

## Between ethics, morality and law

The position of the Dutch government when the impending disappearance of national, cultural heritage caused commotion.<sup>1</sup>



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A thesis presented by  
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<sup>1</sup> Photo: ANP.

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## **Abstract**

As the most powerful authority, the Dutch government creates laws and regulations regarding the selection, management and disposal of national, cultural heritage. However, the state itself takes a half-active / half-alooof attitude in the output of the heritage act. The government points to the law, but this does not always seem to prevent a sale to a private foreign collector. When heritage becomes contested, people mainly point to the ethical objections for the sale and the lack of ownership and associated responsibilities of the government.

In this thesis I have attempted to answer the following research question: What position did the Dutch government take when the impending disappearance of heritage caused commotion between 2011 - 2019, and what does this say about the power, ownership and responsibility of the state? This thesis research aimed for a better alignment of the use of the Heritage Act and -policy from 2019 onwards in order to prevent further scandals.

In doing so, three case studies were analysed in order to unravel the position of the government in relation to the societal debate about the contested heritage. In the first case study, the public debate focussed on the denial of the *Ethical Code of Museums*, when the painting of *the Schoolboys* was sold. In the second case study, obliged the status of protected property the government to act after the loan-agreement of the *Rintel Chanoekia* was cancelled in 2015. The new Heritage Law obliged all parties involved to pay for the object, but none wanted to take the full responsibility. In the third case study, the artwork of *Rubens* was private property of an ex-princess and not protected by the WBC-list. The auction was legal but the process was criticized on ethical grounds.

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## Introduction

The value of art is often not expressed in terms of money. Nevertheless, in the past thirty years, art treasures have been regularly sold to the highest bidder; often private collectors from abroad. This shielded the works from the public which led to social debates about ownership and the freedom to dispose objects. For example, a major abuse came to light in 1987 when the sale of a painting had to pay for the renovation of a cultural center in Hilversum. The municipality of Hilversum had proposed this sale in order to fill the deficits in the culture budget. The work painting *Composition with two lines* (1931) made by Piet Mondriaan, was seen as an important object by a major Dutch artist, which was deemed to have more cultural value than could ever be fetched at an auction. Besides that, the object was a gift and was on loan to the Stedelijk Museum in Amsterdam since 37 years. Encouraged by the Stedelijk Museum, people expressed their discontent which led to Minister Brinkman's proposal to suspend the council's decision in order to enable the Stedelijk Museum to purchase the work. The work was eventually purchased for 2.5 million euros in collaboration with the Prince Bernhard Fund, the Rembrandt Association and the municipality of Amsterdam.<sup>2</sup> After this incident, the Museum Association initiated the Code of Ethics for Museums (1991) and the Guidance on the Disposal of Museum Objects (1999). These guidelines ensured that museums could legitimize their disposal policy. This also enabled other institutions to take over or buy a work before it would end up on the art market.<sup>3</sup> However, this code could not prevent the problems arising from the sale of artworks by private collectors. In 2005 there was another fuss about the sale of two works in the Frans Hals Museum when the municipality of Haarlem decided to sell *Academie* (1655) by Michael Sweerts and *Phaeton Asking Apollo to Drive the Sun Chariot* (1804), by Benjamin West. The sale was initiated by the municipality and implemented by the museum. Like the Mondriaan painting from the first example, these paintings were also once donated to the museum by private collectors. The proceeds of 7.5 million euros were supposed to be used to build a new depot and to purchase new works of art.<sup>4</sup> State Secretary for Culture Medy van der Laan did not prohibit the sale herself, but explicitly asked the municipality to stop the sale and look for alternative funding. Van der Laan also emphasized that the government must act as a protector of the Dutch heritage in a responsible manner. According to van der Laan ' , it is the responsibility of the municipality of Haarlem to act out of the national interest and to protect and manage the art collection." <sup>5</sup> Even though this view is shared by the Chairman of the

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<sup>2</sup> Geheugen van Nederland. (1989): 76.

<sup>3</sup> Museumvereniging (2016): Website.

<sup>4</sup> Ramaer (2005): Newspaper.

<sup>5</sup> Laan (2006): Newspaper.

Museum, the Ministry responded by saying that they do not intervene in such procedures and referred to the Code of Ethics for Museums.<sup>6</sup> The Museum eventually decided to refrain from selling the paintings due to 'technical complexities and financial reasons'. Moreover, the buyer of the art works (The Rijksmuseum of Amsterdam) also expressed their disappointment in regards to the course of events and believes that the municipality of Haarlem will need to solve this issue.<sup>7</sup> When this attitude offered no solution, the municipality decided to finance the new deposit from its own pocket and the ministry decided that they did not want to be involved in similar cases.<sup>8</sup> This solution led to the introduction of the Cultural Heritage Act to give the government some ruling legal decisiveness. In both examples the artworks were originally donated to the museum. A municipality forces the museum to sell the art and use the proceeds for other means, such as the renovation of a building or the purchase of new work. This contradicts the long history of the municipality and the government to cover these costs. When the museum sold the work, they were criticized by fellow institutions. The Government criticises the way things work but refrains from acting or intervening. Instead, they continue to fix the reoccurring issues without actively participating in any discussions whatsoever. It has readjusted the law slightly whenever presented with an incident and continued to do so ever since.

Although museums have to ensure compliance to the *Code of Ethics for Museums* and the *Guidance on the Disposal of Museum Objects (LAMO)*, museums often still fail to carry out such codes. As the highest authority in the country, the central government is often expected to contribute to solving the nation's disputes about the retention of these contested objects. The government creates preservation laws and policies to regulate whether something is labelled as national heritage or not but does not want to be judgemental herself. The Dutch government dissociates itself from judgment of culture and the arts.<sup>9</sup> The ethical code of museums and the distant position of the government together form an unclear mix of policy where a clear owner or legal guideline seems to be missing. Contested, national heritage that is not part of the *Cultural Heritage Preservation Act (WBC)* and can therefore be auctioned off freely to anyone interested. Now and then a case causes uproar about the guidelines for deaccessioning and the role of the government in that. It is a recurrent debate about the ethical and legal guidelines of the national, movable heritage.

This recurrence indicates the importance of academic analysis about the position of the Dutch government in the debates about contested, national heritage. This study aims to make the power

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<sup>6</sup> Sleddering (2006): Newspaper.

<sup>7</sup> Grondel (2006): Newspaper.

<sup>8</sup> Ramaer (2005): Newspaper.

<sup>9</sup> According to the Thorbecke principal, art and culture are not a government's affair, in so far as the Government has no judgment or any authority in the field of art. Pots (2000):

relations between the different actors explicit by concepts of ownership and responsibility. Many scholars have written about the relation between heritage, national identity and society. Scientific research into the position of the government in the debate about contested, Dutch heritage is lacking. Newspapers write about it, but scientific articles are sparse. This thesis is therefore written for those who are determined to explore and research the policy of national, tangible heritage in the Netherlands. These insights might be an addition to the critical heritage studies and sought in a subsequent study for a better alignment of the use of the Heritage Act and -policy in 2019 and in the future which can prevent further scandals. In this thesis I restrict myself to not solve the problem of *how* to deal with contested heritage but my aim is to unravel patterns about responsibility, ownership and power within the past debates. The findings of this thesis will contribute to a better understanding of the discourse on contested heritage in the Netherlands since 2011. The central research question is: **What position did the Dutch government take when the impeding disappearance of heritage caused commotion between 2011 - 2019, and what does this say about the power, ownership and responsibility of the state?**

### Method & Analysis

This thesis is a discourse analysis qualitative research in the framework of the critical heritage studies. In doing so, I will analyze the Authorized Heritage Discourse to compare the case study with each other. Qualitative research highlights the peculiarity of the situation and investigates the meaning behind the interactions and processes. By naming the characteristics of the phenomenon I can analyze and map the phenomenon in order to get answers to the problems of the situation.<sup>10</sup> The discourse is a cultural frame of mind, a framework of ideas and concept which are expressed in a number of actions where meaning is given to both tangible and intangible things.<sup>11</sup> The characteristics of this phenomenon will therefore be described by the discourse analysis of several case studies from the past 8 years. For that I have to pay attention to everything that is part of the phenomenon, to see from which elements it is made up and to see who is involved. On that basis I can make a statement about the role of this case study in a larger context.<sup>12</sup> This research uses concepts from the Critical heritage Studies in order to validate claims that the state is a powerful actor that selects and authorizes heritage as national.<sup>13</sup> Heritage is used to communicate and therefore it is important who defines what is heritage or not and who is in the power to act. This research is therefore done from the perspective of the Authorized Heritage Discourse (AHD), a concept coined by Laurajane Smith, Professor in Heritage Studies at the

<sup>10</sup> Boeije (2006): 44-45

<sup>11</sup> Altheide & Johnson (1994): 485 - 499.

<sup>12</sup> Maso (1987); Boeije (2005): 35-41.

<sup>13</sup> Smith (2017): 19

Met opmaak: Engels (Verenigd Koninkrijk)

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Australian National University.<sup>14</sup> Smith defines the Western discourse on heritage as "a specific ensemble of ideas, concepts, and categorizations that are produced, reproduced, and transformed into a particular set of practices and through which meaning is given to physical and social realities".<sup>15</sup> The AHD and its significance for this research will be described further in the Theoretical Framework section. Reflecting on the analysis process is important because it is a scientific justification for the interpretations, positions, conclusions and recommendations used in the research.<sup>16</sup> Therefore I will collect structure and analyse all the data that I gather during the research process.<sup>17</sup> According to Bogdan & Biklen the analysis of data is "the process of systematically searching and arranging [of] the (...) materials that you accumulate to increase your understanding of them and to enable you to present what you have discovered to others. Analysis involves working with data, organizing them, breaking them into manageable units, synthesizing them, searching for patterns, discovering what is important and what is to be learned, and deciding what you will tell others."<sup>18</sup> Therefore I will assess three case studies about contested, Dutch, tangible heritage in the period between 2011 and 2019 with the use of the AHD. The three case studies illustrate the different ways the government deals with its national heritage. The case studies also differ from each another in various aspects: the actor that started the national debate, the position of the government and the legally protected status of the object are all different. The first section of this thesis outlines the theoretical framework, and discusses theories, concepts, and terms coined and used by other critical cultural researchers on the topics of heritage, ownership, responsibility, and the relation between the Dutch government and the arts. The concept of ownership and responsibility will be analysed with methods of the Authorized Heritage Discourse. Three case studies will be used to analyse which position the different stakeholders had in the discourse. All three case studies concern recent contested tangible heritage between 2011 – 2019 concerning the repelling of art objects that are contested and labelled as an important object for our national identity. All of the cases caused a change in the field of Heritage Policy. Each case study will be analysed in three steps. First, the background and the recent purchasing history of the work will be described. Secondly, a reconstruction is made of the different stakeholders and important shifts that occurred between 2015 and 2017. Furthermore, I analyse the claims that are made by all the stakeholders involved about ownership and responsibility. This reveals the power relations and positioning of the government and the other stakeholders. At last I describe the limitations of this study and I make recommendations for further research. The first case-study is about the auction of the painting *The Schoolboys* (2011), made by Marlene Dumas. This case study is chosen for this thesis

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<sup>14</sup> Smith (2011):

<sup>15</sup> Smith (2006): 43.

<sup>16</sup> Vallet, (2003): 47-68

<sup>17</sup> Boeije (2005): 73.

<sup>18</sup> Bogdan & Biklen (1982): 153

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because of the three reasons. Firstly, it was a scandal in the national art world and wherein the government did little to intervene. The scandal received (inter)national media and political coverage and was the start of a review of the LAMO. The art object was owned by the municipality of Hilversum. The second case-study is about the auction of the *Rintel Chanoekia* (2016). This case study follows the discussion about whether a contested object should become national heritage and who has to take the responsibility to cancel an auction. It is an good example of an auction in which the government has a leading role. It marked the start of the Heritage Act of 2016. The art object was owned by the Jewish Historic Museum. The final case study is about how the government reacted to an auction of a Rubens drawing (2019), part of the royal collection. In this case the government had a passive role while the public debate was roaring. It resulted in a review of the Heritage Act initiated by an Art Commission. Also in this case the object offered for sale was private property of a member of the Royal House.

## Theoretical framework

Many actors participate in and contribute to the public debate surrounding contested heritage. They claim and disclaim, legitimize and de-legitimize cultural heritage and can feel affected when certain objects are contested when being repelled.<sup>19</sup> Especially when these objects are categorized as a symbol of national identity. This requires an analysis of the (re)positioning of these actors in the societal debate. This chapter provides an overview about the meaning and use of cultural heritage in our society. In doing so, I start by explaining the concept of cultural heritage followed by an analysis about the entanglement between heritage and the construction of a national identity. Furthermore, a description is made between the relation of heritage, identity and ownership. The conclusion elucidates the function of government in the construction, conservation and policy of national heritage. As a frame of mind, concepts and theories from *critical heritage studies* and the *authorized heritage discourse* are used. This gives an insight in the discussion about ownership, responsibility, validation and power in relation to the national, tangible, cultural heritage in the Netherland

### 1.1 Concept of heritage

Because I use many policy papers in this research, I use the definition of "cultural heritage" as defined by the National Service for Cultural Heritage (RCE). The Heritage Act and the RCE defines cultural heritage as: "(...) material and immaterial sources inherited from the past, created in the course of time by humans or arising from the interaction between people and the environment, which people, independently of the identify it as a reflection and expression of constantly evolving values, beliefs, knowledge and traditions and which provide them and future generations with a frame of reference."<sup>20</sup> The interaction implies a relevance to a particular society, on a particular location, in a particular moment in time. This definition already takes into account the changing valuation and the constantly developed reformulation of heritage.<sup>21</sup> Heritage is distinguished by the Cultural Heritage Agency (RCE), see picture 1. Intangible heritage includes all monuments which mainly focus on protecting against decay, degradation and change. The tangible heritage includes art, design and scientific collections. The policy on these objects mainly focuses on protecting against export and destruction.<sup>22</sup> Immaterial heritage includes a selection of traditions and rituals that are considered important and worthy of protection - living heritage and communities play an active role in it.<sup>23</sup>

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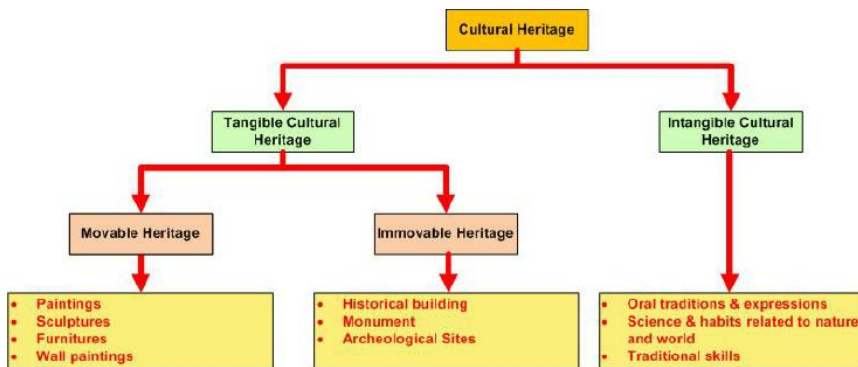
<sup>19</sup> Kalkman (2018): 3

<sup>20</sup> Rijksdienst voor Cultureel Erfgoed (2014): Erfgoedwet Artikel 1.1

<sup>21</sup> Graham, Ashworth, Tunbridge (2000): 2

<sup>22</sup> Rijksdienst voor het Cultureel Erfgoed (2019): Website.

<sup>23</sup> Rijksdienst voor het Cultureel Erfgoed (2019): Website.



Picture 1: Classification of cultural heritage as stated by Rijksdienst voor Cultureel Erfgoed Nederland.<sup>24</sup>

Scholars in the Critical Heritage Studies define heritage as a feature that was created in the past. However, they state that the meaning that is given to the heritage is contemporary instead of historical because of a constant change about meaning and values in our society.<sup>25</sup> Unlike history, which is based on historical facts or truthfulness, heritage is a kind of nostalgia, a 'yearning from the past'.<sup>26</sup> The meaning and the significance of heritage is set on the basis of the values, demands and requirements of contemporary society.<sup>27</sup> For this reason, heritage is not only appreciated for its aesthetic value in the past, because a certain taste changes over time. The remembrance of the past is enabled because of the current cultural tools that are used in the particular sociocultural setting of our society today, argues cultural anthropologist James Wertsch.<sup>28</sup> The reason why we select certain heritage in our society today is mainly for its contemporary economic, political, social or cultural purposes. These purposes are time-specific and change over time which insures that the value will not last for eternity. This does not only apply to the immaterial heritage but also to the material heritage.<sup>29</sup> In the critical heritage studies, many researchers emphasize that heritage is the result of a cultural production formed by process, verb or a communicative act.<sup>30</sup>

## 1.2. The construction of a national identity

The overarching framework of the values, morals and remembering and forgetting of a certain group is linked with claims about a shared identity: A community.<sup>31</sup> Art is predisposed to fulfil a social function

<sup>24</sup> Rijksdienst voor Cultureel Erfgoed (2014): Erfgoedwet Artikel 1.1

<sup>25</sup> Smith (2017): 19

<sup>26</sup> Lowenthal (1989): 7

<sup>27</sup> Ashworth and Graham: 29-31

<sup>28</sup> Wertsch 2002: 11

<sup>29</sup> Graham, Ashworth and Tunbridge: 30

<sup>30</sup> Smith (2017): 19

<sup>31</sup> Cohen (2013).

of legitimating social differences of different social groups within a larger community.<sup>32</sup> Governments claim specific heritage as national, in order to construct a shared, national identity of all the smaller communities in the society.<sup>33</sup> For example, at the start of the Dutch monarchy in 1848, King Willem 1 selected specific monuments as a symbol for the Dutch nationality. These objects were used as cement to unite all the different areas – and cultural backgrounds – of the Netherlands. Even today, the government recognizes the importance of a centrally organized art policy. The national value is then created by protecting certain objects through laws, policies and heritage agencies. With the use of Heritage, a powerful nation-state can selectively construct its national story, by choosing which heritage to highlight or forget. The government is also able to constantly teach and reteach the citizens at national and subnational level the story of the nation and its accompanying values and beliefs. This is all with the aim to keep its citizens familiar with the spirit of the nation. However, in the Netherlands, some of these valuable national objects or concepts spark heated public debate when these values, based on shared belief in the inevitable value of the art object for the nation, are challenged.<sup>34</sup> Not all the groups in our society share the same values when it comes to keeping a national collection, at any cost. These debates often deal with either direct or indirect references to the position of the national, cultural heritage in the Netherlands and the role of the museums, government and society in it.

### 1.3 Who owns the national heritage?

This debate about national heritage also led to questions about ownership and responsibility: To whom does the heritage belong and who is in control about defining if something is heritage or not? This discussion started from the late 1960s and onwards when the debates about restitution and the return of looted and expropriated cultural property came into the picture. These debates caused some shifts in the way the government and the audience governed their heritage. As a result, public ownership was no longer by definition ranked higher than private property.<sup>35</sup> The fall of the communist regime in 1988 also cast new dilemmas on common heritage and property rights.<sup>36</sup> Fifteen years later, the Dutch government also decided to withdraw of its role as financial beneficiary of the arts. Extensive cuts were made in the financing of the cultural sector in order to encourage the entrepreneurship of the institutions and makers. Private parties must co-finance and institutions had to raise more income. The arts were to become 'from everyone in society, not just as a hobby of a left-wing elite'. But the opinion

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Smith (2017): 26-27 ; Graham, Ashworth and Tunbridge: 34; Putnam (2000): 274;

<sup>32</sup> Bourdieu (1984): 7

<sup>33</sup> Frazer (1999):

<sup>34</sup> Kalkman (2018):

<sup>35</sup> Ibidem.

<sup>36</sup> Pettersson, Hagedorn-Saube, Jyrkkö, Teijamari, Weij (2000): 49-51

that art is not a governments' task is not always accepted by the general public. Just like the discussion about whether the government should pay alone or whether it also has substantive control over art, as the two controversies in the Introduction also showed. To investigate a discourse like this, scholars look at the powerful actors who shape the discussion. The most commonly used method is the *Authorized Heritage Discourse* (ADH), a term devised by Laurajane Smith, professor in the Heritage Studies, Anthropology & Archeology of the Australian National University.<sup>37</sup> Authorized Heritage Discourse describes the legitimization and de-legitimization of a dominant and professional gaze. Its authorization of 'the one who is gazing' is claimed by the other powerful actors in the field who justify their selections by the belief that the making of heritage can only be done by experts such as archaeologists, art historians and curators. Since powerful authorized institutions such as museums and the government select the heritage, the values placed upon those objects are not being questioned.<sup>38</sup> According to sociologist Pierre Bourdieu this is not automatically their own taste, but a confirmation to the values and morals of their social group.<sup>39</sup> This hypothesis of a constructed national heritage by some experts is being increasingly challenged in the face of the 'super-diversity' of lobbying groups and social networks, especially those located on the internet. Anthropologist David Harvey states that this led to a 'democracy of the construction and consumption of heritage'.<sup>40</sup> However, this multivocality can also lead to a clash when the different morals, values and interests clash. As a result, heritage becomes part of a social debate where an owner seems to be missing.<sup>41</sup> And in times of 'Twitter storms', the resilience of the public must certainly be taken into account as well. Associate Professor in Museology Susanna Pettersson pointed out on the Collection Mobility Board 2.0 of the European Union that standards, trust, and good networking form the basis for all co-operations in the field of Heritage Policy in contemporary times. It is 'universally accepted that one of the most important national assets belonging to the people is their heritage and the objects which constituted keys to their history; and that a necessary ingredient of sovereignty in a modern State was and should be an ownership by the State of these objects.'<sup>42</sup> This quote implies that it is inevitable that the heritage is owned by the people but that it nevertheless needs a governing party in order to moderate the multivocality of the contemporary society. Art policy can be seen as an attempt to influence the social functioning of art and heritage at a central level.<sup>43</sup>

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<sup>37</sup> Smith (2011)

<sup>38</sup> Waterton (2006): 339-355.

<sup>39</sup> Bourdieu (1984): 7

<sup>40</sup> Harvey (2008): 23.

<sup>41</sup> Zeijden, Elpers. (2017): 30

<sup>42</sup> Pettersson (2000): 89

<sup>43</sup>

#### 1.4 The government and the national heritage

The different actors within the cultural field and the society frequently turn to the state for answers. As the highest authority in the country, the central government is expected to contribute to solving the nation's disputes about the contested objects. However, in line with the Thorbecke principal (1862), the Dutch government dissociates itself from judgment of culture and the arts because it is not supposed to be a government's affair, in so far as the Government has no judgment or any authority in the field of art.<sup>44</sup> On the one hand, the government keeps a distance but on the other hand the government has the desire to monitor the national heritage and pays for it. This control is expressed through laws, policies, heritage agencies and a multitude of semi-governmental actors at many levels.<sup>50</sup> This double role of keeping control and distance leads to many struggles when certain heritage becomes contested. For this reason the Museum Association initiated the Code of Ethics for Museums (1991) and the Guidance on the Disposal of Museum Objects (1999). These guidelines ensured that museums could legitimize their disposal policy. This also enabled other institutions to take over or buy a work before it would end up on the art market.<sup>45</sup> However, this code could not provide an end to problems arising from the sale of artworks by private collectors. This solution resulted in the introduction of the Cultural Heritage Act in 2016 to give the government some ruling legal decisiveness. If these ethical codes are broken, one can always divert to the Dutch law. The laws are made by the government. One of the most important laws within the field of heritage studies is the Heritage Act of 2016. One of the aims of this act is to prevent objects and collections in private possession that are of special cultural-historical, scientific significance or of exceptional beauty from being lost to Dutch cultural heritage. If an item is deemed irreplaceable and indispensable, it can be placed in the protected cultural property register (WBC) which prevents the object from disposal.<sup>46</sup>

#### 1.5 Conclusion

The multivocality of the contemporary society changes the perception of ownership and power relations of the national heritage. However, this multivocality can also lead to a clash when the different morals, values and interests clash. As a result, heritage becomes part of a social debate where a moderator seems to be missing. As the highest authority in the country, the central government is expected to contribute to solving the nation's disputes about the contested objects. However, in line with the Thorbecke principal, the Dutch government dissociates itself from judgment of culture and

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<sup>44</sup> This "adage" has since become a benchmark in discussions that deal with the relationship between government and the arts, or broader, cultural life. It indicates how far the influence of the government in the field of culture may extend and is also used to emphasize "the autonomy of art and culture". The involvement with the arts was marginal and only concerned the visual arts, architecture and an aspect of literary policy, namely copyright. The attention for copyright was connected with the emphasis placed in the liberal views on the rights of the individual, authors in this case,

<sup>45</sup> Museumvereniging (2016): Website.

<sup>46</sup> Raad voor Cultuur (2019): Website.

the arts. However, the government has the desire to monitor the national heritage. This control is expressed through laws, policies, heritage agencies and a multitude of semi-governmental actors at many levels. This double role of keeping control and keeping your distance leads to many struggles when certain heritages become contested.

In the upcoming three chapters an investigation is made about the position of the society and the government in relation to the contested heritage. The interrelation between the actors involved will be shown in order to investigate the claims that are made on power, ownership and responsibility.

## 2.) The lost Schoolboys of Gouda (2011)



LOT 35 | PROPERTY FROM MUSEUM GOUDA, THE NETHERLANDS, SOLD TO BENEFIT THE COLLECTION FUND

Marlene Dumas (b. 1953)

*The Schoolboys*

**Price realised**  
GBP 1,105,250

**Estimate**  
GBP 700,000 - GBP 1,000,000

Follow lot

Add to Interests

Marlene Dumas (b. 1953)

*The Schoolboys*

signed, titled and dated 'M Dumas The Schoolboys 1986/7' (on the reverse)

oil on canvas

63 x 78¾in. (160 x 200cm.)

Painted in 1986-87

**Provenance**

Galerie Paul Andriess, Amsterdam (acquired in 1987).

Acquired from the above by the present owner.

Painting offered in the Christies brochure.<sup>47</sup>

The first case study entails the discussion in the (inter)national, cultural field about the selling of Marlene Dumas' painting *The Schoolboys* by MuseumgoudA in 2011. The auction was proposed by the city council of Gouda in order to overcome budget cuts. This chapter is divided in three parts. First, the background and the recent purchasing history of the work will be described. Secondly, a reconstruction is made of the different stakeholders and important shifts that occurred between 2011 and 2012. To conclude, I will analyse the claims that are made by all the stakeholders involved about ownership and responsibility. This reveals the power relations and positioning of the government and the other stakeholders.

<sup>47</sup> Christies (2011): Brochure.



## 2.1 The origin of *the Schoolboys*

The artist Marlene Dumas was represented by Gallery Paul Andriessse since 1987. In 1988 the painting *'The Schoolboys'* was bought by the municipality of Gouda to be part of museumgoudA, a city history museum in the Western Netherlands. They just started a collection of art that was made by female artists. A collection that was never been branded in such way. The municipality bought the painting from the Dumas gallery for 16.000 guilders and owned the painting ever since. The former director of MuseumgoudA at the time, Josine de Bruyn, purchased only contemporary art and women's art.<sup>48</sup> The painting was in line with that policy. On June 28<sup>th</sup> 2011, the painting was sold for 1.2 million euro to an unknown person at a Christies auction in London. As a lender, the Municipality of Gouda recommended MuseumgoudA to sell the painting so that a new deposit could be built from the proceeds and that new purchases would be made possible. A more detailed background of the artist and the artwork can be found in Attachment 2.

## 2.2 The discourse analysis 2011-2014

### 2.2.1 Gemeente Gouda

From 2012 on, the municipality of Gouda had to make substantial cuts. Due to the recession and extensive spending cuts from central government and perhaps the provincial government, the municipality was expected to receive a budget cut of €10 - €20 million from 2012 onwards. The Coalition Agreement *'Working together on Gouda'* assumes a bend of € 15 million annually.<sup>49</sup> The city council anticipated on this by phasing out the spending cuts in two periods. The first phase of austerity was in 2010-2012 and was a budget cut of € 5.6 million. The arguments stated in their report that 'by clustering facilities, applying the profit principle and promoting cultural entrepreneurship, it should be possible to keep the level of cultural facilities at a sufficient level. Cultural education, active cultural participation and cultural history and heritage therefore remain important means to put Gouda on the map.'<sup>50</sup> The second phase, which includes a € 9.4 million reversal, was part of the program of 2012 – 2014.<sup>51</sup> The national government gives municipalities a mandate to take care of their art collections. Although the opposition parties PvdA, GroenLinks, D66 and SP campaigned at national level against the reduction of the culture budget, the local level of these parties followed a different political track. MuseumgoudA had a council with parties like PvdA, VVD, CDA, D66 and Groenlinks. However, the council had chosen a 25% budget cut above the national's average and proposed a budget cut on MuseumgoudA of 50% in total.<sup>52</sup> This would result in a financial disaster for the museum. As a result,

<sup>48</sup> Historiek (2011): Website.

<sup>49</sup> Bovene (2010): Lettre.

<sup>50</sup> Gemeente Gouda (2010): 7.

<sup>51</sup> Gemeente Gouda (2017)

<sup>52</sup> Ibidem.

the city council came with the proposal to sell artworks in order to get extra money for other purchases and renovations.

### 2.2.2. MuseumgoudA

Besides the upcoming budget cuts, MuseumgoudA suffered from overdue maintenance of their collection and the build property. This changed the course of the museum. Previously museumgoudA focused in its collection management on the social history, migrants, women and contemporary art. In 2011, this course changed into religious art and historical objects like ceramics and clay pipes. In order to pay for the new purchases and restore old purchase like altarpieces, the 19<sup>th</sup>-century art and general collection management, the privatized institution needed to sell other artworks – like *The Schoolboys* - had to be sold. During negotiations between the municipality and the museum about the cutbacks, the sale was discussed, but on the condition that the money would go back to the museum. This happened indeed.<sup>53</sup> Director of the museum Gerard de Kleijn agreed that ‘it was a shame to sell work, but with the sale of one painting we can now realize everything we aspire as a museum.’<sup>54</sup>

### 2.2.3 Christies

Christie’s is the largest auction house for art and antiques in the world.<sup>55</sup> In a press release about the expected revenue, the museum says it is expecting € 800,000.<sup>56</sup> In the catalog of the auction, Christies expected revenue of € 790,000 to € 1,100,000. The work was eventually sold for €1.2 million euros of which €800,000 went to the museum and €400,000 to Christies. It was sold with a guarantee, which meant that the museum would at least get the €800.000, even if less money was collected. If more money is raised, that profit will go entirely to Christies.<sup>57</sup> It is questionable whether this deal was beneficial for any of the parties involved knowing that 30% of the collected amount disappeared into the pocket of a foreign auction house instead of taxing on a domestic sale. Besides that the work is gone, the taxpayer also sees nothing in return of her investment.

### 2.2.4. (Inter)national Museum Association

The actions of de Kleijn was not something that the Dutch Museum Association agreed to (NMV). By letting the painting be auctioned without first offering it to Dutch museums, MuseumgoudA violated the Guideline for Divesting Museum Collections (LAMO). This LAMO was the result of a law, proposed

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<sup>53</sup> Weide (2013)

<sup>54</sup> Kleijn (2011): Newspaper

<sup>55</sup> Christies (2019): Website.

<sup>56</sup> Kleijn (2011): Newspaper

<sup>57</sup> Christies (2011): 35.

in 1991 in order to help museums repelling objects, and respect the national treasures and the museum world.<sup>58</sup> Ignoring the LAMO was the reason the Dutch Museum Association (NMV) rejected the museum's conduct on their Extraordinary General Meeting to start the procedure for expelling museumgoudA's membership at the NMV as soon as possible. The chairman of the Museum Association concludes that (...) "the members are of the opinion in principle that a museum should never sell collection items to meet its financial needs. Especially in this time of austerity, in which museums are under pressure, it is important to underline this principle."<sup>59</sup> A final vote, the 'Voorstel tot uitzetting', on whether to go ahead with the expulsion, took place at its next meeting on 28 November 2011.<sup>60</sup> To gain external feedback on the case study of Gouda an executive meeting was organised by the Network of European *Museums Associations* (NEMO). During the meeting representatives' museums associations from European countries discussed similar issues around financially-motivated disposal and procedures for dealing with sale of collections from different European museums.<sup>61</sup> The committees of the NEMO vote for formulating Europe-wide guidelines in order to tackle the wide disparity between attitudes towards disposals. Maurice Davies, committee member of NEMO and the Museum Association United Kingdom concluded that it would be impossible to reach consensus when so many nations have yet to fully explore the issue, and those that have hold diverse opinions.<sup>62</sup> In the second meeting of the Dutch Museum Association the expulsion was staved off. The chairman only sees steadfastness in this turnaround: "Today it has been established that the unit must be preserved. The rows have closed. (...) We support the management and preservation of the collections."<sup>63</sup> As a result, the association concluded that it will look closely at the existing rules regarding the disposal policy and make changes in the LAMO and the Code of Conduct of the Museum Association, both on a national and international level.<sup>64</sup> Nevertheless, the existing ethical guidelines were not able to prevent the auction. A review of these guidelines will not change much about that. A stronger instrument was needed.

### 2.2.5 Cultural Heritage Preservation Act

Pursuant to Article 14a of the Cultural Heritage Preservation Act of 1991, it was prohibited to "move tangible property that is an integral part of a public collection (...) owned by the State (...) outside the Netherlands" without written permission from the owner or a license from the Minister of Education, Culture and Science.<sup>65</sup> However, this law does not prevent important cultural heritage from

58 Museum Vereniging (2019): Website.

59 Ibidem.

60 Kendell (2011): Website.

61 British Museum Association (2011): Website.

62 Kendell (2011): Website.

63 Kleijn (2011): Newspaper

64 Ibidem.

65 van Onderwijs, Cultuur en Wetenschap (1991): Artikel 14a

**Met opmaak:** Engels (Verenigd Koninkrijk)

**Met opmaak:** Engels (Verenigd Koninkrijk)

**Met opmaak:** Engels (Verenigd Koninkrijk)

disappearing into private collections in the Netherlands and it also does not provide criteria on the basis of which export abroad can be prevented. The most important criteria used by museums is the LAMO. In the end it is just an ethical code which is legally non-binding.

#### 2.2.6. Council for Culture

The Museum Association informed the Dutch Council for Culture about the dilemma and asked for governmental help from the Ministry of Education, Culture and Science.<sup>66</sup> The Dutch Council for Culture send a letter to the state secretary for culture Jet Bussemaker asking for a review of the LAMO in order to solve the contemporary issues among repelling contested art works for the international art market. According to them the collecting in contemporary times are based on a business-economical model instead of a more immersive and substantive manner.<sup>67</sup> The Council for Culture therefore calls on the relevant authorities, including the various authorities, to 'cooperate' in order to find sufficient guarantees for safeguarding heritage, possibly enshrined in a law.<sup>68</sup>

#### 2.2.7. Chamber of Parliament

Three questions were central to the parliamentary questions that Jette Klijnsma, PvdA member and minister of Culture asked at Halbe Zijlstra, VVD-member and State Secretary of the Ministry of OCW. The first question related to whether the municipality owned the work and ordered the sale. This was true. The second question was of a moral nature, asked by Klijnsma: "Do you share the opinion that it is detrimental that museums will get stuck in this way and have to sell our art property because of the cutbacks that are imposed on them by the government?"<sup>69</sup> Zijlstra replied that it is not needed to sell our art and heritage, but the museum should search for alternative ways to gather more income: 'the ethical ICOM code and the LAMO are instruments of self-regulation, to which museums, as managers of collections, consider themselves bound and which they themselves maintain. I assume that municipalities, provinces and central government bodies enable museums that manage their collections to comply with those codes and themselves use those codes as a framework for granting proxies to repel objects. I do that when it comes to the government collection for which I am responsible. The assessment of whether a proposal (...) fits within these codes lies with the municipality.'<sup>70</sup> With this quote Zijlstra indirectly criticizes the municipality of Gouda. It should never have put MuseumgoudA in the position where it came to the decision to sell a masterpiece.<sup>71</sup> The state secretary could use his position to suspend the auction but given the lack of consensus and relative

<sup>66</sup> Raad voor Cultuur (2011): Website.

<sup>67</sup> Ibidem.

<sup>68</sup> Vereniging Kunst, Cultuur & Recht (2012): 8

<sup>69</sup> Tweede Kamer der Staten Generaal (2011): 2.

<sup>70</sup> Van Dijk (2011): 2.

<sup>71</sup> Knight (2011): Website.

**Met opmaak:** Engels (Verenigd Koninkrijk)

**Met opmaak:** Engels (Verenigd Koninkrijk)

chaos in the cultural field, Zijlstra decided to keep further distance of the discussion. The answer also implies that the assessment had never moved beyond the city council. A municipality where the PvdA is the largest party and has actively involved with MuseumgoudA in the past years.

### 2.2.8 The artist

The artist of the painting, Marlene Dumas, was devastated by the fact that she was not informed about the repelling-process of the artwork. Although she did not agree with the nature of selling museum collections, Dumas wanted to help because she knows best who her private collectors are.<sup>72</sup>

### 2.2.9 The gallerist

Dumas' gallerist Paul Andriesse states that the actions of MuseumgoudA are a shame for both the artworld and the society. Selling a work to a museum assumes that it won't be sold on the market later on. "Galleries give museums a discount to enable the inclusion of art in public collections. That is an ideal that is threatened if you see artworks only as commodity" says Andriesse. The focus on the price instead of other values will result in a mental poverty of the Netherlands. 'If this becomes normal, then the Netherlands runs the risk of losing works of art that people care about a lot. Then you are far away from what a museum should be.'<sup>73</sup> Andriesse rejects also De Kleijn's argument that The Schoolboys was a misfit in the collection: 'The work is a counterpart to The Turkish Schoolgirls, which is owned by the Stedelijk Museum Amsterdam. First it should have been investigated whether the painting could have been taken over by the Stedelijk, with or without support. The work was part of the *Collectie Nederland*.'<sup>74</sup>

### 2.2.10 Media

The work was mainly characterized in the media as the property of 'the Dutch Collection' which was indispensable and not for trade. Even though the Museum of Gouda is a privatized cultural institution, they were held accountable by other museums. According to George Knight, the process 'imposes a suspicion of laziness. It sells hotshots without developing its own initiatives. It acts as an infant instead of being an active part of the Dutch museum sector.'<sup>75</sup> This autonomous action was further reinforced when it appeared that Wim van Krimpen, former director of the Gemeentemuseum Den Haag, had secretly searched for a buyer of the work. In exchange for the purchase, the work would become a long-term loan from the museum. This turned out to be unsuccessful and was later offered to the public in auction.<sup>76</sup> Bas Heijne, art critic at the NRC newspaper wrote: 'the affair about the secret sale

<sup>72</sup> Bockma (2011): Newspaper.

<sup>73</sup> Ibidem.

<sup>74</sup> Ibidem.

<sup>75</sup> Knight (2011): Website.

<sup>76</sup> Bockma (2011): Newspaper.

of the painting reveals something unpleasant in the Dutch art policy. The director of the museum, Gerard de Kleijn, completely ignored all the rules because he found them to be "outdated", however, may remain seated. His museum continues to enjoy the benefits of membership of the Museum Association without impunity. The association has "closed the rows". Alderman Bergman of Gouda is working hard on her sharp profile of Gouda. We will never see the Dumas painting again. That is more than mismanagement. This is a scandal. Now that the painting is with a private individual in Asia, we will most likely not see the Dumas painting again.<sup>77</sup> Heijne implies that a museum must primarily act in the interest of the entire sector. While MuseumgoudA acts as a private institution with a large financial deficit on the basis of its individual needs.

### 2.3 Conclusion

As a lender, the Municipality of Gouda recommended that the Museum would sell the paintings and use the new deposit (proceeds) to use towards new purchases. The sale had therefore primarily a financial motive, mainly because the painting was sold for the highest bidder at a renowned, international auction. Since the object was not labelled as protected property, the only regulation concerning museum rejection was the LAMO. However, this was an ethical code only and not legally binding. The study shows that lack of law and ownership leads to instability, especially in times of recession. The maneuvering space of MuseumgoudA was very limited. And the benevolent attitude of De Kleijn was indeed complex. The museum was financially completely under the thumb of the municipality and tried to survive in the political climate with the resources they have. As a private institution, they only had to deal with central government when it came to purchasing works. However, the museum was part of the NMV and has signed the Code of Ethics. Although the Museum Association wanted to suspend the museum, the desire for unity overcame the misstep of an individual director. The association also understood that its moral guidelines ultimately have little effect on the government. A strong, grouped voice from the museum sector has a higher priority in times of major financial cuts in the sector. This attitude of the NMV against sale for budgetary reasons will give museum directors a bit of self-confidence and some support to oppose the governments. As a result, director de Kleijn retired early and 'the lines closed' in the field. In conclusion, it turned out that there was a formal owner of the artwork, the municipality, but due to the absence of a legal law, there was no formal responsibility assumed to that.

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<sup>77</sup> Heijne (2011): Newspaper

### **3.) The Rintel Chanoekia: Ending a 263-year old agreement**



Foto: Erik van Rosmalen. Collectie Joods Historisch Museum

The second case study entails the discussion in the national, cultural field about the sale of the *Rintel Chanoekia* in the time period of 2015 till 2017. The *Rintel Chanoekia* was owned by the Dutch-Israelian Church society since 1753 and on loan to the Jewish Historic Museum Amsterdam since 1955. After 263 years of ownership, the NIHS decided to sell the object. The debate took mainly place between the government and the cultural funds. The reality of the renewed Heritage Act turned out differently than initiated on paper because it was unclear as to who was financially responsible for the purchase of protected heritage. This chapter is divided in three parts. First, the background and the recent purchasing history of the work will be described. Secondly, a reconstruction is made of the different stakeholders and important shifts that occurred between 2015 and 2017. Lastly, I analyse the claims that are made by all the stakeholders involved about ownership and responsibility.

### 3.1 The origins of the *Rintel Chanoekia*

This giant silver Chanoekia was made in 1753 by Pieter Robol II on behalf of Sara bat Itsik Rintel. She donated the object in 1753 to the Dutch-Israelite Head Synagogue (NIHS) in Amsterdam.<sup>78</sup> Since 1898, the NIHS has been using a religious copy at festivities to protect the original.<sup>79</sup> When the Great Synagogue became part of the Jewish Historical Museum in 1955, the *Chanoekia* remained on loan of the NIHS and kept located at the same place. The NIHS decided to withdraw the vulnerable object for daily use to become a historically significant art object for the museum instead of being an Judaic symbolic instrument only.<sup>80</sup> After 263 years of ownership, the NIHS decided to sell the object to cover budget cuts and finance other activities for its members.<sup>81</sup> A more detailed background of the artist and the artwork can be found in Attachment 3.

### 3.2 The discourse analysis 2016-2017

#### 3.2.1. Dutch-Israeli Head Synagogue (NIHS)

In 2015 the Board of Trustees of NIHS imposed the disposal to drastically cut back the budgets in order to create a more balanced budget for the upcoming years. This budget cut led to the permission of a disposal of a number of assets in 2016. This concerned several unused plots, a *machzor* and the *Rintel Chanoekia*, see note.<sup>82</sup> The NIHS is part of the Dutch-Israelite Congregation (NIK).<sup>83</sup> The state obliged Dutch Church societies to provide their own income. Only in special cases, for example when a monumental building needs to be restored, a governmental subsidy can be purchased.<sup>84</sup> The NIHS asks for an annual contribution of her members and did not receive any subsidy. Some of the possessions are owned by the municipality – like houses, lands or cash – and some are owned by the NIHS – like the disposal of the assets..<sup>85</sup> The sale of the objects would generate money to close the budget deficits of the organisation in general, and the inclusion of the other Jewish communities in the area.<sup>86</sup> The Supervisory Board decided that 10% of the proceeds from these assets will be made available to

<sup>78</sup> Joodse Gemeente Amsterdam (2017): 11.

<sup>79</sup> Joods Cultureel Kwartier (2019): Website. Vereniging Rembrandt (2017): 14.

<sup>80</sup> Ibidem: 14-18.

<sup>81</sup> Joodse Gemeente Amsterdam (2017): 11.

<sup>82</sup> The unused grounds included three lots in Muiderberg: The Kocher-forest, a lot on the Echolaan and a garden lot. The Machzor is a Jewish book of prayer. The *Machzor* (€4 million), Kocherforest (€187.500), the other lots in Muiderberg (€45.000) and the *Rintel Chanoekia* (€500.000) would raise €4.732.500,- in total. See note 156 for reference.

<sup>83</sup> NIK (2019): Website.

<sup>84</sup> NIHS (2014)

<sup>85</sup> Ibidem.

<sup>86</sup> Joodse Gemeente Amsterdam (2017):7.

**Met opmaak:** Engels (Verenigd Koninkrijk)

**Met opmaak:** Engels (Verenigd Koninkrijk)

**Met opmaak:** Nederlands (standaard)



finance activities for members. The total revenue to be realized in 2017 will be approximately €4.5 - €5 million, which includes €500.000 of the *Rintel Chanoekia*.<sup>87</sup> The NIHS also state that it will sell the works on the free market if the cultural funds are unable to raise the money. Although the object was still the private property of the NIHS, the object was also part of the list of the Cultural Heritage Preservation Act of *Collectie Nederland*, described as Item ICB 151. This obligated the NIHS to report the intended sale to the Ministry of OCW before they could offer the objects for auction.<sup>88</sup>

### 3.2.2 Heritage Act

Just before the auction the Heritage Act was reviewed. The main principles of the bill were stated as follows: 'Firstly, (...) the levels of protection that apply in the current regulations will at least be maintained. Secondly, private organizations are used to preserve the cultural heritage where possible. In addition, a reasonable balance is sought between the rights of the owner of cultural heritage and the protection of the public interest that represents his property and arrangements and procedures that no longer have clear added value are deleted. Finally, international obligations (...) are fully included in the bill.'<sup>89</sup> The main points of the bill focus on the alienation of cultural objects and collections owned by central government, municipal and provincial governments, the legal embedding of the care for the national collection, the obligation to include important orphan collections and the possibility for other parties than the state, such as private individuals, to purchase protected cultural goods if they are likely to disappear abroad. In addition, there are a few practical points that relate, among other things, to the licensing system and the harmonization of enforcement and supervision.<sup>90</sup>

### 3.2.3. Ministry of Education, Culture and Science

The status of protected property obliged the government to act according to the guidelines of the reviewed Heritage Act. However, since the review, things changed in the procedure. Before the new act, the ministry was responsible for buying a disposable object of the WBC-list. Since the new act, the ministry shared their responsibility with various parties. The Dutch market, funds, art venues and private parties needed to show first what they would offer for the object, and at last the ministry would pay the last bit of the remaining funds. It was a shared deal. In regards to the importance of keeping the object in the Netherlands, and support the financing of the auction, the ministry extended the funding period a few times until the required budget succeeded.<sup>91</sup> As a result, the Ministry of Education, Culture and Science (OCW) had given the Jewish Historic Museum until the first of February

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<sup>87</sup> Ibidem: 11-39.

<sup>88</sup> *Collectie Nederland* (1988): ICB 151.

<sup>89</sup> Rijksoverheid (2014): 5.

<sup>90</sup> Ibidem: 5-6.

<sup>91</sup> *Joodse Gemeente Amsterdam*. (2017): 39.

2016 to collect the required money assessed by the NIHS for the purchase of the object.<sup>92</sup> Although the property was labeled as a protected heritage of national value, this did not mean that the object could not be sold.

#### 3.2.4. Rembrandt Association

The Rembrandt Association main objective is to help Dutch museums acquire works of art which are important to the receiving collection in particular, but which also make sense in the larger landscape of Dutch public art collections'.<sup>93</sup> Buying the *Rintel Chanoekia* fits to this policy and therefore the Association wanted to buy the object to preserve it for the future generations. According to the Rembrandt Association the *Chanoekia* 'bears witness in an eloquent way to the freedom and richness of the Jewish community in 18th-century Amsterdam. The work is also representative of the artistic level of Dutch silversmithing from this period. (...) The *Rintel Chanoekia* belongs to the relatively small number of objects that have been preserved from this period and as such is an early example of the growing prosperity of the High German Jews of Amsterdam from the mid-18th century. These are objects that are not only of art-historical importance, but that are also strongly connected to the building: the *Chanoekia* was already donated to the Great Synagogue in 1753.'<sup>94</sup> The Rembrandt Association was happy to support the purchase of the *Rintel Chanoekia*, albeit on one condition: That the government would also contribute by at least 50% of the requested €500.000,-. Fusien Bijl de Vroe, director of the Rembrandt Association, assumes that the preservation of items on the WBC-list is at least a joint responsibility. "Previously, the responsibility lay entirely with the government, but now that the new Heritage Act is in force, it is shared with private individuals. We think it's reasonable for the government to appeal to the museum and social field, but not more than half".<sup>95</sup> As a result, the Association sent several letters to the Minister of Culture, Ingrid van Engelshoven and the parliamentary in 2015 and 2016.<sup>96</sup> In every letter, the Association stated that purchases cannot be financed solely through private initiative, especially in contemporary times. Moreover, a strong financial partner is needed because hardly any other funds, especially those who use governmental subsidy, still contribute to museum purchases. The government is often the manager of the museum collections and the initiator of the review of the Heritage Law. Therefore, they have to take their responsibility and contribute to the purchases. According to de Vroe, the Rembrandt Association was the ideal partner to negotiate with the government through their independent position.<sup>97</sup>

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<sup>92</sup> Ibidem: 11.

<sup>93</sup> Vereniging Rembrandt (2019): Website.

<sup>94</sup> Vereniging Rembrandt (2017): 17.

<sup>95</sup> Ibidem: 18.

<sup>96</sup> Ministerie van Onderwijs, Cultuur en Wetenschap (2015): Lettre.

<sup>97</sup> Vereniging Rembrandt (2017): 18.

### 3.2.5. Cultural Funds

In the meantime, the Museum Association tried to find other private and public funds to make the purchase possible. However, a joint purchase turned out to be difficult because the government funds had a budget cut on their annual spending due to the cuts in 2012.<sup>98</sup> The budget of the Mondriaan Fund on incidental purchases turned out to be halved.<sup>99</sup> Nevertheless, the Mondriaan and the VSB supported the purchase with a financial contribution. This contribution was supplemented by a contribution from the private Prince Bernhard Fund. Unfortunately, there was little to no background information about the negotiations of this purchase available.

### 3.2.6. Jewish Historic Museum Amsterdam

Liesbeth Bijvoet, director of the Jewish Historical Museum felt like being crushed in a discussion that was mainly about the interpretation of the new Heritage Act. 'Quite tricky,' says Bijvoet 'that an item is on the WBC list and that the market must first show that it is important, while it is unclear what the ministry itself wants to pay.'<sup>100</sup> Many parties like the Rembrandt Association and the Prins Bernhard Fund positioned themselves differently what caused a fragmented field. And this should not be the problem of cultural institutions, but the problem of the government.

### 3.2.7 Media

There were only two publications about the auction in the national news newspapers. The sale of the Chanoekia is mentioned in the Reformatie Newspaper and the New Israeli Newspaper. The Reformatie newspaper decided to focus on the reasons for the sale. The NIHS had to deal with a deficit of €850,000 and a decreasing number of members. The deficit was incurred by a conflict between the ritual butcher and the Chief Rabbi. Due to illness and conflict, foreigners had to be flown in for four months to allow the slaughter to continue, while the salary of their own butcher had to be paid as well.<sup>101</sup> The New Israeli Newspaper copied the annual report of the NIK and did not write anything about the dispute.<sup>102</sup> The news turned out to be mostly newsworthy in a select group of the religious circles and remained out of reach with the general public.

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<sup>98</sup> Ibidem: 16.

<sup>99</sup> Mondriaan (2017)

<sup>100</sup> Vereniging Rembrandt (2017): 18.

<sup>101</sup> Reformatisch Dagblad (2015): Newspaper.

<sup>102</sup> Nieuw Israelitisch Dagblad (2015): Newspaper.

### 3.3 Conclusion

In this case study there were only very few primary sources to be found that showed the positions and opinions of the Dutch government. It mainly consisted of a letter of a report of the Rembrandt Association in their bulletin, an annual report of the NIHS and a letter of the minister. The negotiations were not public and there are hardly any notes to be found about the case. However, with the available background information and some critical articles in newspapers were this case was set as an example, and taking the absence of a primary text into account, a proper analysis of the discourse can nevertheless be made.

The sale was primarily a financial motive in order to create 'a more balanced budget for the upcoming years' of the NIHS. Budget cuts let the NIK board to the permission of a disposal of a number of assets in 2016, which also contained the *Rintel Chanoekia*. The object was on the WBC-list and therefore the NIHS reported the intended sale to the minister. Although the property was labeled as a protected heritage of national value, this did not mean that the property could not be sold. However, the purchase was not to be made by one party, but had to be a shared responsibility of the government and various cultural funds. In the end, the purchase was financed in a shared deal of private gifts, government funds and a financial contribution by the ministry.

In this case study there is no doubt about the legal or ethical procedure. The Heritage Act is a law and it seems not that the auction was an immoral act. This is also the reason that there was almost no media attention. The news turned out to be mostly newsworthy in a select group of the religious circles and remained out of reach of a more general audience.

## 4.) Rubens: A royal affair (2019)


OLD MASTER DRAWINGS

15

PROPERTY FROM THE COLLECTION FORMED BY KING WILLIAM II OF THE NETHERLANDS AND ANNA PAVLOVNA

**Sir Peter Paul Rubens**  
NUDE STUDY OF A YOUNG MAN WITH RAISED ARMS  
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**DETAILS & CATALOGUING**

Sir Peter Paul Rubens  
SIEGEN 1577 - 1840 ANTWERP  
NUDE STUDY OF A YOUNG MAN WITH RAISED ARMS

Black chalk, heightened with white; the two right corners cut; bears inscription in brown ink, on inside up lower right corner: Rubens 491 by 315 mm; 19 3/8 by 12 3/8 in

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Catalogue text of Sotheby's.<sup>103</sup>

The third case study entails the discussion in the national, cultural field about the auction of a collection of art objects in general, and the sale of a Rubens drawing in particular. The auction was held in January 2019 by Sotheby's and offered by a member of the Dutch Royal House. The auction started a large discussion about the position of a national, royal art collection. This chapter is divided in three parts. Firstly, the background and the recent purchasing history of the drawing will be described. Secondly, a reconstruction is made of the different stakeholders and important shifts that occurred from 2019 onwards. Lastly, I analyse the claims that are made by all the stakeholders involved about ownership and responsibility. This reveals the power relations and positioning of the government, the royal house and the other stakeholders.

<sup>103</sup> Sotheby's (2019): 15.

Met opmaak: Engels (Verenigd Koninkrijk)

## 4.1 The origins of the Nude study of a young man with raised arms

In 1838 the drawing was purchased by the future Dutch King William II and his wife Anna Paulowna, daughter of the Russian tsar. The purchases were bought via the Royal Decrees which was filled with contributions from the state treasury. Since 1838 the drawing remained the possession of the Dutch Royal Family.<sup>104</sup> In the following years the work was donated from mother to daughter: In 1959 to Queen Wilhelmina, in 1992 to Queen Beatrix and in 2000 to Princess Christina.<sup>105</sup> She kept the Rubens and hung the drawing in her apartment in New York which was in her apartment since 1996.<sup>106</sup> Although the collection should, in ideal circumstances, have stayed together, there is no law to prevent the former princess from auctioning the Rubens. As a result, the drawing was sold on the 30<sup>th</sup> of January 2019 for 7.2 million euro at a Sotheby's auction in New York.<sup>107</sup>

Princess Marijke Christina van Oranje-Nassau (1947) was the recent owner of the Rubens and part of the Dutch Royal House. Christina decided to strip herself of her royal title and moved abroad in order to get more freedom. She also changed her name from Marijke to Christina and earned her own money ever since.<sup>108</sup> The Oranje-Nassau dynasty, whose fortune Quote magazine estimated to be \$950 million in 2017, still owns a large collection of artworks.<sup>109</sup>

## 4.2 The discourse analysis 2019

### 4.2.1. Government Information Service for the Royal House

The spokesmen for the Royal House is the Government Information Service (RVD). According to them the 'owners of private collections in the Netherlands are free to sell their works by auction provided that, as in this case, all legal procedures are followed.'<sup>110</sup> The RVD also did not want to tell who the contributor of the auction was and why it was assessed. Princess Christina never involved herself in the debate. I could not find an official explanation from her as to why she initiated the sale.

Unlike many monarchies nowadays, the Royal Family owns personal assets separate from the institution's official holdings.<sup>111</sup> Former Queen Juliana (1948 – 1980) had incorporated much of the royal art collection into foundations. This was fiscally beneficial and a guarantee that collections will not fall apart at the time of inheritance. The art collection is housed in the '*Historische Verzamelingen*' Foundation of the Oranje-Nassau (1972). Selling an art object of this foundation is only possible when

<sup>104</sup> Sotheby's (2019): 15.

<sup>105</sup> Ribbens (2019): Newspaper.

<sup>106</sup> Meijer (2019): Newspaper.

<sup>107</sup> Sotheby's (2019): 15.

<sup>108</sup> Meijer (2019): Newspaper.

<sup>109</sup> Hoeks (2017): Website.

<sup>110</sup> Schmale (2019): Newspaper.

<sup>111</sup> Hoeks (2017): Website.

Met opmaak: Engels (Verenigd Koninkrijk)

Met opmaak: Engels (Verenigd Koninkrijk)

Met opmaak: Engels (Verenigd Koninkrijk)

the board agree unanimously on the auction, of which Queen Maxima and the Minister of OCW is also a member.<sup>112</sup> However, some pieces were not included in the Royal Collections, like the Rubens drawing.<sup>113</sup> These personal assets can be traded freely, as was previously done in 1988 and 1996 when Princes Christina sold parts of the collection.<sup>114</sup> According to the RVD, gifts that are housed in the foundation are not sold. The Service also state that the Rubens drawing was not part of the *Historische Verzamelingen Foundation* of the Royal Family.<sup>115</sup> However, an independent investigation about the ownership of the object is impossible argues NRC-journalist Arjen Ribbens. Unlike the British royal family, the Oranje-Nassaus do not disclose what is housed in their foundations. The *'Koninklijk Huis Archief'*, assesses whether art objects can be sold or not.<sup>116</sup> Without transparency, no legal procedures can be followed. In order to follow the Heritage Act, it first need to be stated whether or not the object has the legal status of Protected Property.

#### 4.2.2. Sotheby's

The asset is the first of the two Sotheby's auctions this year of *'Art and antique of the Royal Collection'*.<sup>117</sup> Sotheby's is the oldest and second-largest auction house worldwide for the exchange of rare and valuable pieces. Huge swings in value tend to be common with much of what Sotheby's sells because items are worth whatever a buyer is willing to pay for them at the time they are sold.<sup>118</sup> Head of old master drawings at Sotheby's Greg Rubenstein replied to the rumours and said that "it's an important distinction here that this drawing is actually the private property of a private individual. It doesn't belong to a royal collection or a public collection. As such, the owner is entirely able to do what they will, which includes selling."<sup>119</sup> The fact that Christina offered her Rubens to Sotheby's implies that she would also like to sell her work for a good price. Sotheby's took care of the rest. In their catalog they promote the collection with strategic chosen words in order to increase the price. They write that it was the 'property of a Dutch princess', 'possessed from a royal collection' and that the work is 'a masterpiece', made by 'one of the most important painters in European art history'.<sup>120</sup> Sotheby's director Jan van Schaik pointed out that not only is the work special; the saleswoman herself 'has a spectacular taste and expertise'.<sup>121</sup> This is a remarkable quote, because the princes did not buy or choose the work herself. The work was a legacy and given to her by her older sister Beatrix.

112 Ribbens (2019): Newspaper.

113 Meijer (2019): Newspaper.

114 Ibidem.

115 Ribbens (2019): Newspaper.

116 Ibidem.

117 Ibidem.

118 Kenton (2018): Website.

119 Agence France Presse (2019): Website.

120 Sotheby's (2019): 15.

121 Ribbens (2019): Newspaper.

**Met opmaak:** Engels (Verenigd Koninkrijk)

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### 4.2.3 Media

The Dutch Newspaper NRC was the first party that discovered the 'secret auction' and decided to write a substantive critic about it in their newspaper.<sup>122</sup> This was the starting point of a lively discussion in numerous publications, both on a national and international level, both professionals and amateurs, stakeholders or simply anyone that was interested in the topic of national heritage.

The debate focuses primarily on the unethical way in which the princess had acted. It was a legal act, but not the right thing to do. The work should first have been offered to museums and not have to be sold abroad for the highest bid. Journalist Remco Meijer: "Noblesse oblige. Art is more than its market value. If a member of the Oranje-Nassau family wants to get rid of it, it should be housed in a Dutch Museum. They don't need to, but it would be a royal gesture if they did."<sup>123</sup> This moral sense of duty was further reinforced by the fact that the royal family has been supported by the taxpayer since its establishment in 1813. The specific collection offered at Sotheby's was purchased 'at a time when all the royal family's expenses came directly from the Dutch treasury,' a prominent art historian reports to the AD-newspaper on condition of anonymity, 'This means that they cannot be considered private property.'<sup>124</sup> Also in contemporary times 'the royal house is heavily subsidized by the local taxpayer and therefore they have a moral obligation to offer this national heritage that they possess to the Dutch museums first' conclude political commentator Frits Wester on RTL News.<sup>125</sup> In general, a disposal of the *Historische verzamelingen* used to be approved by the board of the foundation first. This is usually followed by an offer to the Dutch state or market.<sup>126</sup> But, although the Historical Collections regularly gives permission for disposal, and therefore follows the legal procedure, this does not mean that following the law is always in the national interest. This is evident from the amount of scandals that circulate around the divestment of the royal collections and the destination of the money looted. Every new scandal is linked in the articles to the earlier ones. Art journalist Arjen Ribbens, for example, gives an explanation of the repulsive history of the royal collections in the NRC newspaper. According to Ribbens, state treasures were sold by Queen Juliana in 1963 because "the state budget for her position as queen was too low to her liking at the time." A Fabergé dish was offered at an auction in 1974 although it was registered as a gift. However, the RVD stated since 1970 onwards that they never sell gifts. The moral obligation is not limited to the objects only, also the money earned by the auction is a point of discussion in the media. Such as the sale in 1980 where Prince Bernhard put the money from the sale in his own pocket and did not offer it to the promised charity. According to jewelry historian Erik Schoonhoven, the prince was permanently worried about money and often sold

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122 Meijer (2019): Newspaper.

123 Ibidem.

124 Schmale (2019): Newspaper.

125 RTL Nieuws (2019): Website.

126 Ribbens (2019): Newspaper.



art from the royal collection for private purposes.<sup>127</sup> Also Princess Christina have been at the point of discussion after Volkskrant newspaper revealed that she transferred her monetary family legacy in a mailbox firm (brievensbusfirma) on the island of Guernsey. The trust was managed from the Noordeinde Palace, the working palace of Queen Beatrix, with the aim to avoid wealth tax. According to former Prime Minister Jan Peter Balkenende, in response to parliamentary questions in 2008, the palace route was devised "due to privacy reasons".<sup>128</sup> The debate in the media shows the broader context in which this event takes place. The incident does not stand alone, it is a recurring event that requires intervention. Not just legally, but especially ethically.

#### 4.2.4. Society

The public discussion in het media focused on the selection and preservation of the Dutch national identity and -objects. Although in other countries, such as France, there is a longer tradition of government intervention, private property law in the Netherlands is appreciated by the people. Where the French have a flexible policy regarding the selection of national heritage - after all, looted art is labeled as a French cultural item and preserved in the Louvre - the Netherlands have a similar policy. Rubens was Flemish, the painting was purchased from England, sold to Russia and held in the United State since 23 years, the Netherlands decided that it belongs to their identity. It raises the question when a work of art can be characterized as typically Dutch. And even if this is unclear, it is implied that the government must also take the lead, for example in a shared responsibility with the private market in order to meet the high costs of heritage maintenance. People also state that it must be possible to keep these objects in private possession provided that the rules are adhered to, by first offering the work to Dutch museums. The sale itself is no problem for the people, it is the fact that the goal of the sale is to raise as much money as possible. This commercial perspective is not appreciated when it comes to art. So, it is seen as a logical fact that maintenance costs money, but this cannot be recouped from a sale. This feeling was reinforced for citizens by knowing the origin of the money for the purchase. Because the taxpayer supports the royal family, and thus indirectly the purchase and maintenance of the royal collection, it is also co-owner. And shared ownership means a proportionate vote in the management of the collection. The work was however not public and the profit disappeared in the pocket of one person. This debate also raises questions about the distinction between the royal grant and other types of subsidy such as beneficiaries. Does the taxpayer also have the right to judge about their actions?

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<sup>127</sup> Ribbens (2019): Newspaper.

<sup>128</sup> Meijer (2019): Newspaper.

#### 4.2.5. Rembrandt Association

The Rembrandt Association supports Dutch museums in the acquisition of interesting art. According to their director Fusien Bijl de Vroe, the Royal Family has indeed the right to sell the collection but finds it a pity that the objects will be brought abroad. "We can only welcome every attempt to keep some of these works for the Netherlands." Once purchased by King Willem II, sold after his death but also bought back and then stayed in the Netherlands ever since. "For that reason alone they should stay in the Netherlands" says Bijl de Vroe.<sup>129</sup> In other words: It is legally right to sell the work but we pray for every attempt to keep it here. Despite the fact that former Queen Beatrix has been the patron of the Rembrandt Association for 39 years, no claims can be made. Director Fusien Bijl de Vroe: "We are very happy with that, but that does not mean that I have a direct line to discuss such issues with her."<sup>130</sup> In short, Bijl de Vroe does not fire off the fact that the national heritage is sold and how and by whom, but she is disappointed about the fact that it is no longer physically available in the Netherlands. The object was however not physically located in the Netherlands anymore for the last 23 years. It also raises the questions whether an object that was once part of the royal collection, keeps the status of a national treasure for eternity. Especially considering that the object had been abroad for most of its existence. And can man count an object as such still as an essential part of the Dutch identity?

#### 4.2.6 Museum Boijmans van Beuningen

Dutch museums that plan to deaccession old masters work are obliged to gauge interest from other institutions in the Netherlands before involving auction houses, but the rule does not apply to private collectors, including the royal family.<sup>131</sup> Despite this, many private individuals also collect and dismantle in consultation with the museums, like the Oranje-Nassaus did many times before. "There was no consultation in any way," Director Sjarel Ex responds disappointedly.<sup>132</sup> His museum Boijmans van Beuningen has by far the largest collection of works by Rubens in the Netherlands. This collection was put together by the government and the society. The Rubens of Christina was sold 2 weeks after the finisage of a unique overview of the worldwide renewed Rubens collection of the Boijmans.<sup>133</sup> Ex: "If we could acquire the drawing it would be the most important piece in our Rubens collection and it is for sure an important part of our national heritage." Ex made a moral appeal on the royal family to withdraw the works from auction, to give museums such as his the chance to secure the pieces. "Going to auction means the owner is only after the biggest prize. We can never pay such an amount in this period. And I estimate that the American Rubens-collector Leon Black want to acquire this

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129 Bijl de Vroe (2019): Website.

130 Hoedeman (2019): Newspaper.

131 Museum Vereniging (2016)

132 Schmale (2019): Newspaper.

133 Boijmans (2019):Website.

drawing for any price".<sup>134</sup> The Boijmans-director concludes that the solution is not very complicated. We need to make the *Royal Collections* public and show what is housed in the collection. When an object of national heritage is on the list of disposal, independent experts are asked whether or not it is a gift. After that, the Dutch museums get the opportunity to make the first offer before the object is going to an auction. But in order to do so, someone has to take the lead and give some direction.<sup>135</sup> Sjarel Ex implies with this that the objects of national heritage belong to the collections of museums. It is permitted to have nationally protected heritage in private possession, but only if the owners use the same values as the Museum Association.

#### 4.2.7. Government

The publication in the NRC newspaper about the royal art gifts caused parliamentary questions about the management of the Royal Collections.<sup>136</sup> Members of the liberal democrats' party D66 which is part of the governing coalition, Salima Belhaj and Joost Sneller requested to postpone the auction, saying that the artworks should be offered to the Dutch institutions first before selling it to the international art market. "Then the Dutch public could still have a chance to enjoy these drawings. If the works go abroad, we will not see them again," Belhaj says.<sup>137</sup> Minister of Culture Ingrid van Engelshoven, also member of D66, cut short the debate, saying the decision of whether or not to sell a work of art was up to the owner. Prime Minister Mark Rutte, member of the conservative liberal party VVD, added to this that it was 'a private matter for the royal family' and all the legal procedures had been followed which means the legal owner has the right to say if and how the object can be sold.<sup>138</sup> With these answers, the government decided to keep its distance from the case and have it resolved by law. In response to this, Salima decided to appeal for inclusion of the entire former Willem 2 collection as protected heritage by calling upon Article 3.8 of the Heritage Act. Belhaj also asked the prime minister to talk to the Royal Family to open up the Royal Collections to show what is housed in the foundation. This had to happen before the Rubens would be auctioned.<sup>139</sup> According to minister Engelshoven the auction was however 'unavoidable'. The Heritage law is about 'irreplaceability and indispensability of the collection or of one or more of the goods that are part of the collection'.<sup>140</sup> With that irreplaceable and indispensable, it is not too bad, she concludes. As a result she gave permission for the sale and she refused invoking the cautious designation policy. Furthermore, Rutte and Engelshoven conclude that the initiative lies with Dutch museums because they have the

134 Schmale (2019): Newspaper.

135 Ribbens (2019): Newspaper.

136 Ribbens (2019): Newspaper.

137 Tweede Kamer der Staten Generaal (2019)

138 Tweede Kamer der Staten Generaal (2019): 1-2.

139 Tweede Kamer der Staten Generaal (2019): 1-2.

140 Ibidem.

**Met opmaak:** Nederlands (standaard)

**Met opmaak:** Nederlands (standaard)

**Met opmaak:** Nederlands (standaard)

possibility to rely on financial support or private funds to purchase certain works of art.<sup>141</sup> Although the government withdrew, Engelshoven decided to start an initiative in her own party D66. This initiative was set up and implemented by Alexander Pechtold, a former auctioneer who had just submitted his resignation as D66 leader in the House of Parliament.<sup>142</sup> Pechtold had previously proven that he could persuade the government in record time to purchase the two Rembrandt's paintings '*Portraits of Marten Solmans and Oopjen Coppit*' for the Rijksmuseum. Together with Minister Halbe Zijlstra he managed the required €80 million in no time.<sup>143</sup> Such an example proves that the government is actually able to act decisively if the initiator has a prominent position within the system.

#### 4.2.8 Council for Culture

In the Rubens issue, however, the government does not want to get involved directly, which is why an independent committee was established and placed within the Council for Culture.<sup>144</sup> This committee is established as part of the evaluation of the Heritage Act. Minister Van Engelshoven expects 'the committee to advise on whether the legal framework is still adequate to preserve interesting movable heritage in private ownership for the Netherlands and, if necessary, to make proposals for adjustment. It also asks the committee to update the register of protected heritage. In addition, the Committee will investigate whether the criteria for granting or refusing an export license need to be adjusted'. The council will give their advice by the end of 2019. The committee houses five members.<sup>145</sup>

#### 4.3 Conclusion

Although Princess Christina has never given an official explanation for the sale, it can be assumed this was primarily financially motivated. The proceeds were mainly beneficial to the saleswoman herself. It was sold abroad by auction at Sotheby's, to raise the highest possible amount. This profit was maximized through tax constructions, as a result of which minimal tax was paid to the Netherlands. At the disposal all legal procedures were followed and approved.

Although the sale - and especially the way it is sold - causes scandals over and over again, little seems to change. Prominent actors from the field only dare to give their opinion on the basis of anonymity and moral standards. The government is turning a blind eye and the royal family is keeping the collection for the public to see. When the wish for selling becomes reality, it appears that the work could be sold with ease. The work was not protected by the government through the WBC-list but

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141 Rijksoverheid (2019): 1-3.

142 <https://nos.nl/artikel/2272907-onderzoek-naar-behoud-belangrijke-kunst-na-onrust-over-veiling-rubens.html>

143 Nederlandse Omroep Stichting (2015): Newspaper.

144 Hoedeman (2019): Newspaper.

145 Rijksoverheid (2019): Website.

Ribbens (2019): Newspaper.

protected by secrecy by the royal family. This leaves the taxpayer, who indirectly payed for the works, uncomfortable and with a bitter aftertaste.

However, the question is whether it is possible after all to create an independent committee with representatives of the cultural policy sector. After all, according to sociologist Hans van Maanen the sector is based on a peer-to-peer reviewed system.<sup>146</sup> In this case, most committee members worked for the government before. Alexander Pechtold and Sabine Gimbrere worked for the Ministry of Education, Culture and Science before and Lennart Booij works for the Council for Culture right now. Although Tom Barkhuysen is affiliated with Leiden University, his research is funded by the government.<sup>147</sup> Fusien de Bijl de Vroe already indicated at the *Rintel Chanukia* sale that it is independent, see Chapter 3.<sup>148</sup> However, it cannot operate completely independently if the government has more financial and legal decisiveness. This can lead to conflicts of interest. The question is whose interests the committee ultimately serves.

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<sup>146</sup> Van Maanen (2009).

<sup>147</sup> Raad voor Cultuur (2019): Website.; DutchCulture (2019): Website.; Universiteit Leiden (2019): Website.

<sup>148</sup> Lennart Booij member of the Council for Culture, Tom Barkhuysen, professor of constitutional and administrative law at Leiden University and Sabine Gimbrere former senior Advisor International Affairs at the Ministry of OCW.

**Met opmaak:** Engels (Verenigd Koninkrijk)

## Conclusion

In this thesis I have attempted to answer the following research question: What position did the Dutch government take when the impending disappearance of heritage caused commotion between 2011 - 2019, and what does this say about the power, ownership and responsibility of the state? This thesis research aimed for a better alignment of the use of the Heritage Act and policy from 2011 onwards in order to handle future scandals better. In doing so, three case studies were analysed in order to unravel the position of the government in relation to the societal debate about the contested heritage. The three case studies have a number of characteristics in common. Firstly, each object is seen as a materialized representation of the Dutch national identity. In all cases the contested object was part of an art collection and the ownership (being available to private persons while a public lays claim to sometimes partial ownership) became contested after it was offered for sale. In every case there was an act that gave legal or ethical guidance, but as turned out this was not sufficient and the sector was mainly depending on the norms and values of the field. These often implicit codes and values proved to be non-binding, and as a result caring for heritage came into disrepute after an object was sold to the highest bidder and shipped abroad. The case studies also differed from each other in some respects: The actor that started the national debate, the position of the government and the legally protected status of the object are different in for all cases.

In the case of *The Schoolboys* an auction was proposed by the city council of Gouda after a budget cut of 50% to their annual subsidy for the museum. Besides that the debate focussed on the ethical part of not offering the object to another museum first to keep the national treasures in the country, the debate implied that a museum is not an entity on its own and has to act in compliance with the guidelines of the Museum Association at first hand, and the laws of the nation on second hand. At the time of the discussion, there was not a working Heritage Act signed into law yet. As a result, museums were dependent on the Code of Ethics, a guideline for museums amongst themselves but not a legally binding document. The case study shows also the larger context of the event. Although the museum was a privatized cultural institution, the building and the collection appeared to the public to be in the possession of the Municipality of Gouda which also gave an annual allowance for its exploitation. The municipality has a lot of power behind the scenes, but the director seemed to act independent of the local government in public. Both the municipality and the museum were reminded that they are part of a bigger sector with shared values and beliefs. The museum functions in a larger national and international museum field, and the municipality is part of the national government. This comes with responsibilities. I can conclude from this that the public cannot make the distinction between private

and public when it comes to media appearances. A private museum must also adhere to the standards that apply to a public museum in order to prevent such scandals as the disposal of the Schoolboys.

Even following state law when selling an precious object considered to be national heritage by some, might not be sufficient to avoid problems. The *Rintel Chanoekia* for example had been on loan from the Dutch-Israeli Head Synagogue (NIHS) in the Jewish Historical Museum since its opening in 1955. The status of WBC-protected property obliged the government to act after the 50-year loan-agreement was cancelled in 2015. The new Heritage Law obliged all parties involved to pay for the object. This case study did not question the legal or ethical procedures but focussed on responsibilities. It appeared that in addition to the guidelines of the law, a leadership role was needed to steer the disposal and purchasing process in the right direction. The case study shows that the government is the leading party in selecting heritage and introducing and completing the process of the management of heritage. And if the national government is willing to take the lead, it has the most power when it comes to the protection of the national heritage. The case studies repeatedly show that external parties were unable to prevent scandals. However, the actual implementation of the Heritage Act was transferred to external parties like funds and museums. So The ball is tossed around between the stakeholders, so to speak. The study shows that in this structure no one feels obliged to lead in a top down structure with shared responsibilities.

The auction of the Rubens drawing in 2019 sparked criticism in both the cultural field, the society and the government. Despite the fact that the drawing was private property and not protected by the WBC-list, it sparked criticism about the ethically reasons to sell the work abroad. The status of the object as being part of the Royal Collection, owned by an ex-princess that kept the Rubens in New York since 23 years made the discussion about the national importance of the work even more difficult. In many media articles the cultural field turns to the state for measures to prevent the work from being auctioned off, but the government did not want to act because it was a 'private manner'. As the most powerful organization in the Netherlands, the government had the opportunity to solve such a scandal: she could have taken formal, legal steps by stopping the auction. The state decided not to answer the call for morality and leadership that was asked for by the citizens. The affair was reviewed by an external semi-governmental party, the Council for Culture, to get out of their own responsibility and, as stated by some of the actors, obligations. The case study shows that the legalistic path is leading for the government. If a law does not prove to be sufficient in preventing an ethical debate, an independent committee will be established to evaluate this law. As a result, the government and the responsible minister in particular remains free of blame and obligations and the committee bears the responsibility. Unfortunately, the committee does not have the formal power to actually change the law. In addition, the debate was primarily about an ethical scandal, something that cannot be solved

by law. Thirdly, the government has the power to decide whether or not they use the advice of the committee in order to change the law. At last, it is also the question whether it is possible after all to create an independent committee with representatives of the cultural policy sector. After all, according to sociologist Hans van Maanen the sector is based on a peer-to-peer reviewed system. In this case, most committee members worked for the government before. However, it cannot operate completely independently if the government has more financial and legal decisiveness. This can lead to conflicts of interest. The question is whose interests the committee ultimately serves. In order to avoid conflicts of interest more attention should be paid to independence of individual members of committees.

The three case studies reveal a number of oddities. First of all, the government seems to take action only when the discussion has already been fought out in the field or when decision cannot be reversed. However, the government is more likely to take action when the media are frequently involved in the debate. In such cases, the minister acts as a spokesperson to explain the half-alooof attitude of the state. As a result, no substantive contributions can be made, as long as the government points to the Heritage Act as the ultimate solution. This process was clearly visible in all cases. Only when the public debate attracts too much attention, the government intervenes by making a non-binding recommendation of the correct action in addition to the law. This study also raises the question whether it is at all possible to be an equal partner for each other: Government, cultural institution or fund. Since the introduction of the Heritage Act in 2016, the government wants to work together with other parties. However, the state speaks on behalf of all its millions of citizens, while a party like the Rembrandt Association speaks only on behalf of its - relatively few - members. There is a big difference in support, budget and power. This feeling is reinforced when the institution is also controlled by laws and regulations or is directly or indirectly financed by the state. A truly leveled playing field is therefore impossible. At last, the research also shows that the confusion about the position of the government causes chaos among the actors involved. The government points to the law, but the legal procedure appears to bring no clarification on which procedures to follow. From the analysis of the three case studies I conclude that the Dutch government was present in some way or form in the public debate on disputed, national, movable heritage. Most stakeholders in the reviewed case studies point to the government as the formal and most powerful authority. The government has the power to select objects and to assess their heritage value. It also determines whether the object is a materialized version of the national identity and whether or not it is worth protecting. In contrast to this, the government positions itself through the reviewed case studies as half-active and half-alooof in the public debates. This attitude, creates vagueness which leads to incomprehension among the other parties involved. It shows that no one feels obligated to lead in a top down structure with shared



responsibilities.

As the highest authority in the country, the central government is expected to contribute to solving the nation's disputes about the contested objects. The ethical code of museums, the heritage act and the distant position of the government towards the arts form an unclear policy mix where a clear owner or guideline seems to be missing. Due to this changing attitude of the government in the three case studies, it is still not clear whether the government has, or has not, any power, responsibility or ownership in the matter. In short, this makes the conclusion more nuanced. Where the ministers initially gave the impression of being aloof in order to prevent scandals, the case studies show that the reality seems to be structured differently. The government does not grant itself the competence for heritage matters where, according to the public, the national identity is at stake. Ministers and other government representatives may not want to be responsible for a substantive judgment about the importance of an artwork. This lack of clear ownership and actions will probably fail in preventing further scandals, if no further measures are implemented.

In this thesis I have attempted to analyse the position of the Dutch government in the public debates about the auctions of the *Schoolboys* painting, the *Rintel menora* and the *Rubens* drawing. This paper did not aim to solve the problem of *how* to deal with contested heritage but to unravel patterns about responsibility, ownership and power within the past debates. Although this thesis has only been able to investigate a small part of a very complex reality of disputed heritage debates, it nevertheless tries to contribute to a better understanding of the underlying power relationships between the government and other stakeholders. In this research it was outside the scope to also analyze similar case studies from other (Western) countries. The research also mainly focused on the existing literature. Taking interviews was not possible due to a limited time schedule. This also explains why this research is focused on a certain period, namely 2011-2019, in order to make it manageable. I argued that the lack of clear ownership and actions will fail in preventing further scandals. For this reason, I recommend further research into optimizing the Heritage Act. Research can be done into the improvements on the part of the controlling power: The courts that control the government and the private property of, among others, the royal family.

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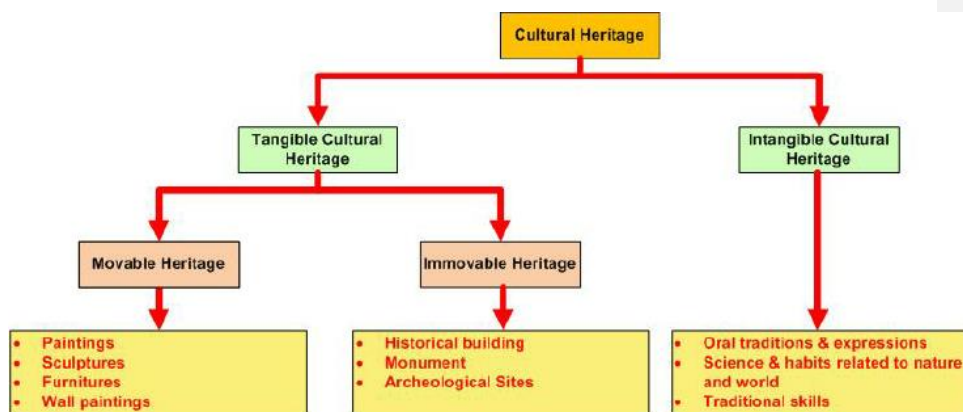
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## Attachment 1



Picture 1: Classification of cultural heritage as stated by Rijksdienst voor Cultureel Erfgoed Nederland.<sup>149</sup>

<sup>149</sup> Rijksdienst voor Cultureel Erfgoed. 'Presentatie Waarde van Erfgoed 2014 – Artikel 1.1 Erfgoedwe.', Geraadpleegd op 01-04-2019 on [https://wetten.overheid.nl/BWBR0037521/2017-09-01/#Hoofdstuk1\\_Artikel1.1](https://wetten.overheid.nl/BWBR0037521/2017-09-01/#Hoofdstuk1_Artikel1.1)



## Attachment 2

### The Schoolboys

#### 2.1.1 Background artist

Marlene Dumas is widely regarded as one of the most influential painters working today. Over the past four decades, she has continuously probed the complexities of identity and representation in her work. Her paintings and drawings, often devoted to depictions of the human form, are typically culled from a vast archive of images collected by the artist, including art historical materials, mass media sources, and personal snapshots of friends and family. Gestural, fluid, and frequently spectral, Dumas's works reframe and re-contextualize her subjects, exploring the ambiguous and shifting boundaries between public and private selves.<sup>150</sup>

#### 2.1.2 Background artwork

*The Schoolboys* is a painting that was made in 1986 to 1987 by the South-African artist Marlene Dumas (Cape Town, 1953). The artwork consists of a 160 x 200 centimetre big canvas with a picture made of oil paint. The artist did not intend to frame the canvas. Dumas painted *The Schoolboys* in Amsterdam.<sup>151</sup> According to the Sotheby's catalogue, *The Schoolboys* are an 'arresting image of four uniformed boys smiling with radiant non-naturalistically coloured and slightly demonic mask-like faces while gathered together outside the school gates, *The Schoolboys* is an outstanding two-metre-long canvas that belongs to an important series of works depicting groups of school children that Marlene Dumas made in 1987. Drenched predominantly in a range of dark hues that mix and contrast deep viridian green, Prussian blue and burnt umber into a shimmering field of colour, the painting hovers between abstraction and figuration, photographic realism and painterly invention, to create a sharp, intensified and almost hallucinatory image of its all-too familiar subject matter. With its concentration on the cheeky smiling faces, the sharp angular white stripes of the boys' blazers, graphically and formally emphasising them as all members of the same privileged group, and their manifestly 'at ease' poses, hands firmly set in pockets, *The Schoolboys* presents an image that at first glance seems to capture the essence of the playground gang. Indeed, with their smiling faces - here slightly blurred by Dumas's delicate abstracting sweeps of the brush and intensified colour - all turned sharply towards the viewer, the boys seem almost to leer or mock the viewer's status as an outsider.'

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<sup>150</sup> [www.marlenedumas.com](http://www.marlenedumas.com)

<sup>151</sup> <https://www.christies.com/lotfinder/Lot/marlene-dumas-b-1953-the-schoolboys-5459654-details.aspx>

## Attachment 3

Rintel Chanoekia

### 3.1.1. Background of the artist

This giant silver Chanoekia was made in 1753 by Pieter Robol II (1733-1769) on behalf of Sara bat Itsik Rintel (1690 -1761). Little is known about the silversmith Pieter Robol II besides the fact that he made many ritual objects for Catholic churches, and the Portuguese Jewish and High German (hoog-Duitse) communities in Amsterdam.<sup>152</sup>

### 3.1.2. Background of the object

Despite the fact that the object is often referred to as the *Rintel-menora*, it is technically speaking a *chanoekia* instead of a *menora*.<sup>153</sup> Like every Chanoekia, it has nine arms: the eight arms represent the eight-day *Chanoeka* party the front, ninth arm, also called the *shammash* or servant, was used to light the other candles of the candlestick. Because of the size of the candlestick, it needed large candles, made from precious beeswax at the time, because this material was considered *kosher*. For the shape of the Chanoekia, Robol relied on Exodus 25: 31-40 in which God gave Moses the instructions to build a candlestick that had to be placed in the First Temple.<sup>154</sup> The text describes the giant 130 cm wide seven-armed candlestick in the Tabernacle with flower-shaped buds and blossoms on the shaft and the arms. Tassels hang at the top of the arms, standing on a rococo ornament.<sup>155</sup> At the very top is an oval shield with a Hebrew inscription, in which the father and husband of Sara Rintel are commemorated.<sup>156</sup> The inscription and the archive piece not only provide important information about the social and cultural-historical context of this specific, unique object, but also give general insight into the use of ritual objects, the reason for donations and the appreciation they enjoyed within the municipality.<sup>157</sup> Every year during Chanoeka, the object was moved from the Great Synagoge to the Raw Aron Schuster synagogue at the Jacob Obrechtplein. During the *Chag Ha'Orot Chanoeka* party, the object was used to enlighten eight candles to resemble the '*Wonder of Chanoeka*' in the Temple

<sup>152</sup> <https://jck.nl/nl/longread/de-rintel-chanoekia>

<sup>153</sup> <https://jck.nl/nl/longread/de-rintel-chanoekia>

Vereniging Rembrandt "Bulleting van de Vereniging Rembrandt" Jaargang 27, Nummer 1 (2017).

<sup>154</sup> <https://www.verenigingrembrandt.nl/nl/kunst/de-rintel-menora>

<sup>155</sup> "Six branches are to extend from the sides of the lampstand—three on one side and three on the other. Three cups shaped like almond flowers with buds and blossoms are to be on one branch, three on the next branch, and the same for all six branches extending from the lampstand. (...) The buds and branches shall all be of one piece with the lampstand, hammered out of pure gold. (...) Then make its seven lamps and set them up on it so that they light the space in front of it." Exodus 25: 31-40.<sup>155</sup>

<sup>156</sup> "Deze / kandelaar is een geschenk van wijlen / de parnas, de heer Chaim, zoon van de parnas / de heer Jozpe Levi, zijn nagedachtenis zij tot zegen, en zijn echtgenote / mevrouw Sara, dochter van de parnas / de geachte heer Itsik Rintel, zijn nagedachtenis zij tot zegen / op de eerste dag van Chanoeka / [S]514 [= 21-12-1753]." Via <https://www.verenigingrembrandt.nl/nl/kunst/de-rintel-menora>

<sup>157</sup> Vereniging Rembrandt "Bulleting van de Vereniging Rembrandt" Jaargang 27, Nummer 1 (2017).

of Jerusalem in 164 BC.<sup>158</sup> It was determined that after Chanoeka the remains of the candles were returned to Sara Rintel. Rintel also had it recorded that the Jewish community had to check the candlestick for damage every year. The Rintel Chanoekia was paired with a cloak, made in 1772 on behalf of Chawa Hewwe Rintel, niece of Sara Rintel. The image on the mantle shows a menorah, with its pronounced buttons showing resemblance to the menorah that was commissioned by Sara Rintel. The cloak is located in the Jewish Museum in New York.<sup>1</sup>

### 3.1.3. Purchasing history

Sara Rintel donated the *Chanoekia* in September 1753 to the municipality of Ashkenazi Jews in Amsterdam for use in the Grote Synagoge, the building that is now in use by the Jewish Historical Museum. The donation was held in name of her recently deceased husband, Chaim ben Jozpe Levi Samuel Polak, who was, along with her father, a *parnas* (bestuurder) within the Jewish community. See attachment 1.<sup>159</sup> The *Chanoekia* was paid with money that the family earned by exploiting plantations in the Surinam. Besides the *Chanoekia*, Rintel donated a *parochet* (voorhang Heilige Ark) and a sum of money. In the gift deed, Sara Rintel had it recorded that the *Chanoekia* would be used in the Grote Synagoge and that Rintel would offer candles for the eight days of the *Chanoeka party*.<sup>160</sup> A donation like the *Chanoekia* was common for wealthy Jews in the 18th century because it was seen as a *mitswe* or *tsjedaka*, a pious duty in name of your religion and community. The donator got some privileges within the Jewish community in return for the gift. The *Rintel Chanoekia* was on loan to the Jewish Museum Amsterdam since 1955 after the NIHS decided to withdraw the vulnerable object for daily use to become a historically significant art object for the museum instead of being an Judaic symbolic utensil (gebruiksvoorwerp).<sup>161</sup> Since 1898, the NIHS used mainly a religious copy in order to project the original.<sup>162</sup> After 263 years of ownership, the NIHS decided to sell the object.

<sup>158</sup> "Deze / kandelaar is een geschenk van wijlen / de parnas, de heer Chaim, zoon van de parnas / de heer Jozpe Levi, zijn nagedachtenis zij tot zegen, en zijn echtgenote / mevrouw Sara, dochter van de parnas / de geachte heer Itsik Rintel, zijn nagedachtenis zij tot zegen / op de eerste dag van Chanoeka / [5]514 [= 21-12-1753]." Via <https://www.verenigingrembrandt.nl/nl/kunst/de-rintel-menora>

<sup>159</sup> Joodse Gemeente Amsterdam. "Rekening en verantwoording 2016" (16 juni 2017): 11.

<sup>160</sup> <https://jck.nl/nl/longread/de-rintel-chanoekia>

<sup>161</sup> Vereniging Rembrandt "Bulleting van de Vereniging Rembrandt" Jaargang 27, Nummer 1 (2017).

<sup>162</sup> <https://jck.nl/nl/longread/de-rintel-chanoekia>

Vereniging Rembrandt "Bulleting van de Vereniging Rembrandt" Jaargang 27, Nummer 1 (2017).

## Attachment 4

Rubens

### 4.1.1 Background artist

The Flemish artist Peter Paul Rubens (1577-1640) is considered to be one of the most successful and influential painters in European art history. Already during his life he was very popular as a baroque painter.<sup>163</sup> His painting is strongly influenced by the classical tradition, which he studies well, and the contemporary Italian art with which he comes into contact during that period.<sup>164</sup> Rubens is the creator of numerous biblical and mythological representations. But what sets him apart from most artists is that he has excellent observation skills, a keen sense of understanding and knows how to adopt techniques incorporating them in a creative manner.<sup>165</sup>

### 4.1.2 Background artwork

According to the Sotheby's catalogue, 'this large and powerfully drawn study of the nearly nude figure of a muscular young man, straining every sinew to push a heavy weight above his head, is one of a small handful of similarly monumental figure studies that survive for the key figures in the great altarpiece representing *The Raising of the Cross* which Rubens painted for the Antwerp church of Saint Walburga shortly after his return from Italy at the end of 1608.<sup>1</sup> (...). The very large figure is drawn right to the edges of the sheet which, though cut in both right corners, seems otherwise to have retained its original dimensions. (...) The outlines are very rapidly drawn with firm, long lines of rich chalk, the density of the lines varying very subtly as the artist applied more or less pressure as he drew. Then the volumes of the figure are sculpted with much more softly applied black chalk, seemingly stumped in many places, highlighted with understated but extremely effective touches of white.'<sup>166</sup>

Over the centuries, the drawing has belonged to many owners. In the 18<sup>th</sup> century it was owned by the Dutch artist Jacob de Wit who sold the drawing to the English artist and collector Thomas Lawrence. In 1838 the drawing was purchased by the future Dutch King William II and his wife Anna Paulowna, daughter of the Russian tsar. The requirement entails that the work should hang alongside major masterpieces by Raphael, Michelangelo, Da Vinci and Rembrandt. The purchase was bought via the Royal Decrees Fund (Koninklijke besluiten) which was filled with contributions from the state treasury. Since 1838 the drawing has been remained the possession of the Dutch Royal Family.<sup>167</sup> In the

<sup>163</sup> <https://historiek.net/peter-paul-rubens/54681/>

<sup>164</sup> <https://www.boijmans.nl/tentoonstellingen/olieverfschetsen-rubens>

<sup>165</sup> <https://www.rubenshuis.be/en/page/his-life>

<sup>166</sup> <https://www.sothebys.com/en/auctions/ecatalogue/2018/old-master-drawings-n10006/lot.15.html?locale=en#>

<sup>167</sup> <https://www.sothebys.com/en/auctions/ecatalogue/2018/old-master-drawings-n10006/lot.15.html?locale=en#>

following years the work was donated from mother to daughter: In 1959 to Queen Wilhelmina, in 1992 to Queen Beatrix and in 2000 to Princess Christina. Until January 30, 2019. On this day the drawing was sold for \$8.2 million at a Sotheby's auction in New York.