Gypsies,[179] and displaced populations,[180] as relevant distinguishable groups within the scope of the CERD. In dealing with racism and racial discrimination, the CERD has stressed that Member States have to provide data and information on the presence of distinctive racial groups within its territories.[181] This information

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[174] With regard to (human rights) education too, the CERD has explicitly held that educational materials should be available to States' citizens and non-citizens alike. The right to education has been repeatedly held to exists for children regardless of their legal status.

[175] CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002

[176] CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35

[177] CERD General recommendation 34, 2011 on racial discrimination against people of African descent, CERD/C/GC/34. After the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, the UN Commission on Human Rights also established the Working Group of Experts on People of African Descent in 2002 (see resolution 2002/68 for the establishment of the Working group, and CHR 2003/30, 2008/HRC/RES/9/14, 2011/HRC/RES/18/28, 2014/HRC/RES/27/25) for the renewals of the mandate by the Commission on Human Rights and the Human Rights Council'.

[178] CERD General recommendation XXIII on the rights of indigenous peoples, 1997, A/52/18, annex V; CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002

[179] General recommendation XXVII on discrimination against Roma, 2000; CERD General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005

[180] General recommendation XXVII on discrimination against Roma, 2000; CERD General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005

[181] CERD General recommendation XXIV concerning article 1 of the Convention, 1999, A/54/18, annex V.

should be based on individuals' self-identification.[182] Social stratification based on race is thus also related to self-identification.

Because the issue of religious discrimination was expressly distinguished from the issue of racial discrimination during the establishment of the ICERD (see paragraph 3.2.2), the CERD has had difficulties tackling religious discrimination that is entangled with racial discrimination (Thornberry, 2016). However, in 2013, the CERD expressed that discrimination against ethno-religious groups does fall within the ICERD's scope.[183]

Interestingly, where the ICERD makes a distinction between citizens and non-citizens, and therefore does not or very limitedly so offers protection against racial discrimination caused by citizenship and racial borders, other human rights documents do not make a distinction between citizens and non-citizens. For example, the CAT and CPED make no distinction between citizens and non-citizens. According to these documents no one may be subjected to torture or enforced disappearance regardless of citizenship. Based on article 3 CAT and article 16(1) CPED, Member States cannot send non-citizens back to their own State if there are substantial reasons to believe that the person in question is in danger of being subjected to torture or enforced disappearance respectively. When in danger of torture or enforced disappearance, borders, including racial borders, thus evaporate and people can claim their human rights. Human categories, sustained by law, does again play a role in the ICMW. The ICMW namely distinguishes a number of types of migrants, with each group having specific human rights.[184]

3.4.3 PEOPLES

As we saw in paragraph 3.3, the human rights framework knows group rights. The first right included in both the ICCPR and the ICESCR is a group right, namely peoples' right to self-determination. Article 1 ICCPR, and article 1 ICESCR are identical. Their article 1(1) reads:

> *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

[182] CERD General recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, 1990, A/45/18. See also the 2001 Durban Declaration and Programme of Action (https://www.un.org/en/durbanreview2009/pdf/DDPA_full_text.pdf). However, most Member States refrain from producing data on this matter (Keane & Waughray 2017).

[183] CERD General recommendation no. 35, Combating racist hate speech, 2013, CERD/C/GC/35, par. 6

[184] ICMW only deals with human rights for migrants. Migrants are defined by the ICMW to be persons who are to be engaged, are engaged or have been engaged in a remunerated activity in a State of which they are not a national (art. 2 ICMW). A number of migrants is excluded from the working of the convention, namely state officials and officials of international organizations whose position is dealt with in other international agreements, investors, refugees and stateless persons, students and trainees, specific category of seafarers and workers. The ICMW distinguishes regular and irregular migrants (art. 5 ICMW), with regular and irregular migrants having specific human rights (artt.36-56 ICMW). The ICMW further knows a number of specific categories of migrants (art. 2 ICMW) with each their own rights (art. 57-63 ICMW). Furthermore, the ICMW is applicable to migrant workers' family members (art. 3 ICMW).

During the drafting period of the ICCPR and ICESCR[185] it was agreed upon that peoples in all countries and territories, whether independent, trust or non-self-governing have the right to self-determination. It was however decided to leave the word 'people' undefined. Reason for this was that there were divergent views on the matter. The views ranged from understanding the term by a reference to the legal status of territories, the inherent characteristics of groups, and aspirational political movements, including: peoples in trust or non-self-governing territories, large compact national groups, ethnic religious or linguistic minorities, and racial units inhabiting well-defined territories (Saul et al., 2014). Without further explicating the distinction between peoples and minorities, it was also agreed upon that the rights of minorities was a separate issue. The minorities issue was reasoned to be something related to the internal right to self-determination of a people, contrasted to the external right to self-determination.

According to Saul et al (2014),[186] CERD is the treaty body that has been most explicit about the internal and external aspect of the right to self-determination. In its 21st General Recommendation, the CERD (1996) explained that:

> *The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.*

Apparently, the concept of peoples can be further divided into peoples with an external right to self-determination and populations with an internal right to self-determination. Furthermore, there is an apparent connection between members of populations and citizenship. Considering the internal right to self-determination, it is citizens who have to have equal rights in freely pursuing economic, social and cultural development, and need to have to right to partake in the conduct of public affairs. As such, the government has to represent the whole population. The nation thus appears to become conflated with the state, forming a nation-state (see chapter 2). Non-citizens thus fall outside of the scope of this citizen-population. Relating to the issue of ethnic or religious groups or minorities, the CERD, also in General Recommendation 21, articulated that:

> *… none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the*

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[185] The first attempts to codify human rights in a legally binding document started in the early 1950s. The initial intention was to create one single document. In the end, two separate documents were created, which were adopted in 1967. It thus took over 10 years to draft and adopt the documents.

[186] See Saul et al. (2012) for the right to self-determination in national and regional legal documents, and for the different interpretations given to the right to self-determination by not only the UN but also national and regional bodies (including for example the Canadian Supreme Court and the African Commission of the African Union).

> *principle of equal rights and self-determination of peoples and possessing a Government representing the whole people belonging to the territory, without distinction as to race, creed or colour. In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a State. ... This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned.*[187]

The citizen-population is thus also one that belongs to the territory. And, in this line of reasoning, the non-citizen does not belong to the territory. Denying the external right to self-determination to populations within a State, thus explicitly protects the State's territorial boundaries. Territorial boundaries that thus also become conflated with people 'belonging' to the territory and citizenship. What belonging means is not clear.[188]

With regard to external self-determination it is thus another community that constitutes a people. It is a group subject to alien subjugation, domination and exploitation. This makes sense if one considers that the right to self-determination in article 1 ICCPR and ICESCR was codified as a human right during a time in which racialized peoples in colonies were excluded from equal rights, compared to citizens of the respective states that had colonized them.[189] The distinction between peoples with an external right to self-determination and peoples (citizen-populations belonging to a territory) with an internal right to self-determination thus perpetuate the very boundaries that were set in place by formal colonization. And thus not only territorial boundaries but also boundaries between groups of people. Boundaries which, as we have seen (chapter 2) carry a legacy of racialization. Boundaries that perpetuate socio-economic and political inequalities. Boundaries that thus perpetuate the global color line, and normalize and naturalize the socio-economic and political order based on White supremacy (see paragraph 3.4.2).[190]

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[187] Similar texts can be found in other UN documents, such as the 1970 UN Declaration on Friendly relations, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the 1993 Vienna Declaration and Program of Action. The UN Human Rights Committee, for example has also explicitly referred to the 1970 Declaration on Friendly Relations as a document that should be taken into consideration when interpreting article 1 ICCPR and article 1 ICESCR, see https://www.un.org/ruleoflaw/files/3dda1f104.pdf

[188] Although it is not a UN entity, I here do want to mention the interpretation of article 1 ICCPR and ICESCR given by the European Commission's Badinter Arbitration Committee, because it provides for a seemingly radically different approach to the right to self-determination. The Badinter Committee was a legal advisory body on the issue of the dissolvement of SFR Yugoslavia installed by the European Economic Community on 27 August 1991. The Badinter Committee interpreted the right to self-determination as granting every individual the right to choose to belong to whatever ethnic, religious or language community they wish. It then went on to suggest that a consequence of this right might be that individuals can chose what legal nationality they want to have. Both citizenship and nationality (in this case meaning national belonging) was therefore related to individuals' choice, and furthermore delinked from territory. Interestingly, the rights to self-determination articulated in this case was related to both minorities' individual right to self-determination, and peoples' right to self-determination (Saul et al. 2014, p. 32).

[189] The Human Rights Commission did later expressly state that the external right to self-determination does not only apply to colonies, but to all peoples. However, again, without defining what a people is. The UN human rights framework does however not clearly distinguish peoples that constitute a minority and therefore do not have the right to external self-determination, from peoples with the right to external self-determination. Nor does it clearly establish who is to decide on the existence of a minority or people with such rights. Regarding the right to self-determination of minorities in the ICESCR, Saul et al. (2014) conclude that the CESCR's practice remains inconsistent, or at least opaque.

[190] Cf. Quijano (2007) who writes: 'In fact, if we observe the main lines of exploitation and social domination on a global scale, the main lines of world power today, and the distribution of resources and work among the

3.4.4 WOMEN, CHILDREN, DISABLED PEOPLE

As we saw in the previous paragraphs we saw that the UN human rights framework seems to give different answers to the question of what human beings are and how they can be categorized. Since this research focuses on racism and the Global color line, the above paragraphs focused on general human rights conventions (the UDHR, the ICCPR, and the ICESCR) and the ICERD. This paragraph also briefly reflects on these issues with regards to women's rights, children's rights and rights of disabled people, as human rights.

The CEDAW does define of what women are. Instead, article 1 of the CEDAW defines discrimination, and refers to discrimination based on sex. This could be understood as only tackling discrimination based on biological differences between men and women. However, the CEDAW also specifically targets stereotyping based on cultural meanings attributed to biological differences which result in hierarchical relationships and unequal power and rights, see for example articles 2 and 5 of the CEDAW. The CEDAW Committee has therefore expressed that reading these 3 articles together, means that article 1 also covers gender-based discrimination (i.a. United Nations 2010).[191]

In contrast to for example, women's rights, children's rights appear to be limited to children's rights, most notably those codified in the 1989 CRC (art. 2(1)).[192] The child is assumed to remain a child until either the age of eighteen is reached, or, if applicable law on maturity provides so, a lower age is reached (article 1 CRC).[193] It thus leaves the categorization of childhood open to domestic legislator. According to the preamble to the CRC, children are understood to be progressively evolutionary beings. This means that with age, physical and mental maturity is assumed to increase. As long as the child remains a child, it is considered to not have reached full maturity and therefore needs special care, assistance and protection (preamble CRC).[194] Because children are understood as evolutionary beings, rights and protections afforded to children should consider children's maturity.[195] This means that Member States should take account of this.[196] To this extent, the Committee to the CRC has

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world population, it is very clear that the large majority of the exploited, the dominated, the discriminated against, are precisely the members of the 'races', 'ethnies', or 'nations' into which the colonized populations, were categorized in the formative process of that world power, from the conquest of America and onward.' Also see Dembour (2015).

[191] General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. CEDA W/C/GC/28. http://hrlibrary.umn.edu/gencomm/CEDAW%20Gen%20rec%2028.pdf. See also the introduction to the CEDAW on the website of the OHCHR where a similar reasoning is applied: https://ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx

[192] Article 25(2) UDHR, articles 14, 18, 23, and 24 ICCPR and articles 10(3) and 12(2) ICESCR did also already include clauses on the special protection of children.

[193] The CRC does not determine when childhood begins, e.g. before or after birth (Archard and Tobin 2019).

[194] See also article 5 CRC that speaks of 'the evolving capacities of the child'. The preamble to the 1959 Declaration of the Rights of the Child, also determined that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care'.

[195] For example, the assumed maturity of the child also affects the weight that is given to children's own views in matters concerning themselves (see article 12(1) CRC and article 7(3) CRPD).

[196] CRC Committee, 'General Comment No 20: Implementation of the Rights of the Child During Adolescence' (6 December 2016) CRC/C/GC/20 ('CRC GC 20') para 1.

recognized three broad phases of childhood: early childhood, middle childhood, and adolescence.[197] The Committee to the CRC stresses the importance of not generalizing the category 'child' and to be aware of heterogeneity of this category, as children going through these different phases need different protection and rights.[198] In principle, this assumed increasing maturity is not based on an individual assessment of children in specific cases, but general understandings of the evolving child (Archard and Tobin, 2019); understandings normally decided upon by adults.[199]

Furthermore, in all actions concerning children, these children's best interest is to be the primordial concern (for example, art. 3(1) and 18 CRC, art. 7(2) CRPD, art. 5 CEDAW). The question is who decides on the best interest of the child, and in what way.[200] Children's own voice in determining their best interest and in decisions making processes concerning themselves, is namely also coupled to their maturity and age.

Connected to this is that the preamble to the CRPD and article 7 CRPD state that children with disabilities should have full enjoyment of human rights and fundamental freedoms on an equal basis with other children. Reading the CRPD, it appears that children with disabilities are thus always and above all, or at least above having disabilities, children.

CRPD's preamble states that *disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others*. The combination of culture and nature on determining disability thus found its way in the CRPD. Article 1 CRPD then continues by stating that persons with disabilities include *those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*.

3.4.5 INTERSECTIONALITY

The early UN human rights declarations and conventions did not explicitly include protection against the specific forms of discrimination based on intersecting grounds of discrimination (see chapter 2 for an explanation of intersectionality). An indication leaning towards the direction of the acknowledgment of intersectionality can arguably be found in the preamble of the CEDAW, which was adapted in 1979. According to the preamble the 'eradication of apartheid, all forms of racism,

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[197] CRC Committee, 'General Comment No 7: Implementing Child Rights in Early Childhood' (20 September 2006) UN Doc CRC/C/GC/7/Rev.1 para 1

[198] CRC Committee, 'General Comment No 20: Implementation of the Rights of the Child During Adolescence' (6 December 2016) CRC/C/GC/20 ('CRC GC 20')

[199] Coupling the distinction between childhood and maturity to physical and intellectual ability has received critique. It is argued that it undermines children's agency, by categorizing children as naturally unlike adults with regards to reason and conscience. And even though this categorization provides a justification for protecting children from harm, this same categorization makes them more vulnerable for exploitation, abuse, and other damaging treatment because they – as different kinds of humans – have different human rights. Bhabha (2006) therefore concludes that 'the challenge is to figure out how to particularize but not to patronize—how to honour the rights of agency without abandoning the obligations to protect'.

[200] In relation to racism this poses a real potential risk. Think for example of how aboriginal children in Australia were taken away from their parents in the best interest of those children, because their parents were aboriginal and therefore reasoned to be less capable.

racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women'.

However, intersectionality only seems to have been institutionalized from the year 2000 onwards. Within the UN human rights mechanisms, one could point to the Expert Group Meeting on Gender and Racial Discrimination which was organized in 2000 by The United Nations Division for the Advancement of Women (DAW) in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Fund for Women (UNIFEM) (Keane, David, and Annapurna Waughray, 2017). Their report explains how intersectionality is to be understood. With regard to the global context it explained that:

> *Unlike the State formation of pre-industrial societies, contemporary States establish their gender and racial regimes through the "unmarked" discourse of citizenship which is defined along the principle of individual rights. The gender regime of the liberal State is firmly ingrained in the patriarchal household, with the male citizen as its head. The racial regime of the liberal State has been regulated mainly through immigration and naturalization laws. Through the construction of racialized and gendered citizenship, modern states have reproduced the historically established structures of domination albeit in different ways. Analysis of the phenomenon of citizenship within the modern national State reveals how notions of gender (the "nuclear family"), and race (the "other") are implicitly woven into the laws.*

According to the report, intersectionality:

> *… seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.*

The report also made recommendations to governments and the United Nations. These recommendations come down to integrating new methodologies, analyses and norms that include the concept of intersectionality. To the United Nations, the report also recommended that they mainstream an intersectional analysis of various forms of discrimination. To Treaty bodies and special mechanisms specifically, the report also recommended that they acknowledge intersectionality and adopt general recommendations addressing this issue, and that these bodies, and specifically the ICERD and CEDAW 'increase information sharing, cross-referencing, and consider joint consultations and producing joint recommendations' (United Nations, 2001).[201]

From the year 2000 onwards the CERD has indeed explicitly acknowledged in multiple general recommendations, that individuals can experience discrimination on the ground of race, colour, descent, or national or ethnic origin, combined with other grounds, such as differences in income,

[201] United Nations 2001. Report of the Expert Group Meeting on Gender and Racial Discrimination. A/CONF.189/PC.2/20, accessed via https://digitallibrary.un.org/record/440520 .

gender, age and religion. The CERD speaks of double and multiple discrimination, and of intersectionality. [202]

The first UN human rights convention that acknowledges intersectionality is the CRPD, which was adopted in 2006. The preamble of the 2006 CRPD acknowledges that people with disabilities can be subjected to *multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status*. It also emphasizes the need of a gender perspective in efforts concerning human rights. To these ends, CRPD includes specific provisions for women with a disability (article 6 CRPD), and children with a disability (article 7 CRPD). Remarkably, it does not include a provision on equal treatment of racialized people with a disability.

And indeed, Treaty bodies have adopted joint general recommendations, such as the Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child, on harmful practices (United Nations 2014).[203] Remarkably however, is that there is only limited reference to intersectionality in Treaty bodies' jurisprudence in individual complaint cases.[204] None of which was jurisprudence of the CERD.

3.5 HUMANS AND RIGHTS IN HRE

Having introduced UN human rights instruments (paragraph 3.2), and explored the meaning of rights (paragraph 3.3) and rights (paragraph 3.4) within the UN human rights framework, we will now turn to human rights education within the UN human rights framework.

Within the UN human rights framework, the term 'human rights education' was first used in the 1990s. Most notably during the 1992 UN World Conference on Human Rights in Vienna where the Vienna Declaration and Programme of Action was adopted. The Vienna Declaration and Programme of Action includes the following:

> *The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.*

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[202] CERD General Recommendation XXV on gender-related dimensions of racial discrimination, 2000; General recommendation XXVII on discrimination against Roma, 2000; CERD General Recommendation XXIX on article 1, paragraph 1, of the Convention (Descent); CERD General Recommendation XXX on discrimination against non-citizens, 2005; CERD General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005; CERD General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, 2009, CERD/C/GC/32, p. 3, par. 7.

[203] https://www.equalrightstrust.org/ertdocumentbank/CEDAW%20CRC_GR31%20GC18.pdf

[204] There were only 16 cases in which a reference to intersectionality was made, in the online jurisprudence database. Most of these cases were cases of the CEDAW. The search key words were 'intersect', 'intersectionality', and 'intersecting', via https://juris.ohchr.org/search/results/2?typeOfDecisionFilter=0&countryFilter=0&treatyFilter=0 .

But education relating to human rights (thus without it being called 'human rights education') can also be found within the UN before the 1990s. For example, the preamble to the UDHR reads:

> *that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.*

And article 26(2) UDHR reads:

> *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*

Similar provisions can be found in other international human rights conventions, such as in article 13 ICESCR, article 13 ICCPR, article 29 CRC, article 24 CRPD and landmark texts from UN conferences on human rights.[205]

Early elaborations on the relation between education and human rights can be found in the 1974 UNESCO 'Recommendation Concerning Education and International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms' in 1974. Compared to what had come before, this recommendation has been observed to be progressive and radical, in that it suggests that education should tackle questions of power and should include critical analysis of the historical and contemporary factors underlying tensions between countries, and ways to overcome these tensions (Coysh, 2014). These ideas were further developed during the 1978 UNESCO International Congress on the Teaching of Human Rights (Ahmed, 2017).

In 1994, the General Assembly proclaimed the Decade for Human Rights Education (1995–2004).[206] It held that human rights education is a prerequisite for the realization of human rights and democracy. Furthermore, the issue was placed under the UN Office of the High Commissioner for Human Rights, instead of UNESCO. In 2011, the General Assembly adopted the Declaration on Human Rights Education and Training (DHRET). Article 2(1) of this declaration reads:

> *Human rights education and training comprises all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.*

Human rights education should thus be directed toward developing a universal human rights culture. To this end, human rights education should not only involve the dissemination of information about human rights. Instead, human rights education should be about, through and for human rights. This means that human rights should include dissemination of knowledge, education in a way that

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[205] For provisions on human rights education in regional organization, see amongst others article 25 of the 1981 African Charter Human and Peoples' Rights, article 31 of the 2012 ASEAN Human Rights Declaration, and the Charter on Education for Democratic Citizenship and Human Rights Education of the Council of Europe.

[206] For the sequence of events of world conferences, programmes of action, decades, and that the world program is ongoing (mention its phases), see for example:
https://www.ohchr.org/EN/Issues/Education/Training/Pages/UNDHREducationTraining.aspx

respects the human rights of both learners and educators, and empowering persons to enjoy their human rights (article 2(2) DHRET).

A number of UN human rights documents connect human rights education to the elimination of prejudices, for example article 8 CRPD, and article 7 ICERD.[207] Article 7 ICERD reads:

> *States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.*[208]

In its 1977 General Recommendation the CERD emphasized the importance of implementation of article 7 ICERD. The CERD expressed that it regards the measures described in article 7 CERD to be important and effective in the combat against racial discrimination.[209] The CERD has stated that providing human rights education is an obligation for member states, and not a choice for individual teachers or schools (Thornberry 2016, p. 448). Article 7 ICERD thus has to be implemented by all member states, regardless of claims that racial discrimination does not occur in their territories.[210]

CERD interprets the ICERD, and also article 7 ICERD in a holistic manner.[211] This means that each provision of the ICERD is to be interpreted in the context of the ICERD as a whole, as well as in relation to other international legal instruments that have a bearing on those provisions.[212] Also

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[207] The ICMW and the CEDAW do not include any provision on education related specifically to human rights. The CEDAW does include provisions on combatting prejudices through education in general (articles 5 and 10 CEDAW). These provisions hold that education should be geared towards modifying social and cultural patterns of conduct which are based on the idea of inferiority, superiority or stereotypes of either of the sexes.

[208] When the CERD found itself confronted with state reports that lacked thorough information on the implementation of this article, it urged member states in 1997 to provide more detailed information on this matter, see CERD General Recommendation V Concerning Reporting by States Parties Art. 7 of the Convention, 14 April 1997, A/32/18. It is remarkable that not only member states appeared to give little attention to article 7 CERD, but that authoritative scholarly works on the ICERD such as those of Lerner (2015), Meron (1985) and Schwelb (1966) do not or just to a minimum include information on this article (see also Farrior 1999). Lerner even writes that article 7 CERD does not appear to show any difficulties, suggesting that the article is clear- cut and in no need of further analysis. Exceptions are Thornberry (2016) and Farrior (1999). Thornberry analysed relevant *travaux préparatoires* and the way in which the article has been interpreted by the Committee and in article 14 CERD procedures. See also Delgado (2015) for an analysis of the Committee's understanding of article 7 CERD.

[209] CERD General Recommendation V Concerning Reporting by States Parties Art. 7 of the Convention, 14 April 1997, A/32/18. The 1967 UNESCO Statement on Race and Racial Prejudice also regards education to be a strategy to combat racism. See also Farrior (1999).

[210] Regarding racial discrimination, see CERD General Recommendation V Concerning Reporting by States Parties (art. 7 of the Convention), 1977

[211] E/CN.4/Sub.2/1998/4

[212] For specific relevant international instruments that the CERD finds to be related to the ICERD, see CERD General Recommendation no. 33 Follow-up to the Durban Review Conference, 2009, CERD/C/GC/33, p. 3; see also E/CN.4/Sub.2/1998/4, p. 4, par. 7.

considering the fact that CERD has explicitly acknowledged intersectionality, it thus makes sense that, according to CERD, teaching about racial discrimination can be included in teaching about discrimination in general and discrimination on other grounds.[213]

Ultimately States Parties are expected to create a human rights system of teaching and education, in which special emphasis is put on the combat of racial discrimination. This system should be available for the Member State's citizens and populations (including immigrants and their children), extending from primary school to university and to out-of-school education.[214] R*esearch in general, and particularly social science research, devoted to racism, to discrimination and to racial prejudice* should be seen as other fields falling within the scope of 7 CERD. [215] Measures taken should not be limited to public education systems. Instead they should focus on private schools as well.[216] Furthermore, TV, radio, other mass media such as the internet, social media, (educational text) books, school curricula and teaching materials, museums, theatre performances, shows, concerts, seminars, conferences, lectures and cultural events, history, language, and truth and reconciliation commissions should all be seen as means through which the general public should be made aware of article 7 CERD and its purposes.

The CERD argues that doctrines or ideas of racial superiority, and doctrines of racial segregation are seen as root causes of racial prejudice and racial discrimination and that they have been strongly condemned by the Convention's preamble and its provisions. Reading this in conjunction with 7 ICERD, according to the Committee, implies that educational and informational measures need to be taken to also specifically combat those ideas and doctrines.[217] Education should therefore include inter- ethnic understanding, and deal with the *intrinsic association of colonialism and all practices of segregation and discrimination*, the *integral relationship'* between *'the elimination of racial discrimination and the promotion of international understanding and peace*, and *the diversity of the contemporary manifestations of racial discrimination*. Furthermore, the Committee finds that Member States need to *raise the awareness of the public on the importance of affirmative action programmes to address the situation of victims of racial discrimination, especially discrimination as a result of historical factors.* [218] Moreover, understanding and tolerance should become day-to-day practice of public life and an established consistent mode of behaviour.[219] Measures should also

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[213] A/50/18, p. 143.

[214] E/CN.4/Sub.2/1998/4, p. 4, par. 8 and p. 15, par. 42 and 47, see also CERD General recommendation XXX on discrimination against non-citizens, 2005, 31; CERD General recommendation XXX on discrimination against non-citizens, 2005. See also article 8(2) CRPD that provides that educational measures should be taken at all levels of the educational system.

[215] A/32/18, p. 13, 15

[216] CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 62

[217] A/32/18, p. 13-14; CERD General recommendation no. 35 on combating racist hate speech, 2013/CERD/C/35

[218] CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 20; CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, 1 (h)

[219] E/CN.4/Sub.2/1998/4, p. 16, par. 42, 47, 51

educate the public about *the importance of building an inclusive society, while respecting the human rights and identity of all peoples.* [220]

According to the CERD, educational strategies for combating racial discrimination include intercultural education, multicultural education, anti-racist education, intracultural coexistence education, dialogue between different communities, and intra-national communication (Thornberry, 2016). These include intercultural bilingual education, based on equality of respect and esteem and genuine mutuality.[221]

Educational material has to display a fair portrayal of racial or ethnic groups present in a State party, as well as information and knowledge of the history, cultures and traditions of those groups. They should also highlight the contribution of all groups to the social, economic and cultural enrichment of the national identity and to national, economic and social progress. Educational material should also include information and knowledge on existing prejudices and xenophobia and be informed by and address human rights themes. To this end member states have to also review all language in textbooks and teaching materials. Stereotyped or demeaning images, references, names or opinions concerning certain racial or ethnical groups should be replaced by images, references, names and opinions that convey the message of the inherent dignity of all human beings and their equality of human rights. [222] In a similar vein, article 10 CEDAW provides that textbooks, school programmes, and teaching methods, should be revised because this will particularly help eliminate stereotypical concepts of the role of men and women. Regarding people with disabilities, article 8 the CRPD sets out that states are to make society aware of rights of people with disabilities, take educational measures to combat stereotypes of persons with disabilities, promote awareness of the capabilities and contributions of persons with disabilities.[223]

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[220] A/32/18, p. 13-14; CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35, par. 34-35; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 32.

[221] CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34. Article 10 CEDAW provides that coeducation 'and other types of education' will contribute to eliminating stereotypical understandings of the roles of men and women.

[222] E/CN.4/Sub.2/1998/4, p.16, par. 51; CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34; CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35

[223] The preamble to the CRPD includes a clause in which it explicitly states that it recognizes 'the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities.' The inclusion of this express acknowledgment might be given by the educational value that conventions can have. The educational value of legal measures is something that the CERD has explicitly acknowledged.

Apart from educating the society at large,[224] member states have to take special educational measures for specific actors such as media, state officials (including politicians), educators, officials dealing with non-citizens.[225] And these actors themselves are to act in accordance to the ICERD.

In regard to mass (online) media and media organizations, measures should be taken to eliminate dissemination of ideas of caste superiority and inferiority or which attempt to justify or incite to violence, hatred or discrimination, ensure that media representations of different racial or ethnic groups should be based on principles of respect, fairness and the avoidance of stereotyping.[226] Moreover, unnecessary reference to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance should also be avoided by the media.[227] Member States should incentivize media and media organizations to make and implement methods of self-monitoring *through codes of conduct* to combat any use of racially discriminatory or biased language. [228]

Politicians, public officials, police personnel, other law enforcers, civil servants, and persons working in the system of justice, prison institutions, psychiatric establishments, and social and medical services also play a distinct role. Action should be taken and training programs should be developed specifically for these actors in order to eliminate prejudices and profiling,[229] and for respect of human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations. [230] Member States are expected to *counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen"*

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[224] CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, I (h); CERD General recommendation XXX on discrimination against non-citizens, 2005, 12; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 14

[225] E/CN.4/Sub.2/1998/4, p. 15, par. 46; CERD General recommendation XXX on discrimination against non-citizens, 2005, par. 12 and 21; CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, 5(b); CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, par. 5(y); CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, par. 30, 32, 33, 44, 46; CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35, par. 39, 40, 41 and 44;

[226] See also article 8(2) CRPD with regards to people with disabilities.

[227] CERD General recommendation XXX on discrimination against non-citizens, 2005, 12; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 33; CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, 4 (r), 4 (s) and 4 (t); CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 30; CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35, 39-40

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[229] CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, 5(y); CERD General recommendation XXX on discrimination against non-citizens, 2005, 21; CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, 5(c); CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, par. 31; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, 41; CERD General recommendation XXX on discrimination against non-citizens, 2005, 12

[230] CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, 5(b)

population groups, especially by politicians, officials, educators and the media, on the Internet and other electronic communications networks and in society at large. State Members should also actively raise awareness among members of different racial and ethnic communities about the importance of their participation in public and political life.

With regard to the focus on specific actors and educational measures, mention should also me made of article 10 CAT and the CPED. Neither CAT nor CPED include a provision on human rights education in general. But, article 10 CAT stipulates that states have to include information on CAT's norms regarding the prohibition against torture in the training of *law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment*. Likewise, article 23 CPED stipulates that education and information on CPED's prohibition of enforced disappearances should be included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty.

According to CERD, implementation of education against prejudices, for peace, tolerance, and human rights, also requires Member States to cooperate with different allies. It requires Member States to cooperate with civil society, *members of communities affected by racial discrimination, and with associations of lawyers, university institutions, legal advice centers and nongovernmental organizations specializing in protecting the rights of marginalized communities and in the prevention of discrimination.* [231] Furthermore, the Committee has attached importance to engaging the general public, civil society, including religious and community associations, parliamentarians and other politicians, educational professionals, public administration personnel, police and other bodies dealing with public order, and legal personnel, including the judiciary.[232]

CERD does not really seem to make a distinction between multicultural and intercultural education (Thornberry, 2016).[233] Nor has the CERD formulated general principles on intercultural education or other suggested types of education it suggests. The way in which these types of education is understood by the CERD can thus only be deducted from the more specific measures suggested by CERD and which have been ascribed above.[234] UNESCO does give a definition of intercultural education.

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[231] E/CN.4/Sub.2/1998/4, p. 15, par. 46; CERD General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), 2002, par. 8 (uu); CERD General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, par. 9; CERD General recommendation no. 34 on racial discrimination against people of African descent, 2011, CERD/C/GC/34, par. 14 and 31

[232] CERD General recommendation no. 35 on combating hate speech, 2013, CERD/C/GC/35, 36. Although this point has been stressed in the specific light of combating hate speech, one may consider this recommendation relevant for the combat against racial discrimination in a broader sense.

[233] An analysis of the General Recommenations published by CERD, also shows that CERD does not seem to make a distinction between multiculturalism and interculturalism. CERD does not make clear how it interprets these concepts nor if, in their understanding, a real distinction can be made between multiculturalism and interculturalism.

[234] Thornberry (2016) argues that the CERD has not formulated general principles on intercultural education. Thornberry therefore turns to UNESCO's understanding of intercultural education which means that education should '(1) respect the identity of the learner, (2) provide learners with the knowledge and skills 'that enable

UNESCO's (2006) understanding[235] of culture is:

> *Culture is defined in numerous ways. As such, it has been defined as "the whole set of signs by which the members of a given society recognize...one another, while distinguishing them from people not belonging to that society." It has also been viewed as "the set of distinctive spiritual, material, intellectual and emotional features of a society or social group... (encompassing) in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs." Culture is at the core of individual and social identity and is a major component in the reconciliation of group identities within a framework of social cohesion. In discussing culture, reference is made to all the factors that pattern an individual's ways of thinking, believing, feeling and acting as a member of society.*

UNESCO's definition reflects an essentialized understanding of culture.[236] The understanding that culture is not inherent to individuals, but that instead cultures are learned, change, internally conflicted, that individuals are influenced by different cultures, and that cultures are negotiated and performed in relation to other individuals and power, does not comfortably sit with it.

UNESCO (2006) formulates interculturality as:

> *… a dynamic concept and refers to evolving relations between cultural groups. It has been defined as "the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect.19" Interculturality presupposes multiculturalism and results from 'intercultural' exchange and dialogue on the local, regional, national or international level.*

Strikingly, both UNESCO's and the CERD's understanding of intercultural education is that human rights education appears to fall outside of the scope of intercultural education. It is as if there is one neutral human rights narrative and that human rights theory, implementation and action is neutral and beyond culture (or a universal culture), and necessarily contributes to the educational aims that CERD has explicated. It thus appears that human rights cannot be approached from an intercultural perspective. The pluralism that is envisioned by interculturality is part of the same project in which one universal global ethics is envisioned. Indeed, UNESCO (2006) acknowledges that it aims to promote both universality of human rights as well as cultural pluralism, seemingly as two distinct things.

Moreover, while different UN documents suggest that education in general and human rights education in particular should contribute, and is essential for harmonious relations among individuals and communities, they do not clearly conceptualize different categories of individuals and communities.

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them to contribute to respect, understanding and solidarity among individuals, ethnic, social, cultural and religious groups and nations'.

[235] I also turn to UNESCO's understanding of intercultural education because the CERD and ….. has acknowledged that it leans on UNESCO's expertise where needed , see A/32/18, p. 14.

[236] See also Thomas Hylland Eriksen on UNESCO's *Our Creative Diversity* report. He argues that although UNESCO does recognize that cultures are dynamic, UNESCO's understanding of cultures does foremost stick with the idea of cultures as 'islands or at least peninsulas'.

3.6 CONCLUSION

This chapter looked into ways human rights and human rights education are conceptualized and institutionalized at the United Nations and how this relates to (the elimination of) racism. More specifically, it focused on human rights conventions and the way in which these have been interpreted by UN Treaty bodies. Since this work analyses the relation between human rights education and racism, the chapter mainly focused on the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the work of its treaty body, the Committee on the Elimination of All Forms of Racial Discrimination (CERD). However, the chapter did place the ICERD in a broader analysis of the UN human rights (education) framework in order to better understand its place in it.

The language of natural law with rational and moral humans naturally and inherently having human rights can be found in the very wording of the Universal Declaration of Human Rights (UDHR). According to the UDHR, Human rights are thus universal, and equally applicable to every human. However, the reliance on natural law leaves the door wide open for the type of essentialization (inter alia, in the form of racialization) where only a specific group of people (Man) is fully human, whereas other people are the human Other (also see chapter 2). It is then of no surprise that the UDHR was followed by other international human rights instruments that codified that other categories of humans have human rights too. It is in this context that international human rights documents can claim that racialized people's rights, women's rights, migrants' rights, children's rights, people with a disability's rights etc. are human rights too. For if everybody would be discursively institutionalized as equally human, there was no need to establish that certain specific categories of humans have human rights too. It could then be said that, looking at the UN Human rights framework: people do not have human rights. Instead, they have the rights that is accorded to the specific categories of humans that the UN framework establishes. It can also be concluded that the specific categories of human identity found in human rights, are not neutral nor innocent, but the product of historical Western hegemonic conceptualization of human identity ánd counter hegemony that has found its way into the UN framework. In some way the UN human rights framework accommodates counter-hegemony, but only to a limited extent. The latter is what we saw in the not even exhaustive analysis of the implementation of the ICERD for example, where, the ICERD could have been far more revolutionary in contributing to the end of racism and more specifically, the global color line but has not been, due to geopolitics.

This chapter offered an analysis of (categories of) the human as discursively institutionalized by a number of UN human rights conventions, namely the International Bill of Rights, the ICERD, the CEDAW, the CRC, the ICMW, the CRPD, and related UN bodies. The analysis shows that these conventions and declarations, and the way they have been interpreted by Treaty bodies and other UN bodies, codify different ontological understandings. We have found at least the understandings that humans are naturally born a certain way (with optimal human being optimally rational and moral), that humans belong to clearly distinguishable groups of persons belonging to a territory with the right to self-determination, that peoples should develop from a colonized situation into an independent legal status, that humans can self-identify as being/belonging to racial groups, that categories of the human are socially constructed, that humans naturally develop in a linear manner from childhood into adulthood, that categories of the human are learned categories, that humans can be categorized in citizens and non-citizens, that one should consider intersectionality.

At the same time, a plurality of understandings of what rights are can be found in the UN human rights framework. One can point to the fact that human rights norms are no longer only explicitly interpreted with the use of legal reasoning, but that interpretation of norms also explicitly involves

the consideration of social context, and input from States and non-state actors. At a certain point, the CERD eventually stated that it considers its monitoring work – including the interpretation of the CERD – the result of a dynamic pluralism. This appears to be a very different understanding of universality than that which can be read in the UDHR. Apart from these understandings, other Treaty bodies have marked human rights as educational means and contributing to senses of belonging. And although it has been tempting for States and academics to find a hierarchy between civic and political rights, and economic, social and cultural rights, after the fall of Berlin Wall, it has been repeatedly emphasized by UN bodies that human rights are universal, indivisible, interdependent and interrelated. According to UN bodies there is thus no hierarchy of human rights. And whereas human rights norms historically and hegemonically have been conceptualized and institutionalized as individual rights, group rights also quickly entered the UN human rights framework. The latter being a clear consequence of the legacies of colonialism and the following non-colonial imperialisms. Furthermore, whereas the UN human rights framework still seems to stress the universality of human rights – which seems to be equated with neutrality of human rights – it does acknowledge that equality before the law can perpetuate historical inequalities, and that affirmative action and positive obligations are thus required.

What exactly constitutes a human, human communities (states, nations, races etc.), and human rights within the UN human rights framework, is thus not at all that clear. Nor are the underlying ontological and epistemological understandings. However, what is clear is that there is nothing neutral nor innocent about these conceptualizations of human identity, human communities, and law (including human rights law). They are inherently related to historically created in- and exclusions, and still adhere to the historical domination of Man. At the same time, counter hegemony does find its way into the UN human rights framework even if only to a limited extent. This is consistent with the understanding that human rights are a constantly changing contested site in which power plays a role.

In addition to the racist inequalities that the UN human rights framework does perpetuate, this chapter also drew attention to the fact that the United Nations itself is established in a manner that privileges some states over others. This cannot be seen apart from the ways in which human rights norms are established. Nor can it be seen apart from the historically unequal means that different actors have on actually influencing the establishment of human rights norms. The very structure of the UN can thus also be said to contribute to perpetuating the global color line. This is even more remarkable because it is the UN that – according to its Charter – aims to promote and encourage respect for human rights and fundamental freedoms.

Claiming that UN human rights are natural, neutral and universal, only adds to the normalization and naturalization of the inequalities, including the global color line, that human rights perpetuate. After all, in this way of portraying human rights, the role of humans themselves and thus also power becomes inconceivable. The same goes with an uncritical stance towards the very structure of the UN.

This brings us to the issue of human rights education and its relation to racism. Within the UN human rights framework, it namely appears that UN Treaty bodies promote exactly the understanding of natural, neutral and universal rights in human rights education.

When dealing with human rights education, the UN human rights framework clearly shows an uncritical preoccupation with the universality of human rights. Learners are to be taught about the universality of human rights. This does not appear to be the dynamic pluralist universality that CERD has articulated in more recent years, or other forms of pluralist universalities. The source of human rights therefore seems to be relegated to a suprahuman plane (cf. chapter 2). An essentialized

understanding of human rights thus seems to be promoted by the UN human rights framework. This is easily paired with essentialized understandings of human identity. This is even more problematic since the UN human rights framework does not make clear what ontological understanding of humanity is to be taught in human rights education. As we saw, in chapter 2 and chapter 3.4, this form of human rights education – that promotes essentialized understandings of human rights and human identity – fails to recognize that human rights norms are sites of contestation in which power plays a role. It also fails to recognize the discursively institutionalized inequalities that continue to be perpetuated by the UN (human rights framework). It then contributes to the normalization and naturalization of discursively institutionalized inequalities, including the global color line.

Treaty bodies heavily emphasize that education should include a fair portrayal of different social groups, and the different contributions that these social groups have made to society. These requirements can resonate with education that acknowledges open and pluriverse relationality. However, it can – at the same time – resonate with education that does acknowledge contributions of different categories of humans, but still holds onto essentialized understandings of human beings. If one looks at UNESCO's understanding of intercultural education for example, UNESCO still appears to hold on to essentialized understandings of the world, despite its emphasis on change and respect for different cultures. More remarkable, however, is that Treaty bodies do not at all seem to require that human rights education (in contrast to education in general) includes a fair portrayal and the contributions of different social groups.

Within the UN human rights framework, human rights education requires not only education about human rights. Human rights education should thus not simply be teaching human rights norms with references to international conventions. Instead, according to the UN human rights framework, human rights education also requires education for and through human rights. This means that human rights education should educate people into acting for human rights and in an environment that meets human rights standards. A critical stance towards governments is therefore stimulated for as far as it contributes to increased human rights compliance by governments. This requirement can be commendable. However, a similar critical stance towards the UN itself is not promoted.

In perpetuating essentialized understandings of human rights and humanity, human rights education does not contribute to eliminating racialization and racism. Whereas human rights education does have the potential to contribute to the elimination of racialization and racism, and more specifically the global color line, this potential is thus undermined by the way in which human rights education is discursively institutionalized by the UN human rights framework.

In this chapter we looked into human rights law and human rights education as conceptualized and institutionalized at the United Nations and how this relates to racism, and more specifically global color line. In the next two chapters we will turn to Curaçao. Curaçao is a constituent state of the Kingdom of the Netherlands. The next two chapters will look into the ways human rights law and human rights education are institutionalized and conceptualized in Curaçao and how human rights education is practiced in Curaçaoan schools. We will see how human rights and human rights education in Curaçao is related to racism and the global color line.

PART III: HUMAN RIGHTS EDUCATION IN CURAÇAO

4. CURAÇAO: HUMAN RIGHTS, RACE AND EDUCATION

4.1 INTRODUCTION

Before turning to empirical research on human rights education in Curaçao (chapter 5), this chapter will first draw a Curaçaoan context. Since this research is about human rights education, racism and the Global color line, this chapter draws a context regarding human rights law,[237] race and national identity, and education in Curaçao. As we will see, these topics cannot be sufficiently understood without considering Curaçao as a part of the Kingdom of the Netherlands. Curaçao as part of the Kingdom of the Netherlands therefore, is an intrinsic part of this analysis. The chapter also explicitly analyses to what extent the global color line is or is not perpetuated regarding Curaçao within the Kingdom of the Netherlands.

The chapter starts off with introducing some characteristics of Curaçao regarding its geographical location, population, and its relation to the (Kingdom of the) Netherlands (paragraph 4.2).[238] As we will see, these characteristics are all relevant to this research. The chapter will then turn to (international) human rights law applicable in Curaçao (paragraph 4.3). After that, the chapter turns to the national identities of Curaçao and the Netherlands and ways in which these do or do not relate to race (paragraph 4.4.).[239] The chapter then turns to education in Curaçao (paragraph 4.5.), and ends with a conclusion on the ways in which the before-described findings are related to each other and are relevant to this research (paragraph 4.5).

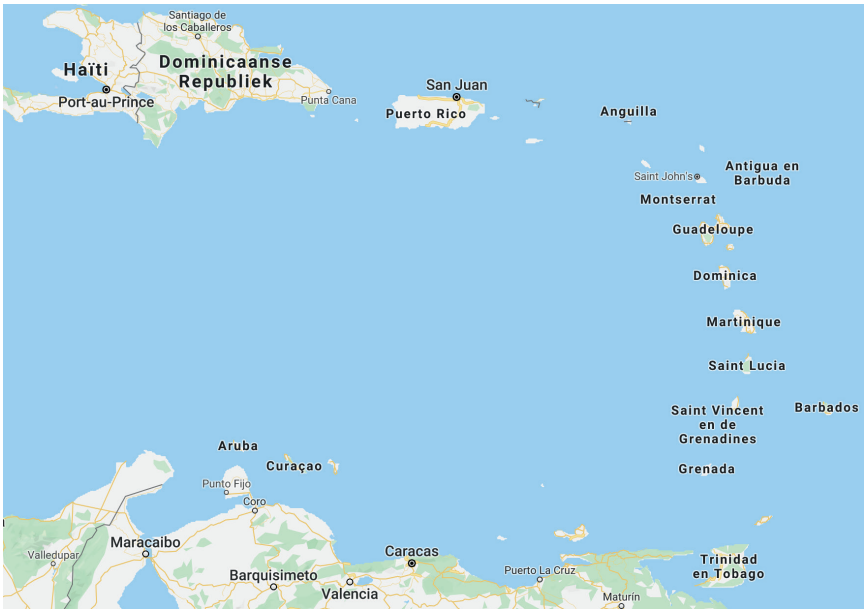
4.2 A SHORT INTRODUCTION TO CURAÇAO

Curaçao is a 444km^2 island in the Caribbean, about 65 kilometers north of the coast of Venezuela neighboring the islands Aruba and Bonaire. Its capital city is Willemstad.

[237] An analysis of human rights law will be performed, and not – in a broader sense – human rights, see paragraph 4.3.

[238] Since 1954, with the adoption of the Charter of the Kingdom of the Netherlands, the Kingdom of the Netherlands is institutionalized as being distinct from the Netherlands (see paragraph 4.3.3). The Kingdom of the Netherlands consists of Aruba, Curaçao, Sint Maarten and the Netherlands. The Netherlands is thus one of the current four countries that are part of the Kingdom of the Netherlands. However, as we will see, this distinction is not as clear-cut (paragraph 4.3). It could even be said that the Kingdom of the Netherlands actually still is the Netherlands, and that the Kingdom of the Netherlands/Netherlands still rules over the three other countries and is a colonial state (cf. Santos do Nascimento, 2016).

[239] Other than being mentioned. Other national identities within the Kingdom of the Netherlands, such as those of Aruba and Sint Maarten are not a part of this chapter.



Curaçao was colonized by the Spanish from 1499 until the Dutch took over Curaçao, Aruba and Bonaire in 1634. Dutch rule on Curaçao first took place through de Dutch West India Company (WIC). Rule by the WIC was authorized by the government of the Republic of the Seven United Netherlands (*Republiek der Zeven Verenigde Nederlanden*) (Van Rijn, 2019). The WIC was a private trade company involved in transatlantic trade, including the trade of enslaved people from Africa. Colonial rule on Curaçao subsequently fell under the Batavian Republic (*Bataafse Republiek*)[240] (1795-1801), the English (1801-1803), the Batavian Republic again (1803-1806), the Kingdom of Holland (1806-1807),[241] the English (1807-1816) and finally by what had by then become the Kingdom of The Netherlands. A form of decolonization arguably occurred in 1954 with the establishment of the Charter of the Kingdom of the Netherlands (Van Rijn 2019), because – in short – it turned the colonies into autonomous countries.[242] Being autonomous in this sense means not being a sovereign state but neither being fully integrated into another state; it is an in-between status (see paragraphs 4.3 and 4.4 where we will dive deeper into this). The Kingdom of the Netherlands currently consists of three autonomous countries, namely Aruba, Curaçao, Sint Maarten, and the Netherlands (more about this will be explained in paragraph 4.3.3).

Different from many other Caribbean islands, Curaçao did not become a plantation society in the 16th-19th century (Allen, 2007). Because of Curaçao's natural harbors, salt banks and strategic geographical location, the island was primarily of geopolitical and economic use. Curaçao became the center of

[240] The Batavian Republic was the successor of the Republic of the Seven United Netherlands.

[241] The Kingdom of Holland replaced the Batavian Republic, with the accession to the thrown by Louis I, the brother of Napoleon.

[242] As we will see, there are different understandings of the current relations of Curaçao with the Kingdom of the Netherlands and about the question if decolonization really occurred. These understandings also make it debatable if one can really speak of an autonomous country.

general and contraband (slave)trade with the region and Dutch slave trade (i.a. Phaf-Rheinberger 2008; Roe 2016; Van der Velden 2011). Although formally not a SIDS (Small Island Developing States) because of the way it is legally embedded in the Kingdom of the Netherlands (see paragraph 4.3), Curaçao does meet some of the characteristics of SIDS, namely its small size, limited natural resources, narrow economic base, large distance to major markets and vulnerability to climate-related disasters.

The people who lived on the island before European imperial expansionism started around the sixteenth century, were called Caiquetio (Roe, 2016) or Arawak (Allen and Guadeloupe, 2016). However, there is not much written knowledge about nor is there much discussion about the Caiquetio or Arawak, despite the still existing Kaketio linguistic, ethnobotanical and spiritual presence (Ansano, 2017). Like anywhere else, Curaçao has known different migration patterns. Some significant[243] and known changes in migration patterns include the increased flux of migration between Curaçao's shores and the rest of the world brought about by centuries of trans-Atlantic (slave) trade (Roe, 2016). Another significant change in migration patterns occurred in the 18th century when the Dutch lost their asiento, due to which there was no longer a large flux of forced migration from Africa (Allen, 2017b). Another significant change includes the change in migration patterns in the early 20th century. This included emigration of Curaçaoans to places such as Cuba for agricultural jobs, and later, when the Shell oil refinery needed more workforce, an influx of immigrants from around the world (i.a. Roe, 2016; Allen, 2019).

Curaçao has a registered population of 156.223 people (Central Bureau of Statistics Curaçao, 2020).[244] Four in ten of the current population have either immigrated from elsewhere or are the first-generation descendants of immigrants (UNDP, 2016). A high number of immigrants migrate from the Caribbean or Latin America. Most notably from Colombia, the Dominican Republic, Haiti, Jamaica and Venezuela (De Bruijn and Groot, 2014). There is also a significant group of migrants from other parts of the Kingdom, namely Aruba, Bonaire, Saba, Sint Maarten, and the Netherlands (Roe, 2016). Curaçaoan citizens carry a Dutch passport. This makes it relatively easy for them to migrate to other countries within the Kingdom of the Netherlands. Migration back and forth between these territories, has led some to define Curaçaoans as hyper mobile (see Starrink-Martha, 2014).

For centuries, Dutch racism justified oppression – including slavery, and other forms of socio-economic and political oppression – on the island (i.a. Allen, 2006; Roe, 2016). Racism was enabled by legally and conceptually delinking Curaçao's territory and population from the territory and population in The Netherlands. The Dutch Self – as created and perpetuated in hegemonic national identity narratives and as institutionalized as legal citizenship – became contrasted to racialized Others in Curaçao, just as – in similar (but different) ways – it was contrasted to racialized Others in other Dutch colonies in the Caribbean and Asia. This enabled a logic used to justify that racialized Others in Curaçao had fewer rights and freedoms compared to people in the Netherlands and Dutch

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[243] Significant in terms of number of migrating people in combination with islandwide socio-economic and political changes they brought about in society.

[244] This is the number of people registered at the population registry of Curaçao (*Kranshi*) (personal communication via e-mail with Central Bureau of Statistics Curaçao 2020 on 6 May 2020). There is also a significant number of non-registered people on the island. At the time of writing this dissertation, the most remarkable is a growing number of Venezuelan citizens who reach Curaçao to escape the current crisis in Venezuela. Projections (made before measures related to Covid-19 were taken) for the end of 2020 are that there will be a group of around 20.000 Venezuelans in Curaçao, see https://www.knipselkrant-curacao.com/paradisefm-curacao-kan-aantal-venezolanen-niet-meer-aan/

people living in Curaçao. Being included or excluded in 'being Dutch' both in the legal and social sense thus had a significant effect on political, social and economic rights and freedoms accessible to people of different racialized social groups. The effects of which can still be found in who is deemed to be Dutch (paragraph 4.4) and who it is that has certain human rights within the Kingdom of the Netherlands (paragraph 4.3). Simultaneously, Dutch rulers in the Netherlands and in Curaçao, constituted hierarchical racial divisions in Curaçao's society itself, which continue to affect the contemporary hegemonic Curaçaoan Self (4.4).

4.3 HUMAN RIGHTS LAW AND CURAÇAO

4.3.1 INTRODUCTION

As we have seen (chapter 2), what human rights are is understood in different ways by different people also depending on time, place, and context. Human rights as human rights law is only one of these understandings. What human rights law is – as we have also seen in chapter 3 – also depends on time, place and context and – despite always changing – is somewhat petrified because it is institutionalized by law. This research does not set out to look into the different meanings given to human rights by different people in Curaçao.[245]

What will be done in this paragraph is an analysis of the legal human rights framework of Curaçao. In this way, the empirical data in chapter 5 – focused on the understandings of human rights (education) of pupils and teachers in chapter 5 – can be understood and analyzed considering the institutionalized human rights applicable in Curaçao. In this paragraph, we will first turn to international human rights applicable in Curaçao (paragraph 4.3.2). Considering the fact that Curaçao is part of the Kingdom of the Netherlands, we will then turn to human rights law and the Charter of the Kingdom (paragraph 4.3.3). Lastly, we will turn to human rights norms in the Constitution of Curaçao (paragraph 4.3.4).

4.3.2 INTERNATIONAL HUMAN RIGHTS NORMS

As mentioned earlier, Curaçao is part of the Kingdom of the Netherlands (hereafter also: Kingdom). It is the Kingdom of the Netherlands that acts as a sovereign State in international law. As such, it is the Kingdom that is State Party to multiple international and supranational organizations (hereafter: international organizations)[246] and human rights conventions. In international public law, Curaçao can thus not sign treaties with other States.[247] Curaçao can only become a member of organizations or

[245] Such research would be valuable as it will show the ways in which people think of human rights, which might be different from human rights as codified in law. In this regard, it is worth mentioning that in Curaçao too – like in other places – people do not necessarily think in terms of 'human rights' when they think about or strive for such things as equality and freedom. Indeed, law, has many times not worked in favor of entire racialized social groups in Curaçao, such as during slavery, but also after 1954 when some constitutional changes took place. People from disadvantaged social groups did not readily accept inequalities and non-freedoms, and dealt with these in different ways, for example in (daily) social and cultural life (cf. Allen, 2007; Rosali,a 1996), different legal systems (Van der Velden, 2011).

[246] International organizations established by public law. Private international organization are thus not considered in this work.

[247] Curaçao does have legal personality. As such it can sign legal agreements – other than public law agreements that have to be signed by sovereign States – with other entities including with other States, for example in civil law or in soft law.

treaties established through international public law, when these organizations or treaties offer the possibility for non-sovereign State states to become members (article 28 Charter of the Kingdom).[248] But even then, the membership is established through the Kingdom.

The Kingdom of the Netherlands is State Party to – amongst others – the United Nations, and multiple United Nations human rights conventions. It is also a member of the Council of Europe (CoE), and the CoE's European Convention on Human Rights. The Kingdom is also State Party to the European Union (EU) and as such has to adhere to the EU Charter of Fundamental Rights when implementing European Union legislation. Most of these conventions are also applicable to the Caribbean territories within the Kingdom of the Netherlands.[249]

Before continuing on the issue of the applicability of international human rights norms within the Kingdom of the Netherlands, I want to draw attention to the fact that ever since the 1960's the promotion of human rights is a core aspect of Dutch Foreign Affairs (Duijf, 2020; Oomen, 2016). So much so, that the Netherlands positions itself as a guiding country considering human rights. However, Dutch governmental and parliamentary documents show that the Dutch interest in furthering international human rights lies not so much in the interest in human rights per se, but rather in wanting to develop the international legal order so that the Netherlands can maintain its wealth through trade activities in the global economic order (Oomen, 2016). However, the image of the Netherlands as a front runner regarding human rights, becomes rather pale when looking at both the actual contribution of the Netherlands to the development and implementation of international human rights norms internationally, and within the Netherlands (Oomen, 2016). As, we will see the image becomes worse if we look at the Dutch attitude towards human rights within the Kingdom as whole. For this we can point out the differentiated applicability and implementation of international human right norms within the Kingdom, and the domestic unaccountability of the Kingdom concerning human rights. We look into both in this paragraph. However, as we will see, these two things are merely symptoms of the problem that the very structure of the Kingdom of the Netherlands is a continuation of institutional racism and a contribution to the perpetuation of the Global color line.

The Kingdom of the Netherlands has made reservations to multiple international human rights treaties to differentiate the territorial applicability of human rights conventions (De Wit and

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[248] For example, Aruba, Curaçao and Sint Maarten have made efforts to become a member of CARICOM, a Caribbean Community international organization consisting of a number of Caribbean states. For the three countries' membership efforts, see for example: https://caricom.org/caricom-sg-holds-talks-with-aruba-on-associate-membership/ . Remarkably, there is no legal basis in the Charter for the Netherlands to become a member of international organizations. However, the Kingdom does at times become State Party to international organizations or conventions while making a reservation for it to be applicable to the (European territory of the) Netherlands only, cf. the European Union membership.

[249] As we saw in chapter 3, the Kingdom of the Netherlands was one of the countries that argued for the inclusion of colonial clauses in international human rights conventions. Such colonial clauses would make human rights only applicable to the territory of the colonial state (in this case the European territory within the Kingdom) and thus not the territories of the colonies (in those times not only Aruba, Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten, but also Suriname, and – what is now called – Indonesia). The ECHR had a 'colonial clause'. The Kingdom of the Netherlands first only became Member State of the ECHR with applicability only in the European territory. It was later made applicable in the Caribbean territories (cf. Martinus 2020c).

Goudappel, 2019; Duijf, 2020).[250] As such, for example the 1951 Convention Relating to the Status of Refugees is not applicable to the 'overseas territories', namely the three countries Aruba, Curaçao, Sint Maarten, and nor to the three Caribbean islands that are now part of the Netherlands, namely Bonaire, Sint Eustatius and Saba.[251] Other human rights conventions are also not applicable in the Caribbean parts of the Kingdom, such as the 2006 Convention on the Rights of Persons with Disabilities (De Wit and Goudappel, 2019; Duijf, 2020; Goudappel, 2020).[252] Ratification of human rights conventions for the different territories within the Kingdom only occurs when domestic legislation is adopted in order to comply with those conventions. In this way, the Kingdom tries to avoid to be held accountable for breaches of human rights. After all, conventions are only ratified when legislation that complies with international conventions, are already in place. Furthermore, implementation of human rights conventions also occurs in a differentiated manner. There thus exist territorially differentiated human rights regime within the Kingdom of the Netherlands. Consequently, the Kingdom of the Netherlands has been criticized for the differentiated applicability and implementation of international human rights (i.a. United Nations General Assembly, 2017; Adviesraad Internationale Vraagstukken, 2018; De Wit and Goudappel, 2019; Duijf, 2020). Remarkably, but not surprisingly considering the above-described underlying Dutch interest in human rights, compliance with international human rights as an aim does not appear to be given by an interest to actually give everyone within the Kingdom access to international human rights. Instead, what seems to be more important is the image and credibility of the Kingdom within the Global order (Duijf, 2020).[253]

Then there is the issue of domestic accountability of the Kingdom for breaches of international human rights.

Depending on the legal protection provided by international organizations and international human rights conventions, (legal) persons can invoke human rights norms at international (semi-) judicial bodies. For example, based on the European Convention on Human Rights, human rights breaches in Curaçao can be brought before the European Court of Human Rights, after having exhausted domestic legal remedies. However, Curaçao is not State Party to any human rights convention. It is thus the Kingdom of the Netherlands that is held responsible in international law for (non-)compliance to human rights norms within the Kingdom of the Netherlands as a whole.[254]

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[250] Duijf (2020) describes that there is debate on whether these are reservations or intentions, see the 1969 Vienna Treaty Convention for the distinction between the two.

[251] See https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en

[252] With regard to the EU specifically, the EU legal regime as a whole applies only to the territory in Europe. For Aruba, Curaçao, Sint Maarten, and Bonaire, Sint Eustatius and Saba, a different regime applies, as the regime for Overseas Countries and Territories (OCTs) applies (i.a. Croes 2006; De Wit and Goudappel 2019).

[253] This was also the motivation for Dutch parliament to change article 27 of the Charter of the Kingdom of the Netherlands. Based on this article, the Kingdom can intervene in the Caribbean countries when they do not comply with international conventions. See the following subparagraphs.

[254] For example the Murray-case, ECtHR 26 April 2016, Murray vs. The Netherlands, application number 10511/10. Within the United Nations, see for example the 2017 Universal Periodic Review of the Netherlands (United Nations Human Rights Council 2017). For a commentary see c.f. Flinterman & Moenir Alam (2020)

However, when individuals or other (legal) persons turn back from the international legal arena to the legal framework of the Kingdom of the Netherlands with a decision of an international court or an opinion of another international body, this person arrives in a limbo. Within the constitutional framework of the Kingdom of the Netherlands, the Kingdom does not have legal personality. In law, neither citizens nor any other (legal) person can thus legally address human rights breaches by the Kingdom of the Netherlands. The paradox is thus that the Kingdom of the Netherlands acts as a sovereign and can breach human rights norms, but cannot be held legally responsible by individuals within the Kingdom of the Netherlands. The sovereign power institutionalized as being the Kingdom of the Netherlands thus clearly exists in international law, but seems to disappear in domestic law (we will get back to this later in this paragraph).

The countries that are part of the Kingdom of the Netherlands, namely Aruba, Curaçao, Sint Maarten and the Netherlands do have legal personality based on domestic law. When international human rights cases relate to a human rights issue in the Netherlands, it has become common practice that it is the Netherlands that deals with the issue.[255] When human rights cases concern Aruba, Curaçao and Sint Maarten however, things become more complicated. It is then often perceived as being either a 'Kingdom affair' or 'autonomous affair'. At the same time, Kingdom interference is almost indistinguishable from interference by the Netherlands.[256] We will get to the distinction of Kingdom affairs between autonomous affairs in paragraph 4.3.3.

4.3.3 THE CHARTER OF THE KINGDOM AND HUMAN RIGHTS LAW

HISTORICAL LEGAL (DE)LINKING BEFORE THE CHARTER

In order to better understand some of the changes brought about by the 1954 Charter of the Kingdom related to human rights, I will point out a number of legal inequalities in rights and freedoms between Curaçao and the Netherlands (their populations and territories). It is a historical relation of being intrinsically linked to each other while at the same time being delinked in a way that led and still leads to differentiated rights and freedoms (in paragraph 4.3.2 we already saw some differentiations concerning international human rights law).

During Dutch imperialist expansion, the Dutch established settlements in territories ranging from (parts of) present-day called Aruba, Bonaire, Brazil, Curaçao, Saba, Sint Eustatius, Sint Maarten, India, Indonesia, South Africa, Suriname, Taiwan, the USA etc. State sanctioned domination and rule in these territories was first established by private trading companies, most notably the *Verenigd Oost Indische Compagnie*, the *West Indische Compagnie* and the *Middelburgsche Commercie Compagnie*.

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[255] This could be explained by the fact that – as we will see – decision making by the Kingdom of the Netherlands to a far extent equals decision making by the Netherlands, the countries are in many ways delinked from each other, and that – with the Netherlands having the highest GDP carries most of the financial costs of Kingdom affairs.

[256] There are multiple cases where the European Court of Human Rights (ECHR) found a breach of human rights in either of the four countries within the Kingdom. It is then the Kingdom, that is held responsible by the ECHR. With regard to human rights breaches in the Caribbean countries however, discussions were held on which of the countries should pay indemnification and take care of measures to solve the human rights breach. The Kingdom has no legal personality. And when discussing responsibilities of the four countries and the Kingdom (which can be said to be the Netherlands), discussion again revolves around the matter of autonomy versus Kingdom interference. See for example the symposium '*TBS en levenslang in Curaçao: overpeinzingen n.a.v. het Murray-arrest*' at the University of Curaçao, where some of these issues were discussed: https://livestream.com/accounts/5492271/events/6556209/videos/140304384 . Also see Van Rijn (2019).

Through these state sanctioned companies, the Dutch were involved worldwide in the trade of goods. This included the trade of commodified Africans. Domination and rule over a number of these territories and their populations was later replaced by direct rule by the Dutch state (also see paragraph 4.2).[257] Legislation in the colonies was from then on thus promulgated by the Dutch legislator, or with a legal basis in laws adopted by the Dutch legislator.

The territory of the Netherlands, including its inhabitants, were conceptually and legally disconnected as a free white society from racialized Others in geographical locations 'there' (Hondius 2011; Maingot 2015). This enabled the exclusion of the colonized territories and their populations from the social, political and economic developments that benefitted the territory and populations in the Netherlands, while it also enabled types of exploitation in the colonies that did not occur in the Netherlands. The colonial state was interested in strategic and commercial interests for itself, and interest in local populations limited itself more to maintenance of public order than the population's wellbeing and development (Groenewoud 2017). From the time of slavery onwards, ruling Dutch in the Netherlands and Curaçao argued that Curaçaoan local populations – other than the Dutch ruling social groups present on the island – and thus most notably the racialized Others, were simply not ready for certain freedoms such as freedom from slavery, or having citizenship rights, voting rights, political power and higher socio-economic standing (i.a. Paula, 1989; Chumanceiro, 1895; Da Costa Gomes, 1935; Hondius, 2011; Allen, 2014; Santos do Nascimento, 2016; Roe, 2016).[258]

Exemplary of the delinking of the territory and population in the Netherlands from Curaçao, is that it enabled the ruling Dutch to legally introduce and maintain slavery in the colonies,[259] while the Dutch did not know slavery in their own territory in the Netherlands.[260] Related to this is the way in which enslaved people from Africa or of African ancestry were categorized into being slaves, and therefore

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[257] What I call the Dutch state here, is what was first the Republic of the Seven United Netherlands, and was succeeded by the Batavian Republic, the Kingdom of Holland and the Kingdom of The Netherlands. The borders of the territory have changed considerably over time, as well as the form of rule, as well as its ties with other European states. Current significant ties within Europe are for example the ties with the European Union and the Council of Europe.

[258] See Blakely (1993) who argues that race and skin color have been used in the Dutch empire 'to cloak all sorts of devilment in human affairs'.This does not mean, of course, that 'whites' within the European territory of the Dutch empire were treated equally; there were real differences based on, amongst other, class, gender, age. What it does mean is that it was possible to dominate and oppress the racialized Other in the colonies differently and to a further extent. Differently because, patriarchy – for example – was constructed differently towards whites compared to that of blacks. To a further extent because - for example – while there were forms of servitude in the Netherlands, this was different from slavery in the colonies, as being a slave meant lifelong and hereditary domination by an owner.

[259] Although slavery and the Dutch Empire in the 16th until 19th century is often associated with the Transatlantic slave trade and slavery in Africa and the Americas (including the Caribbean), the Dutch were also involved in slavery that took place in Asia (Van Rossum, 2015).

[260] Slavery was abolished on 1 July 1863, by Dutch Statutory law '*Emancipatiewet*' of 8 August 1962, with the granting of indemnification of slave holders, and the legal confinement of former enslaved to a 10-year period of servitude (i.a. Van der Velden, 2011; Hondius, 2011). Despite, century-long resistance against enslavement and slavery by enslaved people and other people, and the ruling elite having economic motives to abolish slavery, the fact that slavery was abolished by law, enabled the narrative that freedom from slavery was gifted to the former enslaved by the King (see i.a. Allen, 2014; Blakely, 1993).

non-citizens.[261] Dutch citizenship – and the rights and freedoms that accompanied Dutch citizenship – was out of reach for a significant part of the Curaçaoan population (Santos do Nascimento 2016). This included both the enslaved population as well as people who were not 'from the Netherlands'.

Delinking could also be perceived within the Dutch territory in Europe. Despite existing migrations, for centuries the Netherlands remained considerably white as a result of highly selective social and legal norms of enabling and restricting access of black and brown people (Blakely 1993; Hondius 2011). The conceptual and institutionalized efforts to exclude black and brown people from both the European Dutch territory and Dutch (legal and national identity) citizenship – despite having real limiting effects – of course did not prevent immigration of people from around the world, including non-whites from the colonies (Blakely 1993; Hondius 2011).[262]

Delinking also took place with respect to (universal) suffrage. Which too is intrinsically linked to legal Dutch citizenship. For a long time, large parts of the population in Curaçao[263] were excluded from *Nederlanderschap* (being Dutch in a legal sense) and as such from suffrage.[264] The limited group of

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[261] During the 16th century the terms negers (Dutch word derived from the Portuguese and Spanish negros, which means blacks), swarten (a word wich means male black), and swartinnen (a word wich means female black), took on the second meaning of slave. Sometimes even without this necessarily referring to someone's skin colour. Being categorized as slave first meant being someone's property in legal terms, and later as underaged humans (onmondigen), see Hondius (2011). Physical appearance that is associated to being African, or rather black or a *neger* and therefore slave, were related to the (absence of) rights and freedoms, and the (absence of) privileges, also led to colorism in Curaçao similar to other colonies where hereditary slavery of people categorized as black, existed (see also paragraph 4.2.3).

[262] Research shows that, at least in the seventeenth and eighteenth centuries there was a significant number of black and brown people in the Netherlands (Blakely, 1993), often arriving in the Netherlands via Spain, Portugal, England and Germany, and sometimes migrating further to other places in Europe such as France (Hondius 2011). Currently, there appears to be an increasing awareness that, for centuries, there have been (dark) brown skinned people in the Netherlands. Indications for this are, for example the Black Heritage Tour in Amsterdam (http://www.blackheritagetours.com/) and different other tours and booklets, 'Hier. Zwart in Rembrandts tijd,' an exposition held at the Rembrandt Museum in Amsterdam that shows the work of renowned painter Rembrandt, that depict dark brown skinned people with African ancestry who lived and worked in Amsterdam in the period of 1620-1660 (Kolfin and Runia, 2020). This contests the Dutch imaginary of a white society which only had brown skinned people immigrating in the 1960s onwards.

Immigration included a number of enslaved people who – in different circumstances – reached the Netherlands. Their legal statuses on Dutch territory was not always certain. Notably, it was eventually decided that enslaved people remained slaves even if they somehow managed to reach the Netherlands. This was enabled by reasoning that even if enslaved people reached the Netherlands, the laws of the Netherlands did not apply to them. Instead, the laws of the colonies applied to these enslaved people. The laws of Curaçao were thus applied to the enslaved who were from Curaçao. Enslaved people from Curaçao who reached the Netherlands could therefore be forcefully abducted and transported by their legal owners (Hondius, 2011).

[263] And the other Dutch colonies both in the Caribbean – including Suriname –, and Indonesia.

[264] In the Netherlands – in contrast to the colonies – large portions of the population did have *Nederlanderschap* (being Dutch in a legal sense). This however did not mean that they all had political rights; the majority of Dutch were excluded from (political) rights due to a legal distinction between Dutch civil law citizenship and Dutch public law citizenship. When the powers of the Dutch King were limited by the Dutch constitution of 1848, significant executive and legislative powers were shifted from the King to the Dutch Ministers and Dutch parliament. To an extent, power thus became less autocratic and more democratized. However, democratization took place for a very specific category of the human, namely studied, wealthy, men, categorized as Dutch citizen by public law. In 1892, the distinction between civil law and public law Dutch citizenship was lifted. From then on there was only one type of Dutch citizenship for Dutch in or 'from' the Netherlands. However,

people in the Caribbean colonies who did have *Nederlanderschap*, continued to have *Nederlanderschap* (Santos do Nascimento 2016). They however, did not enjoy the same civic and political rights as those residing in the Netherlands (c.f. Da Costa Gomes 1935; Santos do Nascimento 2016). In 1919, universal suffrage for the House of Representatives (*Tweede Kamer*) was introduced for every Dutch legal citizen of 23 years or older, residing in the Netherlands.[265] This introduced further – even if still limited – democratization in the Netherlands.[266] However, it continued the reality that neither the large parts of the Curaçaoan population (and the colonized populations in the Caribbean and Indonesia) who were excluded from Dutch citizenship, nor those who resided in the colonies and did have Dutch legal citizenship, enjoyed full civic and political rights (including voting rights). This is striking since it was still the executive and legislative power of the Kingdom of the Netherlands that were constitutionally the highest powers of the Kingdom of the Netherlands, and thus also ruled over the colonies without people in the colonies having a say. According to Dutch colonial legislation, in Curaçao it was the Governor (as representative of the Dutch King) who ruled together with the Curaçaoan Colonial Council.[267] The Colonial Council was a co-legislative body composed of council members who were all appointed by the Governor.

From 1936 onwards, Curaçao became part of the Dependency Curaçao (*Gebiedsdeel Curaçao*) consisting of six Caribbean islands, namely Aruba, Bonaire, Curaçao, Saba, Sint Maarten and Sint Eustatius.[268] The 1936 *Staatsregeling* – Dutch colonial legislation – established a partially chosen Parliament; the *Staten* which consisted out of ten elected members and five members whom were appointed by the Governor.[269] Only citizens meeting capacity and census-standards had passive voting rights. Male citizens meeting these capacity and census standards had active voting rights. The Governor – as representative of the King – was only accountable to the Dutch government (Delgado 2014; Van Rijn 2019). Gender was thus an explicit conceptual and legal ground to exclude the female racialized Other from active voting rights.[270] In legislation no reference to race was made when

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this did not mean that every Dutch citizen obtained equal political and other human rights; due to census requirements, for example, large sections of the population in The Netherlands still did not obtain voting rights. Remarkably, with the 1892 law, the limited group of people who did have Dutch legal citizenship in Indonesia was stripped of every form of (differentiated) Dutch citizenship (Santos do Nascimento, 2016).

[265] Universal suffrage for men was introduced in 1917, with only passive voting rights for women.

[266] Limited democracy, because there is still a lot to be said about democracy in the Netherlands, such as the fact that sovereignty and thus governing power is still related to the Royal family. Furthermore, with mainly cabinets with majority support, members of parliament voting according to their party's wishes, and increasingly detailed coalition agreements established at the beginning of the periods of government, there is – to say the least – a serious lack of checks and balances which ought to exist between Government and Parliament.

[267] Dutch government (the King and Ministers) and parliament were the legislator for both the territory in Europe and in the colonies.

[268] Throughout the centuries, Curaçao has known different legal constructions, including that of being part of Surinamese jurisdiction as an entity called *Gebiedsdeel Curaçao* (Suriname was one of the Dutch colonies), before becoming part of the entity called Curaçao and subordinates, and later the Dependency Curaçao.

[269] One of the five appointed members had to be a representative of the Royal Dutch Shell, a gas and oil company headquartered in the Netherlands which had established an oil refinery in Curaçao in 1915 (Van Rijn 2019).

[270] Women in the Netherlands already enjoyed both passive and active voting rights. In Curaçao large numbers of people were still excluded from Dutch citizenship. In Curaçao, women with Dutch citizenship and meeting capacity and census requirements only had passive voting rights.

establishing legislation on voting rights. However, debates on universal suffrage for Curaçao amongst the ruling elite included very calculated references to race (i.a. Chumanceiro 1895; Da Costa Gomes 1935).[271]

World War II provided a momentum for further change (also see chapter 3 for some on the geopolitical context, the establishment of the United Nations and the right to self-determination). In the colonies, changes were demanded by also claiming the right to self-determination as a people. In 1948 the Dutch legislator passed a new *Staatsregeling*. This turned the Dependency Curaçao into an entity called the Netherlands Antilles (*Nederlandse Antillen*), consisting of Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten. It also constituted universal suffrage for a fully elected parliament, namely the parliament of the Netherlands Antilles. Even though legal norms passed by the Dutch legislator still had a higher status than legislation of the Netherlands Antilles, the Curaçaoan population – being a Dutch legal citizen or not – did not obtain voting rights for Dutch parliament.[272] Furthermore, the Governor could still only be held accountable by the Dutch government (Van Rijn 2019).

In 1951 a change took place regarding Dutch legal citizenship. Dutch legal citizenship was extended to the 'entire national population of Suriname and the Netherlands Antilles' by Dutch Statutory law of 1951.[273] Despite former discussions about legal citizenship, where some argued for differentiated citizenship, it was now irrefutably codified that the populations of the Netherlands Antilles and Suriname, carried the same Dutch legal nationality as the Dutch in the Netherlands.[274] 1951 also saw the adoption of an Interim Arrangement (*Interimregeling*) which already contained some of the constitutional changes that would be adopted in the 1954 Charter of the Kingdom of the Netherlands.[275] In the next subparagraph we will turn to specifics of the Charter of the Kingdom of the Netherlands.

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[271] It brings to mind research that shows that during debates in Dutch parliament at the end of the eighteenth century about a new constitution, it was consciously chosen to not include any reference to slavery in the constitution (Hondius 2011). It was argued that census requirements should not be to strict but also not too loose. Not too strict because then to many Jews – who were thought not to be Kingdom minded – would obtain political power apart from the economic power that members of this social group already had. Not too loose because then to many descendants of slaves would have political power and that would lead to chaos (Roe, 2016 referring to Paula 1989; Da Costa Gomez, 1935; Chumanceiro, 1895). This led Chumanceiro (1895) to write his essay '*Zal het kiesrecht Curaçao tot het kannibalisme voeren?*' (Will suffrage in Curaçao lead to cannibalism?) in which he contested these kinds of reasonings. Later, Da Costa Gomes (1935) would also contest these types of racist reasonings as well as that he would argue against representation by only a wealthy few.

[272] Integration of Curaçao in the Netherlands with universal suffrage for the Curaçaoan population for Dutch Parliament (argued as a first option in 1935 by Da Costa Gomez) did not take place. Instead, something similar to what he saw as a second best option was introduced, namely universal suffrage for a local legislative body (Da Costa Gomez 1935).

[273] *Wet houdende nadere regelen omtrent Nationaliteit en Ingezetenschap* 21 December 1951, Stb. 1951, 593.

[274] See Da Costa Gomez (1935) who sets out how some tried to reason that Curaçaoans did not have the Dutch nationality, and how he argued that it should be reasoned that Curaçaoans (and people in other Dutch territories in the 'West') have Dutch nationality.

[275] We will get to the Charter of the Kingdom of the Netherlands. Relevant is that delegations from Suriname and the Netherlands Antilles were part of deliberations on post WWII changes. In 1948 two conferences took place in which – amongst others – a design was prepared for turning the Kingdom into a federation with a federal parliament, a federal council of ministers and a federal court. However, the then governing Ministers – most notably Drees and Van Schaik found the proposed form of equality too unrealistic (Van der Heiden, 1994).

As we have seen, the territories and populations within the Kingdom of the Netherlands have been intrinsically linked for at least 400 years, both in conceptualization as well as institutionalized. However, the way in which these territories and populations have been conceptualized and institutionalized have led to such a delinking that this led to differentiation – amongst others – in Dutch legal citizenship (and also in national identity, as we will see in paragraph 4.4.), and – connected to this – differentiated rights and freedoms, with the racialized Other in the colonies being on the losing end. In this paragraph, I only highlighted some of these differentiations. There are many more to find. We will find some of these in the paragraph below regarding human rights, in paragraph 4.4. regarding national identity, and paragraph 4.5 regarding education. For now, I want to make the point that the differentiation I describe, in which race places an enabling role (i.a. Quijano 2007), reminds of the way in which Vazquez (2020) describes that we are all related, but in different positions to the modernity/coloniality matrix. In this case, the Netherlands being the center, the place of modernity, and Curaçao (and the other Caribbean islands within the Kingdom) being the intrinsically connected place of coloniality (within the Netherlands and within Curaçao there are also centers and margins, as we will see in paragraph 4.4). The ways in which these relations have been structured conceptually and institutionally are not coincidental, nor innocent. Far from that, they are a continuation of the Global color line within the Kingdom of the Netherlands (see chapter 1 and 2 on racism and the Global color line).

1954 UNTIL NOW

The 1954 Charter of the Kingdom was promulgated shortly after World War II, and in hegemonic legal discourse, it is portrayed as having brought about the end of formal colonization of Suriname, and – what was then – the Netherlands Antilles.[276] The Kingdom became hegemonically conceptualized as consisting of two layers. One layer consisted of the Kingdom of the Netherlands and another layer consisted of three countries, namely the Netherlands, the Netherlands Antilles and Suriname. The Netherlands Antilles was conceptualized and institutionalized as a federal state within the Kingdom and consisted of Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten. The federal seat of the Netherlands Antilles was located in Curaçao.

In 1975 Suriname became legally independent and was thus no longer part of the Kingdom. In 1986 Aruba separated from the Netherlands Antilles and became a country within the Kingdom, similar to the Netherlands Antilles. In 2010, the Netherlands Antilles was dissolved. The Kingdom now knows

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Instead, a temporary arrangement was established with the adoption of the 1951 Interim Arrangement, with the aim of pushing the proposed federal structure out of sight in order to preserve Dutch leadership within the future constitutional structure (Van der Heiden, 1994; Santos do Nascimento, 2016).

[276] There are also academics who mark the year 1922 as the end of formal colonization. They argue that this is so because the Dutch legislator marked certain tasks as autonomous tasks. These tasks were left to the concern of local entities, namely for what was called the Colony Curaçao, the Governor and Colonial Council. The Governor is the representative of the Dutch King and the members of the Colonial Council were all appointed by the Governor (see for example Bakker, 2020). I do not follow this line of reasoning since it is still at the discretion of the Dutch legislator that certain tasks were left for the Colony Curaçao, and that there was no Caribbean democratic representation and legitimation for power exerted by the state. In fact, as we will see, it might be argued that the Kingdom of the Netherlands until this very day is still a colonial state with colonies in the Caribbean.

four countries, namely the Netherlands, Aruba, Curaçao and Sint Maarten. Bonaire, Saba and Sint Eustatius became integrated in the country the Netherlands.[277]

In legal terms, the Charter is hegemonically conceptualized as the constitution, and thus the primary and highest legal document of the Kingdom (i.a. Van Rijn 1999, 2019). The preamble of the Charter declares that the Charter was an expression of the free will of the Netherlands, Suriname and the Netherlands Antilles. With the later constitutional changes, it was added that Aruba, Curaçao and Sint Maarten accepted in free will to be countries within the Kingdom. But here comes the paradox. From 1814 onwards, it used to be the Constitution of the Kingdom of the Netherlands that was hegemonically perceived as the primary and highest legal document of the Kingdom of the Netherlands. The Constitution of the Kingdom of the Netherlands did not only codify the power of the King, government, parliament, judiciary, and in later years also human rights. It also codified the relation between the Netherlands and its colonies. This Constitution was changed in order to provide a legal basis for the creation of the Charter. Based on legal history, it should then be concluded that the Charter of the Kingdom springs from the Constitution of the Kingdom of the Netherlands (Santos do Nascimento, 2016), and is thus a primary, and maybe even not the highest legal document. There

[277] Following referendums on all the islands of the Netherlands Antilles, Bonaire, Saba and Sint Eustatius were legally integrated into the Netherlands in 2010. In fact, the majority in Sint Eustatius voted for continuation of the Netherlands Antilles. Since it was the only island where residents voted as such, the Netherlands Antilles dissolved either way. Without further consultation of the residents, Sint Eustatius was integrated into the Netherlands. Integration did not lead to equal rights for residents of these islands compared to residents in Europe. Bonaire, Saba and Sint Eustatius were initially, integrated within The Netherlands as special public entities based on former article 134 of the Dutch constitution. The Charter of the Kingdom of The Netherlands was modified in 2010 and included a so-called differentiation provision (*differentiatiebepaling*) (see former article 1(2) Charter of the Kingdom). This was the legal ground for differentiation because of 'economic and social conditions, the big distance to the European part of the Netherlands, their insular character, small size and population size, geographical conditions, climate and other factors that make these islands substantially different from the European part of the Netherlands'. In 2017, Bonaire, Saba, and Sint Eustatius became Caribbean public entities of the Netherlands (132a Dutch constitution). This means that they are territorially decentralized public entities other than provinces or municipalities. Differentiation between the Caribbean and the Netherlands is legally enabled through a so-called differentiation provision. It provides that 'rules can be established and specific measures can be taken with a view of special circumstances that make these public bodies substantially different from the European part of the Netherlands' (134(4) Dutch constitution). Differentiation is applied in a non-consistent manner. Differentiation in socio-economic matters that would lead to more equality between the European and Caribbean part of The Netherlands are unpopular amongst Dutch politicians, whilst differentiation in issues such as abortion, same sex marriages and euthanasia is found unacceptable. This has led for example to the introduction of same sex marriages on the island, while at the same time social security, state pension etc. are lower in the Caribbean than in The Netherlands (Misiedjan and Palm, 2012). A 2015 report also expressed that it is 'difficult to fathom that factors such as climate and geographical circumstances … are a justification for the current reality that the living standard of a relatively large group of inhabitants is lagging far behind what is deemed acceptable in the European part of the Netherlands'. And although there have been some improvements in health care and education, since 2010 for many (job-holding) inhabitants the standard of living has fallen, and legislation and policy are determined from a great distance and with far less influence from local inhabitants compared to the situation before 2010 (Evaluation Comittee Political Structure Caribbean Netherlands, 2015). The Dutch National Human Rights Institute and the Dutch Ombudsman also continuously reports on unduly substantiated unequal treatment between Dutch citizens in the European part of The Netherlands and Dutch citizens in the Caribbean (College voor de Rechten van de Mens, 2016a, 2016b). Currently, differences still range from differences in voting rights, living conditions, maternity and paternity leave rights, child benefits and childcare, visiting rights of detainees, to differences in insufficient access to legal protection. https://mensenrechten.nl/nl/caribisch-nederland, accessed on 11 May 2020; and https://www.nationaleombudsman.nl/caribisch-nederland, accessed on 30 May 2020.

is also a lot to be said, in regard to the free will acceptance. For one, it is no secret that the Caribbean partners had wanted another construct, for example a real federal state without the preponderance of the Netherlands (i.a. Santos do Nascimento, 2016; Van der Heiden, 1994). Furthermore, against the express wishes of Caribbean, and especially Surinamese representatives, the Caribbean people's right to self-determination was not explicitly included in the Charter (i.a. Santos do Nascimento 2016; Van der Heiden 1994; and the subparagraph above).

As explained earlier, with the establishment of the Charter in 1954, the Kingdom of the Netherlands became hegemonically perceived as consisting of two layers. One consisting of the Kingdom of the Netherlands, and one consisting of currently – since 2010 – four countries, namely the Netherlands, Aruba, Curaçao and Sint Maarten. In hegemonic legal understanding, ever since 1954, the Kingdom of the Netherlands should thus be distinguished from the country the Netherlands. The Constitution of the Kingdom of the Netherlands (hereafter: Dutch constitution) continued to exist and remained the constitution of the country, the Netherlands. The other three countries have their own constitutions. In hegemonic legal understanding, the Charter is thus the highest legal norm within the Kingdom of the Netherlands, and the constitutions of the four countries have a lower rang.

However, certain provisions of the Dutch constitution form part of the Charter of the Kingdom based on article 5 of the Charter of the Kingdom. The Charter of the Kingdom and the Dutch constitution are thus interwoven. And, as we will see, the sovereign state of the Kingdom of the Netherlands and the country of the Netherlands, cannot at all be as clearly distinguished as the 'two-layer concept' implies. The fact that the names of the two entities (the Kingdom of the Netherlands, and the Netherlands) are practically the same, and that the constitutions the Kingdom of the Netherlands, and the Netherlands are interwoven, are two factors contributing to this.

KINGDOM AFFAIRS = AFFAIRS OF THE NETHERLANDS?

The 'two-layer concept' is quite illusive as a distinction between the Netherlands and the Kingdom, can barely be made in legal terms, and even less in the way in which the Netherlands exerts its powers.

The Charter of the Kingdom marks specific tasks as 'Kingdom affairs'. These are defense, foreign relations, Dutch citizenship, orders of chivalry, flag and coat of arms, nationality of ships and requirements with regard to safety and navigation, admission and deportation of Dutch and foreign nationals, extradition (article 3 Charter of the Kingdom). Kingdom affairs are dealt with by the 'Kingdom layer'. The Kingdom layer also supervises Aruba, Curaçao and Sint Maarten (and thus not the Netherlands!) when it comes to fundamental human rights and freedoms, legal certainty, and good governance (article 43 Charter of the Kingdom), the implementation of international conventions (article 27 Charter of the Kingdom). The Kingdom government has the power to review the complete administrative and legislative proceedings of the Caribbean countries for compliance with the Charter, international arrangements, statute law of the Kingdom, governmental decrees and to the interests of the Kingdom (see article 50 and 51 of the Charter of the Kingdom (Santos do Nascimento 2016). Further Kingdom affairs are those for which Kingdom legislation has to be adopted, such as legislation concerning the position of the Governors for Aruba, Curaçao and Sint Maarten (i.a. Borman 1998).[278] Moreover, the constitutions of Aruba, Curaçao and Sint Maarten cannot be changed without the approval of the Kingdom government, article 44 (1)(a) of the

[278] Financial, social and economic affairs are thus no express Kingdom affairs (cf. Martinus, 2020c).

Charter.[279] Furthermore, as representatives of the King, the Governors of Aruba, Curaçao and Sint Maarten have the power to fulfill Kingdom supervisory tasks in their respective countries (Bakhuis 2020). Whereas the King's power in the Netherlands have significantly been limited since the 1948 Dutch constitution (with the introduction of a provision in the Dutch constitution that makes Dutch Ministers responsible for the King), the King (represented by the Governor) has much more far-reaching powers in Aruba, Curaçao and Sint Maarten.

Tasks that are not Kingdom affairs, are dealt with by the four countries themselves (article 41 of the Charter of the Kingdom). These tasks are called autonomous affairs. The autonomy that the Charter brought about for the Caribbean countries, is generally accepted, both internationally and within the Kingdom of the Netherlands, to be based on those countries' peoples' external right to self-determination (i.a. Santos do Nascimento, 2016; Van Rijn, 2019).[280] Also based on article 41 of the Charter of the Kingdom, the interests of the Kingdom are a matter of common concern to the countries.

We will now turn to 'Kingdom layer' institutions to better understand the legal relations between the different countries within the Kingdom of the Netherlands. This is needed because it is the 'Kingdom layer' that supervises Curaçao with regards to – amongst others – human rights, and it is the 'Kingdom layer' that is ultimately responsible for human rights, both within the Kingdom (article 43 of the Charter of the Kingdom) as well as in international law (see paragraph 4.3.2). When the term 'Dutch' is used here below, I refer to that which is part of the country the Netherlands.

There is a Kingdom government, consisting of the King and the Council of Ministers. The latter comprises of all the Ministers of the Netherlands. It is supplemented with a Minister Plenipotentiary for Aruba, Curaçao, and Sint Maarten each in Kingdom affairs concerning the interests of the latter three countries (art. 7 jo. 10 Charter).[281] Remarkably, the Charter thus departs from the understanding that there are Kingdom affairs that only concern one or more of the countries within the Kingdom.[282] This is remarkable because it is hard to fathom that there are matters concerning one of the countries that does not at all affect – even if indirectly – the other countries. Also remarkable is that the Netherlands Ministers are in either case involved in decision making concerning the Kingdom, even if – which according to the Charter is possible – a matter does not concern the Netherlands. Moreover, the Kingdom Council of Ministers is institutionalized as such that the Caribbean Ministers

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[279] Article 45 of the Charter determines that changes to Dutch constitution concerning fundamental freedoms and human rights, and powers of the government, parliament, and judiciary form a Kingdom affair that concerns the interests of the Caribbean countries. This thus requires participation of the Ministers Plenipotentiary in these decision-making processes.

[280] There is a significant number of academic research related to the right to self-determination in Curaçao and the Netherlands Antilles, whether or not with explicit reference to the right to self-determination as a human right (i.a. Da Costa Gomez, 1947, 1935; Gorsira, 1950; Hillebrink, 2008; Broekhuijse, 2012; Van Rijn, 2010; Santos do Nascimento, 2016). Remarkably, in 2019, the Netherlands expressed that the peoples within the Kingdom that have the external right to self-determination, no longer enjoy this right (Duijf, 2020; Handelingen II, 2019/20 nr. 113).

[281] There is discussion on whether or not one can speak of a Kingdom Council of Ministers, since the Ministers Plenipotentiary only take part in this 'Kingdom government' when matters are dealt with that concern their respective countries. I use the term 'Kingdom government' with this particularity in mind.

[282] In that regard, also see article 14(3) Charter which determines that in case of Kingdom affairs that do not concern the interest of Aruba, Curaçao and Sint Maarten legislation is adapted by the Dutch legislator.

Plenipotentiary can always be overruled by the Dutch Ministers (see art. 12 of the Charter of the Kingdom).

The Dutch Ministers nor the Caribbean Ministers Plenipotentiary that partake in decision making can be held responsible before a Kingdom parliament. This is because there is no Kingdom parliament. The Dutch Ministers can only be held accountable by the Dutch parliament.[283] The Ministers Plenipotentiary are appointed by their respective Caribbean governments and can thus not be directly held responsible by the Caribbean parliaments. Instead, it is the Caribbean Ministers that can be held responsible by their respective Caribbean parliaments. While the four countries are thus intrinsically linked within the Kingdom government, they are completely delinked in terms of accountability.

The institutions that enact Kingdom Statutory law are the Kingdom government and the Dutch Parliament with a participatory role for Aruba, Curaçao and Sint Maarten in Dutch parliament (art. 15-19 Charter of the Kingdom). This participatory role entails that the Ministers Plenipotentiary can ask Dutch Parliament to put forward a Kingdom Bill. It also entails that Kingdom Bills concerning the, or one of the, three Caribbean countries are sent to their respective parliaments and that these parliaments can react to it in written form. Furthermore, the participatory role entails that the Ministers Plenipotentiary and special delegates of these three countries can attend Dutch Parliamentary meetings – when Kingdom Bills that concerns their countries are dealt with – and voice their concerns. Ministers Plenipotentiary can voice to be against a Bill, after which the bill can only directly be adopted with a three fifth majority vote. In case the Bill is adopted by a majority smaller than three fifth, the bill will be discussed in a special procedure (art. 12 Charter of the Kingdom). This special procedure is a deliberation between the Prime Minister (who is Prime Minister of both the Kingdom, and the Netherlands), two Dutch Ministers, the Caribbean Minister Plenipotentiary and a Minister or other representative of the Caribbean country concerned. In this procedure too, the Caribbean countries can thus always be overruled by the Dutch Ministers. Moreover, nor the Caribbean Ministers Plenipotentiary nor special delegates nor the Caribbean (members of) parliaments have a vote in Dutch Parliament, even if Dutch Parliament takes a vote concerning Kingdom Statutory law. It is thus Dutch Members of Parliament who vote for Kingdom Statutory laws. Dutch Members of Parliament represent the Dutch people (article 50 Dutch constitution).

Dutch Parliament consists of the House of Representatives (*Tweede Kamer*) and the Senate (*Eerste Kamer*). People with the Dutch nationality have voting rights for the House of Representatives, except Dutch citizens who live in Aruba, Curaçao and Sint Maarten (art. B1 Dutch Electoral law).[284] Members of the Senate are chosen by members of the Netherlands Provincial Parliaments. Members of the Provincial Parliaments are elected by residents with a Dutch nationality of the respective Dutch

[283] Much can be said about the role the Netherlands parliament has in holding Netherlands Ministers accountable, either with regard to Kingdom matters or matters concerning the Netherlands. With mainly cabinets with majority support, members of parliament voting according to their party's wishes, and increasingly detailed coalition agreements established at the beginning of the periods of government, there is – to say the least – a serious lack of checks and balances which ought to exist between Government and Parliament. Furthermore, as Gario (2019) writes, the staff of all the Ministries combined adds up to 110.649 fte, whilst members of parliament have assistance of a total of 1,5fte each, adding up to 225 fte in total. Regarding 'local legislation' in Aruba, Curaçao and Sint Maarten the same can be said with regards to the lack of checks and balances.

[284] People who have lived in the Netherlands for at least 10 years and now live in Aruba, Curaçao and Sint Maarten do keep their active voting rights. As do people with the Dutch nationality who work for 'Dutch public services' in Aruba, Curaçao and Sint Maarten (art. B1 Kieswet).

Provinces. Kingdom affairs can be dealt with in different manners, amongst which through legislation. We have already established that there is Kingdom Statutory law. There is also law promulgated by the Kingdom government (*algemene maatregelen van bestuur*). Except for cases determined otherwise, it is up to the Kingdom government and 'Kingdom legislator' (see here above) to decide if legislation is adopted by Statutory law or by legislation adopted by the Kingdom government (art. 14 Charter).

It must be clear then that according to law there is no democratic representation of people in Aruba, Curaçao and Sint Maarten in the Dutch Parliament, despite the fact that it is Dutch Parliament that adopts Kingdom Statutory law (together with the Kingdom government) and that can hold Dutch Ministers accountable. In legal academic work this has been termed *democratic deficit* (i.a. Van Rijn 2019). Furthermore, there is a clear preponderance of the Netherlands. So much so that what is considered the Kingdom layer is almost identical to the Netherlands. Contributing to the lopsided power balance is that, as said, supervision of Aruba, Curaçao and Sint Maarten is a Kingdom affair. The Netherlands is not supervised. Furthermore, the Charter of the Kingdom does not establish a Constitutional Court or comparable body that can be turned to whenever disagreements between the countries occur concerning Kingdom affairs – including the supervisory tasks.[285]

The Charter does not arrange anything concerning finances, economy, or socio-economic and cultural rights (cf. Martinus, 2020a; Martinus, 2020c). Not within the 'Kingdom layer' nor relating to the relation between the 'Kingdom layer' and the four countries. The Kingdom layer does not have its own budget. There is thus no budget available to perform 'Kingdom tasks'.[286] Instead article 35 Charter of the Kingdom determines that 'Aruba, Curaçao and Sint Maarten will contribute in accordance with their ability to pay in the costs associated with maintaining the independence and defense of the Kingdom, as well as in the costs associated with the care of other matters of the Kingdom, insofar as these extends in favor of Aruba, Curaçao or Sint Maarten respectively'. Discussions concerning performance of Kingdom tasks often decay in discussing which of the countries is to be held financially responsible. Performance of Kingdom tasks is then perceived in the Netherlands as to have to help the Caribbean countries – the Caribbean Other – at the expense of the Netherlands. Here again, the countries are thus obviously historically linked to each other within the Kingdom with historically lobsided relations leading to amongst others differences in economic prosperity, but are delinked regarding finances and economy, and: human rights.[287] As we saw, and will further see, human rights is ultimately (even if not primarily) a Kingdom affair. However, there is a

[285] Art. 12a of the Charter does include a provision that proscribes that the Kingdom layer should adopt legislations for dispute settlement, however despite some attempts, this legislation has never been made.

[286] It would be interesting to look into introduction of Kingdom taxes with (legal) persons of all four countries paying Kingdom (progressive) taxes used for 'Kingdom tasks'. Or, such as the report 'Naar een salsa op klompen' suggests, a Kingdom fund (see Croes 2015). This should however be combined with equal rights and freedoms, and thus including equal positions for the four countries within the Kingdom of the Netherlands, but also equal respect for the multiple national identities that includes the Kingdom as a whole and respect for – even if critical – national symbols of all four countries, with then a sense of people within the entire Kingdom belonging to each other (see paragraph 4.4 for the matter of national identity).

[287] The Netherlands is currently the biggest contributor because of its bigger economy. It has not always been the case that the Netherlands had a bigger economy, see Martinus (2020b). Furthermore, the Kingdom (which can be said to be the Netherlands) has imposed increasingly restrictive measures that make the Caribbean economies subordinated to that of the Netherlands (Martinus, 2020b).

great reluctance by the Netherlands to guarantee human rights for people in the Caribbean because of costs that might have to be made (Duijf, 2020).[288]

Instead, it is the four countries that have their own budgets – and not the 'Kingdom layer'. With this, what might be financially and economically beneficial for socio-economic and political rights and the local context of one country can be detrimental for the other.[289] This is relevant because the financing of Kingdom thus affects the way in which the Netherlands (which has a clear dominance within the Kingdom) goes about Kingdom affairs, including human rights. Indeed, also within the post-1954 context, the Netherlands has been able to impose increasingly far-reaching financial and economic measures. Austerity measures that appear to be detrimental to Curaçao's budget (Martinus 2020a, for Aruba see Croes 2015), and that severely restrict the country's autonomy, democracy, and that increase the power of the Netherlands in the Caribbean countries concerning decision making in a wide range of fields (i.a. Martinus, 2020a; Martinus, 2020b).[290] Politicians in the Netherlands argue this to be necessary because of a lack of due governance in Curaçao (and Aruba and Sint Maarten), but Croes and Martinus show that many of the challenges the islands face are due to Curaçao's SIDS characteristics which require specific and ongoing investments (Croes, 2015; Martinus, 2020b).[291] Apart from that, it is paradoxical – to say the least – to increase anti-democratic measures because of supposed lack of due governance.

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[288] Duijf (2020) also describes the reluctance of the Dutch government to improve the inhumane conditions of prisions in Sint Maarten and Curaçao because of fear of costs and a fear of setting a precedent to improve human rights. Meanwhile Dutch parliament adopted a motion that the Kingdom should interfere regarding the prison conditions, but that interference should be paid by Sint Maarten. Regarding human rights breaches, there is thus not only a greater concern with the image of the Netherlands in the global arena than with the actual human rights breaches, but there are also economic reasons that prevail above the guaranteeing of human rights.

[289] This was evident for example when international sanctions were taken against Venezuela: the Netherlands implemented these sanctions and threatened to impose implementation of these sanctions on the Caribbean countries through the 'Kingdom layer' if these countries would not do the same. This despite the fact that sanctioning Venezuela would be detrimental to the Caribbean countries (cf. Martinus 2020a).

[290] I deliberately use the word 'imposing'. This is given by the fact that not only does the Kingdom have the power to interfere in the Caribbean countries' autonomous affairs, it also uses this power as a threat to force the Caribbean countries into accepting 'voluntary agreements' based on article 38 of the Charter. See for example Hoogers' commentary on article 43 of the Charter in Bovend'Eert e.a. (2018). With respect the economy, it is worth mentioning that the Caribbean countries have to obtain approval first before being able to take a loan (cf. Bodok and Hoogers 2020). With the current Corona-crises, article 38 of the Charter – based on which the four countries are able to come to consensual agreements – is again used to pressure Caribbean countries into accepting financial and economic reforms granting far-reaching and undemocratic political and economic power to the Netherlands (Bodok and Hoogers 2020).

[291] For the constitutional changes in 2010, Curaçao and Sint Maarten (the new countries within the Kingdom – Aruba already was a country) had to accept a Kingdom Statutory law that puts these countries under supervision of the Financial Supervision Commission. An entity presided by a European Dutch (a citizen resident in the Netherlands). About this Statutory law, Croes (2015) convincingly argues that the 'special circumstances' this law mentions, in fact are 'normal circumstances. This is something the Netherlands is now also facing now that Bonaire, Saba and Sint Eustatius are 'special municipalities' of the Netherlands, as the latter three islands, similarly to the Netherlands islands in Europe – the Wadden islands, and other small scale Dutch societies require specific investments. For the Wadden islands, for example, there is a specific Dutch fund, the Waddenfonds, for which both private and public entities can apply (Croes, 2015; Martinus, 2020b). See waddenfonds.nl .

As we saw in this paragraph, the Kingdom of the Netherlands cannot be said to be a federation,[292] a confederation or a unitary state. It does thus not fit hegemonic understandings concerning state sovereignty and statehood (cf. Van der Pijl and Guadeloupe, 2015 and Römer, 2017). Instead, the Kingdom of the Netherlands has a confusing 'in between status', which has led to it being conceptualized most often among legal scholars as a *sui generis* constellation (i.a. Heringa e.a., 2018; Van Rijn, 2019; Bakhuis, 2020). The position of Curaçao (and Aruba and Sint Maarten) within the Kingdom of the Netherlands has also been conceptualized as extended statehood (De Jong 2005),[293] and Subnational Island Jurisdictions (Ansano, 2017; Phillip-Durham, 2020; Ferdinand, Oostindië and Veenendaal, 2020).[294] Convincingly, the Kingdom of the Netherlands has recently been conceptualized as a colonial state with Aruba, Curaçao, Sint Maarten still being colonies (Santos do Nascimento, 2016),[295]

Whatever conceptualization is used, it is undisputed that the Charter of the Kingdom – as we have seen - has multiple mechanisms that sustain a hierarchy in which the Netherlands is superior to the other countries, namely Aruba, Curaçao and Sint Maarten. Both regarding the ways in which Kingdom institutions are institutionalized by law as well as how finances and the economy are arranged, and human rights are institutionalized. This is often paired with the understanding that the right to self-determination belongs to a clearly distinguishable people in a clearly distinguishable territory, and

[292] For example, Santos do Nascimento (2016) and Van der Heiden (1994) show how ruling Dutch politicians did not want to create a federation where all countries within the Kingdom would have an equal say and used their power to cancel initiatives (both from people in the Caribbean and in the Netherlands) in that direction. Santos do Nascimento (2016) also shows that ideas of superiority vis a vis the populations in the Caribbean were still alive and kicking amongst Dutch politicians.

[293] About the term 'external statehood', Allen (2010) writes: 'This term attempts to capture the diversity of constitutional relationships that exist between the USA, the UK, France and the Netherlands and their respective sub-national jurisdictions in the Caribbean. The essence of extended statehood is that people have chosen to remain under the dominion of a mother country. Therefore, one cannot speak of colonies and colonization, which presumes forced dominion. Also, decolonization is no longer seen as a process that should ultimately lead to full independence, as was generally the assumption following World War II. The new concept fails to take into account the unequal power relationships that have often endured since colonial times and that are sometimes reinforced by the present global order. It also says very little about how culture is experienced and contested in a globalized world and within multicultural constitutional arrangements.' (Allen, 2010).

[294] The Kingdom of the Netherlands is also a member of the European Union. This membership only applies fully to the European part of the Netherlands. Aruba, Curaçao and Sint Maarten, and also the Caribbean parts of the Netherlands (Bonaire, Saba and Sint Eustatius) are 'territories overseas' and have a different status. This work does not include any analysis on the differential relation of the European part of the Netherlands and the Caribbean parts of the Kingdom, and if these differences are related to imperial histories and essentialized understandings of who is European. What is clear is that here too there is conceptual and legal distinction between Europe and the Caribbean, see for example Goudappel (2016). Important to note is that citizens in the Caribbean part of the Kingdom all carry a Dutch and therefore European Union passport. It makes a difference in rights and freedoms if someone with a Dutch/European passport lives in the Netherlands in Europe or in the Caribbean territories within the Kingdom.

[295] Santos do Nascimento (2016) analyses the legal and de facto history of the Charter of the Kingdom and concludes that the relation between the Netherlands and the islands in the Caribbean is a colonial one. It is however not the first time that relation is called a colonial one, see for example Martis (1999).

that it is this distinct people that has a free will (i.a. Van Rijn, 1999; Van Rijn, 2019; Santos do Nascimento, 2016; cf. chapter 2).[296]

Within the Kingdom of the Netherlands, these 'clearly, distinguishable' peoples are then (at least) the peoples of Aruba, Curaçao, Sint Maarten and the Netherlands (cf. Van Rijn 2019; Santos do Nascimento, 2016).[297] As former colonized peoples, the peoples of Aruba, Curaçao, Sint Maarten have the right to self-determination. As such, they are protected – at least to some extent – from colonialism, have at least a say – however limited – in the ways in which they are governed, and have at least more equal human rights than before 1954. Remarkably, but historically not surprisingly, there appears to be only one people with sovereignty, namely the Dutch. The other peoples within the Kingdom have the right to self-determination (cf. chapter 2 and 3 on sovereignty and the right to self-determination).

HUMAN RIGHTS AND THE CHARTER

The Charter of the Kingdom does not include a human rights bill.[298] The Charter does include provisions that use the terms 'fundamental human rights and freedoms' in articles 43, 44 and 45. As we saw above, articles 44 and 45 use these terms in relation to the procedure to change the constitutions of Aruba, Curaçao and Sint Maarten, and the Dutch constitution respectively. Article 43 of the Charter uses the terms in relation to the so-called safeguarding function (*waarborgfunctie*).

Article 43 of the Charter namely reads:

> 1. *Each of the countries takes care of the realization of fundamental human rights and freedoms, legal certainty, and good governance.*
>
> 2. *The safeguarding of such rights and freedoms, legal certainty, and good governance is a Kingdom affair.*

Realization of fundamental human rights and freedoms is thus the task of the individual countries, while it is the Kingdom that safeguards these rights and freedoms. Article 43 of the Charter of the Charter is commonly understood as allocating a safeguarding role to the Kingdom. The Kingdom government can take different measures to operationalize its safeguarder's role (i.a. Borman, 2012; Bakhuis, 2020; Duijf, 2020). These measures include preventative supervision with regards to changing the Caribbean constitutions (art. 44 of the Charter of the Kingdom), and the possibility of the Kingdom government to suspend and annul legislation of Aruba, Curaçao and Sint Maarten (art.

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[296] These concepts are also included in the preamble of the Charter. It for example states: 'Curaçao and Sint Maarten have each freely declared that they accept this legal order as a country'.

[297] Van Rijn (2019) argues that the right to self-determination belongs to clearly distinguishable peoples. He argues that the peoples from Bonaire, Saba and Sint Eustatius also have the right to self-determination. As such it could be said that within the Kingdom, the population is conceptualized and institutionalized as six different peoples.

[298] It could be argued that based on article 5 of the Charter of the Kingdom, the fundamental rights (*grondrechten*) of the Dutch Constitution, are also the fundamental rights of the Charter of the Kingdom. However, most legal scholars who discuss the terms 'fundamental human rights and freedoms' of the Charter, do not specify what these words mean, let alone argue that the human rights norms in the Dutch Constitution should also function as human rights norms for the Kingdom as a whole (cf. Borman 2012). Neither is this done when article 5 of the Charter of the Kingdom is explicitly discussed (cf. Borman 2012 and Bovend'Eert e.a. 2018).

50 Charter of the Kingdom). Furthermore, the Kingdom government can promulgate legislation in case it deems that Aruba, Curaçao or Sint Maarten does not sufficiently fulfil their obligations stemming from – amongst others – the Charter of the Kingdom (article 51 Charter of the Kingdom). In its most extreme, the power codified in article 51 Charter of the Kingdom thus means that the Kingdom government can take over governance in the Caribbean countries (Bakhuis, 2020; Duijf, 2020). The Governors of Aruba, Curaçao and Sint Maarten also fulfil a role in supervision by the Kingdom government. Based on the Regulations for the Governors (*Reglement voor de Gouveneur*) they have a signalling function, can temporarily postpone legislation of their respective Caribbean countries, and can put legislation of their respective Caribbean countries before the Kingdom government for annulation (articles 17 and 21 of the respective Regulations for the Governors; also see Bakhuis, 2020). In this task, the Governor answers to the Kingdom government. These measures cannot be taken with regard to the Netherlands, and thus only towards the Caribbean countries. Furthermore, these measures can thus be taken by the Kingdom government (!), without the involvement of a democratically chosen body, whilst – as we saw in the subparagraph above– the Kingdom government as such cannot be held accountable by a Parliament.

Taking measures based on article 43 of the Charter is commonly understood as an *ultimum remedium* (i.a. Borman, 2012; Rodriguez, 2015; Bakhuis, 2020; Duijf, 2020). However, the mere fact that these Kingdom powers exist, together with the lopsided power balance within 'Kingdom institutions', adds to the power dynamic that benefits the Netherlands at the expense of Aruba, Curaçao and Sint Maarten (cf. Santos do Nascimento, 2016).[299] What is more, within the Kingdom, citizens and other (legal) persons have no (!) domestic judicial body to turn to, to hold the Kingdom accountable concerning human rights issues. The Kingdom namely lacks legal personality so that the Kingdom cannot be brought before a domestic judicial body. The Kingdom can thus not be held accountable for wrongful acts, which in the legal systems of the Kingdom is a matter of private law.[300] Neither is there a Kingdom National Human Rights Institution that can review Kingdom legislation, despite international organizations such as the UN requiring Member States to have such institutions (cf. UN, 1994).[301]

Since it is ultimately the Kingdom government that decides when fundamental human rights and freedoms are not sufficiently realized by the countries, and when the Kingdom should interfere, in legal terms it can be said that – within the Kingdom of the Netherlands – it is ultimately the Kingdom government that decides what 'fundamental human rights and freedoms' are, and who has 'fundamental human rights and freedoms'. After all, the Kingdom as a whole is not accountable to one (democratically chosen) state organ. Instead, as we have seen, constitutional accountability of

[299] The Netherlands has threatened the Caribbean countries in the past to use its power within the 'Kingdom layer' to interfere in the Caribbean countries' autonomous affairs based on article 43 of the Charter of the Kingdom, to force the Caribbean countries into accepting 'voluntary agreements' based on article 38 of the Charter. See for example Hoogers' commentary on article 43 of the Charter (in Bovend'Eert et al., Eds. 2018).

[300] The four countries within the Kingdom do have legal personality and can be sued as such for wrongful acts. Van Rijn (2019) and Van Gestel and Sybesma (2020) suggest that it should be possible to sue the Netherlands for wrongful acts by considering the Netherlands to be the representative of the Kingdom. However, at the moment of writing this dissertation, this has not been tried yet.

[301] The country the Netherlands does have a National Human Rights Institution; The Netherlands Institute for Human Rights, see mensenrechten.nl.

the Kingdom government is ambiguous,[302] if not to say non-existent. Or, one could reason that – since the Dutch Ministers are always involved in Kingdom decision making (in contrast to the Caribbean Ministers Plenipotentiary), the Dutch Ministers can always overrule the Caribbean Ministers Plenipotentiary, and Dutch Ministers are held responsible by the Dutch Parliament – it is Dutch Parliament that ultimately decides what human rights are within the Kingdom of the Netherlands as a whole (cf. Santos do Nascimento, 2016).[303]

In either case, it is clear that people in the Caribbean countries are insufficiently democratically represented in decision making processes, including decision making processes concerning human rights norms. This within the context of the Charter of the Kingdom that does not have a human rights bill, and there – other than international norms – not being any concrete human rights norms for the 'Kingdom layer'. It is then no surprise that Santos do Nascimento (2016) calls the terms 'fundamental human rights and freedoms' as used in the Charter of the Kingdom, vague. Indeed, with the way in which human rights are institutionalized in the Charter of the Kingdom of the Netherlands, one could – at least say – there is a real lack of equal (socio, political, civic, and economic) rights and democratic representation. Human rights as institutionalized in the Charter of the Kingdom can thus not be said to codify equal human rights and freedoms for everyone – or at least every citizen – within the Kingdom of the Netherlands. Whilst it has been normalized and naturalized that one ought to be in favour of human rights and democracy as an undeniable good, one can hardly be expected to be in favour of human rights and democracy as institutionalized by the Charter of the Kingdom (cf. Trouillot, 2002, 2004, and also see chapter 2). After all, what the Charter of the Kingdom does, is institutionalize unequal rights and freedoms, and differentiated democratic representation, with people in the Caribbean continuing on the losing end. To make matters worse, there are legal scholars who continue to refer to the Kingdom the ultimate protector of human rights, and the

[302] Ambiguity because as we have seen, the Kingdom government consists of the King, the Dutch Ministers. In Kingdom affairs concerning the Caribbean countries, one Minister Plenipotentiary for each of the three Caribbean countries partake in decision making processes. Formally, Dutch Ministers are held accountable for the King and themselves by the Dutch Parliament. They can always overrule their Caribbean partners in decision making. Only Dutch citizens living in the Netherlands or those who have lived in the Netherlands for at least 10 years can vote for Dutch Parliament and are thus represented by this Parliament. The Ministers Plenipotentiary do not answer to their respective Caribbean Parliaments but to their respective governments. It is only the Caribbean Ministers who can be held accountable for their Ministers Plenipotentiary by their respective Caribbean Parliaments (see above at Kingdom Affairs = Netherlands Affairs?).

[303] Article 55 of the Charter of the Kingdom determines that the Charter is changed by Kingdom Statutory law, which – as extra procedural requirements – has to be adopted by Statutory law of the Caribbean countries respectively (as we have seen, the Dutch Ministers and Dutch Parliament always already participate in the adoption of Kingdom Statutory law). Based on this it could be argued that it is the four countries that ultimately decide what human rights are and who has human rights, as they have the legal power to change the Charter of the Kingdom. However, the legislative history of the Charter of the Kingdom shows that people in the Netherlands are not inclined to grant racialized people in the Caribbean equal rights (cf. Santos do Nascimento 2016). Lifting legal inequalies in rights and power of humans and the four countries, and thus also creating legal equal human rights for everyone or at least every citizen within the Kingdom based on this article is thus – however currently farfetched – a legal possibility. However, what then has to be overcome is the racist essentialization of the 'peoples' within the Kingdom of the Netherlands. As we have seen, it is the Color line that enabled i.a. slavery and colonialism, which continues to have its legacy in the Charter, and a constant – although changing in forms – delinking of people in the colonies. As we will see, current hegemonic national identities of the four countries also carry an essentialist and racialized identity. What remains true, is the point that within the current constitutional framework it is the Kingdom government that ultimately decides what 'fundamental human rights and freedoms' ex. article 43 Charter of the Kingdom are and who it is that has those rights.

reason why gross human rights breaches will not occur in the Caribbean. However, it is the Kingdom that has historically perpetuated inequalities and anti-democracy. This makes a reference to the Kingdom (which can be equaled to the Netherlands) as an external savior, non-sensical (Römer, 2017; Delgado and Römer, 2020).

Contrary to what most academic works on (international) human rights law in Curaçao seem to argue (i.a. Goldschmidt, 2008; Van Rijn, 2012; Marchena-Slot 2005, 2012, 2017; Rodriguez, 2005, 2016), Curaçao should thus not be moving towards human rights norms in a more or less linear manner, without a critical stance towards who or what it is that decides what human rights entail, and what it is that human rights entail in a specific context (in this case, the context of Curaçao within the larger framework of the Kingdom of the Netherlands). Instead, the effects of the relation between empire and colony and racialization on human rights law, theory, and practice should be considered and – more importantly – overcome.[304]

4.3.4 CURAÇAO AND HUMAN RIGHTS LAW

We have discussed the Charter of the Kingdom, and – related to this – the Dutch constitution. The Kingdom also knows the constitutions of Aruba, Curaçao and Sint Maarten, namely the *Staatsregeling van Aruba*, the *Staatsregeling van Curaçao*, and the *Staatsregeling van Sint Maarten*. The constitutions of the four countries include human rights bills. In the Constitution of Curaçao (*Staatsregeling Curaçao*), human rights can be found in chapter 2, articles 3 to 27. The rights codified in the constitution of Curaçao include civic, political, social, economic and cultural rights, such as the right to equality, the right to education, and voting rights. Article 100 of the Constitution of Curaçao also includes the prohibition of the death penalty.

Based on article 101 of the Constitution of Curaçao, the judiciary has the power to review legislation for compatibility with the human rights norms of the Constitution of Curaçao.[305] There might be a real added value to this form of judicial review in the Caribbean countries. However, the extent of this added value is limited by the fact that the Kingdom government, or arguably Dutch Parliament, ultimately decides what human rights are and who it is that has human rights (see paragraph 4.3.3). Furthermore, the judiciary has the power to review legislation for compatibility with some of the

[304] In this context it is worth mentioning that the 'UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance' published a report in July 2020 (United Nations Human Rights Council, 2020). The report does not show any proper understanding of the unequal human rights amongst the European territory and the Caribbean territory of the Kingdom of the Netherlands, and the ways in which these are related to racism, despite – for example – a shadow report written by Dutch Section of the International Commission of Jurists and other NGOs which points out matters related to racism and the structure of the Kingdom of the Netherlands (NJCM e.a., 2020).

[305] In Aruba and Sint Maarten too, there exist similar forms of judicial review. In Sint Maarten, the judiciary has the power to assess compatibility with the constitution of Sint Maarten as a whole. Judicial review is thus not limited to review compatibility with human rights norms. In the Netherlands, the judiciary does not have the power to assess Statutory law's compatibility with higher domestic norms such as the Dutch Constitution, or the Charter, see art. 120 Dutch Constitution and i.a. Supreme Court 14 April 1989, NJ 1989/469 (*Harmonisatiewet-arrest*). The Netherlands is the only country worldwide that has a provision in its constitution prohibiting the judiciary to perform judicial review of statutory law (Goudappel and De Wit, 2015) The judiciary in the Caribbean cannot review statutory law's compatibility with the Charter or unwritten legal principles, see Joint Court of Justice of the Netherlands Antilles and Aruba 4 September 1990 JPNA-AR 1995 (Antonia and Paulina vs. Curaçao).

human rights norms of international human rights conventions.[306] This thus brings international human rights into the realm of domestic judicial review; something which can be welcomed as far as those human rights norms indeed contribute to equal human rights (cf. chapter 3 for critical reflections on international human rights law of the United Nations).

As already mentioned, Curaçao does not have a National Human Rights Institution. There is an Ombudsman in Curaçao (article 71 *Staatsregeling* Curaçao).[307] Although the current Ombudsman seems to be invested in human rights as far as he has the power to do so, human rights does not explicitly fall within the Ombudsman's mandate.[308] Furthermore, the Ombudsman's assessment and recommendations do not have any direct legal consequences as they are not legally enforceable. Even if Curaçao would have a National Human Rights Institution, the question still remains to what extent it will be able to perform human rights norm setting, promoting, and protection tasks since, ultimately it is the Kingdom (which can be read as the Netherlands) that has a final say (see the paragraphs above).

4.4 RACE AND NATIONAL IDENTITY WITHIN THE KINGDOM: THE NETHERLANDS AND CURAÇAO

4.4.1 INTRODUCTION

As follows from the above, being Dutch or not being Dutch has real consequences on what (human) rights one has (paragraph 4.3). And despite the fact that since 1951 the majority of residents in Curaçao do carry a Dutch legal nationality, there are multiple mechanisms in place that still turn them into second-class citizens. I argue that these unjustifiable differences, which have been normalized and naturalized, are perpetuated by the hegemonic national identities within the Kingdom of the Netherlands. There are at least four, arguably seven, hegemonic national identities within the Kingdom of the Netherlands. They are – at least – those of Aruba, Curaçao, Sint Maarten and the Netherlands, arguably also those of Bonaire, Saba and Sint Eustatius. Since this chapter focuses on Curaçao, it is needless to say that we will look into the hegemonic national identity of Curaçao. In this paragraph we will also turn to the Dutch hegemonic national identity, since it is those deemed Dutch that have had and continue to have an upper hand within the Kingdom of the Netherlands and more equal rights and freedoms compared to those deemed non-Dutch, namely in the past – amongst others – non-Dutch in the colonies, and – as we will see – contemporarily, those – amongst others – who are 'from' and/or reside in Aruba, Curaçao and Sint Maarten. What will follow is thus a description of the hegemonic national identity of the Netherlands (paragraph 4.4.2) and Curaçao

[306] The applicability of international treaties is regulated in articles 93 and 94 of the Dutch constitution. Based on article 5 of the Charter, these articles also apply in Curaçao. Based on articles 93 and 94 of the Dutch constitution, the judiciary can review legislation for compatibility of human rights norms that are binding on everybody. It is generally accepted that civic and political human rights are such human rights norms that are binding on everybody.

[307] The Ombudsman's task is to assess if a Curaçaoan national state organ behaves 'properly' (*behoorlijk*), article 25 *Landsverordening Ombudsman*.

[308] See for example the results of a human rights questionnaire set out by the Ombudsman (Ombudsman, 2019). The Ombudsman also explicitly assesses state organ's compliance with human rights norms, see the Ombudsman's reports via https://www.ombudsman-curacao.cw/nederlands/rapporten_3307/

(paragraph 4.4.3), which – as we will see – are essentialized at least in the form of racialization.[309] Since Curaçao is the main focus of this research more attention will be paid to 'race-relations' within Curaçao than to those in the Netherlands. Furthermore, in order to prevent falling into the trap of essentialized national identities, the chapter also includes insights into non-essentialized understandings of having a Curaçaoan *Yu di Korsou* national identity.

4.4.2 DUTCH NATIONAL IDENTITY

The (contemporary) dominant national founding myth and hegemonic national identity of The Netherlands is an essentialized one that presupposes whiteness and the Dutch language as the norm (ia. Blakely, 1993; Geschiere, 2009; Starink-Martha, 2014; Wekker, 2016; Allen and Guadeloupe, 2016).[310]

Dutch racism, both everyday racism and institutionalized racism, – although often denied – is still a real problem and affects people differently when intersecting with other social constructs such as gender and class (e.g. Essed 2017, [1984]; Essed and Hoving, 2014; Wekker, 2016; Amnesty International, 2013a; Amnesty International, 2013a; [311] den Otter, 2015; Moors, 2018; Essed and Goldberg, 2002).[312] Explicit reference to race is often avoided, but the idea of race is often hidden in the use of the word ethnicity (Essed and Nimako, 2006), or the notion of 'non-Western allochthone'. Dutch citizens are commonly categorized (not in law, but until recently in policy documents and still in hegemonic national identity narratives) as being either allochthon (from the soil) or autochthon (from another soil) (Yanow and Van der Haar, 2013). The categorization is further split into Western and non-Western allochthons,[313] which has led to a common understanding that people who do not 'look' Dutch or European – meaning, White – do not belong to the Dutch soil (Wekker, 2016). It also expresses itself in negative imagery and stereotyping of non-white people. Such as with blacks who are vaguely associated with evil (Blakely, 1993) and Muslims being portrayed as a threat (Moors, 2018).

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[309] This paragraph does not really consider essentialization based on, for example, gender and sexuality, and family structures.

[310] See Frijhof (2018) who argues that multilingualism was a distinguishing feature of the Republic of the United Provinces, and that after 1750 in addition to Dutch – the rising national language – French obtained currency as the language in international commerce, of the political and intellectual elites (in rivalry with academic Latin), and amongst refugees and immigrants. Later, foreign languages as German and English were introduced in education.

[311] For ethnic profiling by the Tax department (*Belastingdienst*) also see: https://www.trouw.nl/politiek/rechter-rutte-zette-aan-tot-rassendiscriminatie~bc40d2da/?fbclid=IwAR1uovL0bJ7C44jsRyGdoOzs7mTlljwmU-R3qz-gZpTiWmssSAM-Z4tuscw ; https://www.trouw.nl/economie/belastingdienst-erkent-toch-sprake-van-etnisch-profileren~b91d1a45/?fbclid=IwAR2__C5E0BnigkdBhoZNKJ5y4-q9GhHnqkjTx2t8ETK0qDYyYQ58QOmNw8Q&referer=https%3A%2F%2Fl.facebook.com%2F&utm_campaign=shared_earned&utm_medium=social&utm_source=copylink . For ethnic profiling by the police and Royal Marechaussee, also see: https://www.controlealtdelete.nl/dossiers

[312] For racialization and eugenics in The Netherlands in 1900-1950, see Eickhoff, Henkes and Van Vree (2000).

[313] These were also official categories used by the Dutch government until 2016 (Wetenschappelijke Raad voor het Regeringsbeleid, 2016).

When I worked at the University in Curaçao, a new colleague who had recently immigrated from the Netherlands, spoke about his preparations for his family's move to Curaçao. He said that his young daughter had a fear of black people. Therefore, before coming to Curaçao, he had taken his daughter to visit the Bijlmer neighborhood in Amsterdam. The Bijlmer is a neighborhood is known for its high percentage of immigrants and people with a recent immigrant background, most notably from Suriname, the Dutch Antilles and Ghana, amongst whom thus a significant number of black people. I never asked him, but I always wondered if it was because of the negative stereotyping of black people that his daughter had developed her fear.

Similarly, a black female colleague told me about her young granddaughter. Her granddaughter is the daughter of a black dad and white mother and lives in the Netherlands. The granddaughter once told her grandma – my black colleague – that she is scared of black people. My colleague responded by asking if she was then also scared of grandma. When describing this incident to me, my colleague wondered out loud what it is that the Netherlands does to children.

It contributes to the Dutch common sense that non-white, black, Third World on the one hand, and being or becoming Dutch or European on the other hand, are mutually exclusive categories (Essed 2001). Citizens of the Kingdom's islands are commonly seen as foreigners or foreigners with a Dutch passport and as allochthons (Sharpe, 2014).[314] Similarly to the past, there is thus a delinking of white populations 'from' the Netherlands in Europe and Others within the Kingdom of Netherlands, those either residing in the Netherlands in Europe or those residing in (former) colonies.[315] Belonging to the category Dutch 'from the Netherlands' thus appears to be mutually exclusive to belonging to the category Dutch 'from another soil', including from the 'other soil' that is the Caribbean territories within the Kingdom of the Netherlands.

Furthermore, in Dutch hegemonic narratives, Dutch imperialism is delinked from the Dutch past and present. This created and perpetuates the 'white innocent' understanding that 400 years of Dutch imperial rule has left no traces in the country's cultural archive (Said, 2003; Wekker, 2016; also see chapter 1) and the current institutionalized inequalities within the Kingdom of the Netherlands.[316]

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[314] Considering this, it is not surprising that current Dutch prime minister Rutte expressed in 2013 that if the people on the islands are unsatisfied with the current situation, they would only have to make one phone call to him and he would have that fixed.
This hegemonic narrative does find some exceptions when strategically beneficial in geopolitics or when contributing to a good image of The Netherlands. In those cases Antilleans do become part of the Dutch imaginary. Think of the Kingdom's lobby for a chair in the UN Security Council in which the Kingdom was portrayed as a unity with an important relevance in both the Caribbean region and in Europe. Or think of media coverage of sports, where Antillean athletes become part of Dutch imagery when they participate under the Dutch/Kingdom flag and achieve successes, and become Antillean again when they are unsuccessful.

[315] A delinking of those 'from' the Netherlands in Europe, and on the other hand those born, raised and/or living in the Netherlands but not 'from' the Netherlands, as well as the racialized Other in the Caribbean.

[316] Efforts to reconnect stories of Dutch imperialism with Dutch past and present, and show how they cannot be seen as apart from each other, are being made in a myriad of ways. A recent documentary that shows the connection between Dutch past and present, with Dutch imperialism, (forced) migration, racism and cultural assimilation is Our Motherland produced by Shamira Raphaëla (https://www.shamiraraphaela.com/stills-2). Furthermore, there is a process of institutions slowly seemingly taking up responsibility by for example including multi-perspectivity, acceptance of multi-culturalism and using more inclusive vocabulary and imagery

What makes matters worse is that this delinking also causes the Caribbean part of the Netherlands to be absent in Dutch national consciousness concerning the Kingdom of the Netherlands (we will also get to this in paragraph 4.5 on education and in chapter 5). Furthermore, – as we have seen (paragraph 4.3) and will see – the continuing hegemonic narratives that essentialize and delink the Dutch Self from the Curaçaoan Self (and other Caribbean Selves), perpetuate the type of essentialized and racist 'them and there' versus 'us and here' logics that has an effect on (legally) defining who has which rights, freedom, and democratically elected political representation.

4.4.3 CURAÇAOAN NATIONAL IDENTITY

The contemporary hegemonic national identity is the *Yu di Korsou* identity. It is an identity that seeks to include different social groups by emphasizing multiculturalism and the creole language Papiamentu,[317] but is essentialized in presupposing blackness – albeit not necessarily meaning 'race' – while continuing to carry white supremacy (Roe, 2016).

Like the rest of the Caribbean Curaçao has been shaped by racialized constructs (Reddock, 2007). From its early colonial days until the industrialization era – starting with the establishment of Shell's oil refinery in 1915 – an overt hegemonic white supremacist racial ideology was implemented and sustained through language, religion, legislation, education, work, citizenship status, class, demography, cultural production and intimacy (Roe, 2016) which sought to structure society into a hierarchical manner on the basis of race, religion, culture and class with white Dutch protestant higher classes on top, and subsequently white lower classes Dutch protestants, Jews, Christian mixed race people and blacks, and non – Christian mixed race people and blacks (Allen, 2007; Sharpe, 2014; Roe, 2016; Groenewoud, 2017; Rosalia, 1997). These forms of in- and exclusion enabled different forms of domination and exploitation of racialized groups. As Allen and Guadeloupe (2016) explain, class relations in Curaçao and the wider Caribbean have thus 'been racialized from the inception of Western imperialism in the region'.

During formal colonial time, the official language on Curaçao was Dutch (Roe, 2016). It was the language spoken by the – mainly Protestant – Dutch who wielded political power (derived from the colonial state) as well as social and economic power. Other racialized social groups, such as Sephardic Jews[318] and enslaved people from Africa and their descendants (both free and enslaved), were able to obtain a basic understanding of European languages such as Dutch. However, until the 20th century only white – mainly Protestant – children would be officially educated in European languages such as Dutch as they were considered symbols of refinement and white superiority (Roe, 2016). In this way,

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(e.g. Essed, 2017), especially since the world-wide Black Lives Matter movement after the murdering of George Floyd. The question remains however if this is done from a perspective that there still exist racial groups of peoples that are essentially different from other groups of people, and which differences are thought to be readable from the body's dna, skin color, hair, to some extent accessories (chapter 2). Or, that there is the realization that what should be institutionalized is non-essentialized identities.

[317] Papiamentu includes references to Luango (an important state in Africa during Transatlantic slave trade), words of Congolese-Angolan origins, and wears traces of Guene language (a language originating probably from the Upper Guinea (Allen, 2017b with reference to Rupert/Ansano/Arion). It carries Caiceto traces (Ansano, 2017). It also carries traces of Portugues, Spanish, Dutch and English (Roe, 2016).

[318] Also known as the 'Portuguese Jews'. In 1656 a large number of Sephardic Jews arrived on Curaçao. They had been expulsed from Spain by the Inquisition, resided in Portugal, Amsterdam and Brazil and eventually arrived in Curaçao where a significant number became merchants, insurers, ship owners and seafarers.

the Dutch language served as one of the gate-keeping mechanism to exclude non-Dutch from social, economic and political power. Papiamentu – a Creole language which became fully established around 1700 (Rupert referred to by Roe, 2016)[319] – became one of the languages that was spoken by the different racialized social groups living on the island from the 18th century onwards. As Roe (2016) argues: 'Papiamentu thus bridged the racial divide while also maintaining it.'

When the Royal Dutch Shell Petroleum Company (Shell) established an oil refinery on the island in 1915, an enormous and rapid influx of immigrants occurred which was incomparable to former migration flows (i.a. Roe 2016).[320] The oldcomers on the island now distinguished themselves from the newcomers by claiming to be 'real' Curaçaoans as opposed to the newcomers (Sharpe 2014; Roe 2016). It led to a quest for more political and economic self-sufficiency, and gave an impulse for the creation of a Curaçaoan national identity that would be inclusive to the main racialized groups that had been living on the island, both the social groups that had been wielding socio-political and economic power and had more rights and freedoms, as well those who had been withheld from such powers, rights and freedoms. This led to the ideology of multiculturalism as part of national identity (Roe 2016). Papiamentu, which by many Dutch and missionaries alike was perceived as a slave-language and was stigmatized, became a language that set oldcomers apart from newcomers (Roe 2016).

A couple of decades later, Curaçao became part of the autonomous country the Netherlands Antilles, which was also codified in the 1954 Charter of the Kingdom (see paragraph 4.3). The legally constructed nation – the Netherlands Antilles – was however not paired with a strong Netherlands Antillean national identity. Indeed, Curaçaoan sociologist Römer argued that there existed no such thing as an Antillean identity. In his perspective, the Netherlands Antilles was just a legal structure and not a community (Allen, 2006, 2010).

Discussions about the national *Yu di Kòrsou* identity came to involve race and class more explicitly again in the 1970s. This was after after a general strike on 30 May 1969 in which dissatisfaction against exploitation and racism were voiced by the masses (Allen, 2006; Sharpe, 2014; Roe, 2016).[321] The general strike led to the initiation of numerous reforms through which people of color obtained more opportunities in areas such as education and on the job market. The strike also gave impulses for a self-image shaped by a shared historical struggle against slavery and racism. Curaçao's current hegemonic *Yu di Korsou* identity ideology now presupposes Afro-Curaçaoaness, associated with black slave descendant as the norm (Roe, 2016; Rosalia, 1997; Sharpe, 2014; Starink-Martha, 2014). This understanding of the Curaçaoan national identity has been criticized for excluding other ethnic

[319] That Papiamentu was arguably fully established as a language around 1700, does of course not deny that language always continues to develop.

[320] Shell notoriously contributed to the legitimization and continuation of segmentation and segregation of the Curaçaoan population both within the company as in the wider society (i.a. Roe, 2016; Sharpe, 2014). For example by creating neighborhoods that were designated for white Dutch people. Shell had a significant influence on many aspects of the society. Apart from economic and social power, its political power was also embedded in the Dutch colonial government. Dutch colonial government appointed Shell representatives as council members of the Colonial Council (Van Rijn, 2019). Shell actively recruited foreign labor. This included people from Suriname, and people from (former) British colonies such as Trinidad and Tobago, British Guyana, Jamaica etc., most of whom were black. Furthermore, Shell employed native white Dutch managerial staff from the Netherlands (Sharpe, 2014).

[321] It was also the time of Black power movements and continuing struggles for decolonization worldwide.

groups present on the island.[322] However, despite the fact that Afro-Curaçaoaness and its association with blackness – which is not primarily about 'race' (Allen and Guadeloupe, 2016) – is part of the national identity myth, blackness continues to be associated with inferiority and lower social standing, while whiteness is associated with superiority and higher standing. And despite the hegemonic national identity ideology of unity, the idea of race, and racism, white supremacy and colorism still persist in Curaçaoan society (i.a. Shon Cola referred to by Ansano, 2017 ; Roe, 2016; Ansano, 2017).[323] Not in the least because 'Afrocuraçaoan reform, resistance, and achievement is consistently trivialized, colonial exploitation as the root case for contemporary racial inequality is whitewashed and obfuscated, white achievement and history is glorified, and critique on white supremacy is deflected' (Roe 2016). It is thus no accident that today still, the upper classes are predominantly 'white', while the middle classes are 'mixed', and the lower classes mainly 'dark skinned' (Roe, 2016).

Papiamentu was and still is the mother tongue of the majority of the Curaçaoans and functions as a signifier of who is and who is not considered a *Yu di Korsou*[324] or Curasoleño. As such much importance is attached to Papiamentu. However, the mastery of Dutch is most often needed for social economic upward mobility (Allen 2010; Roe 2016). Because of this paradox – where Papiamentu is the mother tongue of the overwhelming majority of the population, while Dutch is what gives access to socio-economic upward mobility – avid discussions on whether or how to use Papiamentu in schools continue to exist (Allen 2010; also see paragraph 4.5). Also relevant to this research is that despite the fact that parliamentary proceedings are conducted in Papiamentu, law – including human rights law – in Curaçao is written in the Dutch language (also see Phillip-Durham, 2020). The Curaçaoan constitution (*Staatsregeling van Curaçao*), and the 'constitution' of the Kingdom of the Netherlands, namely the Charter of the Kingdom – which all include provisions on human rights– are also in Dutch.[325] Deliberations and legislation within the 'Kingdom layer' also take place and are promulgated in Dutch. And, despite the legal possibility to do proceedings in Papiamentu in Curaçao, the working language of the judiciary within the Kingdom of the Netherlands is Dutch. The Dutch language, in this way too, thus remains inextricably connected to legal and political power, and social and economic upward mobility.

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[322] These other groups include the significant number of Dutch and the Sephardic Jews who have been on the island since the beginning of Dutch colonization, and large numbers of labour immigrants from South Asia, China, the Middle East, Portugal, Suriname, the English-speaking Caribbean, and Dutch who settled in Curaçao after Shell established itself on the island in the early twentieth century (Allen, 2010; Roe, 2016), and more recent immigrants from Haiti, Jamaica, Venezuela and Colombia have (Allen, 2010; De Bruijn and Groot, 2014), see also paragraph 4.1.

[323] See also the documentary *Sombra di kolo* (The Shadow of Color) by anthropologist Angela Roe, that shows how color and 'race' is still a determining factor in social relations in Curaçao.

[324] The term 'Yu di Korsou', which translates as 'child of Curaçao' has been criticized as a term that was used by the Catholic Church for the former enslaved and their descendants in a way that meant that these children of Curaçao were inferior to whites, were more child-like than human-like.

[325] Other legal documents are also written in Dutch, such as State Council (*Raad van Advies*) reports, deliberations and other documents produced in legislative processes for Kingdom legislation. Court proceedings too continue to take place predominantly in Dutch as a significant number of judges are not from Curaçao but from the Netherlands and do not speak Papiamentu. Interpreters are used when court proceedings involve people who do not have a sufficient command of Dutch.

I remember clearly witnessing a criminal case in Curaçao. I sat in the public gallery. There were three young suspects from Curaçao. Three young black males from severely disadvantaged socio-economic backgrounds. I am not sure if they were minors, but if not, I estimate they were barely adults. The judge and prosecutor were white Dutch women.

The proceedings during the case took place in Dutch. This meant that the judge, prosecutor and defense lawyer made their legal arguments in Dutch. The suspects did not have a command of Dutch. The proceedings were therefore translated into Papiamentu by an interpreter. The interpreter and the defense lawyer were the only ones who had a good command of Papiamentu. When the judge allowed the suspects to speak, they spoke Papiamentu, which the interpreter translated into Dutch.

If you have ever witnessed interpreters doing their admirable work, you know, like I know, that certain nuances get lost in translation. This was also the case during this criminal case. In criminal cases, just like in other legal cases, it is nuances that can make the difference. On top of that, the judge interrupted the suspects multiple times with seeming disinterest, not giving the suspects a proper chance to make their argument. I found it chocking to witness this reality, in which language still clearly disadvantages people from lower classes, and considering the specific context of Curaçao in which class and race have always been interrelated, it is most likely that it is no accident that the suspects were black, and the judge and prosecutor white Dutch.

It thus appears that, just as in other (former) colonial societies, forms of in- and exclusion, domination and exploitation in Curaçao are not static and unchanging in their articulation of racial ideologies and social relations (cf. Solomos and Back, 1996).

4.4.4 KINGDOM NATIONAL IDENTITY

As described above, Curaçao and the other Caribbean islands that are still part of the Kingdom of the Netherlands, were (formal) colonies of the Kingdom of the Netherlands (see paragraph 4.3). Up until 1954 these Caribbean islands had never been an integral part of the Kingdom of the Netherlands in the sense that – amongst others – a different legal regime was applied in the Caribbean, the economy of the Kingdom of the Netherlands was distinguished from that of the colonies, and the hegemonic Dutch national identity did not include people in the Caribbean who were not 'from' the Netherlands. The Dutch Self thus othered those in the Caribbean who were not from the Netherlands or descendants of those from the Netherlands. People in the Netherlands are largely unaware of the their (historic) relation to the Caribbean (cf. paragraph 4.5 regarding the absence of Caribbean people in the Dutch imagination and in education(al material) in the Netherlands). Being Dutch and being Aruban, Curaçaoan or Sint Maartener thus appears to be mutually exclusive. So much so that discussions in the Netherlands concerning the Caribbean also involve Dutch people expressing the view that the Caribbean islands are a burden and that they wish the Caribbean would leave the Kingdom.[326] This view has also been expressed by a number of Dutch and thus Kingdom Ministers,

[326] See Croes description of this phenomenon at http://rozenbergquarterly.com/the-kingdom-of-the-netherlands-in-the-caribbean-de-reinvention-van-het-koninkrijk/ . It brings to mind the phenomenon of the White Man's Burden.

who have stated that they would gladly get rid of the islands. Like current Prime Minister, Mark Rutte, once said: it would only take a phone call from the islands.[327]

People in Aruba, Curaçao, and Sint Maarten, Bonaire, Saba and Sint Eustatius are very much aware of relations with the other countries within the Kingdom of the Netherlands. Not in the least because their hegemonic national identities can be said to be anti-imperial nationalist, because of the current constitutional relation with the other countries within the Kingdom,[328] and migrations within the Kingdom (cf. Van der Pijl en Guadeloupe 2015), and – as we will see in paragraph 4.5 and chapter 5 – the content of education(al material) in schools. Being Dutch as in belonging to the Kingdom of the Netherlands and being Aruban, Curaçaoan and Sint Maartener is thus not necessarily mutually exclusive.

Whatever might be, citizens of the four countries do share the same Dutch/European Union passport, but there is not a 'Kingdom national identity' hegemonically conceptualized and institutionalized in all four countries that encompasses the populations or peoples, and knowledge and respect – even if critical – of each other's languages, national symbols and significant personalities (such as heroes) of all four countries.[329] The contrary seems to be true when we look at how the right to self-determination and state sovereignty within the Kingdom are conceptualized by – for example – legal scholars, namely as belonging to clearly distinct peoples (see paragraph 4.3.3.).

The invisibility of the Caribbean in the Dutch imagination (see also paragraph 4.4.2 and paragraph 4.5) must have a real effect on the ways in which the ruling elite of the Netherlands go about their power within the Kingdom (see paragraph 4.3 on the preponderance of the Netherlands within the Kingdom of the Netherlands). There appears to be a real lack of awareness among Dutch ruling elite of their positionality in this historical framework that continues to be a form of institutionalized racism. At the same time, in the Caribbean there exists distrust regarding Dutch based on historical and present inequalities.[330] It might explain the fact that – despite the Charter creating possibilities thereto – there is a lack of cooperation between the countries in which the countries work together, with an awareness of their positionality in the modern/colonial order, and in which by listening to each-other real efforts are made to improve the lives of everybody within the Kingdom of the Netherlands (cf. Vázquez 2020 on positionality and listening, also see chapter 2).

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[327] As a comparison, the Prime-Minister would not say it would gladly get rid of – for instance – the Province of Limburg, even though Limburg has been part of the Kingdom of the Netherlands only since 1867 and thus a shorter period of time than the Caribbean islands.

[328] During the years that I lived in Curaçao (2014-2018) I would be constantly surprised by how many people knew about the Charter of the Kingdom, the extent to which their knowledge reached, and how often relations within the Kingdom were discussed during all kinds of events such as dinners, other social gatherings, but for example also during radio talk shows when people would call in to share their perspective. With regard to Curaçaoan radio talk shows, see Römer (2017).

[329] Cf. Guadeloupe (2014) who writes: 'We are dealing here with an extended state consisting of multiple nations. In the ideal case, every nation ought to cherish both their national symbols and to be respectful, even if critical, of those of their co-constituents/partners in the Kingdom. Knowing these other national symbols is already a sign of the kind of respect that can foster critical dialogues that enhance all the countries of this Trans-Atlantic Kingdom. This has implications for how you go about concretely making the nation; constructing the Sint Maarteners.'

[330] It is not only a distrust of Dutch ruling elite, but of people and organization who continue to exploit the masses (including those based on race and color), see also paragraph 4.4.5.

I was at a conference on constitutional law in the Netherlands. The theme of the conference was constitutional law of the Kingdom (Koninkrijksrecht). Academics specialized in constitutional law from all over the Netherlands gathered, a number of them presented papers. There were also a number of (former) politicians from Sint Maarten and Curaçao and civil servants from the Netherlands. During one of the breaks one of the civil servants turned to me and remarked that she could not understand why politicians and people in general in the Caribbean made a fuss about their position within the Kingdom. After all, she said, there are Dutch municipalities that are bigger than the communities in the Caribbean, whilst Caribbean politicians have direct access to the central government, and the Dutch municipalities have not. To me this showed a lack of historical understanding of the current constitutional framework and the inequalities that it continues to perpetuate.

4.4.5 NON ESSENTIALIZED IDENTITIES

There is an increasing number of academic work that stress that the above described hegemonic essentialized national identities are one aspect of reality. However, the institutionalized ways in which society is sought to be structured does not prevent the multiple ways in which individuals who – by definition – cannot be essentialized (see chapter 2) go about these structures. Attention for these hegemonic narratives should therefore be complemented with the equally true part of lived reality where the idea of who is a *Yu di Korsou* or what it means to be a *Yu di Korsou* (or for that matter, who is Dutch, Aruban, Sint Maartener, and Bonairian, Sabian, or Statian) is not something fixed or static. Instead, these (and other) identities are also used to search for meaning, i.e. identity and belonging, and to articulate and mobilize for demands for change, social mobility, citizenship rights and material benefits, and are hybrid and dependent on the space, time, situational setting, power relations and negotiation of multiple identities (Allen 2006, 2010; Benjamin, 2002; Starink-Martha, 2014; Maingot, 2015; Allen and Guadeloupe, 2016; Van der Pijl and Guadeloupe, 2015). These works also acknowledge how identities and culture are partly shaped by influences 'from the margin' and thus not only by those in power and hegemonic institutions. They are also influenced by influences worldwide due to the constant migration of people, goods and ideas (Guadeloupe, 2010; Allen, 2011; Cañizares-Esguerra and Breen, 2013; Allen, 2017b; Ansano, 2017).[331]

Scholarly work like these thus take every day lived experiences seriously and draw a different image from scholars who imagine(d) Curaçaoan society as more or less static and fixed, or as the result of the mixtures of otherwise static and fixed categories of people and 'their' cultures (cf. Hoetink, 1958, 1962).[332] These types of works also show the everyday behavior of people – including their inventiveness – when confronted with institutionalized hegemonic identities and resulting hierarchies, without ignoring the conceptual and institutionalized identities and resulting forms of

[331] Cañizares-Esguerra and Breen (2013) emphasize that all atlantics are the product of multiple "entangled histories. For example, they write that the daily needs of the residents of Venezuela were met by international networks of merchants and smugglers stretching from the South American interior to Amsterdam and London. …[and] … For two centuries, Franciscan priests, Sephardic merchant widows, Guayquirí Indians, and black slaves for hire (either sailors or female peddlers) played the different legal, religious, and mercantile regimes of Dutch Curacao and Spanish Tierra Firme against each other to gain new freedoms and opportunities, creating in the process thoroughly hybrid communities …[and] Creoles in Grand Colombia alone managed to recruit more than six thousand men and women from England, Ireland, Germany, Poland, and the Netherlands to help the Spanish American cause for independence' (Cañizares-Esguerra and Benjamin Breen 2013).

[332] See Allen (2006) for Römer's changing views of race, culture and national identity.

oppression that are in place, such as white supremacy, colorism, and racially exclusive understandings of the national identity and the ways in which this intersects with other social constructs such as gender and sexuality, and the ways which this impacts lived experiences, processes and practices.

Also relevant for this research is the academic work that stresses that reality is not only shaped by the legal fictions of sovereignty and right to self-determination that rely on the concept of clearly distinguishable peoples with a free will and the right to self-determination or sovereignty, however commonly used and despite the fact that they have been institutionalized as such. These scholars stress that such obscure the way in which sovereignty has historically contributed to racialization and racism, and that they obscure multiple sites of power and (Bonilla, 2013, 2017).[333] It also obscures the fact that people in Curaçao do not necessarily always think of the future of Curaçao as either remaining in the status quo, fully integrating in the Netherlands[334] or obtaining public law independence. Instead, people in Curaçao imagine different futures for the political status of Curaçao (Römer, 2017) or try to image the future differently, even if they do not know precisely yet what that something different is (i.a. Bonilla, 2013; also see Delgado and Sulvaran, 2020). Like in the wider Caribbean, individuals understand that public law sovereignty is 'not the romantic promise of a yet to be achieved political future, nor the tragedy of an unfulfilled future past, but rather the contemporary sign under which power is routinely brokered among state, nonstate, and suprastate actors' (Bonilla, 2013).

4.5 EDUCATION IN CURAÇAO

4.5.1 INTRODUCTION

This work focusses on the relation between racial discrimination and human rights education. In this chapter I already drew a context concerning human rights and national identity in Curaçao and their relation to race. In this paragraph I will draw a context concerning education in Curaçao and its relation to racism. With this context in mind, we will turn to an analysis of empirical findings on human rights education in Curaçao in chapter 5.

This paragraph first draws a brief historical context regarding education in Curaçao and the way in which race and/or racialization (in relation to national identity and language) played a role. It will then proceed to further discuss that education, in principle, is an autonomous affair and not a Kingdom affair (see paragraph 4.3.3. for an explanation of the distinction between autonomous and Kingdom affairs) and the broader local educational legal framework applicable in Curaçao. After that, it will draw a context regarding the content of knowledge production and dissemination in schools in Curaçao.

[333] Also see Gario (2019) for an analysis on how multiple sites of power in Curaçao and the Netherlands are used with and despite the legally structured state, for the economic gain of only a few whilst the wider population in Curaçao (and beyond) is burdened with increased health risks, loss of job opportunities etc., and is disproportionally more affected by climate change and damaged environment. As we will see (paragraph 4.4), all four countries also have their own essentialized hegemonic national identities, which perpetuate the idea of clearly distinguishable, and thus mutually exclusive, peoples.

[334] Bonaire, Saba and Sint Eustatius were integrated into the Netherlands in 2010. However, this has not led to equal treatment, and equal rights, see paragraph 4.3.

4.5.2 A BRIEF HISTORICAL CONTEXT

In formal colonial times, institutionalized education was one of the ways in which racialized groups were segregated. As Roe (2016) shows, deliberate efforts were made to keep those racialized as non-European, outside of 'European civilization' (cf. Roe, 2016 and Rosalia, 2002), and the WIC and Dutch state were not interested in formal education for racialized Others in Curaçao (i.a. Groenewoud, 2017; Do Rego, 2013; Roe, 2016). Education of enslaved and poor people – most often people whose reality or (family) history included being enslaved (in this paragraph called Afro-Curaçaoans) – was something that the Catholic Church took upon itself from the 1820's onwards with a specific civilizing mission. Catholic missionaries, who judged Afro-Curaçaoans to be unsophisticated and unrefined, gave instruction in writing and reading and set to instill 'white culture' into these 'poor black souls'. In the following decades the Catholic church arose to great power and exercised significant authority and control over the lives of Afro-Curaçaoans (Roe, 2016; Allen and Guadeloupe, 2016). The Church's mission was to 'generate a healthy, manageable, docile and well-organized population' (Roe, 2016). Education by the Church – except for education taught in a number of elite schools – for a long time remained missionary education combined with generating patriotic feelings with reverence for the Dutch King and God (Allen, 2014, 2007; Groenewoud, 2017). The Church's efforts to change the behavior of the social group whose history was one of slavery - a social group that most missionaries considered lacking intellectual capacities or comparable to big children (Groenewoud, 2015; Groenewoud, 2017) – was enforced through corporal punishment, legal and religious sanctions (Roe, 2016; Allen and Guadeloupe, 2016; Rosalia, 2001). The Church was able to exercise these efforts of control well after the abolishment of slavery in 1863 (i.a. Rosalia, 2001; Allen, 2007; Groenewoud, 2017). The Afro-Curaçaoan population resisted the Church and State's oppression and control in multiple ways so that different Afro-Curaçaoan beliefs, practices and cultural expressions survived, and created a black counter-hegemonic identity. Catholicism however did have a (strategic) appeal to many Afro-Curaçaoans for it provided them access to 'white culture' and therefore some upward mobility (Roe, 2016; Allen, 2007; also see paragraph 4.4 on upward mobility).

Education in Church schools – which until recently remained missionary and 'civilizing' education (i.a. Groenewoud, 2017) – was conducted in Papiamentu up until 1935. The Papiamentu language was also used for educational and religious material. With this, Papiamentu also became the 'civilizing' language. The role of the Catholic Church in Curaçao was one of the factors contributing to the stabilization of Papiamentu as a language, even if it was still perceived by Dutch colonials and missionaries as an unsophisticated slave-language (Roe, 2016).

As we have seen, in the early 1900s, Papiamentu became a signifier of national identity (see paragraph 4.4). At the same time Dutch – which still was the only official language on the island - was promoted as the exclusive language (Do Rego, 2013) and became the exclusive language of instruction in all schools in 1936 (Sharpe, 2014). This was due to the renewed interest of the Netherlands in Aruba and Curaçao because of the wealth produced with their oil industries (Sharpe, 2014). Dutch as a language of instruction was a way to assert Dutch influence on the island. It also prepared the children of especially native Dutch for higher education in the Netherlands (Sharpe, 2014). Education thus took place with Dutch as a first language, even though the vast majority of pupils did not speak Dutch when starting elementary school (Narain, 1995). For a long time, speaking Papiamentu in class or on school premises was not allowed, and pupils disobeying this rule received corporal punishment (Sharpe, 2014).

During dinner with acquaintances in Curaçao, we somehow ended up talking about school in the old days. One of these acquaintances, a man of just over 60 years old, told us about when he used to go to primary school. He told us that he used to receive corporal punishment for speaking Papiamentu with his friends on the school premises. Until this day, he becomes emotional when expressing that as a young boy he could just not understand why he should be punished for speaking his own language.

It was in 1987 that Papiamentu again became part of education. This time as a course taught in all primary schools (Narain 1995; Roe 2016) and from 1998 onwards also in secondary schools.[335] Papiamentu as language of instruction was again introduced in 2001, this time in elementary schools.[336] As from the year 2002 schools can opt for Papiamentu as the language of instruction (Kibbelaar 2012). There are a number of VSBO schools (preparatory vocational schools) that have Papiamentu as language of instruction and a number of VSBO schools that have Dutch as language of instruction. However, none of the state-funded HAVO/VWO schools (university preparatory schools) has Papiamentu as an instruction language.[337] This is in line with Roe's (2016) finding that education has become one of the main means for social and economic upward mobility for people of color, but that because of the language issue it is a double-edged sword. Education in Papiamentu gives mainly Afro- Curaçaoan (Roe 2016) and other Papiamentu speaking children who do not speak Dutch at home, a better start and more positive appreciation of self, compared to education in Dutch. For most of these children, Papiamentu is their mother tongue and/or they speak Papiamentu in daily life settings other than formal education. However, mastery of the Dutch language remains a key asset on the job market and economy, especially with regard to jobs that require scientific or applied science education, to pursuing higher education in the Netherlands (Roe 2016; also see paragraph 4.4).[338] Segregation in schooling is still not something of the past, as there are still different mechanisms that perpetuate explicit segregation based on religion (which, as we have seen has played a role in racially stratifying society) and indirectly based on class and race (Roe 2016. For school populations of the four state-funded pre-universities on Curaçao, see appendix 1).

As one of the colonized territories of the Netherlands, Curaçao did not receive the same educational means (i.e. it received considerably less funding, and legal requirements for the teaching staff was lower) compared to the Netherlands and even other colonies such as Suriname (Groenewoud, 2015, 2017) There was also differentiation within Curaçao as schools in the capital city received greater means and provided higher educational levels compared to schools outside of the capital city (Groenewoud, 2015; Do Rego, 2013). A differentiation that disadvantages especially Afro-Curaçaoans, and poor people in general (Groenewoud, 2015; Do Rego, 2013). Differentiation compared to other territories within the Kingdom lasted until 1954, when education became an autonomous affair of – what was then – the Netherlands Antilles (see paragraph 4.3) and thus became more or less by default differentiated from the other countries within the Kingdom. Differentiation within Curaçao itself lasted until 1953 (Groenewoud, 2015). While in the past, teachers were mostly from the

[335] https://naam.cw/aktividat/isla-den-nos-bida/exhibition/1969-1985-education/

[336] https://naam.cw/aktividat/isla-den-nos-bida/exhibition/1969-1985-education/

[337] There is currently one non-state funded havo/vwo school that offers education in both Papiamentu and English. Other non-state funded secondary schools teach in either English or Dutch.

[338] And to deal with Dutch investors that still play a significant – albeit sometimes dubious – role in Curaçao, see Gario 2019.

Netherlands and – starting from the time of the establishment of the Shell oil refinery – also from Suriname, by the 1960s primary school teachers were mainly locals, and by the 1980s this was also the case in secondary schools (Do Rego, 2013).

In 1979 another significant change occurred which was the establishment of the University of the Netherlands Antilles, which – due to the constitutional changes – was renamed in 2010 as the University of Curaçao. It is the only state-funded university in Curaçao.[339] It made upward social mobility more accessible to those for whom studying abroad, either in the Netherlands or in another country – for one reason or another – is less accessible.

4.5.3 EDUCATIONAL LAW

The Kingdom of the Netherlands is Member State to various international human rights conventions that determine that States should provide equal right to education and human rights education (see paragraph 4.3 on international human rights law). Some relevant UN conventions are the UDHR, ICESCR, CERD, CEDAW, and the CRPD (also see chapter 3).[340] These conventions are also applicable to Curaçao. However, within the Kingdom of the Netherlands, education – in principle – is an autonomous affair (cf. paragraph 4.3.3, and article 3, 41 and 43 Charter of the Kingdom).[341] As such, all four countries are primarily responsible for education in their respective countries. There are significant differences in education amongst the four countries, regarding – amongst others – educational content, quality, educational material, school facilities and school premises (cf. Martinus, 2020c).[342]

As we have seen (paragraph 4.3), the Kingdom has the power to interfere in autonomous affairs in order to guarantee human rights, and – considering the Kingdom's international human rights obligations – thus also international human rights regarding education. The 'Kingdom institutions' have never interfered with education in Aruba, Curaçao and Sint Maarten. Considering the inequalities institutionalized in the Kingdom institutions, it is also highly questionable if interference by the Kingdom institutions would be an adequate approach. A solution in which equality between citizens and people within the Kingdom as a whole are the basis and aim of decision making and improving education, would be a more adequate approach (see paragraph 4.3).

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[339] In Aruba, there is the University of Aruba, and in Sint Maarten the University of Sint Maarten.

[340] The Kingdom of the Netherlands is also state party to regional conventions that include the right to education, for example the European Convention of Human Rights (ECHR).

[341] The Charter of the Kingdom does not explicitly mark education as a 'Kingdom affair', nor has education ever been marked as a 'Kingdom affair' by the 'Kingdom institutions' based on the Charter of the Kingdom. Martinus (2020c) argues that education should be interpreted as a 'Kingdom affair', and that education as a Kingdom affair should be dealt with in conformity with UN General Assembly Resolution 1541 (XV), and thus while respecting the right to self-determination, individuality and cultural characteristics of the Caribbean peoples.

[342] In Curaçao it goes as far as that for example, schools do not even provide for toilet papers in their school because of budgetary reasons (Delgado and Sulvaran, 2020). Of course, like in the other three countries, in Curaçao too there are significant differences between schools within the countries themselves, such as differences between state-funded and private schools, and segregation (for Curaçao cf. Roe, 2016, for the Netherlands cf. OCW, 2019).

With Curaçao being primarily responsible for education in Curaçao, it is the Curaçaoan legislator[343] that has the power to promulgate educational law. All costs related to education are thus also – in principle – for Curaçao (Martinus 2020c). The Charter of the Kingdom does provide legal basis for cooperation between the four countries of the Kingdom (article 38(1) Charter of the Kingdom). In 2019 this was also used in the area of education, culture and science to create a cooperation protocol between the four countries (*Samenwerkingsprotocol Onderwijs, Cultuur en Wetenschap tussen Aruba, Curacao, Sint Maarten en Nederland*).[344] The protocol determines – amongst others – that within the Kingdom there is one 'educational sphere' (*educatieruimte*). What this means remains to be seen. Relevant to this research (also see chapter 5) is that the protocol also determines that '*mutual exchange of culture and art contributes to mutual respect and understanding of each other's cultural norms and values and mutual appreciation*'. How this is converted into concrete measures in education also remains to be seen. The protocol further determines that research concerning topics relevant for the countries will be stimulated, that the countries keep each other informed about developments in the area of education, culture and science, and that cooperation between departments of the different countries is possible. With respect to political and financial accountability, the norms of the Charter and the countries' constitutions are applicable (see paragraph 4.3).

Article 21 of the Constitution of Curaçao determines that education is a subject of continuing concern of the government. It also codifies freedom of education, which also includes freedom for religious schools. Curaçao funds both public schools[345] (*openbare scholen*) and special schools[346] (*bijzondere scholen*), the latter including religious schools, are eligible for state funding.[347] However, state funding of education can be made subject to educational requirements based on Statutory law, and regulations based on Statutory law. The Curaçaoan legislator and government exercise this power by determining legal norms concerning school subjects and learning aims. In chapter 5 we will look into educational legal norms concerning human rights education in state funded pre-university secondary schools.

Curaçao's contemporary formal educational institutions include nursery schools (*kleuterschool*), primary schools (*funderend onderwijs*), secondary schools (*vsbo*, *havo, vwo*), vocational education (*sbo*), and higher education (*applied science and science*). The vast majority of these schools are state

[343] The Curaçaoan legislator is the Curaçaoan government and the Curaçaoan parliament. The government consists of the Governor and Ministers. The Governor represents the King of the Kingdom of the Netherlands. See also paragraph 4.3.

[344] https://www.rijksoverheid.nl/documenten/convenanten/2019/11/12/samenwerkingsprotocol-onderwijs-cultuur-en-wetenschap-tussen-aruba-curacao-sint-maarten-en-nederland.

[345] School maintained by the state or by a designated public legal person.

[346] School maintained by a natural person or by a legal person based on private law.

[347] Article 21 of the Curaçaoan constitution is similar to article 23 of the Dutch constitution. There is a very specific history underlying the rights codified in article 23 of the Dutch constitution. As Van der Schyff (2010) writes: 'Much of the tinder in Dutch politics was also addressed by the Pacification of 1917, an accord which saw social harmony maintained by resolving longstanding disputes in society by appeasing the Socialists and Liberals with the introduction of universal suffrage, while the Confessionals had the funding of their schools guaranteed by the state.' The right to have religious schools funded was thus a trade-off for universal suffrage.

funded special schools. Curaçao's state funded special schools can be divided into Roman Catholic, Protestant, Christian, Adventist and Humanist schools.

There is also a number of private schools. Private schools do not issue Curaçaoan diplomas, but instead diplomas from for example The Netherlands. Private schools have to adhere to only a limited number of Curacaoan educational regulations. The Curaçaoan legislator and other governmental bodies, therefore, do not have a as much influence on these schools as they have on state-funded schools.

4.5.4 EDUCATIONAL CONTENT

Formal education in Curaçao has been shaped by a long history of Dutch cultural imperialism (Groenewoud 2017, 2018), Eurocentrism and including little knowledge on Curaçao(an histories) and the surrounding region (Römer, 1974; Groenewoud, 2018; Allen, 2021). Despite efforts to establish something different and efforts in the 1960s and onwards to include Caribbean histories (Narain, 2006; Do Rego, 2013; Roe, 2016; Groenewoud, 2018; Roe, 2016), formal education in Curaçao remains largely Eurocentric (Curaçao Directorate of Foreign Affairs, 2015;[348] Roe, 2016; Van Heydoorn, 2017; Delgado & Mulder, 2017; UN Working Group for People of African Descent, 2015).[349]

In the Netherlands too, Dutch formal education has been criticized for being Eurocentric. This is relevant because education in Curaçao leans heavily on Dutch education (i.a. UNICEF, 2013; EP-Nuffic, 2015; Van Heydoorn, 2017).

Dutch curriculums (of both primary, secondary and tertiary formal education) rarely address the histories, intellectual contributions and perspectives of non-white people adequately, if at all (i.a. Weiner 2014, 2015; Wekker 2016; Wekker et al., 2016; Delgado and Mulder, 2017). They also rarely acknowledge positionality in knowledge production, despite knowledge production in Dutch education being clearly centered in Europe and the United States of America (Wekker et al., 2016). Dutch school textbooks depict essentialized understandings of categories of human, and curriculums rarely, if at all, address (the lasting effects of) slavery and colonialism and the logic behind it that

[348] With regard to the colonial legacy of race and racialization, the UN Working Group for People of African Descent concluded that racial discrimination is considered a "taboo" subject in Curaçao and that there is a lack of understanding within the society about its manifestations" (UN 2015:4). It might be interesting to research when, where and how race and racial discrimination become a taboo. I am reminded of a fellow researcher in Curaçao (born and raised in Curaçao) who told me that during his school years, 'race' was not talked about in school, but that it was talked about at home, and amongst friends and family, and that it was strange experiencing this space (school) where race was not talked about. I am also reminded an incident in May 2020 when one of the owners of a Jazz café in Curaçao (a white Dutch person) placed a comment on Facebook with the text 'monkey island,' and received an enormous online backlash with people wanting to boycott the café. Since this took place during the local lockdown because of Covid-19 it is yet to be seen what the offline effects will be. The café owner's remark and initial apology brings to mind Wekker's (2016) conceptualization of Dutch white innocence. The owner later did acknowledge the racist nature of his comment. The online backlash indicates – contrary to UNWGPAD's findings – that at least a part of the Curaçaoan population is well aware of manifestations of racial discrimination. As are other both on- and offline efforts against racial discrimination, even if these are not dominant. For example, with regards to criticism against the racist black face figure Black Pete, see for example the podcast Skuchara number 24: https://www.facebook.com/watch/?v=739738219720647&extid=0vTilkFNjTnmHOO4 or a video by Fullinck: https://www.youtube.com/watch?v=MEs7XwUsgMQ.

[349] The issue of Eurocentric education has also been voiced concerning education on the other Caribbean islands of the Kingdom. For Sint Eustatius, see for example Faraclas, Kester & Mijts (2013).

continues to justify certain ways of oppression and exploitation. Instead, the Netherlands and Europe are portrayed in a heavily positive light, emphasizing a good sense of mercantilism, and their unique political, economic, and cultural role in the world, particularly their superior guidance on social issues. This is delinked from Dutch and European former and present exploitation and racism, depicting other peoples as lacking the positive characteristics ascribed to essentialized Dutch and Europeans (Weiner 2014, 2015; Wekker, 2016; Essed 2017, [1984]; Sijpenhof, 2020). This impedes a critical understanding of the Dutch Self and Other and how socially constructed essentialized identities such as race are institutionalized and continue to oppress people (Wekker, 2016; Delgado and Mulder, 2017) both in the Netherlands, the other countries within the Kingdom, and beyond.[350]

Considering the above-described Eurocentrism, and the current position of Curaçao within the Kingdom of the Netherlands, which calls for citizens being educated in being knowledgeable about their situation and to be able to imagine something new, it is then no surprise that formal education in Curaçao has been criticized for failing to stimulate critical thinking in learners. This includes failing to provide learners with tools to deal with societal challenges in the geopolitical context of Curaçao and tools to deal with learners' understandings of the Self and their place in the world (Van Heydoorn, 2017). Similarly, it is no surprise that the need for education that reflects the histories and lived realities of people in Curaçao, and of the surrounding region, has often been connected to the issue of political emancipation, equality and freedom (i.a. Dip 1971, 1988; Do Rego, 2013; Allen, 2021; Narain, 2006; Groenewoud, 2018).

(Historical) underfunding and underinvestment in formal education, Eurocentricy and Dutch cultural domination in education, are intrinsically linked to the history of slavery, colonialism and racism, and continue to affect the educational system and educational material in Curaçao, and with that, access to socio-economic mobility within Curaçao, and within the Kingdom of the Netherlands as a whole.[351] Efforts have been made in the past by governmental institutions to deal with these matters. For example, by facilitating the publication of educational material on the history of the Netherlands

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[350] In June 2020 the official Dutch canon was adjusted. I have not analyzed the renewed canon – it remains to be seen (and thus also researched) whether the canon perpetuates or goes beyond Eurocentrism, racialization and the perpetuation of racism. Eurocentric education in the Netherlands has been contested as shown by the (non-exhaustive) number of academic works that are cited here above but also a myriad of private initiatives. For example: joint initiatives of private institutions FunX (radio-station), De Correspondent (news website), and Black Archives (historical archive for Black and other perspectives) to enrich education with different perspectives and untold historical events and accounts, including a poster called '10x more history' for use in schools, see http://www.theblackarchives.nl/meergeschiedenis.html and http://www.theblackarchives.nl/morehistory.html. On representation of the Dutch Caribbean in Dutch education and media, see also: https://vimeo.com/222739470 and https://www.facebook.com/TheBlackArchives1/videos/523521418340851/ . In 2019 the Dutch government established a commission tasked to 'recalibrate' the Dutch Canon. The commission finished its work and presented its results in June 2020 (Commissie Herijking Canon van Nederland 2020). It wanted to tell a story 'in which many different people and groups can recognize themselves, which offers space for different interpretations of history and which has an eye for the composition of today's society'. In constructing the canon the commission took into account the concepts of *meerstemmigheid* (multiple voices), diversity and geographical distribution.

[351] Concerning access to social mobility within the Netherlands, it is worth noting that the Netherlands introduced several measures in the past to limit access for underprivileged Antilleans to the Netherlands, and multiple further attempts to limit access have been made (Zonneveld, 2015). See also the 'Verwijs-index Antilianen', a system of the Dutch government to keep track of data of so-called problem youth from the Dutch Antilles specifically.

Antilles. These materials contained knowledge produced by historians that included or focused on local perspectives. [352] However, these efforts have left education still lacking proper means and being largely Eurocentric. Especially, because these efforts mainly took place in the 1980s and not much after that period.

In dealing with this reality, two things are worth mentioning. One is that written knowledge production in the Caribbean indeed has been dominated historically by Eurocentrism and with a focus on the wealthy, men, and heteronormativity (for example in the field of historiography, see Allen (2007)) but that there has been an increasing body of written knowledge that includes the (historic) realities and perspectives in and from the Caribbean. Regarding Curaçaoan historiography for example, there is not only the Curaçaoan history recorded by the Roman Catholic Church focusing mainly on its own positive contributions to the society, or the Netherlandocentric historiography focused principally on a chronological description of colonial administration, and influential men. Instead, there is also increasing knowledge production that includes relations between social groups, events, social norms, nature and knowledges that have been excluded (i.a. Allen, 2007; Henriquez, 2002; Groenewoud, 2019; Paula, 1974; Rosalia, 1997). And there is the growing body of written knowledge that shows realities that are not limited to the reality of hierarchically socially constructed identities, and the inequalities that have been institutionalized based on these. Instead, they show how there is also the reality in which migration of people, goods, and ideas is acknowledged and that shows the efforts of different and changing social groups to create a better living for themselves (see paragraph 4.4.5). However, it appears that these contributions have not yet found their way into education(al material) in formal education. Secondly, non-governmental organizations and individual actors also try to deal with Eurocentrism through knowledge production and knowledge dissemination through out-of-school education in the form of i.a. lectures, educational tours, movies and music (Ansano, 2017; Allen, 2021).[353]

These two things are worth mentioning as they show that there is already a body of written knowledge out there that can be used in schools, and which can contribute to going beyond Eurocentrism, to providing learners tools to critically analyze the knowledges that hegemonic knowledge normalizes and naturalizes, and with that to providing learners tools to deal with societal

[352] See chapter 5.3 on the book entitled *Nos Pasado*, which was funded by the government of the Netherlands Antilles. It includes histories of the Netherlands Antilles. However, there appears to be a dominance of Curaçaoan history and the Papiamentu speaking islands.

[353] It seems to resonate with what pupils say about not learning about life in school, and learning these things at home (in contrast to school), see chapter 5. With regard to education on the relation between Curaçao and the Netherlands, there was a recent new impulse; as the world is trying to deal with the effects of Covid-19, and Aruba, Curaçao and Sint Maarten having suffered immensely economically with – for example – tens of thousands of people now relying on donated food packages, the Netherlands has offered relief if the Caribbean countries agree to far-reaching limitations of the local democracies. The Caribbean countries will have to accept supervision by a Dutch entity, that is accountable to a Dutch Minister and that is staffed by Dutch citizens. This prompted an increased number of out-of-school podcasts, lectures, meetings, discussions and videos on the issue, in which subjects like colonialism, emancipation, autonomy, integration into the Netherlands, and the right to self-determination on all the six islands that are part of the Kingdom. In Curaçao alone, one could point to the podcast Knockout Podcast Korsou, lectures such as one organized on 20 July by Akademia Popular Errol Scoop, a discussion organized on 23 July by SITEK, a meeting on 28 July 2020 organized by Plataforma Sklabitut i Herensha di Sklabitut, a video of 20 July 2020 made by Kòrsou Fuerte i Outónomo.

challenges in the geopolitical context of Curaçao in the Caribbean, within the Kingdom of the Netherlands, and in the world.[354]

4.6 CONCLUSION

This chapter set out to draw a context regarding human rights law, race and national identity, and education in Curaçao. Curaçao as part of the Kingdom of the Netherlands therefore is an intrinsic part of this analysis, and the chapter also explicitly analyzed to what extent the global color line is or is not perpetuated regarding Curaçao within the Kingdom of the Netherlands. The context drawn in this chapter is needed to better analyze the empirical findings in chapter 5.

This chapter showed that despite the fact that the populations in and the territory of the Netherlands up until this day have been Intimately connected to the territory of Curaçao and its populations (as well as to those of Aruba and Sint Maarten, and Bonaire, Saba and Sint Eustatius, and other former colonies), albeit from different position within the modern/colonial order, this connection has been dominantly and hegemonically constructed as a here and us in the European territory, and a racialized there and them in Curaçao. Dutch imperial expansion thus created legally and conceptually less free, less equal, societies with less constitutionally institutionalized political power in its colonies, including in Curaçao. Race was historically used for these differentiations. The effects of which can still be found in the constitutional exceptionalism created by the 1954 Charter of the Kingdom of the Netherlands – a product of the post WWII period. The global color line, which entails a connection for the benefit of the West and the disadvantage of the non-West thus continues to exist in the relation between Curaçao and the Netherlands (cf. chapter 1 and 2).

The Charter of the Kingdom drew a conceptual and legal distinction between the Kingdom of the Netherlands on the one hand, and – since 2010 – Aruba, Curaçao, Sint Maarten and the Netherlands on the other hand. The Kingdom of the Netherlands no longer was the exact equivalent of the Netherlands (the territory and the people in the European territory) that governed its colonies. However, it is undisputed that the Kingdom layer is hierarchically superior to that of the four countries, and that within the Kingdom layer it is the Netherlands that always has the upper hand. Looking at how the Kingdom layer is discursively institutionalized, one must conclude that it is almost the equivalent of the Netherlands. One can point to the fact that people in the Caribbean are not democratically represented (or at the very least, insufficiently) in decision making processes by the Kingdom government. Furthermore, Kingdom statutory law is adopted by the Kingdom government and the Dutch parliament. The Dutch parliament represents the Dutch people in the Netherlands. People in the Caribbean are thus excluded. Furthermore, there is no judiciary that can review Kingdom legislation or resolve conflicts between the Caribbean countries and the exercise of power by the Kingdom (which can be equaled to the Netherlands). And despite certain tasks being reserved to the Kingdom layer and other tasks being reserved for the countries (for the Caribbean countries based on the right to self-determination), the Kingdom government supervises the Caribbean countries (and not the Netherlands), amongst others regarding human rights. One can thus conclude that – in the current constitutional framework – it is the Kingdom government that decides what human rights are and who it is that has human rights. Considering the fact that the Kingdom government always consists of Dutch Ministers and in certain cases is complemented with a Caribbean Minister Plenipotentiary, and that Dutch Ministers are accountable to Dutch Parliament,

[354] Here I emphasize the existence of written knowledge since this is what formal education still focusses on. There is not much space (yet) for embodied and oral knowledge.

one could also conclude that it is ultimately Dutch parliament that decides what human rights are and who it is that has human rights. Relevantly, a great deal of treaty interpretation happens in the process of ratification (Oomen 2018), while in most cases, Dutch government and parliament overpower the Caribbean governments and parliaments. The legal sovereign within the Kingdom of the Netherlands thus appears to be Dutch citizens in the Netherlands, to the exclusion of citizens with a Dutch passport from the Caribbean who live in the Caribbean.

Up until this day there are different human rights regimes within the Kingdom of the Netherlands, with people in the Caribbean on the losing end. This includes Bonaire, Saba and Sint Eustatius, that since 2010 have been integrated in the country the Netherlands. Despite having been criticized about differentiated human rights regimes, Dutch Ministers show great reluctance to afford and guarantee equal human rights to people in the Caribbean, amongst other because of claimed lack of due governance in the Caribbean and the fear that it would cost the Netherlands too much. Furthermore, considerations to implement international human rights law in the Caribbean appear to be more given out of wanting to uphold an international image of front runner in the field of human rights. Importantly, wanting to be a front runner in the international arena has historically been by wanting to contribute to a global order that benefits the economic interests of the Netherlands. Ironically, despite the bad historical (past and present) track record of the Kingdom of the Netherlands concerning human rights in the Caribbean, based on the Charter of the Kingdom, it is the Kingdom layer (which can be equaled to the Netherlands) that has a safeguarding and supervisory role in the Caribbean countries.

Furthermore, both in hegemonic national identities and scholarly conceptualizations the populations of the four countries are portrayed as respectively racially essentialized and clearly distinguishable peoples. Although people living in and educated in Curaçao are well aware of relations between Curaçao and the other countries and islands within the Kingdom of the Netherlands, the same does not necessarily apply to people who live and are educated in the Netherlands. People in the Netherlands are minimally – if at all – made aware of past and current relations with the territories and people in the Caribbean. And whereas pupils in Curaçao are educated in formal education with significant knowledge of the Kingdom of the Netherlands and as citizens not only of Curaçao but also of the Kingdom, pupils in formal education in the Netherlands are educated as citizens of the Netherlands, whilst the Netherlands is equated to the Kingdom of the Netherlands (the Caribbean countries thus remain out of sight).

With respect to the rights and freedoms individuals enjoy, it thus still very much matters where one lives, where one is from, and what one looks like. This is true both for citizens within the Kingdom of the Netherlands who all carry the same Dutch legal passport as well as for non-citizens.

The Kingdom of the Netherlands can thus only be categorized as a democratic *rechtsstaat* if one ignores the anti-democratic reality of people in the Caribbean (and the fact that power is still related to the King). I thus conclude that the Kingdom of the Netherlands is not a democratic *rechtsstaat*. The lopsided power relations, unequal rights and freedoms, and anti-democracy institutionalized by the Charter of the Kingdom are no accident nor innocent, but are rather an integral part of broader global historical patterns which also carry within them the legacies of racialization and racism. One could conclude that the Kingdom of the Netherlands actually still is a colonial state, and at least is a form of institutionalized racism and a perpetuation of the global color line.

Not only does it perpetuate the Global color line. By uncritically making a conceptual distinction between the Kingdom layer and country layer and institutionalizing the Kingdom as the safeguarder of human rights, the Charter of the Kingdom of the Netherlands normalizes and naturalizes its

intrinsic inequalities and anti-democracy regarding the Caribbean, and (unfairly) portrays the Kingdom layer as a savior and the Caribbean countries as a burden.

The continuing effects of historical inequalities within the Kingdom and in Curaçao, can also be found in the way in which education is provided for, with regard to at least available means, language of instruction, educational law and educational content.

Human rights education within Curaçao – and necessarily also within the Kingdom as a whole – requires an unsettling of the normalization of racism, colonialism and the global color line. As we have seen in chapter 2 this can be done by historicizing human rights law (its conceptualizations and the ways in which they have been institutionalized) in a way that includes the realities on both sides of the global color line, or perspectives from the different positions within the modern/colonial order. And also, by showing the internal inconsistencies in the reasonings used to normalize and naturalize racialization and racism. Equally important, it should open up space to imagine something new. A new based on that which already exists namely the non-essentialized Self, with which here I mean the non-essentialized individual living in relation to different non- essentialized social groups, languages, ideas etc. It should provide pupils with a vocabulary to recognize multiple sites of power, and to question who it is that is profiting from racialization and colonial ties today (analysis of winners / losers in the relationships of colonialism, globalization and neoliberalism). It should also provide learners with tools to act against the racism that is perpetuated by the very structure of the Kingdom of the Netherlands and its related racializations.

Now that we have set out the discursively institutionalized relation between Curaçao and its (former) colonial state the Netherlands, and the doings and undoings of racialization in this relation, within Curaçao, and in education in Curaçao, we will turn to human rights education in secondary schools in Curaçao in the following chapter.

5. CURAÇAO: TURNING TO SCHOOLS

5.1 INTRODUCTION

This chapter examines the relation between human rights education and racial discrimination as institutionalized, understood and practiced in the basic formation phase of state funded secondary pre-universities (*HAVO*/*VWO*) in Curaçao.[355] Curaçao has four state-funded secondary pre-university schools, namely Kolegio Alejandro Paula (KAP), Radulphus, Maria Immaculata Lyceum (MIL), Albert Schweitzer HAVO/VWO (ASHV) (see appendix 1).

For this chapter, Curaçaoan educational law is analyzed. Furthermore, the chapter draws from interviews, focus groups and participant observation that were performed in schools to understand how human rights education is understood and practiced by both teachers and pupils. Policy officers, and school heads and teachers of all four schools were interviewed. Pupils of MIL and KAP participated in focus groups. Participant observation was performed multiple times at KAP and once at MIL. Finally, the chapter draws from an analysis of textbooks used in the four schools. As we saw, the methodology for this chapter is set out more extensively in paragraph 1.4.

The chapter starts off by inquiring whether human rights education is provided at all, according to educational law, school heads, teachers and pupils (paragraph 5.2). For as far human rights education is provided, the chapter looks into what human rights are and who it is that has human rights, according to teachers, pupils and textbooks, and in class (paragraph 5.3). Considering the subject of this chapter, paragraph 5.3 also specifically analyses teachers', pupils' and textbooks' understandings of 'race'. The chapter ends with concluding remarks (paragraph 5.4).

Throughout this chapter, quotes of interviewees and textbooks are included. Literal and thus colloquial quotes are used. This is especially of added value when quoting pupils, as their use of multiple languages is one of the topics that is part of the analysis, because pupils brought the issue of language up when discussing human rights education. All translations in this chapter are mine. Names of the respondents are not used in this research. Appendix 1 shows the abbreviations used for the respondents. Teachers are referred to as T, pupils with P and policy officers with O. As the list in appendix 1 shows, these are further specified with the use of numbers such as T1, T2 etc.

5.2 HRE IN SCHOOLS?

5.2.1 EDUCATIONAL LAW

[355] HAVO (literally translated: higher general secondary school) aims at preparing pupils for higher professional education. VWO (literally translated: preparatory scientific education) aims to prepare pupils for academic education. Both the *vwo* and the *havo*-trajectory can be divided into three phases. The first phase consists of *basisvorming* (freely translated: basic education) and is taught in the first two years of secondary school. The two years of *basisvorming* are followed by one year of *profielvoorbereidend onderwijs* (literally translated: profile preparatory education). After the profile preparatory education year, pupils choose one out of four available profiles. Each profile consists of a distinguished set of courses. See chapter 1.4 and appendix 1 for more information.

The Kingdom of the Netherlands is Member State to various international Human Rights Conventions that determine that States should provide human rights education (cf. paragraph 4.3 and 4.5). These conventions are also applicable to Curaçao.

As set out in chapter 1.4, this research examines human rights education in the second grade of state funded secondary pre-university (*havo*/*vwo*) schools. The second school year is the last year of the basic formation phase (*basisvorming*). Education law applicable to the basic formation phase of state funded secondary schools are the Statutory Law Secondary Education (*Landsverordening voortgezet onderwijs*),[356] and the Royal Decree Core Aims Basic Formation (*Landsbesluit kerndoelen basisvorming*).[357]

The Statutory Law Secondary Education determines what courses have to be taught in the basic formation phase. These are: Papiamentu, Dutch, English, Spanish, Human and Society, Math, ICT, Human and Nature, Handwork, Home Economics (*verzorging*), Physical Education, Mentor Classes, and at least two of the school subjects Music, Dramatics or Visual arts. Furthermore, schools can decide to offer Religious Education or Philosophy of Life.

The Royal Decree Core Aims Basic Formation[358] determines the general aims of the basic education phase, and the aims and the core objectives of the different courses. Human rights is not included as either a separate course or as part, aim or core objective of the various courses. This does not necessarily mean that human tights education is excluded from educational law. Especially because sections of the Royal Decree Core Aims Basic Formation include educational requirements that could be associated with human rights (education). The Decree namely requires that the basic education phase provides:

> *General formation that is necessary for pupils to function meaningfully in society, but which also has to lay a foundation for their further personal development and their further study and / or professional development. … This is aimed at making educational content more consistent with socio-cultural conditions on the island and with economic and technological modernization. The aim is to create education that promotes the social resilience of people and social justice.*

Furthermore, the Royal Decree Core Aims Basic Formation determines that the aim and core objectives of the course 'Human and Society' include knowledge and an understanding of social issues, and the ability to take a position in issues concerning society, history, administration, politics, and spatial issues. They also include a critical analysis of democracy and the democratic *rechtsstaat* of the country, and a commitment to social justice. They also include knowledge and an understanding of the social groups in Curaçao, the world community, pluriform society and identity.

Apart from these legal educational requirements, it is the schools that develop their curriculums. As T1 explained, the curriculums of the first grades normally differ from each other. Education in the

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[356] Statutory legislation is adopted by the legislator, namely Curaçaoan parliament and Curaçaoan government jointly. The Curaçaoan government consists of the King (represented by the governor) and Curaçaoan Ministers.

[357] A Curaçaoan Royal Decree is adopted by the government. The Curaçaoan government consists of the King (represented by the governor) and Curaçaoan Ministers.

[358] The *Landsbesluit kerndoelen basisvorming* was enacted in 2000 and has never been renewed.

years after the basic formation phase is more similar in the different schools because they are catered to the 'end terms' of the state exams.

5.2.2 FROM NO TO SOME HUMAN RIGHTS EDUCATION

When asked, all four headmasters (whom I interviewed separately) initially responded that their schools do not provide human rights education in the basic formation phase. This initial response was quickly nuanced as all headmasters explained that human rights is not a specific module[359] and human rights education might be covered indirectly in the History course.[360] As explained by one of the headmasters, the Human and Society course is split into History and Geography.

All four head masters also indicated that human rights education probably is part of the discipline called General Social Sciences (*Algemene Sociale Wetenschappen*) which is taught from the fourth year onwards, and thus not in the basic formation phase.[361] Following the headmasters' answers regarding the basic formation phase, I interviewed a number of History teachers of all four schools, namely T1, T2, T3, T4, T5 and T9. After all, as the headmasters indicated, human rights education might take place indirectly in the course History.

The teachers' responses were less unanimous compared to the headmasters. They did all indicate that human rights education is not an explicit part of what they teach in the first and second grade. Like the headmasters, they explained that human rights is part of General Social Studies. And for as far human rights is part of the History course, it can be found in a module called Political Science (*Staatsinrichting*), which is taught only from the third year onwards. However, T1, T3, T4, T9 also associated human rights education to what they teach on the French revolution in the second grade. Furthermore, T1, T2, T5 and T3 associated human rights education with teaching about slavery in the second grade. In these classes they teach about rights, freedoms, obligations and the development from monarchical absolutism towards democracy. I understood this as the history teachers' indicating that a cultural archive is formed during classes on the French revolution and slavery, regarding rights, freedoms and obligations which can be associated with human rights.[362]

5.2.3 TO LEARN ABOUT LIFE

[359] The headmaster of one of the schools asked a General Social Sciences teacher and the coordinator for the basic education phase to join my interview with the headmaster. The General Social Sciences teacher explained that there used to be specific human rights modules in the past. The coordinator for the basic education phase explained that there had been a time in the past when, Bos di Hubentut ('Voice of the Youth,' a local foundation) had a project in their school and that posters concerning human rights were put up the school walls.

[360] One of the four headmasters also indicated that indirect human rights education might be taught in the discipline Geography. Another one of the four headmasters indicated that indirect human rights education might also be covered in the discipline home economics (*verzorging*). The history teacher of the latter's school whom I interviewed, T4, informed me that he had contacted the home economics teacher. The home economics teacher had informed T4 that human rights is not all part of home economics.

[361] As human rights education, according to the headmasters, is not an explicit part of education in the first or second grade, two of the headmasters wondered out loud if it would not be better to do research into the third or upper school grades if I wanted to research human rights education.

[362] Said (2003) conceptualized the cultural archive. This was further conceptualized and applied to the context of the Netherlands, including its educational system, by Wekker (2016). See chapter 1 and 4.

When I asked pupils in the KAP focus group (P1, P2, P3, P4 and P5) where they learned their ideas about human rights, they explained that this is how they were raised (P1 and P2), what they learned from their parents (P3) what they learn at home (P5), and what they learned from everyone that has an influence on them (P2). Pupils (P1, P4 and P5) explained that they learn at home and bring knowledge into practice at school; bringing knowledge into practice at school prepares one for 'bigger and more situations' in the future (P1). Pupils spontaneously further elaborated on this by explaining what they do learn in school (P1, P2, P3, P4), which according to them has nothing to do with life, or in the words of P4:

E kos ta ku skol, nan ta dunabu e koinan di buki anto e koi nan den buki no ta bida. (…) bida ta papia ku hende, deal ku hende, pasombra bida ta hende. Bo mester hende, hende mester di bo. (…) Anto si bo no por deal ku hende, e sosietat no ta bai!	*The thing is that school, they give you the things in books and the things in books are not life. (…) Life is talking with people, dealing with people, because life is people. You need people, people need you. (…) And if you cannot deal with people, society will not function!*

Life – according to the pupils – is thus about relating to people or else society will not function. It is then not surprising that when I asked the pupils how they would like the educational system to be changed, they said that they wanted 'something more social' (P2), 'life lessons to be prepared for life out there' (P3), and 'to learn how to deal with people' (P4). Later during the discussion, they repeated that they wanted education 'on how to go about life' (P5), and social studies (P1 and P3).

Several pupils also argued that the school system should change with the times, especially now that with the internet and their smartphones, they 'have the world in their hands' and read about things that happen throughout the world. Like P1 stated:

un konbersashon aworaki ku un hende grandi ku un uhm, un mucha di nos idat aki over min sa, mensenrechten, LGBT, of mensenrechten mane discriminatie di race, of kualke kos ku bo pon'e. mi ta bisa bo ku ei, nos sa di un par di un kosnan ku e juffrouw, ku e hende ta mane 'kiko'? … Ami, un biaha, m'a bai papia ku mi tante anto e no ta sa mes kiko tabata pasando na Alabama ku e uhm abortion.	*A conversation right now with grown-ups with uhm, a child of our age about I don't know, human rights, LGBT, or human rights such as discrimination on the basis of race, or anything that you propose. I tell you, we know about certain things that Miss, that people are like 'what'? … I, once, I went to talk with my aunt and she did not even know about what was happening in Alabama with uhm abortion.*[363]

Pupils thus repeatedly stressed they wanted social studies and to learn about social life. They also related this to the current affairs they learn about on the internet and their electronic devices, [364] including current affairs concerning human rights. Learning about life apparently thus also means learning about human rights issues.

[363] The focus group was held in the same period that in Alabama, the United States, a controversial abortion Bill was passed. This is what P1 most likely was referring to.

[364] In the classes that I observed, use of electronic devices is not part of education. At ASHV, pupils had to hand in their mobile phones at the beginning of the class and they were only handed back at the end of the class.

The pupils' longing for social studies, or, learning about life, stands in stark contrast to what O1 said based on discussions in the Platform HAVO/VWO:

Bijvoorbeeld als je een leerling zoveel laat leren, laat studeren, gewoon over het algemeen sociale wetenschappen, zal dat kind weten waar sociale wetenschappen over gaan? Maar wat heeft dat kind daar nou aan? Als het dat weet?	*For example, if you let a pupil learn that much, let it study, about general social sciences, will the child know what social sciences is about? But what does the child even get from that? By knowing that?*

The Platform HAVO/VWO is a platform where different actors and stakeholders, such as school boards and schools are represented and in which knowledge is exchanged between those actors and the Ministry of Education and these stakeholders. It leaves one wondering if such a remarkable discrepancy between the Platform HAVO/VWO and the pupils' interests would occur if pupils would have been included in the platform.

5.2.4 IT IS IN THE LANGUAGE

The pupils' discussion of what school could change, took a different direction when, besides the introduction of social studies, pupils spontaneously began discussing the issue of language:

P1: social studies anto nan mester kita un vak. Nan mester trata Nederlands manera un	P1: yes, social studies and they need to cancel a discipline. They need to treat Dutch as a
P4 & P3 & P1: vreemde taal.	P4 & P3 & P1: foreign language.
P3: paso no ta nos	P3: because it is not our
P4 & P3: moedertaal	P4 & P3: mother tongue
P3: e no ta nos moedertaal.	P3: it is not our mother tongue
P5: Papiamentu	P5: Papiamentu
P1: no mester tur kos na Papiamentu, pero mester tin opshon di kontesta na un otro idioma ku no ta ulandes.	P1: not everything has to be in Papiamentu, but there has to be an option to answer in another language that is not Dutch.
P5: hasta den Spaans[e les] tin Ulandes.	P5: even in Spanish [class] there is Dutch.
…	…
P1: esei ta e koi, niet per se, gewoon dun'e opshon ku bo por also kontesta den moedertaal. Paso ban bisa ku tin un un phrase ku bo no sa bon bon,…	P1: that is the thing, not necessarily, just give the option that you can also answer in your mother tongue. Because let us say that there is a, a phrase that you do not know very well,…
P3: ta kiko e kemen, ta kiko, kiko pa splikele, pero bo no sa bisa na Ulandes	P3: what is it that it means, what is it, what is it to explain, but you do not know how to say it in Dutch

P1: anto a, hopi problema e ta trese	P1: and it has caused a lot of problems
P4: Ulandes ta pa Ulandesnan papia. Papiamentu ta pa Yu Korsou papia! Spianjo, ta pa esnan ku ta papia Spianjo, Ingles ta pa nan, tur pais ta signando na nan mes idioma, Korsou so ke bin ku	P4: Dutch is for Dutch to speak, Papiamentu is for *Yu Korsou* to speak! Spanish, is for those who speak Spanish, English is for them, every country is learning in their own language, it is only Curaçao that wants to come with
P3: ku Ulandes!	P3: with Dutch!
P4: ku Ulandes	P4: with Dutch
…	…
P4: nos no ta forma parti di Ulanda. Si nos tabata forma parti Ulanda, anto nos ta papia Ulandes, mi ta kompronde, pero nos no ta forma parti di Ulanda anto nos ta papia Papiamentu.	P4: we are not part of the Netherlands. If we would be part of the Netherlands, and we would speak Dutch, I would understand, but we are not part of the Netherlands and we speak Papiamentu.
P1: mas autonomo, nos ta hopi mas autonomo.	P1: more autonomous, we are much more autonomous.
P4: nos no por bin ku, ahm, lessen na Ulandes si na kas un yu korsou no ta bai papia Ulandes.	P4: we cannot come with, uhm, classes in Dutch if a Yu Korsou does not speak Dutch at home.

With this, the pupils touched on a myriad of issues related to language in Curaçao. It involves the ways in which Papiamentu has become one of the official languages of Curaçao, and is the mother tongue and primary language of the vast majority of the Curaçaoan population (see Kibbelaar 2015 on Papiamentu being the mother tongue of the majority of the Curaçaoan population, also see chapter 4.4 of this work). It also involves the ways in which Papiamentu has become a signifier to determine who is a *Yu Korsou* or not (*Yu Korsou* national identity is discussed in chapter 4). Furthermore, and what started the pupils' remarks on language, is that Dutch is the instruction language in school despite it being the mother tongue of only a small part of the Curaçaoan population. Finally, it involves Curaçao's position within the Kingdom of the Netherlands as an autonomous country. With regard to the latter, it is worth noting that this is not a topic that is addressed in the curriculum and educational material of these pupils' grade, namely the second grade. It is a topic that is part of, for example, the third-grade module on Political Science (see paragraph 5.3.3).

As we have seen in the pupils' discussion, P1 envisions a more fluid use of language within the classroom. Remarkable is that not only does P1 make an argument for fluid use of language, the pupils in the focus group already appeared to have this flexible attitude towards language during the focus group as they – to various extents – used multiple languages to communicate. Answers were given in Papiamentu, Dutch, English and in mixtures of these three languages. This also shows in the various quotes that are included in this work. With this, language seemed to be used primarily as a means of communication rather than as a means of inclusion or exclusion. The idea of language as an option also seems to concur with the pupils' understanding of human rights as 'having options' (see paragraph 5.3.2).

During class, T1 and T3 too, seemed to adopt a relatively flexible attitude towards language. Both these teachers mainly spoke Dutch with pupils but used English and Papiamentu words or expressions in between. In a one-on-one interview, T1 explained that pupils sometimes do not understand what is explained in Dutch. When this is the case, T1 explains certain things in Papiamentu too.[365] This attitude might be aligned with what T6[366] expressed (my translation):

> *The Papiamentu speaking Curaçaoan should not be limited in taking in knowledge and in developing, by a foreign language such as Dutch.*

During class, pupils too would mainly respond in Dutch, but would also use Papiamentu and English words and phrases in between.

However, the official instruction language in school is Dutch, textbooks are written in Dutch and exams are taken in Dutch. As we saw, P5 expressed his frustration concerning the fact that he has to learn Spanish – a foreign language to him – from Dutch instructions, while Dutch to him is also a foreign language. To make matters worse, T4 explained that for the second year of HAVO/VWO only a HAVO textbook is used because pupils lack the level of command of Dutch, to use VWO books.[367] VWO textbooks – which are considered to be of a less analytically demanding level compared to HAVO – are thus selected not based on the intellectual capacities of the pupils but on the fact that pupils do not have a sufficient command of Dutch.

Research shows that pupils are capable of learning multiple languages, and that if started at a young age and with proper educational means and pedagogy, pupils can become near native-speaking in a foreign language (Kibbelaar, 2015). However, apparently schools do not have the proper educational means to 1) teach the Dutch language as a foreign language to pupils whose mother tongue is Papiamentu and not Dutch, and 2) to instruct, pass on knowledge, and produce knowledge in class in Papiamentu as a mother tongue or Dutch as a foreign language (also see Kibbelaar, 2015 for similar findings). This, within the context of a nation that has Dutch and Papiamentu as official languages, where Papiamentu is part of national identity, where for the majority of the population Papiamentu is the mother tongue. And in a broader context of the Kingdom of the Netherlands, where Dutch is the 'language of the state', meaning that law, regulations and policy is all written in Dutch. It is also in the historic context of a nation where the Dutch language served to exclude large sections of the local population from, not only, the Dutch language, but also access to power and upward social mobility that comes with mastering the Dutch language, which continues to have effect to this day. These legacies have thus been institutionalized in education in Curaçao. As we have seen, it creates a harsh reality that disadvantages many pupils, perpetuating inequalities from the past, even if we have seen that in daily school life both pupils and teachers appear to turn language more into a means of communication rather than one of inclusion or exclusion.

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[365] Remarkably, T5 explained that it is possible for pupils to graduate from pre-university without a good command of the Dutch language.

[366] T6 is not a History teacher but a Papiamentu teacher. I interviewed T6 because the pupils stressed that T6 is 'amazing' because T6 does teach them 'about life' (see paragraph 5.2.3).

[367] For the first grade of HAVO/VWO there is only one textbook, a HAVO/VWO textbook. However, for the second-grade, there is a HAVO (preparatory school for applied sciences), and VWO (preparatory school for science) textbook. The former is thus used in the school where T4 teaches.

5.3 HUMAN AND RIGHTS

5.3.1 TEACHERS

HUMAN RIGHTS

As we saw, teachers associated human rights education mainly with the third-grade module on Political Science. Even when I specifically asked if there was any human rights education in the second grade, teachers associated human rights education with teaching about the French Revolution and/or teaching about Slavery (see paragraph 5.2.2).

In describing the module on Political Science, teachers explained that human rights education included teaching about rights, freedoms and obligations. Some of the teachers spoke of rights of humans, while others also specifically spoke of rights and obligations for citizens. Still in the context of the third-grade module, teachers spoke of rights such as freedom of expression, freedom of education, and the prohibition of torture. And obligations such as paying taxes, supporting fellow citizens and being helpful. As we will see (paragraph 5.3.3) this largely resonates with the textbook used for Political Science.

The French revolution, according to teachers can mostly be associated with human rights because of the development from absolutism to democracy, and the Enlightenment ideals of equality, freedom and brotherhood. Concerning slavery, T1 explained that in class they touch upon the fact that in the time of the Enlightenment, 'everyone' did not mean 'everyone', for example if one takes the colonies and enslaved people into consideration. According to T1, it is why uprisings took place in the colonies and that enslaved people wanted equality, freedom and brotherhood too. T5 referred to the paradox of liberals, such as the Dutch politician Thorbecke, who claimed that everyone is equal but that at the same time justified American and Dutch slavery. However, T5 explained that this paradox is not explicitly part of the curriculum.[368] T3 explained that when teaching about slavery a connection is made to the fact that up until the 50's black people in the United States were not allowed to sit in front of a bus, and that racial segregation can still be seen, especially in the United States.[369]

When discussing more generally what human rights are, T3 expressed that having human rights is not self-evident (*vanzelfsprekend*), and that we must be grateful for human rights. According to T3, having human rights basically comes down to that 'our freedom cannot be taken away just like that,' and the principles of the *rechtstaat*. Furthermore, it is about the right to be happy, and like in the 'American constitution' the right to the pursuit of happiness, the right to a fair trial and the prohibition of torture.

T1 also said that they refer to children's' rights during class. T1 indeed referred to children's rights during one of the classes I observed. T1 stressed that children's rights are privileges, and that pupils

[368] That T1 does explicitly teach this in class, while T5 says it is not explicitly part of the curriculum could be explained by the books they use. T1's school uses the book *Nos Pasado* (amongst others) where this connection is explicitly made (see paragraph 5.3.3). T5's school does not use *Nos Pasado* nor any other book that explicitly makes this connection.

[369] When I attended one of T3's classes, T3 also made an explicit association between slavery and contemporary Curaçaoan society.

should be grateful for their own situation. To exemplify this, T1 spoke of the past when children did not have children's rights. When one of the pupils reacted by saying 'but there are still children who do not go to school', T1 explained that 'our society' used to be just like that, but that indeed there are still children in the world who have 'literally nothing'. In another class, T1 explained that children's rights protect children against abuse. However, T1 explained, there are 'children and organization that use children's rights as an excuse to abuse parents.'

For T9, human rights is what humans are born with. According to T9 it is important for pupils to learn about human rights because for the pupils' own identity and so that they know what freedoms and rights they have, and to know what obligations they have as citizens in a democratic society.

T4 did make an association between human rights education and what is taught in school about fundamental rights (*grondrechten*) and the French revolution. When talking about the MEMO book, T4 explained that in class explanation is given about the ideals of equality, freedom and brotherhood, but not really about rights. T4 also said that strangely enough the book does not even mention the special document for women's rights.[370] T4 made these associations, but also expressed that they did not really have anything to do with human rights. According to T4, the origin of democracy might be a human right but democracy itself is not. For T4, human rights is more about international rights, the United Nations, UNESCO, and rights such as the right to education, and a safe living environment.

Referring to the American Declaration of Independence, T5, explained that human rights are 'really unalienable'. They include habeas corpus, and people's responsibility for their happiness and future. The right to vote and democracy are also related to human rights. T5 explains how the Greeks invented the right to vote – even if for a small percentage of people – and that this is discussed in education, but that it is then not called 'human rights'. T5 thinks that historically one can only properly use the term 'human rights' from the 18th century onwards when people started thinking about what it means to be free (cf. T3's remark in paragraph 5.2.2).

In different ways, teachers thus explicated human rights as certain freedoms, rights, prohibitions and obligations. For two teachers, human rights are what humans are born with, for one teacher human rights is what we should be grateful for, for another children's rights is what children should be grateful for. Teachers also associated human rights with democracy and one of them also specifically with the *rechtsstaat*. For one of the teachers, it is more about international norms and organizations than anything else. When discussing human rights or human rights education, associations were made with identity, and political theories from the time of the Greeks, Romans, the French revolution, current fundamental freedoms, the American Declaration of Independence, the American constitution, and Amnesty International.

Other than T4, who mentions international rights, none of the teachers made an explicit connection to legal international or Curaçaoan human rights norms during the interviews. In discussing these topics, most teachers mentioned a number of different categories of humans. As we saw, these are human, citizen, enslaved people, black people, women. In class, only some of the teachers discuss some of these categories, and differentiated rights, freedoms, prohibitions, and obligations applied or accessible to these different categories.

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[370] Because T4 was talking about the French Revolution, T4 presumably refers to the 1791 Declaration of the Rights of Woman and of the Female Citizen, which was written in response to the Declaration of the Rights of Man and of the Citizen.

RACE

When they brought up the themes of the French revolution, slavery or racial segregation, I asked T1, T3, T5 and T9 about 'race', in order to understand how and to what extent race is discussed in class.

T3 explained that in class the difference between trans-Atlantic slavery and other types of slavery is discussed. The difference is racism; that your skin color makes you bad and less. As T3 explains, racial prejudice is also something which is discussed in class (third grade), when discussing Hitler's persecution of the Jews and scientific racism, and when touching upon Islam when the Middle Ages is discussed. What race is and if they exist is not discussed. T1 and T5 too explained that 'race' is discussed in the third year in relation to Hitler's race doctrine. According to T1, race is something that is created by humans to distinguish people. T1, explains that this understanding of race is merely mentioned and not further discussed in class. According to T5, biologically there are about five races, but this is not discussed in class as the question of 'what race is' is not discussed in class. According to T9 race is covered in class when discussing colonialism and European imperialism. In class, T9 explains race as ethnic origin and corresponding physical traits. Multiculturalism is then explained as the mixture of people from different places with their own cultures.

Race and racism is thus discussed in relation to different subjects, dependent on the school: in the third-grade when discussing Hitler's racism, T3 when dealing with slavery, and T9 when dealing with colonialism and European imperialism. However, in class, the category of 'race' is not questioned by teachers, except for T1 who merely mentions that race is something that is created by people. This in itself is already significant regarding the subjects that these teachers teach. What is relevant too, is that teachers thus all have different understandings of 'race'. This is significant because the educational material used, use racial categorizations. And although some of the books do question the hierarchization of human races, they do not question the idea of different human races. In fact, the textbooks mostly perpetuate the idea of essentialized racial categorization as mutually exclusive categories (see paragraph 5.3.3, also see chapter 2.2.4 for the evolution from ape to man, used in class).

5.3.2 PUPILS

TO HAVE AN OPTION

Pupils of the KAP focus group described human rights as having an option, being free, having the right to be anywhere, being able to be who you want to be, and the freedom to have an opinion, express your own feelings and make your own choices. Like P2 expressed:

Tur hende ta su eigen persoon. Iedereen heeft het recht om zichzelf te zijn en ja, keuzes te maken voor zichzelf.	*Everyone is his/her own person. Everyone has the right to be themselves and yes, make choices for oneself.*

When I asked pupils if they can name a number of specific human rights, they mentioned children's rights, the prohibition of child labor, the right to recreation, the right to go to school, the right to clean water, and the right not to be mistreated (*maltrata*). When I later asked the pupils if they think that the school environment meets human rights standards, they connected my question to a violent incident that took place in school (see below), and the ways in which school goes about free periods (*vrije uren*). Both ASHV and KAP pupils spoke with indignance about the latter, explaining that

presence in school during these free periods is mandatory but that they do not have anything to do – nor recreational nor educational.

It was only when I asked pupils if human rights norms can be found anywhere or are written down somewhere, that P3 said it could be found in law and P4 said 'nowhere, the internet'. When I asked what kind of law, P3 said human rights law (*lei di derecho humano*), humanity law (*lei di humanitat*) and UNICEF. None of the pupils mentioned international human rights conventions or national constitutions. It was then that pupils also mentioned that apart from rights, there have to be obligations too. It appeared like pupils understood having obligations as having responsibilities.

YOU TOO

According to the pupils, it is humans who have human rights. As P4 described it:

Bo ta echt un hende. Bo tambe tin balor.	*You really are a human. You too are worthy.*

Remarkable is the number of times pupils used the words *tambe* (too), *tur hende* (every human), and *nos* (we) throughout their discussion of human rights. It seemingly expresses an inclusive idea of being human, with every human being having equal worth and having the same freedoms and rights. Something that also transpired when pupils stressed that human rights is also about having the right to be yourself.

In discussing human rights, two pupils (P1 and P4) also contrasted humans (who have human rights) to animals. This contrast was not met with any resistance from the other pupils. It appears then that – within the context of discussing human rights – pupils have an inclusive understanding of the category human which is contrasted to being animal. However, this inclusive understanding of 'being human' appeared to be not always that inclusive when pupils discussed race and being *Yu di Korsou*.

WHERE YOU ARE FROM

During one of the focus groups I asked the KAP pupils 'what is race according to you?'. This unleashed a discussion where different understandings of 'race' were posed, made and unmade. For P1 race is related to where one is from and one's ancestry. P1 exemplifies this as follows:

Bo a nase na. Bo ancestors nan ta di China, nan tur, tur, tur hende ta di China. Bo mester ta chines.	*You were born in. Your ancestors are from China, they all, every, everyone is from China. You must be Chinese.*

Even though P1 later stressed that everyone is the same, that everyone is to some extent mixed, and that race actually does not matter, P1 holds on to this 'blood and soil' understanding of race. According to P3 however, race is about ancestry but also religion, and skin colour, whilst later P3 also stated that in the eyes of God everyone is the same. P5 appears to have a totally different understanding of race. According to P5, it is about personality and the way one is raised (*opvoeding*). P4 expressed yet another understanding of race; race is connected to one's nationality. In a discussion with P1, P4 stressed that the name Latin America only designates the Spanish speaking countries on that continent, and that 'Latin American' or 'Latino' is no race. Instead, for example 'Mexican' is a race.

These different understandings of race led to disagreements between pupils. Moreover, at times, they seemed not to realize that they were discussing the topic from these different understandings. For example, when P5 voiced that race is about personality, P1 answered by saying: 'No, you cannot compare race to personality. Where you are from does not describe who you are'. It is as if it did not occur to P1 that what P5 was saying is that race is about personality and not about 'where you come from'.

P4 also stressed that it is wrong to have racial prejudices, and took as an example President Trump's prejudices about Mexicans. References to the United States, Mexico, Venezuela and other countries were made by pupils throughout the focus group sessions.

Pupils quickly related the question of 'race' to themselves and started wondering what race 'we' are. This eventually led P2 to wonder out loud: 'the question is, what am I then?'. With a father from the Netherlands and a mother from Curaçao, the pupils seemed to agree that P2 is 'mixed'. From the discussion it did not become clear if this idea of being mixed meant the same thing to everyone. What did seem to count to everyone was that P2's parents are 'from' different places. Also clear is that P1 subsequently stressed that 'right now you will not find people of pure, pure [races]', implying that once there were pure distinguishable races. Which led P2 to argue that she does not necessarily believe that there ever were 'pure races'. P2 ended her contemplation with the following:

Waar is de mensheid ontstaan, en waar komt iedereen vandaan? Want dan is niemand. Niemand is dan 100% één rasa eigenlijk.	*Where did humanity originate, and where does everyone come from? Because then no one is. Nobody is 100% of one race actually.*

P2 thus made an explicit connection to the question of what people are to the question of where humanity comes from. P2 thus appeared to understand that ontological questions depend on the genesis or creation story of humanity (cf. chapter 2).

YU DI KORSOU

When they discussed 'race', pupils had trouble defining race in relation to themselves, to people in Curaçao and to being *Curaçoleño*. I therefore asked whom among them considers themselves to be *Yu di Korsou*. This prompted pupils to explain where their parents and family are from. Being or not being *Yu di Korsou* is thus related to where one is from. Acknowledging migrations in their family background did not exclude them from claiming to be a 'pure, pure' *Yu di Korsou*. That is when I asked what a *Yu di Korsou is*. This question was first met with the idea of being born and raised in Curaçao but was quickly nuanced, when P2 started saying she was not born in Curaçao:

P5: als je geboren bent in Curaçao	P5: if you were born in Curaçao.
P3: born and raised!	P3: born and raised!
LD: born and raised?	LD: born and raised?
P1: no, si.	P1: no, yes.
P2: ik ben geboren in Nederland, maar ik	P2: I was born in the Netherlands, but I
P3 : eigenlijk! Bo no mester ta perse born. Si bo ta born and raised: bo ta curasoleno, 100%, pero si bo ta mane, bo a nanse na otro pais anto bo bin biba na Korsou foi jong, ku bo man'e 2 anja, 3 anja nei, tambe ta kind of mane born and raised, paso bo a lanta akinan nan.	P3: actually! You do not necessarily have to have been born. If you are born and raised: you are Curasoleño, 100%. But if you are like, if you were born in another country and you came to live in Curaçao from a young age like 2 years, 3 years or so, that is kind of

	like you were born and raised here, because you grew up here.

What matters most for P3, apparently, is having been raised in Curaçao from a young age. P4, who had said earlier that race is about nationality, who had been one of the pupils who raised their hands when I asked who considers themselves *Yu Korsou*, and who had told about Venezuelan family members, later said that Yu Korsou actually does not exist:

No, eigenlijk no ta eksisti Yu Korsou.	*No, actually Yu Korsou does not exist.*

In explaining this statement P4 seems to connect and disconnect in various ways, issues such as legal nationality, nationality in the sense of being raised in a certain place, race, and being born and raised in a certain place. P4 first distinguished being raised in Curaçao from legal nationality:

Riba bo pasport tin Nederlander, bo ta echt un Ulandes, kria na Korsou. Ke men Yu Korsou no ta eksisti.	*On your passport there is Dutch, you are really Dutch, raised in Curaçao. This means Yu Korsou does not exist.*

Yu Korsou thus does not exist as it does not exist as a legal category ('on your passport'). But P4 then explains that he does not agree with this, because most commonly, your nationality is the same as your race. In this case *Yu Korsou* is thus a 'race':

mi no ta 100% di akuerdo kune paso maioria biha, bo nationalitat ta bisabo eigenlijk ki rasa bo ta.	*I do not 100% agree with it, because most of the time, your nationality actually says what race you are.*

However, P4 continued repeating that 'we' are Dutch, raised in Curaçao:

Ulandes, nos ta Ulandes pero kria na Korsou.	*Dutch, we are Dutch but raised in Curaçao.*

Race, apparently, has to do with being raised somewhere, and normally coincides with someone's legal nationality. In Curaçao, however, 'we', according to P4, are both Dutch and raised in Curaçao. The issue of legal nationality prompted the pupils to discuss naturalization. In this context, P4 explains that legal nationality can change, but someone's race – which means being born and raised somewhere – can never change. The latter, P4 explains by referring to P1 who was born in Venezuela and arrived in Curaçao at 9 years of age:

Ta gewoon bo nationalitat, e nomber dilanti bo pasport so por kambia … Ku Yu Korsou nos kemen kria anto nanse na Korsou. … bo nationalitat por kambia pero bo raisnan nunka no por kambia, pasombra e por bin biba na	*It is just your nationality, the name on front of your passport that can change … With Yu Korsou we mean raised and born in Curaçao. … Your nationality can change but your roots can never change, because they can come live here in Curaçao, they can marry, they can have children,*

korsou, e por kasa, e por tin yu, pero su raisnan Venezuelano, e no por saka nan.	*but their Venezuelan roots, they cannot pull them out.*

The understandings of what a Yu di Korsou is, thus went from 'born and raised' to not necessarily being born but at least raised from a young age, to being Dutch and raised in Curaçao, to being born and raised in Curaçao. Blood and soil understandings were thus clearly present, albeit in various ways made and unmade. What is clear is that someone cannot become *Yu di Korsou* if that someone was not born and – or at least – raised in Curaçao. Other than for some when discussing 'race', ancestry (blood) does not seem to play a role.

INTERSECTING IDENTITIES IN SCHOOL AND FAMILY LIFE

Since most of the KAP pupils voiced that they do not learn about human rights in school, but instead bring human rights knowledge into practice in school, I asked if they had examples of situations in school that they believed have to do with human rights. They took a couple of seconds to think and started saying that not much happens in school, but then P1 exclaimed that one of their classmates had been hit by a teacher.[371] This sparked an entire narration. Not only did the pupils describe the event, they also talked about what this had to do with rights, and the relation between teachers (who according to the pupils should act as role models and feel consequences of their actions too) and pupils (who according to the pupils should be held accountable but are also allowed to make mistakes). Not only did they discuss the relation between teachers and pupils, they also spontaneously brought up the issue of gender and age.

P1: anto, si tabata, ban bisa, ban bisa, un mucha muhe …	P1: and, if it were, let us say, let us say, a girl …
P4: e lo yega dal'e?	P4: would he hit her?
P1 and P3: e lo no yega dal'e.	P1 and P3: he would not have hit her.
P4: of si tabata un di e muchan'ei vijfde … e lo dal'e bek.	P4: or if it were one of the fifth-grade kids … he would have hit him back.

Pupils did not only discuss unequal treatment based on identities (teacher, pupil, female, older pupil), but also the intersection of identities (pupil and female, and male, pupil and older). They also discussed the role of power, in this case physical power – an older student might have hit back – and institutional power – a pupil would be expelled for hitting a teacher, whereas the teacher in the described incident still works at the school despite having hit a pupil. Pupils concern with identity also came up when they discussed responsibilities older siblings have vis-à-vis younger siblings. Their understandings ranged from thinking that younger siblings need more help and older siblings have more responsibilities, to the idea that older siblings are raised in a stricter manner than younger siblings and younger siblings showing problematic behavior because of it, to the idea that people reflect what they have learned at home and that siblings have distinct roles to play in the family. Being an older or younger sibling, and the position you have in the family, and the responsibilities that come with different roles are thus understood in different ways.

[371] The pupils described this as an incident, as did one of the KAP teachers I spoke with. Nevertheless, this incident reminded me of Van Heydoorn (2017) who found that corporal punishment still occurs in primary schools.

Relevant to this research is that pupils thus have a real concern about the roles they play – or identities they have – in life and how this relates to freedom, power, and responsibilities.

REALIZATION OF HUMAN RIGHTS

During the focus group with KAP pupils, I asked if they think that they have an influence on how human rights are implemented. P1 voiced that there is power in masses, and that little choices by individuals can make a difference, but that there is no point in going to stand in front of the parliament building to voice concerns. This is remarkable since demonstrations in Curaçao, and around the globe have of course led to social change in the past. The remark about standing in front of the parliament building unleashed a discussion amongst the pupils, in which it became clear that pupils do not trust local politicians. They raised concerns about self-enrichment, nepotism, voting behavior, and a lack of care for proper schools/education. To illustrate, here are three quotes from the discussion:

P3: paso parlementario, uniko ku nan ta, paso nan no ta echt actually buska un solushon pa Korsou bai dilanti.	P3: because parliamentarians, the only thing that they, because they do not really actually look for a solution so that Curaçao can advance.
…	…
P4: nan ta soru ku esnan ku paga kampanha, pa nan bai dilanti … E mester buta su ruman nan den yen kommishon ku'n ta hasi un pataka, gana sen	P4: they make sure that those who paid for campaigns, that those advance … He must place his siblings in various commissions that do not do anything, gain money.
…	
P3: Koinan pa pueblo nan no ta drecha, por ehempel nan no por drecha un skol. … basta hende ku ta bai vota … nan no ta hanja un nut pa vota pa un hende ku nan sa ku ta mem koh ku tur hende. Nan no ta bai hasi un kambio.	P3: for the people things do not improve, for example they do not improve school, … many people who go vote … do not see the use to vote for someone because they know it's the same as everyone else. They do not bring about a change.

In discussing local politicians and local politics, pupils repeatedly claimed that the government does not do enough to sufficiently improve the school. In this regard it is worth mentioning that, according to T11 and T12, two teachers guiding KAP's student council, explained that one of the pupils of the student council initiated a survey amongst pupils. In the survey, pupils indicated that the gym's toilets are filthy. T11 and T12 learned this to be true. The school, however, does not have a budget to fix this problem. The student council will have to organize a fund-raising activity. The poor state of schools and class rooms was also mentioned by T1 and T3. When I myself had to make use of a toilet I learned that it is normal that there is no toilet paper available.

Pupils proactively voicing concerns about their school was also something that came up during the focus group with ASHV pupils. For example, two pupils organized a petition among pupils to ask school to stop using plastic straws. And a number of pupils negotiated the conditions of school uniforms. According to pupils, the requirements of long pants and closed shoes are not appropriate for the warm temperature in the class rooms as they are not air-conditioned. The acts described by T11, T12 and the ASHV pupils were all performed without any use of a human rights language or human rights law. The contrary might even be true. When I namely asked the ASHV pupils if they used human rights during these actions, one of the pupils said: 'No, we will not revolt or something. We

just try to get things done in close consultation.' Human rights, by this student, is thus associated with revolting and as the opposite of consultation.

In discussing local politicians and local politics, the KAP pupils also showed awareness of existing relationships between Dutch and Curaçaoan Ministers. Pupils thus again showed an awareness and concern regarding the relation between the Netherlands and Curaçao. This time, they described a subservient position of Curaçaoan Ministers:

P4: Nan mester biaha, bai Ulanda, nan mester bai chupa ulandes nan.	P4: They have to travel, go to the Netherlands, they have to beg the Dutch.
P5: Pa supose nos pueblo	P5: supposedly for us people.
P3: Pa supuestament nan drecha kosnan na Korsou, pero nada.	P3: Supposedly so that they can improve things in Curaçao, but nothing.

P3 and P5's solution to their skepticism towards their governments and local politicians, lies with their parents and themselves. They find that their parents can show them how to do the right thing, so that if one day one of them becomes a parliamentarian, they will do it differently from the ones currently in power. Again, pupils make no mention of learning tools from school to go about these things. Instead, again reference is made to learning in the home environment (cf. paragraph 5.3). Pupils make no connection at all with national or international human rights (law).

5.3.3 EDUCATIONAL MATERIALS

INTRODUCTION

As we saw, most of the KAP pupils agreed that they do not learn about human rights in school. Teachers associated human rights education with education about the French revolution and/or slavery. Apart from this, teachers also strongly indicated that within the History course, human rights or fundamental rights within the discipline History, albeit not extensively, is discussed in the third-grade module in Political Science. In this paragraph we will look into the educational material that is used for both second-grade teaching about the French revolution and slavery, and a third-grade Political Science book that teachers referred me to.

There are remarkable differences in how the schools go about the topics of the French revolution and slavery. What all four schools have in common is that they use the textbooks entitled MEMO (published by the Dutch publisher Malmberg).[372] However, the schools use different editions. MIL and Radulphus use the fourth edition of MEMO 2 HAVO,[373] ASHV uses the third edition of MEMO 2 HAVO/VWO and KAP uses only chapter three of an older edition of the MEMO 2 HAVO/VWO.[374]

All four schools supplement the MEMO textbooks with different educational material. Radulphus supplements Memo with the cartoon Quaco, which according to T4 is about 'an enslaved African who – separated from his family – lands in Suriname and eventually in the Netherlands'. ASHV supplements the Dutch textbooks with four self-written articles on slavery. MIL supplements MEMO

[372] Do Rego (2013) also observed the use of MEMO in secondary schools in Curaçao.

[373] MEMO 2 HAVO is thus used for HAVO/VWO classes. T4 explained that MEMO 2 HAVO is used because of pupil's lack of command of the Dutch language (see paragraph 5.2.4).

[374] It is not clear what edition this is. The pages used in the course, are available on the school's website.

with the readers Indigeno, Reader Slavernij, and Decade.[375] KAP also supplements MEMO with the cartoon Quaco and with chapter four and six of the book Nos Pasado.[376]

T9 explained that they follow the Dutch canon, which is supplemented with readers about Curaçaoan history, because it is important that pupils learn about their 'own history,' and how that is related to world history, so that the pupils can know themselves. T1 explained that it is important that pupils have different backgrounds and that this should be reflected in school, but that there is no suitable educational material for the local population. *Nos Pasado*, according to T1, is what gets closest to something in which pupils can recognize themselves. Furthermore, T1 does not use the latest issue of MEMO because it is 'too much focused on the Netherlands', and the older issue has a somewhat broader scope. T5 explained that the textbooks used are 'Europe centric,' which – according to T5 – can be explained by the lack of proper secondary school educational material in the Dutch language that deals with world history and history about the Americas. T3 supplements MEMO with own written texts about slavery because MEMO's chapter about slavery consists of 'sources' only and not – like the other chapters – learning texts. According to T1 and T5, the lack of proper education material is at least partly due to the high costs for producing locally relevant textbooks for such a small market and population (cf. Do Rego 2013; Kibbelaar 2015).[377] The teachers' observations regarding the lack of proper educational material fit the larger reality of historical underfunding and Eurocentrism (see chapter 4.5).

In the following paragraph we will look into the way rights, freedoms, human rights and fundamental rights are discussed in the educational material on the French revolution, slavery and Political Science. Special attention will be paid to how educational materials categorize geographical locations and racialized categories of people (cf. chapter 2). Since this research focuses on human rights education and racialization, it also explicitly looks into the understandings of 'race' that exist in the textbooks. With regard to the latter, this is also done if race or racism are explicitly discussed in other chapters than those concerning the French revolution and slavery.

MEMO

GENERAL

As we saw, there are three different MEMO textbooks used by the four schools, namely:

- MEMO 2 HAVO, fourth edition, used by MIL and Radulphus

[375] Unfortunately, an analysis of these readers is not part of this work as I was unable to get my hands on these readers.

[376] Nos Pasado is an educational textbook published in 1985 and written by J.M.R. Schrils. The textbook was published by the *Dienst Onderwijs en Kultuur van het Eilandgebied Curaçao*. According to the textbook it is an Antillean educational history method for VMBO, HAVO and VWO. For an explanation of VMBO, HAVO and VWO see Appendix 1. Remarkably, *Nos Pasado* makes explicit references to (academic) literature used for its content.

[377] Remarkably, the 'Nationaal Comité 4 en 5 mei', which organizes the yearly Dutch national commemoration of WWII and the celebration of Liberation Day, publishes educational material on World War II for both The Netherlands and the Caribbean parts of the Kingdom. According to G6, the textbooks for the Caribbean parts differ from those in The Netherlands in that they include more 'Caribbean' stories, and are published in both Dutch, Papiamentu, and English. However, according to G6, the relatively high costs is also the reason why Nationaal Comité 4 en 5 mei renews the Dutch textbooks yearly, while the Caribbean textbooks are revised every three years.

- MEMO 2 HAVO/VWO, third edition, used by ASHV
- MEMO 2 HAVO/VWO, edition unknown, used by KAP

The chapters of the MEMO textbooks are divided into a number of paragraphs. Each paragraph has a learning text, and a number of sources. The sources include pictures (such as pictures of events, people or maps), and short representations or quotes from historical figures. These sources are accompanied with a short legend. Every chapter includes a timeline. MEMO 2 HAVO, fourth edition and MEMO 2 HAVO/VWO, third edition end with a number of learning aims and a number of definitions that pupils need to learn.

As we saw, a number of teachers explained that the MEMO textbooks are Eurocentric or Netherlandscentric. By way of illustration: in the entire MEMO 2 HAVO fourth edition textbook (which is used in two out of the four schools), Curaçao is not mentioned once nor are any of the other Caribbean islands that are still part of the Kingdom. The 'Netherlands Antilles' is mentioned only once as a colony owned by the WIC (West Indian Company). This, to say the least, is remarkable, as MEMO are Dutch educational textbooks, and an entire part of the Kingdom of the Netherlands is thus practically out of sight (and with it most probably also out of consciousness) of pupils who live in the Netherlands and are not in other ways reminded of the existence of this other part of the Kingdom (cf. chapter 4). This same material, where Curaçao (and other Caribbean islands) are out of sight are thus also used in Curaçaoan schools, rendering histories taking place in Curaçao and the region invisible. Despite the fact that the textbooks are clearly Eurocentric, the textbooks do not make explicit their positionality or a specific centering of knowledge.[378]

FRENCH REVOLUTION IN EUROPE

In MEMO 2 HAVO, fourth edition, the French revolution is discussed in chapter three entitled ' The time of wigs and revolutions: the French revolution'. More specifically, the chapter discusses the *ancien régime*, class society (*standenmaatschappij*), the Enlightenment, the actual French revolution, the Batavian revolution in the Netherlands, Napoleon, and the idea of equal rights.

When discussing the Enlightenment, the book explains that 'many enlightened thinkers thought that all humans are born free and equal and that they criticized abuse of power. According to the textbook, John Locke thought that the king derived its power from the people, Jean-Jacques Rousseau thought that people should govern themselves, and that Montesquieu argued for the separation of power.

With regard to rights, the book explains that in 1789 the French National Assembly agreed to want a constitution that included the rights and obligations of citizens and that determined the allocation of power, and that later the 'Declaration for the Rights of Human and Citizen' [sic!] was adopted. According to the textbook, the declaration determined that all French would have equal rights and obligations. It then mentions that wealthy citizens were granted voting rights and that poor people wanted voting rights for all men.

Concerning rights and Napoleon, the book explains that a new constitution was introduced with which Napoleon established a dictatorship, and which also determined that every human is born free

[378] I also took a look at MEMO 1 HAVO/VWO, fourth edition, as I figured that maybe the textbooks would explain something about positionality. Remarkably, the textbook explains that people need to know their own history to know themselves, without explaining what 'own history' means (p. 6 of the textbook). It appears that 'own history' means history close to home, but again this is not explained (p. 4 of the textbook).

and with equal rights, and that all citizens have fundamental rights such as the right to expression and freedom of religion. Napoleon, the textbook explains, wanted to free people in Europe and give them equal rights. That is why he wanted to extend his power into Europe. The chapter then discusses the Batavian revolution in similar lines as the French revolution.

In MEMO 2 HAVO/VWO, third edition, which is used at ASHV, the French revolution is discussed in chapter 2 entitled 'The time of wigs and revolution'. This edition describes the French revolution in similar lines to the MEMO 2 HAVO, fourth edition. A remarkable difference is that the MEMO 2 HAVO/ VWO textbook also includes a paragraph on the Russian Catharine the Great and one paragraph on the Mogul empire. The textbook clearly links Catharine the Great to the Enlightenment. The textbook does not explain if there is a connection between the Mogul empire and the rest of the chapter.

The learning aims of both chapters, and the definitions pupils have to learn, are exclusively related to the French revolution, the Batavian revolution and the influences they had in Europe and the Netherlands. This is also clear from the chapters' timeline and the sources used. According to their legends, they are all maps, paintings and pictures of or related to Europe, France, the Netherlands, Austria, Russia and people living in these places. With regards to the sources used this is only different in the MEMO 2 HAVO/VWO book when discussing Catharine the Great and the Mogul empire. The learning aims and learning definitions are not related to these latter two subjects.

It is clear that the chapter exclusively deals with the French revolution as something that happened in France, had its effects in Europe, was influenced by Enlightened thinkers from countries such as England and France, ended the class society (*standenmaatschappij*), and introduced equal rights. The chapter does not at all include (not in words nor in images) the revolutions that took place in the same period in other parts of the world regarding similar and connected struggles for rights, freedoms and power. Not even does it mention the revolutions that took place in the territories that were dominated by the French and Dutch specifically, and where French and Dutch slavery existed, such as Haiti and Curaçao. Nor is a connection made with how 'rich citizens' were able to extract and accumulate wealth not only in Europe but also and significantly from the colonies, and the role that this enrichment played in empowering these citizens to turn against monarchy.

The text does not explain that what was also at stake is the determination of who was to be considered citizen or human and therefore was 'born freed and with equal rights', nor does it explain the difference between being a citizen or human. Remarkably, the text uses another name for the Declaration for the Rights of Men and Citizen, in which the word 'men' is replaced with 'human'. With this the gender issue thus disappears. Although the text does mention that poor people wanted voting rights for men, which thus touches on both class and gender. Gender is however not a point of discussion. What is not mentioned at all is the ways in which racialized people were not considered to be citizen nor properly human based on race. Nor the fact that slavery in the French colonies was abolished by the French and later reintroduced. Neither is the discrepancy between Napoleon's dictatorship and equal rights discussed.

When discussing the French revolution, not only is Europe delinked from the rest of the world, but the text also contributes to and perpetuates a common sense of Europe and European countries being clearly bounded, with territories and peoples who are distinct from other geographical locations and peoples. The only exception in the MEMO 2 HAVO/VWO textbook is when it is explained that Catharine the Great wanted Europeans to perceive Russia as European. It is the only instance where what it means to be a European country is not taken for granted.

SLAVERY: MEMO 2 HAVO, FOURTH EDITION

Slavery is discussed differently in MEMO 2 HAVO and MEMO 2 HAVO/VWO. At KAP, the MEMO textbook is not used for education regarding slavery. This subparagraph deals only with MEMO 2 HAVO. The following subparagraph will deal with MEMO 2 HAVO/VWO.

In MEMO 2 HAVO, fourth edition, slavery is discussed in chapter 6 entitled: '1600-1900: The United States: divided or one?'. Slavery is thus discussed within an overarching theme related to the United States of America (USA).

After explaining that white Europeans traveled to the New World for a better life (par. 1), and highlighting friendly relations between Europeans and 'Indians' (par.2), the chapter describes that slaves were transported to Virginia (my translation):

> *In 1619, a Dutch merchant ship deposited the first twenty black Africans in Virginia. The number of slaves only grew rapidly from the end of the 17th century.*

The chapter proceeds by explaining the relation between white European immigrants in America and Great Britain, the issue of taxes, the 1776 declaration of independence and federalism (par. 3). It then turns to discussing increasing tensions between the 'pioneers' and 'Indians' (par. 4).[379]

The chapter then turns to discussing the 'conflict about slavery' in the USA (par. 5). It starts with a 'source' that describes Harriet Tubman's efforts to free enslaved people. The main text of the chapter then turns to the need of, the profitability, and the lack of profitability of using slaves and the fact that slaves remained commodities within the United States. When explaining the industrialization and immigration in the northern states, it explains (my translation):

> *As a result, the white population in the northern states grew much faster than that in the southern states. Between 1777 and 1804, most of the northern states banned slavery. ... They found that slavery violated equal human rights, as described in the Declaration of Independence and the Constitution.*

The chapter then explains the Civil War, which according to the book was caused by the conflicts about slavery and tariff duties, and a number of southern States wanting to secede (par. 6). The chapter explains the adoption of the Emancipation Proclamation by Lincoln, after which amongst others, '200.000 former slaves joined the Northern army'.

Despite the fact that the chapter is about the United States of America, the last paragraph of the chapter (par. 7) is about slavery in Suriname. The paragraph first explains the colonization of Suriname by, first England and later the Netherlands. The remainder of the paragraph consists of five sources. In the sources' legends, the paragraph explains that 'escaped slaves' were called Marrons, and that Marrons were able to create their own societies in the jungle, and that several peace treaties were signed between different Marron groups and the colonists.[380] The sources' legends also explain

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[379] 'Pioneers' is one of the learning definitions, and according to the book means: 'in Northern America: the first whites who went to the west.'

[380] Remarkably, the image accompanying the text on Marron societies is a painting of white men looking for black people, and is called 'chasing escaped slaves'. The text also explains that Marrons were later called '*bosnegers*' (Bush Negroes) or '*boslandcreolen*' (Bush Creoles). Names used by specific marron societies, such as Saramaka are not used. Remarkable too is that the text does not use capital letters for the words Marron, Bush Negroes and Bush Creoles, whilst in Dutch, names always start with a capital letter.

that there were different types of slaves, such as field slaves, house slaves, *Foetoeboys*, and craft slaves. Furthermore, there is an image of a sugar plantation and a 'slave hung on a hook by his rib cage'.

The chapter thus distinguishes the following racial categories: white European immigrants who became Americans, Indians, and black Africans who were slaves. Throughout the text, American government and later the US government is associated with white European immigrants,[381] such as in the following quote: 'government also liked the tribes to adapt to the culture of the whites.'[382]

The text thus uses the same racial categories that were used in justifying racism, including slavery and the forced migration of indigenous peoples. These categories are used uncritically. Race, racism and the Trans-Atlantic slavery are not mentioned, let alone explained in the chapter. Slavery is discussed in a chapter that centers around the territory that is now the United States of America. Except for the paragraph on slavery in Suriname, there is no mention of slavery in other places in the Americas and Asia that was also justified through racist reasonings. The confinement of the native populations in Northern American reservations, and the commodification of people, is thus not at all connected to racism.

Also remarkable is that 'Indian' societies are consequently called tribes with chieftaincies, while other places are called 'European countries'. The distinction between tribes and countries is not explained. The text also uncritically turns the territory into America and the United States, without explaining what the territory was from the native populations' perspectives. The only instance this is done is in one of the sources where an 'Indian tribe's leader' is quoted as he spoke of the impossibility of commodification of nature, and the divide and conquer strategy of whites.

The chapter includes agency of a former enslaved people in America in relation to struggles for freedom (Harriet Tubman and Black soldiers). However, what is centered is the 'white population' in 'America' which – in the textbook – is associated with the abolishment of slavery and the idea of human rights that is centered by placing it in the main text. In the chapter's learning aims, fundamental rights are furthermore associated with the Enlightenment. As we already saw, the textbook only discusses the Enlightenment in the context of Europe and more specifically, mainly France and the Netherlands. In the paragraph on Suriname, (former) enslaved people also have agency with regard to freedom and rights by highlighting Marrons. These forms of agency are not connected to different ideas and ideals about freedoms and rights, worldviews or ontological understandings.

The racial categories used in the text and where people of these racial categories are from including the territories, if anything, appear to be essentialized and thus mutually exclusive. For example,

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[381] Throughout the text, the 'American' government and United States government is associated with whiteness and the European government. The only instance this is not so, is the first image of the chapter, which is an image of President Obama on Thanksgiving Day, with his two daughters Sasha and Malia, and National Turkey Federation Chairman Steve Willardsen, and a turkey.

[382] Regarding the relation between 'whites' and 'Indians', most of the chapter discusses the friendly relations between both groups. However, it also explains that treaties between the government and Indians were sometimes forced upon Indians with violence. And that Indians were later forced by law and military force to leave their fertile territories where gold was found, and that they were placed in reservations. In the context of the latter it explains the Trail of Tears.

Europeans are white and fared the seas from Europe to other places. Sea faring by other categories of humans is not even mentioned or depicted. And what Europe is, appears to be a given.

SLAVERY: MEMO 2 HAVO/VWO, THIRD EDITION

In MEMO 2 HAVO/VWO, third edition, slavery is the subject of chapter four, entitled 'Project slavery'.

The chapter starts off with the phrase 'African slaves in… Africa!' (par. 1). It then sets about explaining that slavery was a normal phenomenon in Africa, it explains the triangular trade, which according to the chapter, encompassed Europeans transporting goods to Africa, these goods were exchanged for slaves in Africa, slaves were transported to the Americas where slaves had to work, products produced through slavery were then transported to Europe. Europeans, according to the text, became interested in slavery in the 15th century. European involvement in slavery changed 'the mentality in Africa' because African tribes wanted to deliver slaves. This caused a rise in tribal wars, and there were gangs that kidnapped people. The chapter mentions Ashanti tribe specifically as a trading partner of the Dutch.

The following paragraph (par. 2), entitled Creoles and Afro-Americans wants learners to compare slavery in Suriname with slavery in the United States. It shows a number of sources about slavery in Suriname and the United States of America. The textual sources include information on slave examination on slave markets, work on a plantation in the United States, the ill-treatment of a female slave in the United States, and information on the Marrons in Suriname.[383]

The third and last paragraph, entitled 'the difficult end of slavery' mostly discusses the abolition of slavery in the United States. It explains that 'already since the 17th century, there were people who thought that slavery was inhumane and should be abolished'. It then mentions the increase in abolitionist movements, especially in England. With regard to the United States, it explains that former enslaved people, for a long time remained second class citizens. It explains Jim Crow, mass-resistance under the lead of Martin Luther King, and the Civil rights act (which according to the text was about equal civil rights for both black and white). The text also mentions that a high percentage of 'black Americans' still live in poverty, have less career opportunities and end up in crime more often. But, the text continues, the election of Obama, shows that the tide is turning. The paragraph includes one 'source' on Suriname which explains that slavery was abolished in 1863, but that slaves were obliged to work for the state for another 10 years, and that later, 'from India, Java and China indentured servants were gotten too'.

This chapter too makes no mention of racism. Race and racial categorizations used in the text are not questioned. And just like in the MEMO 2 HAVO fourth edition, racial categories and the continents where these racial groups are from appear to be mutually exclusive, so that for example, Europeans appear to be always white and (with ancestry) from Europe. What Europe is seems to be given. In this chapter too, slavery and related inequalities are for a significant part discussed in the context of the USA. Reference to current inequalities are only made within the context of the USA, not in the Netherlands nor the Kingdom of the Netherlands. In contrast to MEMO 2 HAVO fourth edition, the triangular trans-Atlantic (slave-)trade is discussed. It is discussed in a one directional movement whereby Europeans fare the seas.

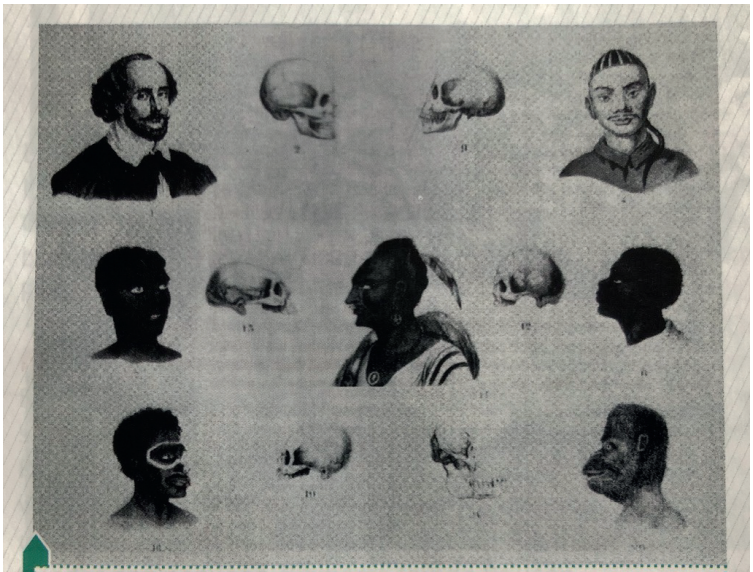
RACISM

[383] This is done in a way comparable to that of MEMO 2 HAVO, fourth edition.

Chapter 5 of Memo 2 HAVO (fourth edition) includes a chapter titled: 'The time of citizens and steam engines: nationalism and imperialism'. The chapter discusses nationalism in the Kingdom of the Netherlands, European settlements outside of Europe and colonialism, mercantilism, the Berlin Conference, Dutch in Dutch-India, *cultuurstelsel* (a system of forced farming) in the Dutch Indies, the civilizing mission (both religious and Enlightenment), and German nationalism. These topics are all discussed without mentioning racism, let alone giving a definition of racism. What is discussed is 'superiority thinking' (*superioriteitsdenken*), which is explained as: 'the feeling that you are worthier than others. Europeans in the 19th century thought that their civilization was much better than those of Africans and Asians.'

The last paragraph of the book is entitled 'racism'. The paragraph on racism starts off with a short description of a 1883 world exhibition where the Netherlands exhibited Javanese natives (*inboorlingen*), and Surinamese people. According to the text, the exhibition was such a success that the exhibition of humans was later repeated at other world exhibitions. It does not become clear from the text for whom this was a success, and for whom it was not (those exhibited). Moreover, it appears that the book departs from the idea that pupils themselves are not brown-skinned. The text namely ends with the question: 'what did people in the late 19th and 20th century think about people with a different skin color and culture?'

The text is followed by three sources. The first image shows a number of black people, mainly women in *Koto Misi* (a traditional dress worn by Afro – Surinamese women). The legend accompanying the image describes that it is a group of Surinamese in a circus tent during the 1882 world exhibition. The second image, according to the image's legend, shows a 1850 picture where human races were hierarchically placed with the wild, uncivilized African at the bottom:



Bron 2 Een plaat uit 1850 waarop een aantal verschillende mensenrassen te zien is. De hoogste rassen waren het meest ontwikkeld. De wilde, onbeschaafde Afrikaan staat helemaal onderaan.

The third image shows an excerpt of the cartoon 'Sjors en Sjimmie' which has a stereotypical depiction of a black boy, Sjimmie. The legend describes that the cartoon makers changed the appearance of Sjors and Sjimmie in 1972 to better fit modern society. Remarkably, the paragraph does not explain what racism is, nor does it question the actual existence of different human races.

In the chapter as a whole, there is close to no agency and perspectives of people (both in the colonies and Europe) other than white, ruling class men. The racial categories Europeans, Africans and Indians are used. And, like in the chapter on slavery, the text speaks of European countries and African tribes without explaining why it makes the distinction between countries and tribes. The text only speaks of countries on the African continent when it explains that 'Africa was divided into forty countries …[by] Europeans'. In other words, only when it is white Europeans who turn a society into a country.

The learning definitions at the end of chapter five display Eurocentricity by centering European perspectives, and focusing on mercantilism, European wars, European nationalism, European desires of expansion, and strategies of European powers to govern colonized peoples. What is clear is that none of the learning aims is catered to questioning race, understanding racism, questioning the commodification of life, or understanding non-European or non-ruling class perspectives.

MEMO 2 HAVO/VWO, third edition also has a chapter on imperialism, namely chapter 6 entitled 'Imperialism'. The chapter deals with 'Europe conquers the world', 'the causes of imperialism', 'the conquest of Asia', 'the conquest of Africa', 'consequences of imperialism', 'Queen Victoria' and 'Japan'. Racism is discussed in the paragraph that deals with the consequences of imperialism. According to the text, one of imperialism's consequences for Europe was that there was 'an increased interest in other territories and cultures, and 'alien' peoples'[384]. This, according to the text, led to racism. Racism is explained as people being treated differently on the basis of their race. Racism is also one of the chapter's learning definitions. The definition given is: 'the different and inferior treatment of groups of people on the basis of their race'. Again, race is not critically questioned. In this chapter too, being European seems to mean being white and from Europe which is mutually exclusive to being from Africa or from Asia. In contrast to the chapters analyzed here above, this chapter uses the words 'the Western world' and 'the West'. It equals the Western world with Europe, and the West with European countries. In this chapter too, African societies are called tribes. When it discusses Asia – with a focus on the Dutch conquest of Dutch Indie – the text mentions the Sultanate Atjeh once, but other than that does not specify in what type of societies people in the conquered territories lived. In the paragraph on Japan, it is explained that Japan was an empire (*keizerrijk*).

NOS PASADO

GENERAL

[384] The text also includes a number of other consequences for 'Europe' and the 'conquered territories'. According to the text, one of the consequences for Europe was that the colonies were not that profitable because – amongst others – investment in infrastructure, and creating schools and medical care in the colonies. One of the consequences of the conquered territories was that the economies of the colonies became dependent on Europe.

Nos Pasado, which translates as 'Our History', is an educational textbook, published by the local island government of Curaçao in 1985.[385] According to the textbook it is an Antillean educational history method for VMBO, HAVO and VWO.[386] Every chapter starts with a short introduction and a timeline. It then enumerates a number of learning aims. This is followed by the main text which consists of several paragraphs. The text is accompanied with images. Every chapter ends with references to the (academic) literature used for its content, and a number of questions. Below I will analyze the chapters in which the French revolution, slavery, and racism are discussed.

FRENCH REVOLUTION AND THE ABOLITION OF SLAVERY

Nos Pasado explicitly connects the French revolution, revolutions in the Caribbean, and slavery. This is done in chapter 6 which is entitled 'Tula'. Tula is described as the leader of a big slave uprising which took place in Curaçao in 1795. The learning aims of the chapter are: the types of work performed by enslaved people, the treatment of enslaved people, the ways in which enslaved people actively or passively resisted slavery, and the 1795 slave uprising in Curaçao, and the abolition of slavery.

The chapter also shows how ideas of (the right to) freedom and equality were understood by and within different social groups. For example, it explains how many enslaved people did not readily accept enslavement and resisted in various ways. Enslaved people are thus ascribed human agency. The textbook then turns to explaining the 1795 slave uprising in Curaçao. It starts off with explaining that there were European Enlightenment thinkers. The textbook states that 'the spirit/mind of the human changed'. Apparently, the word human in this context means European human. The chapter then describes how the 'ideas of the French revolution' were interpreted differently. For example, some Patriots argued for the abolition of slavery and others did not. It also shows how some enslaved people were able to obtain freedom from slavery through uprisings and fights (Haiti and Sint Maarten) and that others did not manage to obtain this freedom other than by manumission or legal abolition.

Not only the developments on different Caribbean islands are considered, but also how ideas travel and developments in Europe, the Caribbean, the Americas and Asia influence each other. For example, when the text explains that 'our people were well informed about the ideas of the French revolution and the developments in Haiti.'

Remarkably, the textbook uses the word 'our' several times. It clearly identifies pupils as being Netherlands Antillean, and it wants pupils to identify with historical developments that have taken place in the Netherlands Antilles. This form of nation building can also be found in the way in which Nos Pasado deals with Tula. One of the sub learning aims of the chapter is namely to consider Tula a hero. The textbook explains that 'With those [his own] ideals and his Enlightenment ideals and Christian love, Tula without a doubt is one of the greatest men in our history'. And the related

[385] This was in the time that Curaçao was still part of the country called the Netherlands Antilles (see chapter 4.3). The book was thus not published by the government of the Netherlands Antilles. More specifically, it was published by the Department of Education and Culture of the Island Curaçao (*Dienst Onderwijs en Kultuur van het Eilandgebied Curaçao*).

[386] For an explanation of VMBO, HAVO and VWO see appendix 1.

question in the textbook asks pupils to explain why Tula is one of our greatest heroes (cf. Roe 2016; Allen 2021; chapter 4 on signaling Tula as a national hero).[387]

The book makes an explicit connection between Tula's ideals of freedom, equality and justice with Enlightenment ideals and Christian love. Tula, as a national hero, thus becomes intrinsically connected to both his own ideals, the Enlightenment and Christianity. This connection also shows in one of the questions at the end of the chapter. In the question however, it appears that the French and Haitian revolution, the Catholic religion and the fights between Patriots and Orangeists were the only sources of inspiration for Tula's ideals. Even more because – although the text does include human agency of enslaved people – there is no question in the textbook that makes pupils think of other reasons why enslaved people would want to obtain freedom and equality. In the context of the slave uprising specifically, this is the more remarkable since it is known that rituals based on African spirituality were used during the uprisings.

The chapter explicitly describes that commodification dehumanized Africans. Regarding commodification, the textbook asks pupils to explain what it is that shows that Catholic Church did consider enslaved people to be human. Relying on the text, the answer should be that in contrast to the Reformed Protestants, the Catholic Church did teach slaves about the message of Jesus Christ. However, as we have seen (chapter 4), research shows that the Catholic clergy might not have seen black enslaved people as 'things' but neither as fully human. They were most often considered to be big children in need of civilization (i.a. Allen 2006; Roe 2016; Groenewoud 2017; also see chapter 4).

The chapter ends with stating that with the abolition of slavery a black page in history was closed. This could draw the image that slavery is something from the past with no lasting effects.

SEGMENTED SOCIETY AND THE RACE-PROBLEM

Chapter 4 of Nos Pasado, entitled 'The eighteenth century', includes paragraphs on the 'race-problem' and the 'segmented society' of Aruba, Curaçao, Bonaire, Sint Maarten, Sint Eustatius, and Saba.

In the paragraph about segmented society, the textbook explains that the 'mother countries' determined the rights and obligations of each group by law. These groups, the textbook describes, were very different from each other. They differed in 'origin (race!) and cultures and in the professions each of these groups were allowed to have'.

The text then sets out to explain the segmented societies of each of the six Netherlands Antilles islands. With regard to Curaçao, the text distinguishes three segments. The first and highest segments consisted of high Protestants (white Protestants, mainly Dutch, of high socio-economic standing and with political power), low Protestants (white Protestants with little power and little socio-economic standing), and Sephardic Jews also called Portuguese Jews (with high socio-economic standing but no political power). The second segment, according to the text, consisted of 'Free Negroes' and 'coloreds'. 'Free Negroes' were former enslaved people and their descendants. Coloreds are the free children of black and white parents. They were allowed to work in different professions, but not in government, and mainly remained poor, except for colored people who were helped by their white fathers. The biggest segment consisted of African slaves, who had little rights and many obligations.

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[387] 'On the official level, the government installed a committee in 2019 for the development of educational material that expands the limited information on the August 17, 1795 revolt that is included in the official school curriculum' (Allen 2021).

Most slaves who arrived were transported to other places, but high Protestants and Jews in Curaçao would also buy slaves. The text then explains that most of the 'Indians' who lived there prior to the Dutch conquest of the island, had not been allowed by the Dutch to remain on the island. Only a few families remained. They first formed a separate segment, but later disappeared by intermixture with people from other segments.

On Aruba, according to the text, Indians lived in peace and quiet. Save for a white Lieutenant Governor and a number of white soldiers, there were no white families living on the island up until in the late 18th century. On Bonaire too, there was a Lieutenant Governor and a number of white soldiers. Furthermore, there were Indians working, and the majority of the population was Negro-slave. The textbook then compares the 'windward islands' societies to 'English colonies' where there were segments of black enslaved people and white free people, but no segment of colored people. The text explains that there were colored people present on the island but that they too were considered slaves.

In the paragraph on the 'race-problem', the textbook describes two ideal typical behavior patterns, namely the 'slave behavioral pattern' and 'master behavioral patterns'. The master behavioral pattern was the behavior white people had or ought to have: being proud of their economic activities, their wealth, their power, and their protection by the law. The 'slave behavioral pattern' was demanded of slaves, Free Negroes and colored people. Their freedom was limited by law, and they had to act submissive and with respect towards white people. According to the text, this caused whiteness to become associated with positive things, and blackness with negative things. Therefore, there were non-white people who volunteered in the army and even fought against rebellious slaves, colored people tried to act as white as possible, kinky hair (*kroeshaar*) was straightened, and parents stimulated children to 'whiten the race' (*drecha rasa*). The paragraph ends with a statement that it is sad to have a segmented society where people are not judged for their inner being but the color of their skin, and where people, including whites and Negros, have to pretend they are someone they are not. It concludes with stating that fortunately these ideas are being contested.[388]

The chapter ends with a paragraph on 'our culture'. By framing the subject as 'our culture' the text seems to contribute to nation building. The text explains that the slave behavioral pattern and master behavioral patterns are part of culture, but that 'our culture' owes something of all segments of 'our country'. There are dances of African origin, and of European origin, and the islands know different religions. On the subject of religion, the text explain that the Protestant Reformed religion had to remain for the white rulers, and that Jews did not spread their religion either. On the leeward islands, Catholic clergy converted 'coloreds', 'Free Negroes' and 'slaves' to Catholicism, while on the windward islands these segments were strongly influenced by Anglicans, Methodists and other Protestant denominations. The text then explains that 'our superstition' has real African influences in *brua* and *montamentu*.[389] According to the text, all these religions, different forms of dance and music are all part of or have influenced 'our culture'. Concerning language, the textbook explains that Papiamentu is 'our beloved language' and is based on African grammar and influenced by all social groups of the leeward islands.

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[388] The description of the segmented society and the ideal typical behavior patterns clearly derive from the theories of historian Hoetink (1958; 1962), to which *Nos Pasado* also explicitly refers to (cf. chapter 4).

[389] Remarkably, in the textbook, the first letter of the words Brua and Montamentu are written in lower case letters. This despite the fact that in Dutch, names (including names of religious denominations) are written in capital letters.

The chapter ends with two sources. Referring to the work of Paula (1968) the sources describe that current lazy attitudes amongst Curaçaoan employees is a contemporary problem resulting from undermining attitudes of slaves during slavery. In this way the textbook perpetuates the stereotype of lazy black Curaçaoans. Other contemporary phenomena resulting from slavery is that of single unwed mothers and husbands with extramarital relations. In this context, the text also addresses inequality between men and women by stating that:

> *in contrast to men, she could not have intimate relations with more than one man. If she had a relation with more than one man, she immediately became a 'bad' woman'. But a man could do whatever he wanted without losing his honor. It was considered 'masculine' if a man had multiple women simultaneously!*

While addressing gender inequalities it thus also labels non-wed mothers and husbands with extramarital relations as necessarily problematic. It also labels these types of relations as necessarily a consequence of the combination of the African cultural tradition of men having multiple wives and slavery where African men could no longer fulfill the important roles they had in relations with multiple women. The latter is somewhat nuanced by the questions at the end of the chapter when pupils are asked to think of other reasons why 'we' have so many unwed mothers. However, this nuance is undone with the follow up question:

> *the behaviour of men towards unwed women is antisocial. Explain why and use the following words in your answer: irresponsibility – egoism – wrong mentality'.*

With the latter, the textbook cartoons people in such non-nuclear families of agency; it is as if these mothers, fathers, husbands and wives cannot have other reasons for being in such relationships other than it being a consequence of slavery and African culture, it being because of the attitude of men, and the attitude of men being necessarily irresponsible, egoistic and based on a wrong mentality.[390]

OVERALL REMARKS

In describing the French revolution and slavery, the text makes clear connections between different territories and peoples and shows how ideas travel and how different ideas exists within social groups. Despite these efforts, the text does seem to perpetuate racial categories and racial prejudices.

In describing racism and the segmented society, the text explains how society was sought to be stratified into different social groups. These social groups, the text explains, consisted of different races with different cultures, and had differentiated accessibility to freedoms, rights and obligations. The text does question differential treatment on the basis of race. It does not question the category of race. Furthermore, the text clearly derives its theories from historian Hoetink (1958; 962). Thereby neglecting the theories of later academic scholars who take everyday behavior of people – including their behavior in relation to institutionalized differences – seriously (see chapter 4).

Furthermore, it makes a clear connection between the racial segments from the past and the current culture. The text namely explains 'our culture' as created by the very social groups in which the country was sought to be segmented in the past. It is does not stretch too far to think that the 'we' to

[390] The questions in chapter 4 of the textbook further perpetuates the 'lazy Curaçaoan' stereotype by asking questions like 'what can we do so that we can work more and better?.' The stripping of agency of members of the non-nuclear family is not only condemning but also gendered, see for example the question '

whom the text caters, are the descendants of people from these social groups. It appears to exclude pupils with a background of more recent immigration (cf. chapter 4.4.3).

The two sources at the end of the chapter four also perpetuate racial stereotypes where there is also a clear intersectional aspect. For example, it is apparently the female descendants of African slaves who are prone to be unwed single mothers, and it is male descendants of African slaves who are prone to have multiple partners simultaneously. Not because they had any say in this, but because this is what resulted from African culture which was disturbed during slavery. The condemnation of non-nuclear families reminds one of the *hende drechi* respectability politics requirements (cf. chapter 4 and see Roe 2016).

The text frequently uses phrases like 'our history', 'our hero', 'our language'. This clearly aims to contribute to nation-building. The textbook is from 1985. Since the text was written when the Netherlands Antilles was still a country (see chapter 4), it appears to aim at Netherlands Antilles nation-building. And despite the fact that the text does include histories of the other islands, there is a remarkable focus on Curaçao and the other windward islands. Such as when the text describes Papiamentu as 'our language' whilst it is a language that is spoken by only a small part of the leeward islands' populations. This resonates with the understanding that Curaçao – where the Netherlands Antilles' government was seated – used to be dominant regarding the other islands (see chapter 4).

With regards to nation building, even though the people constituting the nation are depicted as multi-cultural, it is still portrayed as comprising of different (mixed) races, without the category race being problematized. Furthermore, the nation is associated with the struggle against slavery through signaling Tula as a national hero. Moreover, Christianity and the Enlightenment appear to be an intrinsic part of the text's contribution to nation building (cf. chapter 4).

FOUR SELF-WRITTEN TEXTS

GENERAL

MEMO 2 HAVO/VWO, fourth edition, is complemented with four texts at the ASHV school. These texts are written by the teacher, and are entitled: 'Modern Slavery', 'Slavery in Curaçao', 'Slavery Throughout the Centuries', and 'Trans-Atlantic Slave Trade'. The latter includes five questions at the end of the text. The other texts do not include questions.

MODERN SLAVERY

The Modern Slavery text, distinguishes colonial slavery or trans-Atlantic slavery on the one hand and modern slavery on the other hand, and compares these forms of slavery. It explains that trans-Atlantic slavery was legal, visible and justified with racist ideas about Africans. The text then continues with: 'this ideology has given slaves feelings of inferiority from which their descendants still suffer'.

In contrast, according to the text, modern slavery is illegal and hard to see. The text includes statistics about modern slavery and further explains child slavery, modern slavery in general and sex slavery. The text does not contextualize the statement about feelings of inferiority amongst enslaved Africans and their descendants. What racist ideas are or what race is, is not explained either.

SLAVERY IN CURAÇAO

The 'Slavery in Curaçao' text first compares slavery in Curaçao with that in the USA and Suriname. According to the text, in Curaçao slaves themselves represented a certain commercial worth, while in the US and Suriname the worth of a slave was based on the production capacity of the slave.

According to the text 'the Curaçaoan sold a slave' for example when harvest was bad. While it is clear that the text discusses slavery in Curaçao, it is not clear what is meant with 'the Curaçaoan' in this context. Furthermore, it appears as if 'a slave' is thus something else than 'Curaçaoan'. According to the text, compared to the other two countries, only a small percentage of society in Curaçao was enslaved, and Curaçaoan plantations were not only habited by slaves but also by black and colored 'free people'. According to the text there was no 'classic slavery' in Curaçao, because most slaves had access to a piece of land to grow their own crops, and through that – and for example the yield of fishery – slaves gained an income. Slaves living in the city often gained their own salaries and were able to save for their own or their children's manumission. Furthermore, whipping and severe punishments occurred rarely – save for some abuses – and 'the yoke of slavery in Curaçao did not weigh as heavily as we are often led to believe'.

SLAVERY THROUGHOUT THE CENTURIES

The text 'Slavery Throughout the Centuries', explains that slavery was very common in the time of the Greeks and Romans, including debt slavery and hereditary slavery. According to the text, this absolute form of slavery barely existed anymore in Europe in the Middle Ages, because people thought Christians could not keep each other as slaves. However, there were serf farmers (*horigen*), who had access to piece of land but had to pay with part of their harvest and perform certain work for the landlords. Furthermore, serf farmers (*lijfeigenen*) were not allowed to leave the land without permission. According to the text, serfdom in Russia was only abolished in 1861. The text ends with the explanation that after the discovery of America, a new form of slavery developed where black slaves from Africa were brought to America to work on plantations.

TRANS-ATLANTIC SLAVE TRADE

The text on 'Trans-Atlantic slave trade', explains that since 15th century this form of slave trade was a trade between seafaring European countries such as Portugal, France, Spain, England and the Republic of the Netherlands, and Kingdoms on the West coast of Africa. It also explains that the trading companies VOC, MCC, WIC were involved in this form of trade. According to the text some African rulers, such as Ashanti, made use of the opportunity and imprisoned and sold people from the region. These people would be transported by slave ships, where they would be chained and maltreated and where there was poor hygiene. They would be transported to the New World, Latin America, the Caribbean. The ships then continued their way back to Europe.

The text on trans-Atlantic slave trade ends with 5 questions. Question 1 and 2 are related to the examination of slaves and to the goal of the triangular trade. The third question is: 'Africans too were responsible for the slave trade in Africans. Substantiate this proposition'. The forth question is about explaining the triangular trade and its economic benefits. Question 5 asks if 'ill-treatment of enslaved people by slave traders' was 'an exception or rule'. From the interview with the teacher and a look at the exam questions, the answer to question 5 must be in line with the idea that ill-treatment must have been an exception because enslaved people were considered to be products and traders wanted to make highest possible profits.

OVERALL REMARKS

Slavery in these four texts is not so much discussed in terms of rights, freedom and power, other than explaining that in the past some people were enslaved, whilst others were not, and that people are still enslaved today. When discussing slavery, different forms of slavery are compared; in different places and different times. One of the texts does mention the issue of racist ideas when discussing the trans-Atlantic slave trade and slavery. However, it does not explain what this means. It only

explains that it created feelings of inferiority amongst slaves, which – according to the text – descendants of slaves still have. With this the text thus perpetuates racial prejudices concerning descendants of slaves.

Slavery in Curaçao is discussed in a manner that reminds one of the 'mild slavery theory' thesis. A thesis that has been found to be misguided (cf. Fatah-Black e.a. 2019; Fricke, Laffoon, Victorina and Haviser 2020). Furthermore, one of the texts wants pupils to imagine slaves as commodities. With this, the text denies that enslaved people remain human and that at least some enslaved people will resist their enslavement and that it is the threat of resistance that leads to harsh and cruel treatment of enslaved people (cf. James 2001 [1938]; Heijmans 2019).

In the four texts too, it appears as if the trans-Atlantic slave trade involved Europeans faring the seas in a one-directional manner. Like in MEMO HAVO/VWO, third edition, there appears a need to stress that Africans too were 'guilty'.

QUACO CARTOON

We now move on from the four self-written texts, to the Quaco cartoon that is used in a number of the schools. The Quaco cartoon was first published in 2015 and it aims to bring the Dutch slavery past to the attention of the general public in an appealing and visual way.[391]

Quaco is a 64-page cartoon based on the true story of Quaco, who was later renamed Willem Stedman. He was kidnapped at a young age, transported to Suriname as a slave on a 'slave ship'. He lived in Suriname as an enslaved person for a number of years before his new owner took him to the Netherlands. There he worked as a help for a wealthy family, before he left for Dutch East Indies as a sea farer.

The cartoon portrays settings both in Africa, Suriname, and the Netherlands. In all these settings, the cartoon shows different social groups, differences within social groups, and the different relations within and between social groups. It also shows movement of different peoples, ideas, and languages. As such it does not portray the time of trans-Atlantic trade as one where enslaved people are only transported from Africa to the 'New world' and that it is only white Europeans who travel to different places. Instead, it also shows how both free and enslaved people traveled between different places, such as a former enslaved person who traveled from Curaçao to Suriname, or Quaco himself who travels to Europe and Asia. In Suriname, the book shows how people spoke different languages such as Dutch, Sranang Tongo, and English, different African languages on the slave ship and at the arrival in Suriname, and French and Dutch in the Netherlands. It also mentions Dutch slavery in Bernice and the islands that are still part of the Kingdom of the Netherlands. Freedom and rights are discussed from different perspectives and world views (such as Christianity and animism (such as portraying the belief in Mami Watra – a water spirit), and based on different historic moments, such as the French revolution, but also Quaco's own longings for freedoms. Furthermore, it shows how Quaco, in daily life deals with his (lack of) freedom, rights, power and relations. In the cartoon, the world is thus in relation. Not a romantic relation, but one with differences in rights, freedoms, and power. But still, in relation (cf. Vázquez 2020).

POLITICAL SCIENCE TEXTBOOK

[391] https://www.quaco.info/

GENERAL

We now move on to a political science textbook that is used in the third grade. As we saw (paragraph 4.3), several history teachers explained that human rights education to a minimal extent is taught from the third year onwards in the political science module (*staatsinrichting*). Several of the history teachers pointed me to the textbook that is used in the third grade. It is a 28- page textbook titled Elementary Political Science of Curaçao (*Elementaire Staatsinrichting van Curaçao*).[392] It is an adaption of the textbook Elementary Political Science of the Netherlands Antilles (*Elementaire Staatsinrichting of the Netherlands Antilles)*. The textbook deals with forms of government in general and in Curaçao, and rights and obligations in general and in Curaçao.

The textbook consists of learning texts and questions. Remarkable, and related to pupils' objections that they feel like they do not learn anything about life (paragraph 5.3) and that they feel underestimated with regard to their capacity to think about what happens in real life and throughout the world, the questions in the textbook are catered to reproduction of knowledge. For example, on page 11 the textbook enlists and explains 6 of 'some of the most important fundamental rights'. The question that follows is 'name and explain the six most important fundamental rights'. The textbook contains only one question that is not catered to knowledge reproduction: this question is specifically categorized as 'thinking question' (*nadenkvraag*) and invites pupils to think for themselves. It thus depends on the teacher if the textbook is used differently from uncritically pointing pupils to predefined knowledge. It reminds one of Freire's (1970) critical look on 'banking system' types of education.[393]

HUMAN RIGHTS AND CONSTITUTIONS

In the textbook, human rights and fundamental rights (*grondrechten*) are equated to each other (p.5) and are explained as protecting the freedom and well-being of humans (p.5). Further down the textbook (p.11), it explains that citizens have fundamental rights and that these rights are encoded in the constitution and form the basis of 'our freedom',[394] a freedom that may not endanger the freedom of other citizens (p.5 and 11). Human rights is thus about human rights law.[395] According to

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[392] T5, while talking about political science in the '*bovenbouw'* (the phase after the third grade), also explained that material is used that is not updated after the constitutional changes in October 2010. This means that pupils are still educated about the Netherlands Antilles (which was dismantled in October 2010) and – depending on if a teacher provides extra information – do not learn about the current constitutional situation.

[393] Shockingly, T7 – a Dutch teacher at a *vsbo* school in Curaçao – even expressly said that pupils do not think about their own situation or about the world. Maybe even more shockingly, T7 connected this to the pupils' neighbourhood (*Koraal Specht* which is known for its low social economic standing), and to Papiamentu being the mother tongue of these pupils. Papiamentu, according to T7 is a messy language and therefore it must be messy inside the pupils' heads too. I really hope that research will be done into education in *vsbo* schools too in order to have a clearer image and better understanding of teachers' understandings of their pupils and the ways in which this affects pupils. It could be – to not say 'is' - one of the factors leading to the high number of pushouts (pushouts is a better word for dropouts, if one considers various private and public factors demotivate and push pupils out of the educational system). For prejudices in education towards teenagers from Seru Fortuna, another neighborhood known for it low social economic standing, see Roe 2016. Relevantly, Van Heydoorn (2017) in her research on primary schools in Curaçao observed underestimation of pupils by teachers.

[394] By using the word 'our' in this context, the textbook does not seem to consider the fact that non-citizens minors also enjoy education in Curaçaoan state funded schools.

[395] See chapter 2 on different understandings of 'human rights' of which human rights law is only one.

the text, some of the most important human rights are freedom of religion, freedom of expression, freedom of the press, the right to personal (physical) freedom, freedom of education, and freedom of association.

Although the textbook mentions the existence of constitutions, it does not refer to any existing constitution nor does it mention the existence of the numerous international human rights conventions.[396] The mere fact that no specific constitution or international convention is mentioned in the textbook is already remarkable. However, it becomes even more remarkable considering the constitutional framework of Curaçao. Within the Kingdom of the Netherlands, there are five different constitutions, namely the constitution of the Kingdom of the Netherlands, and the constitutions of each of the Kingdom's countries, namely Aruba, Sint Maarten, Curaçao and the Netherlands (see chapter 4).[397] Furthermore, the Kingdom of the Netherlands is state party to a multitude international human rights conventions (see chapter 4). It is therefore up to the teachers teaching with the textbook *if* they mention specific constitutions and/or international conventions. When they decide to be specific about which constitutions include human rights, the question becomes which constitution they discuss. Tellingly, in this regard is what T2 told me in an interview:

T2 had just finished teaching a third-grade class on equality and the 'prohibition of discrimination on the basis of race, religion, political affiliation, and two or three other grounds.' During this class, T2 showed the pupils article 1 of the Dutch Constitution. When I asked if any reference was made to the constitution of Curaçao, T2 answered that this would stretch too far.[398]

RIGHT TO SELF-DETERMINATION

The textbook explains that Curaçao was conquered by the Dutch West India Company, and that the Netherlands determined almost everything in Curaçao. It explains that since 1954, the relation between the Netherlands and her overseas territories is governed by the right to self-determination. The right to self-determination is the right of a people to independently take decisions about their future. After explaining the right to self-determination, the text states:

Alle burgers van het Koninkrijk hebben hetzelfde paspoort en worden *in het buitenland* als dezelfde Nederlanders beschouwd en behandeld. [emphasis in the original]	All citizens of the Kingdom have the same passport and *abroad* are considered the same and treated equally. [emphasis in the original]

The textbook's understanding of the right to determination brings to mind the commonly used concept, that the right to self-determination as well as sovereignty belongs to a clearly distinguishable people and that it is this distinct people that have a free will. Furthermore, the text considers that

[396] On page 14 the EU and the Council of Europe are mentioned (albeit confused as being part of the same organization). But even here there is no mention of international human rights norms.

[397] Arguably, one could say that there is still only one constitution, namely the Dutch constitution which formed the legal basis for the Charter of the Kingdom and the constitutions of the Caribbean countries.

[398] T2 indicated that he had been living in Curaçao since only a short period of time. A significant number of teachers in Curaçao are (born and) raised in the Netherlands. The educational curriculum in the Netherlands pays no to minimum attention to the Caribbean, the Charter of the Kingdom of the Netherlands and the constitutions of Aruba, Curaçao and Sint Maarten (see paragraph 4.4.2.1 and paragraph 4.4.3). This could explain why T2 says that including the constitution of Curaçao stretches too far.

there are four autonomous countries within the Kingdom, namely Aruba, Curaçao, Sint Maarten and the Netherlands. Based on these understandings, a logical conclusion would be that there are four clearly distinguishable peoples within the Kingdom. Citizens of these peoples all carry a Dutch passport, but they are only treated equally abroad. The implicit message is thus that (members of the) four peoples (which is therefore not necessarily the same as legal citizenry) within the Kingdom are not treated equally. What this unequal treatment consists of and how it has come into being does not become clear, other than when the textbook gives the following explanation of two layers within the Kingdom of the Netherlands.

TWO LAYERS AND PRACTICALITY

The textbook explains that the Kingdom of the Netherlands consists of two layers: a Kingdom layer and a layer of autonomous countries. The textbook continues by explaining that practical reasons led to separating Kingdom affairs from autonomous affairs. In this context it mentions the Charter of the Kingdom and that the Kingdom has a safeguarding function. This safeguarding function, the textbook explains, in practice entails that the Netherlands supervises the compliance of the 'new countries' with their own rules, especially regarding finances. With this, the textbook connects practicality and autonomy, it uncritically conflates the Kingdom with the Netherlands, and it uncritically practically equates the safeguarding function with compliance to, especially, rules concerning finances.

By connecting practicality with autonomy, the textbook does not acknowledge the effects of historical logics used for the legal and conceptual delinking of Curaçao (and the other colonies) from the Netherlands, on the conception of the Charter. Nor does it, again, acknowledge multiple sites of power that led to the conception of the Charter. Practicality in itself does therefore not explain why education, for example, is an autonomous affair and not a Kingdom affair. Nor does it explain why the economies of the four countries, are four distinguished ones and that there is no formal Kingdom economy. And that citizens of the four countries do not have equal rights. Using 'practicality' as an explanation is a rather misleading explanation for how the Charter came to its specific division of power, tasks, and differentiated socio-economic, civic and political rights.

As mentioned earlier, the textbook conflates the Kingdom – which is hierarchically placed above the countries – with the Netherlands without any further explanation. Regarding the conflation of the safeguarding function with supervision of compliance to rules concerning finances, the following can be remarked.

Discussions regarding the division of tasks between the Kingdom and Aruba, Curaçao and Sint Maarten often witness proponents of Kingdom interference, on the one hand, and proponents of non-interference and autonomy, on the other hand. Kingdom interference is then commonly understood as interference by the Netherlands or aid from the Netherlands (cf. 4.4.3.2). In practice, issues concerning the constitutional status of the Caribbean countries, the division of tasks between the Kingdom and the Caribbean countries, and the imposition of measures by the Kingdom government, easily get tangled up with matters of proper financial management (cf. Allen, 2010 and chapter 4). However – contrary to what the textbook on political science seems to suggest – the safeguarding function of the Kingdom as codified in the Charter is not about supervising the financial management of the Caribbean countries (even if in practice it often seems to be reduced to this). Instead, according to the Charter, it is about safeguarding of fundamental human rights and freedoms, legal certainty, and good governance – however paradoxical this might be regarding human rights breaches by and the a-democracy of the Kingdom.

5.3.4 IN CLASS

As we have seen, history teachers were of the opinion that human rights was not really part of the education that they provide in the first two grades of *HAVO*/*VWO*. However, some of the teachers did associate human rights education with what they teach on the French revolution and slavery. According to most of the pupils in the focus groups, they do not or minimally learn about human rights in school. School, according to most pupils is an arena where you put into practice what you learn at home. Indeed, I observed practices of democracy, power relations, and justice put into use in class, in an interaction between pupils, T1 and the textbook used on the French revolution. The following is based on these observations.

T1 started off the class by explaining that during this particular class, the class would be turned into a Parliament. Before proceeding, T1 asked the pupils what people in parliament are called. One of the pupils responded that they are called Parliamentarians. To which T1 responded that this is true and that they are also called representatives of the people (*volksvertegenwoordiger*). T1 did not explain who the pupils were going to represent. Instead T1 put to vote the option of 'democracy or absolutism'. One of the pupils shouted:

Rumanan vota demokrasia!	*Brother and sisters vote democracy!*

Visibly excited, all pupils raised their hands. Next, T1 wanted to put a motion (*motie*) to vote in the class turned Parliament. This created a moment where democracy appeared to be very fragile. After the initial vote (about democracy or absolutism), the pupils remained exited and noisy, and as T1 tried to quiet them down, T1 eventually said:

Als jullie zo door gaan, word ik absolutistisch en dan moet je gewoon doen wat ik zeg.	*If you continue like this, I will become absolutist and then you will just have to do what I say.*

To which a pupil replied:

Dan wordt u onthoofd.	*Then you will be decapitated.*

The pupil's reaction was an obvious reference the guillotine used in the French revolution – a subject prominently discussed (both visually and in text) in the MEMO textbook used in class. It can also be said to simultaneously be an undermining of the teacher's power and the non-acceptance of unilateral power. In the meantime, T1 sent one of the other pupils out of the classroom. This pupil protested and repeatedly claimed he had done nothing wrong whilst walking towards the door. He did leave the classroom but stayed in the hallway where he was visible from the classroom as there are windows on the same side of the classroom. Subsequently, one of the pupils raised his hand. As soon as T1 indicated he could speak, he exclaimed, with a raised finger as if to emphasize his words:

Mi ta hañ'e un inhustisia grandi!	*I find this a great injustice!*

He then explained that the pupil who was sent out of the classroom had done nothing wrong,[399] and that he should be let back into the class. T1 listened and said that with this, a motion had been introduced, and asked the class if the pupil should be let back into the classroom. The motion was adapted with an overwhelming majority and T1 called the pupil back into the class.

In this class on the French revolution knowledge about the past was thus actively brought into the present to enact decision making processes, where positions of power were made and unmade. The cultural archive that was informed by knowledge of the French revolution was used in a here and now context. Power seemed to lie with the teacher, but the pupils did not simply accept this as they made use of spaces available to create their own sites of power. In this case a site of power used to turn an *inhustisia grandi* (great injustice) into justice. Where pupils learned about their reasonings of justice and injustice, and how to go about those, did not become clear. What is clear is that one of the pupils referred to what he had learned in school (the guillotine) to make a point, and that at least to some extent he was informed by or at least used the cultural archive related to the French revolution.

5.4 CONCLUSION

This chapter looked into human rights education as institutionalized, understood and practiced in the Basic Formation Phase of state funded secondary pre-universities (*HAVO*/*VWO*) in Curaçao, and its relation to racialization and racism.

Curaçao is legally bound to multiple international human rights conventions that determine that human rights education should be provided for. However, human rights education is not a specific requirement in Curaçaoan educational law concerning the Basic Formation Phase of secondary school. Educational law does include the learning aims of enabling pupils to know their own society and world society, and to enable pupils to strive for social justice. These aims could easily be conceptualized as being part of or requiring human rights education. However, this connection is not explicitly made in educational law, nor by school headmasters and teachers.

Headmasters initially indicated that human rights education is not provided for in the first two years of pre-university. However, they quickly made an association with the History course. History teachers associated human rights education in those first years of pre-university with teaching about slavery and/or the French revolution. They also stressed that the Political Science module in the third year does somewhat deal with human rights. Apparently, these were the associations headmasters and teachers had with regard to human rights education and the History course in the first two school years. I understood this as implicitly indicating that what is taught about slavery and/or the French revolution informs the cultural archive on human rights (cf. chapter 1).

In teaching these subjects, teachers and pupils are confronted with a serious lack of educational material that is suitable for the local population. For as far educational material is used that contains knowledge about Curaçao, these are very materials consisting significantly of outdated knowledge. Dutch school textbooks – different editions of the MEMO textbook – are used in the schools, while Dutch school textbooks have been criticized (both within the Netherlands as well as in Curaçao) of being centered on Europe and the USA, without those textbooks acknowledging this centering of knowledge. With the minimal means that they have, teachers do try to remedy this lack of

[399] According to him, the pupil who was sent out of the classroom had said 'oh, dis!' and not what T1 thought: 'hode!'.

educational material by using additional material, such as the 1985 *Nos Pasado* textbook, a 2015 cartoon Quaco, by using, or other additional materials, and by writing texts themselves.

Indeed, the educational materials used for teaching about slavery and the French Revolution discuss rights, freedoms, obligations and power.

However, history in the MEMO textbooks is centered on Europe and the United States of America. The textbook does not make explicit that it centers knowledge on Europe and the USA. Instead, it pretends to depict history in general. Curaçao and its population, the other Caribbean islands that are still part of the Kingdom of the Netherlands, and almost the entire world apart from Europe and the USA, does not appear to have history at all. Simultaneously, the textbook depicts the world as consisting of people essentially belonging to different hierarchical racial categories who seemingly originate from clearly bounded territories and/or continents. Moreover, on the subject of slavery, it is remarkable that in the text it appears as if only white Europeans fared the seas, while Africans only fared the seas as cargo from Africa to the 'New World'. Multidirectional movement (by sea) of other populations is not visible at all. Furthermore, slavery is significantly discussed in relation to the USA, and to a much lesser degree in relation to other places. This is remarkable as it is a Dutch textbook and Dutch have historically contributed significantly to slave-trade and slavery, both in territories dominated by Dutch as well as world-wide.

Eurocentricity can also be found in MEMO's depiction of ideas concerning rights, freedoms, equality and democracy. They are mainly portrayed as deriving from Europe, white Europeans, white Europeans' minds, and descendants of Europeans in Europe or the USA, and the Enlightenment. The Enlightenment is also depicted as merely a product of Europe.

Contrary to the learning aims formulated in Curaçaoan educational law, the MEMO textbooks can therefore be said to not adequately add to pupils' understandings of current social phenomena in their own society and worldwide. Relevant for this research is that MEMO only adds to the essentialization of humanity and human rights, and perpetuates the normalization and naturalization of racialization and the global color line.

Different teachers use different additional materials to teach about the period of slavery and the French revolution. The ways in which the MEMO textbooks are supplemented thus differ significantly.

One of the schools uses *Nos Pasado*, a 1985 textbook which was clearly published with a nation building function. It includes histories of all the Caribbean islands within the Kingdom of the Netherlands, although it does have a clear focus on Curaçao and the Papiamentu speaking islands. Significantly, when discussing slavery and revolutions in the late 18th century, it includes uprisings that took place in Curaçao, Haiti, and France. In this context it also shows how ideas travel between different places. Furthermore, it shows how law plays a role in according differentiated rights, freedoms and power to different racial groups. It depicts different social groups and differences within social groups. However, even though the book is critical about racism, it does not demystify the idea that races actually exist. Worse, it sometimes even perpetuates racist stereotypes.

Another school uses four texts on slavery written by one of the teachers. Slavery in these four texts is not so much discussed in terms of rights, freedom and power, other than by explaining that some people can become enslaved, whilst others are not. Significantly, it compares different forms of slavery from the past and present, holds on to the 'mild slavery in Curaçao thesis', and in one instance, uncritically perpetuates the stereotype of descendants of slaves as necessarily having feelings of inferiority.

Two of the schools use the Quaco cartoonbook, a cartoon based on the true story of Quaco who was enslaved during the time of trans-Atlantic slavery. The story – to a large extent and very significantly when compared to the other textbooks used in the schools – shows the non-singularity of people, places, ideas and languages. It also includes different aspects of Dutch slavery, including multiple geographical sites where Dutch slavery occurred, different social groups within these sites, different languages spoken within these 'Dutch territories' such as Dutch, Sranang Tongo, English, French, different African languages, and Papiamentu. It also shows differences within social groups. Freedom and rights are discussed from different perspectives and world views, both 'big ones' such as those based on the Enlightenment or different forms of spirituality as well as 'personal ones' such as Quaco's own yearnings for freedom. Without using the term racism, the book shows both how race and racism played a real role in structurally privileging white people from different places, and exploiting black people from different places, whilst simultaneously showing agency of different people who are positioned differently within the modernity/coloniality order.

In discussing rights, freedoms and power, in the context of the French revolution and slavery, whether or not the racial human categories are questioned, then mainly depends on teachers. However, teachers explained that race is mostly discussed when discussing the Second World War; a theme that is not taught in the first two years of secondary school. And even if they do discuss race, the way in which race is discussed, differs per teacher. Teachers' understandings of 'race' ranged from it being a category created by human beings, to the idea that there are a number of biological races.

It is then safe to say that in many ways human rights education in the Basic Formation Phase of state funded secondary pre-universities (*HAVO*/*VWO*) in Curaçao contributes to the normalization and naturalization of racialization and the global color line. The analysis of the third-grade textbook on political science leads to the same conclusion with regard to racialization and the global color line within the context of the Kingdom of the Netherlands specifically.

Remarkably, most of the second-grade pupils were very adamant in saying that they do not receive human rights education in school. The only pupil who might have implied otherwise, said that she learns from anyone who has an influence on her. However, in discussing human rights education, all second-grade pupils very clearly and repeatedly expressed they feel they do not learn about – what they called – life. This can be explained by the fact that – as we have also seen in chapter 4 – the educational materials do not reflect the (historical and present) lived realities and context of Curaçao. The pupils themselves, expressed that it is due to a lack of social sciences in school. They understood social sciences as learning to deal with human relations, including current affairs relating to human rights. And indeed, throughout the focus groups, pupils showed that they were aware of the different relations, identities and roles they have. They contemplated on what these relations, identities and roles are, and how they impact social interactions between themselves, their future selves and – amongst others – siblings, teachers, parents, politicians and the broader society. In doing this they also demonstrated that they are aware that different identities can intersect in different ways. They also showed a clear awareness of Curaçao being part of the Kingdom of the Netherlands, and of developments in the region, including the USA and Venezuela.

Pupils thus showed that they are already interested and invested in their lived realities, and think about the identities, rights, freedoms and power they have. This includes the issue of language, which in the context of Curaçao means that Papiamentu is the mother language of the majority of the

population, but Papiamentu is not the language of instruction in pre-university schools.[400] Not only do they think about, but they also act upon these things. They show the latter in class in their interactions with the teacher and the textbooks in which both the teacher and pupils negotiate their roles, their 'rights, freedoms and power' within the context of specific institutionalized teacher-pupil identities and power relations, and in which they try to create what they understand to be a more just situation. It also shows from the different initiatives taken by pupils, such as initiating a student council, and lobbying for the change of school rules. These initiatives have not been taken with any known reliance on human rights. While this is perfectly fine, it might also indicate that there is a serious lack of understanding how human rights discourses and human rights law can be used to contribute to pupils' causes of improving their lives. On the contrary, pupils seem to associate human rights with demonstrations and uprisings, which in turn appears to be judged as something negative by the pupils. There appears to be no substantive knowledge on human rights law (either domestic or international) among the students.

Remarkably, but not surprisingly, pupils thus showed that they were very capable of de-essentializing different human identities even if they were also tempted to adhere to essentialized understandings of humanity. I understood their longing for education about – what they called – life as a longing for education that takes lived realities seriously. Lived realities are necessarily not singular and take positionality seriously. This would contribute to the elimination of racialization and racism – contrary to most of the educational material currently provided for them in schools.

Now that I have looked into human rights education and its relation to racialization and the global color line in general, the United Nations, and in Curaçao, it is time to turn to a conclusion of this research. This will be done in the following chapter.

[400] There is one relatively newly established pre-university school in Curaçao that offers education in Papiamentu and English. It is the SKAIH pre-university. SKAIH pre-university opened its doors in the 2018-2019 school year. This school is not included in this investigation. See Appendix 1 for the reasoning behind this choice.

6. SUMMARY, CONCLUSION AND RECOMMENDATIONS

This research started with the following question:

> *How does HRE as conceptualized and institutionalized within the United Nations human rights framework, and as conceptualized, institutionalized and practiced in state funded secondary schools in Curaçao perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?*

In order to be able to answer the research question, this work first set out to answer a number of sub questions (see chapter 1 for the sub questions). In this chapter we are now able to give an answer to the main research question. Before getting into that, this chapter will first provide a short summary of the preceding paragraphs (paragraph 6.1). This chapter will then provide an answer to the main research question (paragraph 6.2) and will end with a number of recommendations (paragraph 6.3).

6.1 SUMMARY

Chapter 1 first introduced the philosophical presumptions underlying this work. It introduced the idea that the Race Question in fact is the Human Question. The Human Question deals with how human identity has been hegemonically conceptualized and institutionalized. It also laid out my understanding of key concepts in this work such as discourse, order of truth, social institutions, hegemony and contra-hegemony, power, the West, racism and the global color line. The Chapter furthermore introduced two case studies, namely the United Nations and Curaçao, the methodology used in this work, a reflection on my own positionality, and a chapter outline.

As explained in chapter 1, considering the topic of this work, the United Nations and Curaçao make relevant study cases. They are both entities that exist in (international) public law. Considering that human rights law is hegemonically understood to be part of both international public law and national public law, both the United Nations and Curaçao are by definition affected by the ways in which human rights law are discursively institutionalized. Furthermore, paradoxically, both entities are embedded in (international) public law which hegemonically departs from the understanding that there are sovereign states, whilst neither, the United Nations and Curaçao, are sovereign states. At least not in (international) public law. In many ways, their mere existence in itself defies essentialized understandings of law, sovereignty, and human (societies). In contrast to how sovereign states are dominantly and hegemonically conceptualized and institutionalized as singular powers over clearly bounded territories with clearly distinguishable peoples, the United Nations and Curaçao explicitly deal with nations in relation with each other. After all, the United Nations consists of a number of sovereign states, and Curaçao is a non-sovereign nation within a sovereign state. In some sense they thus intrinsically embody both the sense and non-sense of essentializing human societies. Essentialization and national borders, as is introduced in chapter 1 and further set out in chapter 2, are relevant for the topic of racialization and the global color line.

Chapter 2 delved into the matter of the Race Question as the Human Question. I argued that the category of the human is not innocent nor neutral. When people talk about humans or about being human, or about different human categories, they do not necessarily all mean the same thing. However, I do argue that Western dominant hegemonic orders of truth from the 15th century until now, created dominant hegemonic essentialized categories of the Self and Other. This Self developed from Christian to Man (both Man_1 and Man_2), and its non-Christian and non-Man Other. These categories are reasoned to exist suprahumanly, namely based on the divine or nature without taking into account the human aspect. These orders of truth thus disregard that the ways in which people

interpret, experience and create the world is also influenced by human (un)consciousness(es), and the interactions between nature and socialization. Being human (and thus having access to being identified as or being allowed to identify as human) thus means in the end, one fixed thing. This creates a number of essentialized identities or categories of the human, of which 'race' - essentialization in the form of racialization - is only one. Essentialized understandings of being human go hand in hand with essentialized understandings of human communities, including nation-states, and based on that sovereignty, citizenship, rights, freedom and power. As such it became discursively and institutionally justifiable to not have human rights for every human being, but rather rights for certain types of human beings, namely Man (in its two renditions). Furthermore, whilst the internal Other was included in national citizenship, they were excluded from political citizenship. The racialized external Other was excluded from sovereignty, political citizenship and national citizenship. Man as the human Self as citizen, and with their rationality (in Man_1) and selectedness (Man_2) then came to represent symbolic life, whilst those who do not meet these qualifications represent different degrees of symbolic death. Justifying expropriation, exploitation and domination of the racialized Other under the guise of the civilizing mission (which in the hegemonic Christian conceptualization of being was the evangelizing mission). Indeed, creating and perpetuating racialization and racism. The latter also in the form of the global color line.

As argued in chapter 2, freedom from coloniality by these epistemes, including freedom from essentialized forms of race, lies in bringing the human back into the equation and thus in unsettling the coloniality of truth and being, and thus rights, freedoms and power. This requires historicizing, de-essentialization, inclusion of different perspectives (from different positionalities), and the understanding that humans and human societies are always in relation, constantly becoming, and that power and thus positionality play a role. In this understanding 'rights' in human rights are thus changing sites of contestation, and not – as hegemonically portrayed and institutionalized– fixed norms.

The degree to which human rights education perpetuates racialization and the global color line then depends on the extent to which it perpetuates the normalization and naturalization racialization and the global color line through essentialization. Perpetuation of the global color line includes perpetuation of the civilizing mission known in hegemonic Western conceptualizations of truth, and thus includes the portrayal of the global North as symbolic life because (best) adhering to human rights, and portrayal of the global South as symbolic death because far from adhering to human rights. Reversely, the degree to which human rights education counters the normalization and naturalization of essentialization depends on the extent to which it is able to include the human aspect, and thus historicize, de-essentialize, include different perspectives, and include the awareness that humans and human societies are not singular. As everybody contemplates about their place in the world, this can be done with virtually any type of learner. Not by pretending to present them the entire story, but by including them in the story while at the same time showing and reminding them that life itself constantly unsettles essentialization, despite the opposite being conceptualized and institutionalized. It opens up to questioning why Western hegemonic understandings exist and who profits from it.

Human rights education that contributes to the elimination of racialization and racism, does thus not only concern discursively institutionalized axes of power including the global order, and the basis of political alliances, but also personal feelings and understandings of the Self and belonging.

Chapter 3 turned to the United Nations and its legal human rights framework. The United Nations still carries within it, historical legacies of colonialism, racism, imperialism, and the geopolitical shifts that took place during and after WWII. Legacies which can be observed in the hierarchies within the very

structure of the United Nations itself – think of the Security Council. But also, in how 'humans' and 'rights' have been discursively institutionalized in its human rights framework. This is perhaps most visible in how the UDHR institutionalized human rights as natural law for rational and moral beings, leaving the door wide open to Man_{1and2} understandings for what humans are – including all its hierarchies (also see chapter 2). It is then no surprise that the UDHR was followed – not only by the ICCPR and ICESCR – but also human rights conventions for specific non-Man human categories. However, looking at the UN human rights framework, one can discern different understandings of human identity, including those that acknowledge socialization and intersectionality. The UN human rights framework also has different understandings of what rights are. Although there is still a very present reliance on natural law, and - based on that – neutrality and universality of human rights, rights have also been conceptualized as educational means, as contributing to a sense of belonging. In more recent years, the ECERD has explicitly acknowledged that its interpretation of human rights is the results of a dynamic pluralism and that it now opens up to any public comment on draft recommendations.

However, when it comes to human rights education, there still seems to be a reliance on natural law, neutrality, and universality. The pluralism that the human rights framework expects in education in general – including knowledge of contributions, languages and perspectives of different social groups within and without the nation – does not seem to be expected from human rights education. Instead, it seems that the human rights education envisioned by UN bodies, is declarationist human rights education. Declarationist human rights education portrays human rights as fixed norms which are necessarily good. As argued in chapter 2 and 3, portraying human rights in this way, perpetuates normalization and naturalization of the ways in which the UN human rights framework continues to perpetuate racialization and the global color line. It thus also fails to provide learners with tools to grasp the inequalities that are discursively institutionalized in the UN human rights framework and the United Nations itself.

Chapter 4 turned to Curaçao, a Caribbean Island just off the coast of Venezuela and a non-sovereign nation within the Kingdom of the Netherlands. The chapter drew a context regarding human rights law, race and national identity, and education in Curaçao. To better understand these topics, Curaçao as part of the Kingdom of the Netherlands was an intrinsic part of the analysis. It argued that despite the fact that the populations in and the territory of the Netherlands up until this day having been intimately connected to the territory of Curaçao and its population (as well as to those of Aruba and Sint Maarten, and Bonaire, Saba and Sint Eustatius, and other former colonies), this connection has been dominantly and hegemonically constructed as a here and us in the European territory, and a racialized there and them in Curaçao. It hegemonically justified legally and conceptually less free, less equal, and less sovereign societies in Curaçao based on the Color line. The effects of which can still be found in the constitutional exceptionalism of the 1954 Charter of the Kingdom of the Netherlands which codifies the relation between Curaçao and the Netherlands. Furthermore, both in hegemonic national identities and scholarly conceptualizations, the populations of the four countries are perceived as conceptualized as respectively racially essentialized and clearly distinguishable peoples. Based on the conceptual and institutional inequalities within the Kingdom of the Netherlands, one can conclude that the Kingdom of the Netherlands actually still is a colonial state, or at least a form of institutionalized racism and a perpetuation of the global color line. The continuing effects can also be observed in human rights law within the Kingdom and in Curaçao, and in the way in which education is provided (with regard to at least available means, language of instruction, educational law and educational content).

Chapter 5 looked into the relation between human rights education and racial discrimination as institutionalized, understood and practiced in the Basic Formation Phase of secondary state funded

secondary pre-universities (*HAVO*/*VWO*) in Curaçao. Curaçao is bound by international law to provide human rights education. However, human rights education is not an explicit requirement in Curaçaoan educational law concerning the Basic Formation Phase of secondary school. Educational law does include the learning aims of enabling pupils to know their own society and world society, and to enable pupils to strive for social justice. These aims could easily be conceptualized as being part of human rights education. However, this connection is not explicitly made in educational law, nor by school headmasters and teachers.

Whereas all headmasters and teachers initially stated that human rights education is not provided for in the Basic Formation Phase, they subsequently stated that one could say that human rights education is provided for in the History course when teaching about slavery and/or the French revolution. In teaching these subjects, schools are confronted with a serious lack of educational material that is suitable for the local population. Dutch school textbooks – different editions of the MEMO textbook – are used in the schools, while Dutch school textbooks have been repeatedly criticized (both within the Netherlands as well as in Curaçao) to be Eurocentric. Indeed, while the MEMO textbooks present themselves as describing history in general, it appears as if Curaçao, its population (and almost the entire world apart from Europe and the USA, does not have any history at all. Furthermore, the textbooks contribute to the essentialization and hierarchization of people and human communities. The latter by uncritically distinguishing European states and African tribes, for example. Furthermore, ideas concerning rights, freedoms, equality and democracy are mainly depicted as deriving from Europe, white Europeans, white Europeans' minds, and descendants of Europeans in Europe or the USA. With the minimal means that they have, teachers do try to remedy this lack of educational material by using additional material, such as the 1985 *Nos Pasado* textbook, by writing texts themselves, by using a 2015 cartoon book made by Ninsee and/or by using other additional materials. These additional textbooks in various degrees unsettle of perpetuate the essentializing logics, racialization and the global color line.

In discussing rights, freedoms and power, in the context of the French revolution and slavery, whether racial human categories are questioned, mainly depends on teachers. However, teachers explained that race is only discussed when discussing the Second World War; a theme that is not taught in the first two years of secondary school. And even if they do discuss race, the way in which race is discussed, differs per teacher as teachers' understanding of 'race' ranged from it being a category created by human beings, to the idea that there are a number of biological races.

It was clear that pupils are interested and invested in their lived realities, and to think about their identities, rights, freedoms and positionality. This includes the role of language, which in the case of Curaçao means that although Papiamentu is the mother tongue for the majority of the population, it is not language of instruction in school.[401] Not only do they think about and discuss these matters, they also act upon it in class and in school. However, they do not necessarily see these matters as something that has to do with human rights. They were also very adamant in claiming that they had not received any human rights education. What pupils very clearly and repeatedly stated is that they feel they do not learn about – what they call – life. I understood this as a longing for education that takes lived realities, which are necessarily non-singular, seriously. In discussing their identities, rights, freedoms and positionality, there appeared a doing and undoing of both essentialization and de-

[401] There is one relatively newly established pre-university school in Curaçao that offers education in Papiamentu and English. It is the SKAIH pre-university. SKAIH pre-university opened its doors in the 2018-2019 school year. This school is not included in this investigation. See Appendix 1 for the reasoning behind this choice.

essentialization. They also related the personal – senses of Self and belonging – to institutionalized differences. But again, pupils claimed that the things they knew about these issues were not learned in school, but outside of school. This can be confirmed if one looks at the type of human rights education provided for in the schools' educational materials.

6.2 CONCLUSION

This research set out to answer the question:

How does HRE as conceptualized and institutionalized within the United Nations human rights framework, and as conceptualized, institutionalized and practiced in state funded secondary schools in Curaçao perpetuate or counter the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization?

This research shows that the extent to which human rights education perpetuates or counters the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization, depends on the type of knowledge production involved in human rights education. Western hegemonic orders of truth rely on the suprahuman and take the human aspect out of the equation. It makes essentialization in the form of racialization and racism justifiable by referring to the divine or natural. It does not only make racialization and racism justifiable, but it also naturalizes and normalizes it. Knowledge production sustaining these logics, does thus not only concern institutionalized (global) inequalities based on race, but also subjective feelings of Self and belonging.

In order for human rights education to contribute to the elimination of racialization and the global color line, human rights education should therefore contribute to de-essentialization, historicizing hegemonic conceptualizations, and taking the role of positionality – thus identity and power – seriously. It should contribute to remembering that no human being, nor any human society is a singular being. As well as that it should unveil how discursively institutionalized inequalities have come to exist and who profits from it.

As we saw, the very structure of both the United Nations and the Kingdom of the Netherlands (of which Curaçao is a constituent state) carry the legacies of colonialism, slavery and imperialism. More specifically, they also carry with them the legacies of racialization and the global color line. This is the more remarkable in the context of this research, because both the UN and the Kingdom of the Netherlands portray themselves as promotors of human rights in the international realm. The UN has actual legal powers to intervene in nation states for the sake of human rights. Furthermore, the Kingdom of the Netherlands formally has an actual safeguarder's role concerning human rights within the Kingdom of the Netherlands, including Curaçao.

Human rights education as discursively institutionalized at the United Nations seems to promote essentialized understandings of human rights; they are portrayed as a fixed set of norms that contribute to a universal good. Furthermore, in setting norms for human rights education, the United Nations human rights framework does not have a clear ontological understanding of humanity and human societies. If one looks at the broader UN human rights framework, one should even conclude that different ontological understandings exist, even though Western hegemonic conceptualizations are still dominant. This research shows that human rights education as promoted by the United Nations does not contribute to the de-essentialization of human identity, nor that it contributes to unveiling the workings of the normalization and naturalization of racialization and the global color line. Stating that human rights education should contribute to the elimination of racial discrimination,

such as is done in article 7 ICERD for example, is simply not enough. As this research shows, it takes much more.

Education as institutionalized in Curaçao does not explicitly include human rights education in the Basic Formation Phase of secondary state funded schools. However, as we saw, this does not mean that human rights education is not provided for. Indeed, human rights education is provided for – at least a cultural archive is created – in the History course when discussing slavery and the French revolution. Headmasters and teachers also emphasized that human rights education is part of a course on Political Science in the Third grade. Both in the educational materials used and the physical conditions of the school heavily carry the legacies of colonialism and Dutch imperialism. With regard to educational materials, this included Eurocentricity and the normalization and naturalization of racialization and the global color line, including the global color line sustained by the structure of the Kingdom of the Netherlands. An exception is a textbook called Quaco. Education in this manner is a lost opportunity, as pupils show a longing for education that takes into account lived realities, and that pupils – not surprisingly – think about and act upon their place in the world, including intersecting and multiple identities, and power. They think about their subjective Selves and the institutionalized inequal structures they find themselves in.

That human rights education as discursively institutionalized at the United Nations and as discursively institutionalized and practiced in Curaçao thus to a very significant extent actually contributes to the forms of essentialization that perpetuate racism in the form of the global color line and its accompanying forms of racialization. With regard to essentialization of states – a form of human societies – into sovereign states with absolute power over their own territory, this is the more remarkable since the very structure of the United Nations and Curaçao defy such a limited understanding of state sovereignty.

This research argues that if human rights education is to contribute to countering the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization, human rights education should contribute to humanization instead of dehumanization. Human rights education should therefore contribute to an understanding of the human that acknowledges the changing and changeable ways in which humans understand, perform and create (in relation to) the (social) world, and thus also depending on time, place, and context, while acknowledging people's positionality. As we have seen, human rights education as conceptualized and institutionalized within the United Nations human rights framework, and as conceptualized, institutionalized and practiced in state funded secondary schools in Curaçao still seriously lacks the humanization needed to significantly contribute to countering the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization. Despite efforts to the contrary. In fact, in many ways these forms of human rights education still perpetuate the hegemonic normalization and naturalization of racism in the form of the global color line and its accompanying forms of racialization. It is time to thoroughly revise human rights education at the United Nations and in Curaçao as suggested here above. This is the way to provide for human rights education that can actually contribute to the elimination of racism. Besides, learners show that they are ready for critical human rights education and that they long for education that does not alienate them from their own lived realities.

6.3 RECOMMENDATIONS

As should be clear by now, in order for human rights education to contribute to the elimination of racialization and the global color line, it should not contribute to de-essentialization, historicizing hegemonic conceptualizations, and taking the role of positionality – thus identity and power –

seriously. It should not take Western hegemonic conceptualizations of humanity, human societies (including states and nations) for granted. Instead, it should critically question these, as well as the ways in which Western hegemonic conceptualizations have been institutionalized. With regard to the UN and the Kingdom of the Netherlands, the latter also means, that the very structures of the UN and the Kingdom should be historicized and critically questioned. Ultimately it should also lead to providing learners with tools to contribute to a restructuring of the UN and the Kingdom of the Netherlands in a way that does actually institutionalize equal rights, both conceptually and legally. Considering the findings of this research, equal human rights for every human being should at least also entail that the extent of equal human rights should not be affected by where one lives, where one is born, and not depending on the legal status of the (non-) sovereign state of which one is a citizen. Because for as far as these circumstances do affect the equality of human rights, they perpetuate) the legacies of) racism and more specifically, the global color line.

De-essentializing humanity means that human beings are not portrayed as being confined to a singular being. Instead, it takes lived realities and thus human agency seriously. Lived realities that show how people are constantly becoming. De-essentializing humanity, of course also means de-essentializing human communities. At the same time, it should take discursively institutionalized inequalities seriously, and thus the way in which people and human societies are affected by their positionality. In other words, it requires humanization. This should be part and parcel of human rights education. Pupils who were respondents in this research show to not only be very capable of thinking about these matters, but that they already do think about these matters and long to be educated about them in school.

Seeing the ways in which pupils – like other learners – are already invested in thinking about their changing lives and their place in the world (including their positionality), human rights education should include that pupils are involved in decision making processes about the way in which human rights education is provided for to them. The latter would also be in line with the UN Convention on the Rights of the Child, as this convention requires that children be involved in decision making processes concerning them.

With regard to human rights, de-essentializing also means that human rights themselves are not portrayed as a set of fixed norms. Instead, it takes into account that human rights are a changing site of contestation in which power plays a role. As I already argued, declarationist approaches only contribute to the normalization and naturalization of racialization and the global color line. That human rights are a changing site of contestation can already be shown by the manifold understandings of what human rights are according to the United Nations framework. And the role of power can be shown by how Western hegemonic conceptualization are still dominant. For example, if we look at the UDHR and subsequent human rights documents, or if we look at how the revolutionary potential of the ICERD was undermined by geopolitics.

De-essentializing human rights does not mean that learners should not be made aware of the human rights norms that have been institutionalized in constitutions and conventions. On the contrary, learners should be made aware of these legal norms. However, this should thus be accompanied with a critical understanding of how these norms came to be, the different meanings they can have, and how these norms can be used.

The task of humanization and thus also de-essentializing might seem daunting. But if one looks at the Quaco cartoon used in Curaçaoan schools (see chapter 5), it should become clear that this task does not have to be a difficult one. After all, the cartoon manages to show institutionalized inequalities, and the role of positionality, while also showing human agency and the multidirectional ways people

and ideas travel around the world. Humanization in human rights education thus proves to be achievable.

On the subject of human rights education in Curaçao specifically, and which also applies similarly to other non-sovereign territories, I also want to stress that it does not make sense to only teach pupils in Curaçao in a manner that denaturalizes and denormalizes racialization and the global color line. The same should be done in the Netherlands and the other nation states within the Kingdom of the Netherlands. With regards to the Netherlands specifically, this is needed, because of the fact that people in the Netherlands have the power to change the global color line within the Kingdom of the Netherlands into equality – constitutionally and (geo)politically. In this context, I want to point out the current movements and efforts in the Netherlands focused on decolonizing knowledge (decolonizing universities, decolonizing archives, etc.). Efforts to denaturalizes and denormalizes racialization and the global color line, also specifically regarding the Caribbean islands within the Kingdom of the Netherlands – and thus also concerning Curaçao – could be part of these movements and efforts.

NEDERLANDSE SAMENVATTING (DUTCH SUMMARY)

Dit onderzoek begon met de volgende vraag:

Hoe draagt mensenrechtenonderwijs – zoals discursief geïnstitutionaliseerd binnen het mensenrechtenkader van de Verenigde Naties, en als discursief geïnstitutionaliseerd en beoefend op door de overheid gefinancierde middelbare scholen op Curaçao – bij aan het bestendigen of tegengaan van de hegemonische normalisatie en naturalisatie van racisme in de vorm van de global color line en de bijbehorende vormen van racialisering?

Hoofdstuk 1 introduceert de filosofische veronderstellingen die aan dit werk ten grondslag liggen. Het introduceerde het idee dat het bij ras (de *Race Question*) in essentie gaat om de vraag wie als mens wordt gecategoriseerd en behandeld (de *Human Question*). Het gaat dus om de vraag hoe de menselijke identiteit hegemonisch is geconceptualiseerd en geïnstitutionaliseerd. Hoofdstuk 1 legde ook relevante sleutelconcepten uit, zoals discours, *order of truth*, sociale instituties, hegemonie, tegenhegemonie, macht, het Westen, racisme, discriminatie op basis van ras en de *global color line*. Verder introduceerde hoofdstuk 1 de twee casestudiess, namelijk de Verenigde Naties en Curaçao, en ook de methodologie die in dit werk wordt gebruikt, een reflectie op mijn positionaliteit, en een hoofdstukoverzicht.

Om de onderzoeksvraag te beantwoorden, werd in dit werk vervolgens eerst een aantal deelvragen beantwoord in de hoofdstukken 2 en 5.

Hoofdstuk 2 gaat nader in op de *Race Question* als de *Human Question*. De categorie 'mens' is noch onschuldig, noch neutraal. Als mensen het hebben over de mens, mens zijn of verschillende menselijke categorieën, bedoelen ze niet noodzakelijkerwijs hetzelfde. Ik beargumenteer echter wel dat westerse dominante hegemonische *orders of truth* vanaf de 15e eeuw tot nu dominante hegemonische geëssentialiseerde categorieën van het menselijk zelf en de niet- menselijk of minder menselijk ander creëerden. Dit zelf ontwikkelde zich van Christen tot Man (zowel Man_1 als Man_2), en de niet-Christelijke en non-Mens. Deze concepten worden gebaseerd op het goddelijke en/of op de natuur, zonder het menselijke aspect in acht te nemen. Deze *orders of truth* negeren dus dat hoe mensen de wereld interpreteren, ervaren en creëren ook wordt beïnvloed door het (on)bewustzijn van de mens, en de interacties tussen natuur en socialisatie. Mens zijn betekent dan dus één vaststaand ding. Door te doen alsof het mens-zijn wel een vast bepaald ding is, dat te vinden is door Gods regels te kennen en/of natuurregels, zonder daarbij in ogenschouw te nemen hoe de mens zelf dit kennen beïnvloed, ontstaan verschillende essentiële identiteiten of categorieën van de mens, waarvan 'ras' - essentialisering in de vorm van racialisatie - er slechts één is. Geëssentialiseerde opvattingen over mens-zijn gaan hand in hand met geëssentialiseerde opvattingen over menselijke gemeenschappen zoals natiestaten, soevereiniteit, burgerschap, rechten, vrijheid en macht. Deze opvattingen maakten en maken het mogelijk om discursief en institutioneel te rechtvaardigen dat niet ieder mens (even veel) mensenrechten heeft. In plaats daarvan zijn er bepaalde mensenrechten voor bepaalde mensen. Geëssentialiseerde verschillen tussen groepen mensen worden dan ook gebruikt om onteigening, uitbuiting en overheersing van de geracialiseerde ander te rechtvaardigen onder het mom van de beschavingsmissie. Het creëert en bestendigt racialisering en racisme, inclusief racisme in de vorm van de *global color line*.

In hoofdstuk 2 betoogt dat vrijheid van de kolonialiteit (*coloniality*) die deze hegemonische en essentialiserende epistemologiën kan ontstaan door het menselijke aspect terug te brengen in het begrijpen van de realiteit, en dus ook in het begrijpen van ras, rechten, vrijheden en macht. Dit vereist historiteit, de-essentialisering, erkenning van verschillende perspectieven (vanuit verschillende

positionaliteiten), en het besef dat mensen en menselijke samenlevingen altijd in relatie staan, voortdurend worden, en dat macht en dus ook positionaliteit een rol spelen. Van belang voor mensenrechten, is dat in deze opvatting rechten en het mens-zijn dus geen enkelvoudige (*singular*) en vaststaande dingen zijn die te kennen zijn door alleen God en/of de natuur te kennen. In plaats daarvan zijn mensen constant in wording én in relatie tot discursief geïnstitutionaliseerde identiteiten, net zoals rechten plaatsen van betwisting zijn en ook constant in wording. Om racialisering en racisme tegen te gaan, zou mensenrechteneducatie dus kritisch moeten zijn over de filosofische concepten die gebruikt worden en moeten bevragen wie de macht heeft om te definiëren wat mensenrechten zijn en wie ze heeft. Dit zou dus in ieder geval moeten behelzen dat essentialisering tegen wordt gegaan door te historiseren, de-essentialiseren en verschillende perspectieven een plek te geven. Aangezien iedereen nadenkt over diens plek in de wereld, kan dit met vrijwel elk type leerling. Mensenrechtenonderwijs kan leerlingen er dan zowel aan herinneren dat het leven zelf constant laat zien dat het niet te essentialiseren is, terwijl het ook toont hoe hegemonische discoursen en instuten wèl essentialiseren en dat men zich daartoe verhoudt.

Hoofdstuk 3 richt zich op de Verenigde Naties en mensenrechtenonderwijs. Voordat werd toegekomen aan het onderwijs, werd eerst (relatief beknopt) ingegaan op het de mensenrechten van de Verenigde Naties. Hieruit bleek al dat de Verenigde Naties zelf ook nog de geschiedenis van kolonialisme, racisme, imperialisme, en de geopolitieke veranderingen van na de Tweede Wereldoorlog met zich meedraagt. Deze erfenis is onder meer te vinden in de structuur van de Verenigde Naties (bijvoorbeeld de Veiligheidsraad) en in hoe 'de mens' en 'rechten' discursief zijn geïnstitutionaliseerd. Dit laatste is wellicht het best zichtbaar in de Universele Verklaring voor de Rechten van de Mens. De Verklaring lijkt heel erg te leunen op de idee van natuurlijke wetten en dus ook neutraliteit en universaliteit. Dit laat als gevolg de deur wijd open voor geëssentialiseerde begrippen van wat een mens is en welke rechten mensen hebben (zie hoofdstuk 1 en 2). Zo bezien is het dan ook geen verrassing dat de Universele Verklaring voor de Rechten van de Mens niet alleen is opgevolgd door twee algemene mensenrechtenverdragen, maar ook door een aantal mensenrechtenverdragen die zich specifiek richten op bepaalde categorieën van de mens. Tegelijkertijd vindt men een scala aan verschillende begrippen van wat een mens is en wat rechten zijn, binnen het mensenrechtenraamwerk van de Verenigde Naties. Hieronder vallen onder meer begrippen die rekening houden met socialisatie en het erkennen van intersectionaliteit. En ondanks dat natuurlijke wetten nog een belangrijke rol lijken te spelen, worden rechten binnen de Verenigde Naties ook geconceptualiseerd als educatieve middelen en het kunnen bijdragen aan een *sense of belonging*. En meer recent zijn mensenrechten ook geconceptualiseerd als een dynamisch pluralisme, waarbij het bredere publiek wordt uitgenodigd om bij te dragen aan het vormen van adviezen. Dat verschillende begrippen van wat mensen zijn en wat rechten zijn, bestaan binnen de Verenigde Naties (ook al is er nog duidelijk een overwicht van het begrip van natuurlijke wetten), sluit aan bij de idee dat mensenrechtenrechten plaatsen van betwisting en constant in wording zijn (zie hoofdstuk 2).

Dat ondanks het pluralisme in mensenrechten, nog steeds voornamelijk geleund wordt op de idee van natuurlijke wetten, neutraliteit, en singulaire universaliteit is ook te zien in het mensenrechtenonderwijs dat de Verenigde Naties propageert. Dit is des te opmerkelijk omdat, wanneer het over onderwijs in het algemeen gaat, de Verenigde Naties expliciet pluralisme blijft benadrukken. Dit houdt onder meer in dat onderwijs kennis, bijdragen, talen en perspectieven van verschillende sociale groepen binnen naties en wereldwijd moet behelzen, en dat de rol van socialisatie en geïnstitutionaliseerde ongelijkheden deel uit moet maken van onderwijs. Dit wordt niet vereist van mensenrechtenonderwijs. In plaats daarvan behelst het mensenrechtenonderwijs dat de Verenigde Naties promoot, een discourse waarin mensenrechten als vaste normen en als noodzakelijkerwijs goed worden geconceptualiseerd. Uit hoofdstuk 2 en 3 volgt dat deze wijze van onderwijzen juist bijdraagt aan het normaliseren en naturaliseren van racisme en de *global color line*.

Daarmee geeft het leerlingen niet de juiste tools om te begrijpen hoe de structuur en mensenrechten van de Verenigde Naties bij kan dragen aan racisme en de *global color line*.

Hoofdstuk 4 gaat in op Curaçao, een eiland in het Caribisch gebied net van de kust van Venezuela en een niet-soevereine (althans juridisch niet) natie binnen het Koninkrijk der Nederlanden. Het hoofdstuk schetst een context met betrekking tot mensenrechten, ras, nationale identiteit en onderwijs in Curaçao. Het hoofdstuk betoogt dat het territorium van en de mensen in Curaçao (net als de andere Caribische eilanden binnen het Koninkrijk) intrinsiek met verbonden zijn en zijn geweest met het territorium van en de mensen in Nederland. Een verbinding die historisch gezien beïnvloed is geweest door racialisering en racisme. Dit leidde tot hegemonisch gerechtvaardigde conceptuele en juridische verschillen tussen Nederland en Curaçao. Curaçao was daarbij juridisch en conceptueel minder vrij, minder gelijk, minder soeverein. Het zijn verschillen die te classificeren zijn als een onderdeel van de *global color line*. De effecten hiervan kunnen nog steeds teruggevonden worden in het Statuut van het Koninkrijk der Nederlanden van 1954. Dit Statuut codificeert de relatie tussen Curaçao en Nederland. Verder, worden de populaties van Curaçao en Nederland (en ook die van Aruba en Sint Maarten, de andere twee landen binnen het Koninkrijk) raciaal geëssentialiseerd in hegemonische academische concepten en nationale identiteiten. Hoofdstuk 4 beargumenteerd dat, gelet op essentialiserende discursief geïnstitutionaliseerde ongelijkheden binnen het Koninkrijk, er nog steeds sprake is van een koloniale staat met koloniën, geïnstitutionaliseerd racisme en een voortzetting van de *global color line*. De voortdurende gevolgen hiervan zijn onder meer nog te vinden in hoe mensenrechten zijn gecodificeerd en hoe onderwijs wordt verzorgd.

Nadat in hoofdstuk 4 de context van Curaçao is geschetst, richt hoofdstuk 5 zich op mensenrechten en racisme in de basisvorming van door de overheid gesubsidieerde HAVO/VWO scholen. Hoewel de overheid eisen kan stellen aan de inhoud van het te verzorgen onderwijs, wordt juridisch niet vereist dat scholen in de basisvorming mensenrechtenonderwijs verzorgen. Dit is ondanks dat het Koninkrijk hiertoe wel een internationaalrechtelijke verplichting is. Dat scholen naar Curaçaos recht niet expliciet vereist zijn mensenrechtenonderwijs te verzorgen neemt niet weg dat onderwijs verzorgd wordt dat te classificeren is als mensenrechtenonderwijs.

Zowel schoolhoofden als docenten associeerden mensenrechtenonderwijs in de basisvorming met het vak geschiedenis wanneer er wordt gedoceerd over de Trans-Atlantische slavernij en de Franse revolutie. De onderwerpen mensenrechten, rechten en vrijheden komen dan aan bod. Bij het doceren over deze onderwerpen moeten docenten het vooral doen met onderwijsmateriaal dat ongeschikt is voor de lokale populatie: de boeken die de kern vormen van het vak zijn Nederlandse boeken. Deze boeken zijn Eurocentrisch en Nederlandcentrisch. Behalve Europa en de VS lijkt bijna heel de rest van de wereld – inclusief Curaçao, die nog steeds deel uitmaakt van het Koninkrijk – geen geschiedenis te hebben. Een kritische bespreking van de verhouding tussen Curaçao en Nederland en de rol van ras, is daarom nog verder te zoeken. Bovendien houden deze boeken concepten aan die bijdragen aan het essentialiseren en het hiërarchisch plaatsen van mensen en samenlevingen. Zo goed als ze kunnen proberen docenten om te gaan met het gebrek aan geschikt materiaal. Bijvoorbeeld door het materiaal te vullen met het oude en inmiddels voor een significant deel achterhaalde boek *Nos Pasado*, door zelf teksten te schrijven, door een stripboek te gebruiken, of ander materiaal te gebruiken. In verschillende maten draagt dit aanvullende materiaal bij aan racialisering en de *global color line*. Het valt op dat 'ras' niet (kritisch) bevraagd wordt door het onderwijsmateriaal ondanks dat ras een belangrijke rol speelt in de Trans-Atlantische slavernij en de Franse revolutie. Docenten doen dit ook niet tijdens de les. Voor zover zij dit wel zouden doen zou elke docent dit anders doen, omdat elke participerende docent een ander begrip heeft van wat ras is.

Leerlingen die participeerden aan dit onderzoek waren juist heel stellig dat zij geen mensenrechtenonderwijs ontvangen op school. Mensenrechten, stelden zij, gaat over jezelf kunnen zijn, eigen keuzes kunnen maken, en mensenrechten zijn er voor iedereen. Leerlingen stelden dat zij op school niet leren over het leven. In tegenstelling stelden de meeste leerlingen dat zij buiten school leerden – onder meer over mensenrechten – en dat zij de opgedane kennis toepasten op school. Op school kunnen zij oefenen voor later. Wat hier ook van zij, het is heel duidelijk dat leerlingen nadenken en discussiëren over hun realiteit, hun identiteiten, rechten, verantwoordelijkheden. Zij passen deze kennis ook (impliciet) toe in de klas. Leerlingen hebben zij het ook over geïnstitutionaliseerde verschillen en positionaliteit. De relatie tussen Curaçao en Nederland, en de verhouding tussen Nederlands zijn en Curaçaos zijn, zijn ook onderwerpen die leerlingen in dit verband bezig houden. Deze onderwerpen brengen leerlingen echter niet in verband met mensenrechten. Bij het bespreken van deze onderwerpen werd al snel duidelijk dat de initiële gedachte dat mensenrechten er voor ieder mens zijn, niet zo simpel is als het lijkt. Onder de leerlingen bestonden namelijk verschillende ideeën over wat mensen zijn. En al sprekende werden ras en nationale identiteit dan weer geconceptualiseerd als essentialistisch en dan weer niet. En hoewel leerlingen echt wel hun eigen idee hebben van wat mensenrechten zijn, lijkt er onder leerlingen vrijwel geen kennis te zijn van juridische mensenrechten. Noch van nationale noch van internationale mensenrechten. Een associatie die gemaakt werd met juridische mensenrechten was demonstratie en revolutie, en demonstratie en revolutie werden niet als iets positiefs gezien.

Hoofdstuk 6 van dit werk omvat een Engelse samenvatting, een conclusie waarin antwoord wordt gegeven op de onderzoeksvraag, en enkele aanbevelingen.

Kort concluderend toont dit onderzoek dat de mate waarin mensenrechtenonderwijs bijdraagt aan racisme of racisme juist tegengaat afhangt van de mate waarin het de hegemonische normalisatie en naturalisatie van racisme tegengaat. Dit is dus afhankelijk van het type kennisproductie dat plaatsvindt in mensenrechtenonderwijs. Om hegemonische normalisatie en naturalisatie van racisme tegen te gaan dienen filosofische concepten kritisch bevraagd te worden in plaats van simpel weg te doen alsof volstaan kan worden met een referentie aan natuurwetten, God, of andere essentialistische denkwijzen. Mensenrechtenonderwijs zou de-essentialisatie, historiciteit, posititionaliteit (en dus ook identiteit en macht) kritisch moeten bevragen. Mensenrechtenonderwijs gaat dan expliciet niet alleen over geinstitutionaliseerde ongelijkheden, maar ook over subjectieve gevoelens van het zelf en *belonging*. Zoals we hebben gezien staat het mensenrechtenraamwerk van de Verenigde Naties mensenrechtenonderwijs voor dat uitgaat van natuurwetten, singulaire universaliteit, en neutraliteit. Dit gaat de normalisatie en naturalisatie van racisme en de *global color line* niet tegen. Bovendien lijken de ongelijkheden in de structuur van de Verenigde Naties zelf geen onderwerp van discussie in mensenrechtenonderwijs. Tijdens de basisvorming op HAVO/VWO scholen in Curaçao is er geen module over mensenrechtenonderwijs maar wordt wel een cultureel archief opgebouwd die geassocieerd kan worden met mensenrechten. In dat cultureel archief vindt voornamelijk een voortzetting plaats van bestaande hegemonische Westerse concepten die bijdragen aan de normalisatie en naturalisatie van racisme en de *global color line*. Mensenrechtenonderwijs, of wanneer het cultureel archief met betrekking tot mensenrechten wordt opgebouwd dient dus een grondige herziening door te gaan. Leerlingen zijn hier niet alleen al aan toe, zij tonen dat zij zelf al denk over en handelen naar hun inzichten over de onderwerpen die mensenrechten raken.

APPENDIX 1

STATE FUNDED SCHOOLS AND THEIR SCHOOL BOARDS

State funded primary, secondary, and vocational schools (including special education) all fall under their own school boards. Schoolboards manage and further regulate the schools. Curaçao has a total of 7 school boards that manage state funded schools.[402] Of these seven boards, four have pre-university secondary schools, namely:

- Dienst Openbare Scholen (DOS), a governmental body for public schools;
- Stichting R.K. Centraal Schoolbestuur (RKCS), a foundation responsible schools that provide education based on Roman-Catholic principles;
- Vereniging Protestants Christelijk Onderwijs (VPCO), an association responsible for schools that provide education based on Protestant principles;
- Fundashon Skol Humanista na Papiamentu (FSHP), a foundation that provides education in the Papiamentu and English language based on humanist philosophy.

STATE-FUNDED PRE-UNIVERSITY SECONDARY SCHOOLS

Curaçao has five state funded pre-university secondary schools, namely: Kolegio Alejandro Paula (managed by DOS), Radulphus (managed by RKCS), Maria Immaculata Lyceum (managed by RKCS), Albert Schweitzer (managed by VPCO), SKAIH pre-university (managed by FSHP).[403] I performed field research in 2019 during the 2018-2019 school year. This was when SKAIH pre-university opened its doors to students, for the first year of the basic formation phase. It then only provided for the first year of (the basic formation phase) of pre-university. Since this research focused on the last and thus second year of the basic formation phase, this research does not include an investigation into SKAIH pre-university.

Characteristics of the four schools:

- Vocation (non-vocational or religious);
- School vision;
- Composition of the pupil population in terms of number, class and ethnic background;
- Geographical location of the schools;
- General information online about the schools and the education that they provide.

[402] These are: Dienst Openbare Scholen, Stichting R.K. Centraal Schoolbestuur (RKCS), Vereniging Protestants Christelijk Onderwijs (VPCO), Fundashon Skol Humanista na Papiamentu (FSHP), Schoolbestuur der Zevende Dag Adventisten (Advent Schoolbestuur), Stichting Christelijk Onderwijs New Song (SCONS), and Stichting Christelijk Onderwijs der Evangelische Broedergemeente (SCOEBG).

[403] There are four private schools that offer *havo/vwo* or the equivalent, namely: Curaçao American Preparatory school, International School of Curaçao, Miguel Pourier Academy, and Vespucci College. There are also two private schools that offer *vsbo, havo* and *vwo,* namely: Abel Tasman College and Omega College. See the government's yearly educational report (*onderwijsverslag*) for the year 2017-2018 (the latest available while writing this work): https://gobiernu.cw/wp-content/uploads/2019/07/De_Staat_van_het_Onderwijs_op_Cura__ao_2017-2018.pdf .

These characteristics might have an influence on the content of education taught at the schools, with regard to racialization, race, racism, and human rights. For race and racism, and racial segregation in schools, see chapter 4 and Roe (2016).

There are no studies on the abovementioned characteristics (except for government reports on the number of pupils, the gender of pupils, and their educational accomplishments).[404] Instead the data below is based on the information on the schools' websites and information provided by the headmasters. I supplement this with a category 'according to others' to add descriptions I heard during the time I lived in Curaçao and when I did the field research.

School	Kolegio Alejandro Paula (KAP)	Maria Immaculata (MIL)	Radulphus	Albert Schweitzer HAVO VWO (ASHV)
Vocation	Non-vocational, public school	Roman Catholic	Roman Catholic	Protestant
Vision	Education to enable pupils to develop into intellectually skilled, versatile and socially resilient world citizens in a rapidly changing multicultural information society.	Education to render knowledge, insight, subject-specific and general skills so that pupils are able to achieve good study results now and later. The Roman Catholic faith, plays a major role.	Education in which the Catholic-Christian philosophy of life (*levensbeschouwing*), including ecumenism, is central.	To educate independent world citizens who can continue their education anywhere in the world. Learning to think critically regarding Curaçaoan society and beyond is central.
Language of instruction	Dutch	Dutch	Dutch	Dutch and bilingual education in Dutch and English
Pupil population according to respective headmasters	700 pupils. Pupils of a variety of ethnic, and religious/non-vocational backgrounds, and from a higher social/economic class.	800 pupils. Pupils of a lower socio-economic class, mostly Christian (not only Roman Catholic) disadvantaged families. A significant number of pupils from Bandabou, and pupils from families who speak other languages such as Spanish.	Pupils of a high social-economic standing, with a significant number of pupils being children of doctors, lawyers, and politicians. The headmaster explained that at a certain point, they had pupils from 35 different countries, that a lot of the pupils are bilingual, often speaking a	450 pupils. The majority of the pupils are Antillean.[405] An increasing percentage of 35-40% of the pupils are from The Netherlands. Reputation of being an elite school.

[404] For the school year 2017-2018, see: https://gobiernu.cw/wp-content/uploads/2019/07/De_Staat_van_het_Onderwijs_op_Cura__ao_2017-2018.pdf

[405] Description used by the headmaster.

			combination of English, Papiamentu or Dutch, and that around three fourths of the pupils speak Papiamentu.	
Geographical location	Area which traditionally houses people of a higher social-economic standing, namely Van Engelen, Mahaai, Damacor and Emmastad.	The school is also located in an area with multiple neighborhoods, inhabited by lower socio-economic classes. MIL is also the *havo*/*vwo* school that is closest to Bandabou, the western side of Curaçao, which is commonly known for or associated with its lower socio-economic standing and a high number of descendants of former enslaved people.	Area which traditionally houses people of a higher social-economic standing, namely: Van Engelen, Mahaai, Damacor and Emmastad.	ASHV is located in the middle class neighborhood Salinja.
Information online	KAP is the oldest secondary school of the Netherlands Antilles, established in 1942. KAP's website provides information on the establishment of the school, the current organization and composition of the school, the organization of its educational programs, rights, regulations and duties, exams and it sums up the school subjects that are taught in the	Established in 1949. information on the establishment of the school, the current organization and composition of the school, the organization of its educational programs, rights, regulations and duties, exams and it sums up the school subjects that are taught in the different grades. It does not provide school subject descriptions or a list of compulsory literature or educational material.	The school is named after friar Radulphus Hermus, who worked in the Dutch Antilles from 1890 to 1959 in different positions in the education field. It was established in 1948, and has around 1200 pupils. Its website provides information on the establishment of the school, the current organization and composition of the school, the organization of its educational programs, rights, regulations and duties, exams and it sums up the school	

	different grades. Although not always complete, the website also includes school subject descriptions, lists of compulsory literature, and sometimes even the actual educational material. The school was formerly named Peter Stuyvesant College. In 2011 the school changed its name to Kolegio Alejandro Paula, after Dr. Alejandro Paula, a Curaçaoan academic and politician. It is clear on the KAP's website that this change of name has taken place (the school website's url is still kap-psc.com) it does not provide any information on *why* this change took place. Not on its website and not in the online information booklet.[406]		subjects that are taught each year. It does not provide school subject descriptions or a list of compulsory literature or educational material.	

I conducted participant observation and held focus groups with KAP and ASHV pupils. I also interviewed teachers from the four schools and analyzed the textbooks.

[406] This is of particular interest because Dr. Paula wrote on 'race issues' and taught human rights at the then University of the Netherlands Antilles. The change of name is controversial because Peter Stuyvesant, after whom the school was first named, was one of the directors of the West India Company, in Aruba, Bonaire and Curaçao. The WIC was – amongst others – involved in the Transatlantic slave trade.

ONE-ON-ONE SEMI-STRUCTURED INTERVIEWS

I conducted semi-structured interviews with the teachers. I asked the teachers at least the following questions:

- is human rights education provided for?

- what are human rights according to you?

- what is race?

- do you teach about the right to equality or not to be discriminated against on the basis of race?

I interviewed the following history teachers:

T1	History teacher havo/vwo
T2	History teacher havo/vwo
T3	History teacher havo/vwo
T4	History teacher havo/vwo
T5	History teacher havo/vwo
T9:	History teacher havo/vwo

I also asked the headmasters if their schools have student councils. After all, student councils are potential spaces for pupils to have a say in decision-making processes concerning them, which could be interpreted as being part of human rights education.[407] This led me to interview three other teachers: T10, T11, and T12.

T10:	Teacher involved with Kiwanis
T11	Teacher involved with student council
T12	Teacher involved with student council

During my three-months stay in Curaçao, I also spoke to people outside of the schools in question. Amongst these were the minister of Education, Science, Culture and Sport. I also interviewed two civil servants from the educational policy organization of the same ministry, O1 and O2.

Minister of Education, Science, Culture and Sport	

[407] As we have seen in chapter 3, including children in decision making processes in issues concerning them is a Children's right.

O1	Officer of the education policy organization of the Ministry for Education
O2	Officer of the education policy organization of the Ministry for Education

In order to have a sense of what else takes place in Curaçao within the field of human rights education, I also spoke with people from private organizations that are explicitly doing something related to human rights education. With this I mean that in their educational activities, they explicitly mention human rights. This led me to speak with people from:

- Bos di Hubentut: a foundation focused on educating youngsters within social, cultural, political and economic fields, G4
- Aliansa pa kombatí violensia doméstiko i abusu kontra di mucha: an alliance of different organizations involved in combatting and preventing domestic violence and child abuse, G4 and G5
- Medialab: an organization focused on media literacy, G6, G7 and G8
- Steering group International Convention for the Rights of the Child: a steering group established by the government to assess the implementation of the CRC, G9
- Nationaal comite 4 en 5 mei – as organization from The Netherlands focused on commemorating, celebrating and keeping alive memories concerning WWII, G6

G4	Member Bos di Hubentut and member of Aliansa
G5	Member Aliansa
G6	Member Medialab and Cooperating with Comité 4 en 5 mei
G7	Member Medialab
G8	Member Medialab
G9	Member Steering group International Convention for the Rights of the Child

Of course, I welcomed conversations with others who felt like sharing something with me concerning human rights education and race, either during the three-month field research in Curaçao in 2019 or when I lived in Curaçao in the period from November 2014 until March 2018. This is how I came to speak to a third-year 'Human and Society' (*mens en maatschappij*) teacher from one of Curaçao's *vsbo*'s, T7. These were also subjects that also came up when I spoke to friends and acquaintances.

FOCUS GROUPS

I did not conduct individual interviews with pupils. Instead, I spoke with them in focus groups. I held focus groups with KAP and ASHV pupils.

KAP is the only non-vocational state funded pre-university school in Curaçao. According to the headmaster, the school has pupils from a variety of ethnic, and religious/non-vocational backgrounds, and from a higher social/economic class. ASHV is one of the three vocational state funded pre-university schools in Curaçao. According to the headmaster, the majority of the pupils are Antillean,[408] but a significant and increasing percentage of 35-40% of the pupils are from the Netherlands. It has the reputation of being an elite school.

At KAP, during a History class (in which I conducted participant observation), I invited pupils from the second-grade class to participate in this investigation. I told them that I was doing research into human rights education. Five KAP pupils participated in focus groups, P1, P2, P3, P4, P5. We met twice on the school premises, where we decided to sit on benches under a tree in the schoolyard.

Participants focus group KAP:

P1	Second grade, 14 years old, born in Venezuela, female
P2	Second grade, 14 years old, born in The Netherlands, female
P3	Second grade, 14 years old, born in Curaçao, female
P4	Second grade, 14 years old, born in Curaçao, male
P5	Second grade, 13 years old, born in Curaçao, male

When I asked the headmasters about their student councils, one of the headmasters directed me to a teacher involved with their student council, T13. T13 proposed I speak with a number of pupils on this matter. In this way a spontaneous focus group was created with five pupils who wre selected by the aforementioned teacher. These pupils, P6, P7, P8, P9, P10, were from different school years, ranging from the first to the fifth school year.

Participants focus group ASHV:

P6	Fourth grade, 16 years old, enrolled from vsbo, female
P7	Fifth grade, vwo, male
P8	Fourth grade, havo, male

[408] *Antilliaans*. This is the word used by the headmaster. I found this remarkable as I have come to learn that most people in Curaçao identify themselves as a *Yu di Korsou* or *Curasoleño*, and are not inclined to identify themselves as Antillean (also see chapter 4). It is possible that the headmaster meant to indicate people from other Antillean islands too.

P9	Fourth grade, havo, female
P10	First grade, female

PARTICIPANT OBSERVATION

As mentioned above, all headmasters indicated that if there was any human rights education to be found in the basic education years at their schools, it was to be found in History classes.

I conducted participant observation in two schools, KAP and ASHV, during History classes. I did not conduct participant observation at MIL and Radolphus. The reason for this is that the teacher at MIL did not provide me access to the history classes. At Radulphus, both the headmaster and T4 explained there is no human rights education in the basic education phase.

At the KAP I conducted participant observation during six classes. Five of them were History classes taught by T1 to the same second-grade class from which I also invited the pupils for the focus group. The sixth class was a History class also taught by T1, but to another second-grade class. The latter served for me to observe if the class composition was comparable to the other class and to observe if the class was taught in a similar or significantly different manner.

At the ASHV I conducted participant observation during one class. It was a second-grade History class taught by T3.

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