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SOME CURSORY REMARKS ON RACE, MIXTURE AND LAW BY THREE DUTCH JURISTS

Some Cursory Remarks on Race, Mixture and Law by Three Dutch Jurists

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L.W.C. van den Berg, photo Piet Stek
W.F. Wertheim, source: Spaarnestad
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Introduction

In this lecture, I look at the legal work of three Dutch jurists and the role that they have played in producing meanings of race and mixture. I do that as a way to explore the legal archive that still influences the laws and regulations that are relevant today. Al-though I discuss the work of three individual jurists, my concern is not with the intentional actions of isolated individuals, but with the legal texts that they produced, to address the question of how race thinking was a part of the Dutch legal system and legal scholarship.

The study of the Dutch legal system as a system in which race and mixture have played a role is relevant for three reasons. First, the role that other disciplines, like anthropology, sociology and medicine, have played in developing scientific racism has already been researched extensively (Bovenkerk et al. 1978; Eickhof, Henkes & Van Vree 2000; Harkema & Sysling 2018; d'Oliveira 2015; Pols 2007; Sysling 2015). Scientific racism was the (pseudo) scientific belief that there was empirical evidence that proved the inferiority of certain races and the superiority of the white race, and especially problematised mixture. It was particularly strong in the nineteenth century, but lasted well into the twentieth century, only to be discredited after the Second World War had proved its disastrous consequences.[1] However, so far, we know little about how legal scholars and legal professionals produced meanings of race as part of their normal, daily job of writing legislation, jurisprudence and textbooks. This is because the role of lawyers has been analysed mainly as market-driven (monopolising the market of legal expertise) and described as essential players in the rise in liberal, democratic values Halliday & Karpik 1997; Scheingold 1999), and regimes. The darker side of the role of lawyers has received little attention, with the exception of Nazi lawyers (Sharafi 2007). It is therefore high time that we legal scholars take this responsibility ourselves, and start looking critically at our own discipline in this respect.

This is all the more true for European legal scholars. As far as research on the role of jurists in producing meanings of race and mixture has been done, this literature has been largely Anglo-American. This American critical race and critical mixed race literature has for a long time inspired me and influenced my work in profound ways. However, I have had a difficult time finding comparable European research on the role of jurists in producing meaning of race and mixture, because European legal scholars tend to view the law as working independently on society, or merely reflecting social norms. We tend to understand European legal systems as historically democratic, liberal, tolerant, and non-racist (again, with the exception of the Nazi legal system), even anti-racist, in spite of everything we know about how racism and colonialism worked. In my view, these assumptions need to be challenged. There is an urgent need for more research and academic debate on the particularities of European racialising processes and the role that the law has played in it. If we as legal scholars want to contribute to social justice and effectively combat racism, we need to take a close look at race thinking in our own legal past and how it has influenced the laws, regulations and legal scholarship with which we work today. This is what I call exploring the legal archive.

Exploring the Legal Archive

Gloria Wekker, in her book *White Innocence* (Wekker 2016) posed the idea of a Dutch cultural archive, a concept that she had borrowed from Edward Said. Said (1978) defined this concept as 'a storehouse of particular knowledge and structures of attitude and reference' as a way of exploring the centrality of imperialism in Western culture. Wekker used the concept to explore the meanings of 'race' and 'whiteness' in how the Netherlands creates a sense of self. She suggested that, in the Netherlands, the exploration of the cultural archive still has to start and that this archive is an unacknowledged reservoir of knowledge and feelings based on four hundred years of imperial rule. The cultural archive is located in many things: in the way we think, do things, and look at the world; it is located in memory but also in policies and rules. It may be located in different domains and travel between the colonies and the metropole.

When I read Wekker's book, I immediately recognised that this is what my research is about. The law is one of the domains in this cultural archive. I will therefore use the concept 'legal archive' to explore the meanings of 'race' and 'mixture' in legal documents: acts, regulations, jurisprudence and legal scholarship.

The concept of the 'legal archive' has been used by others before (Birrell 2010; Coleborne 2013; Motha & Van Rijswijk 2016).[2] However, as Mawani (2012) points out, it has not really been explored by legal historians and legal scholars, as compared to the colonial and cultural archive by postcolonial and subaltern scholars. Very few, she argues, have asked what it constitutes, how it might be conceptualised, or how the legal archive might shape what we think of as the law.

As I see it, the legal archive is not separate from the cultural archive. Understanding the legal archive as a domain of the cultural archive means that it consists of much more than just legal texts, jurisprudence and legal doctrine. It also includes oral histories, documentaries, newspaper articles, novels, and photographs about legal texts, court cases, lawyers and legal doctrines, as well as feelings and beliefs about law. However, it is still important to take the particularities of the legal archive into account. It is produced by and filled with archival material from the legal social field that has specific particularities. I will come back to these particularities of the legal social field later. For now, it is important to understand that the legal archive works somewhat differently than the cultural archive, although it remains strongly connected to it. It privileges some narratives of the past over others that do not easily connect to legality (Mawani 2012).

These specific characteristics of the legal archive have very practical consequences for the ways in which it can be explored. The law constantly produces documents and records that are kept in archives. The law also determines what is kept in the archive, as well as what is kept out. Thus, the link between the law and the archive is particularly strong. The observations of Trouillot (1995) on how archives silence the past certainly also apply to the legal archive, as has been also noted by feminist historians (Coleborne 2005; Stoler 2002). The official legal sources alone would probably reveal little about 'race' and 'mixture'. In the process of production, organisation and repression of the legal archive, the regulations on mixture and mixed couples may get lost. However, I assume that the legal archive in a broad sense, as

part of the cultural archive, contains extensive knowledge and structures that have influenced the laws and regulations that are relevant today, although they have been largely ignored, forgotten and suppressed. This can be explained by the specific characteristics of the legal field.

The Semi-autonomous Legal Field

To address the specific characteristics of the legal archive, I turn to Pierre Bourdieu's (1987) work on the social legal field. Bourdieu discerns four characteristics of this field. First, legal scholars see the law as an autonomous system of thought, relatively free from social constraints and pressures (such as thinking on race and mixture). This autonomy of the judicial field as a social field is based on historical conditions. The law works on a logic of conservation. It is based both on power structures and on the internal logic of juridical functioning.

Second, not everybody is allowed to become part of the legal field. Entry into the juridical field requires acceptance of legal knowledge. To be part of the juridical field one needs not only to master the canon of texts, but also to acquire a universalising attitude, that is distinct from common-sense notions of fairness.

Third, within this legal field, various actors and institutions compete with each other for the right to determine what the law is. Legal resources are inherited from the past and not everyone has the same right to interpret them. Control over the legal text is the prize to be won in the struggle over interpretation, but it seems the necessary result of interpretation of the accepted texts. The competition over interpretation occurs between theorists dedicated to doctrinal development and practitioners aiming to solve uncertainties and fill lacunas. However, introducing changes and innovations is also needed to allow the system to survive. According to Bourdieu, it is judges who introduce such innovations, after which legal scholars formalise it into a body of generally applicable principles.

Finally, legal scholars share a universalised reason that actualises itself owing nothing to the conditions under which it is manifested. They see the law largely as a neutral space (even in their critique). Lawyers translate feelings of injustice into legal claims or veto it, define problems into legal problems, thus neutralising conflict. The language used creates an image of the law as impersonal, universalistic and neutral. To be sure, the characteristics of the legal field represent not what the law is, but what legal professionals and legal scholars think it is; how the law is imagined.

Connecting these characteristics of the social legal field to the concept of the legal archive means that the archive is constructed through power struggles between its participants, which may explain why, even more than in other cultural domains, race and mixture are actively kept out as issues, because they challenge the assumed neutrality and universality of the law. If so, how then can this legal archive be explored?

Methodology

An exploration of the legal archive as I have tried to do here, and envision to continue in the coming years, has been conducted by Canadian legal scholar Constance Backhouse (1999). She described that although Canada is popularly considered to be 'raceless', in the first half of the twentieth century it was common to use racial terms and typologies. Race was considered a valid categorisation, but not a legal category; no racial distinctions were mentioned in titles of acts, and in legal journals and commentary the issue of race was rarely addressed. This meant that Backhouse had to start from scratch and go through these materials page by page. Sometimes she came across cases because they had been discussed in newspapers, but she also noted that it was likely that many cases had been destroyed, not archived as they had been seen as irrelevant. Still, she concluded that Canadian legal history was deeply racialised and not just limited to the intentional actions of isolated individuals, but part of the legal system. She found the 'Act to prevent the Employment of female labour in certain capacities' which was in fact a White Women Labour Act, that prohibited Chinese employers from hiring white female employees. The Female Refuge Act allowed the incarceration of young women to control their sexual relationships with racialised others (Sangster (2002).

My experiences, so far, in exploring the Dutch legal archive, have been fairly similar. Extensive archival research is necessary in order to find relevant court cases and other legal materials. I often had to rely on other than legal material to access the legal archive. Literature from other academic disciplines, old newspaper articles and peculiar magazines helped me to identify jurists and court cases that I would not have found otherwise.

Because of the focus on 'mixture' rather than 'race', it has been even more of a challenge to find relevant material. Let me explain why I look specifically at 'mixture'. Firstly, mixture is my topic. I have always studied mixture, starting with my PhD on Dutch citizens with a migrant partner and migration law, in my later work on dual citizenship and on transnational families and family law. This started as a topic of personal interest and involvement in an NGO of mixed couples. It became an academic interest, as mixture is the perfect topic to use as a lens to try to understand the world. Mixture confuses and destabilizes, by uniting them in one relationship, marriage or family, (legal) categories that have become fixed and essentialized in certain times and places; for example, European and native, black and white, Muslim and non-Muslim. Through the lens of mixed relationships and mixture, it becomes clear how these categories are produced and reproduced through law, rather than natural categories (see also Gross 2008). Informed by critical legal and critical race studies, and by revealing the obsession of law with mixed sex and marriage, it is possible to look at the power of law in shaping racialised identities. Looking at mixed relationships can teach us about how jurists responded to the disruption, instabilities and uncertainties caused by mixture and how they tried to make sense of the created chaos.

In this lecture, my focus is on the role of legal professionals and scholars in producing meanings of 'race' and 'mixture', addressing the following questions: How have jurists been involved in the regulation of mixture in colonial systems? How have

jurists in the metropole responded to black presence in Europe goes that back much further than often acknowledged (Hondius 2014). How did discourses on race and mixture travel between the colony and the metropole (Cooper & Stoler 1997) and how has that affected the work of jurists?

Let me clarify what I mean by producing meanings of race and mixture. Following the insights from critical race studies, I pose the claim that the law actually produced meanings of race, and thus, the jurists writing laws, regulations, judgments and legal commentaries. They not only worked within a legal framework that contained and produced meanings of race and mixture, but also actively contributed to it. In their legal work, they accepted certain meanings of race and rejected others. This did not remain without effect, but impacted society at large as well as the daily lives of individuals and families, and informed the legal framework that we work with today.

As the social legal field is semi-autonomous, it is linked to other academic disciplines. In their work, legal professionals have made use of the expertise on 'race' and 'mixture' from other disciplines. For the United States, Ariela Gross (2008) and Peggy Pascoe (2009) described the use of medical and other scientific expertise to determine who was 'white' and who was 'black', for instance in cases on interracial marriage prohibition. A second form of knowledge used was 'common racial knowledge' (Gross 2008), for instance through witness statements on the racial identities of others. Mariana Valverde (2009) points to a third form of racial knowledge: knowledge that is produced by professional actors involved in law enforcement, such as police officers. All three forms of knowledge production are relevant in institutional and court decisions, in the development of laws and legal doctrine; they impact the law and through the law, produce meanings of race and mixture. I have assumed that these three forms of knowledge production can also be found in the Dutch legal archive and the work of the three jurists that I have selected.

Selection of Three Jurists

In preparation of this inaugural lecture, I have delved into the archives from different angles; there is a lot yet to be uncovered and I have made certain choices. Here, I will explain what I have come across in the research so far, and the choices I made in selecting the three jurists.

In my 2014 inaugural lecture – not at VU University, but at the University of Amsterdam – I made an inventory of the regulations on mixture that I came across in the archives. Once I started this endeavour, I found much more than I had expected over a much longer and more recent period than I had anticipated. I discussed topics as varied as the interracial marriage prohibition in colonial Suriname, the forced closure of Negro cabarets (clubs that played jazz music) in Dutch cities in the 1930s, the regulations preventing Dutch white girls from entering Moluccan living areas in the 1950s, to the use of migration laws to break up 'immoral' mixed relationships in the 1970s, and the role of race and mixture in marriages of convenience control practices in migration law today (De Hart 2014). These regulations were not always formal laws enacted by parliament, but also included local regulations or enforcement practices. This research convinced me that regulation of mixture was a frequent legal

practice in the Netherlands. Here, I want to focus more specifically on the actors involved in that legal practice: judges, lawyers and law professors. The following are just a few examples of what I have come across so far.

W.J. Leyds completed his PhD with Professor G.A. van Hamel at the University of Amsterdam and, on the advice of Professors Moltzer and Pierson, became state attorney with Paul Kruger in 1884 in the South African Republic. In this function, he was not only responsible for laying railroads, but also wrote laws prohibiting interracial sex.[3] Kollewijn, a colonial lawyer who later became an expert in Private International Law used the phrase 'intergentiel law' in his publications in the Dutch colonial context, but 'interracial law' in international publications (Kollewijn 1929). In 1949, jurist Van den Brandhof held lectures at Dutch law faculties, including the VU University, defending South African Apartheid Laws (Van den Brandhof 1948, 1949). In a peculiar article, E.M. Meijers claimed that legal history could help us to understand the spread of the races throughout Europe (Meijers 1922). Professor Van Hamel, in response to the UNESCO statement on race in 1950, stated that we should not get rid of the biological concept of race (Harkema & Sysling 2018). Well known, of course, is the debate among legal scholars about the application of the Nazi prohibition on marriage between Jews and non-Jews in the Netherlands, before the German occupation in 1940 (Caestecker & Fraser 2008). Obvious examples of jurists who supported Nazi ideology were J.J. Schrieke and L.J. van Apeldoorn. Legal historian Van Apeldoorn included Nazi ideology in his lectures at the University of Amsterdam, and wrote in Nazi magazines. Schrieke was appointed as Professor of Colonial Law at Leiden University and, during the war, as director of the Ministry of Justice. Both were convicted after the war.

I have decided not to select Nazi jurists whose work was explicitly informed by racist ideology. Maybe I will study some of them at a later date. For now, I have chosen to study the work of three Dutch jurists who were well-respected and held influential positions as, respectively, legislator, academic, and judge. They did not explicitly support racial ideologies, or even vehemently rejected them. Nevertheless, in their work, they all expressed forms of 'race thinking' in which race mattered to them as jurists, at different times and in different contexts, in inconsistent and contradictory ways.

I will briefly sketch their professional careers and personal lives, before going into their publications and legal work, and how meanings of race and mixture were produced in that work.

Their work covers the period from the late nineteenth century to the 1940s. Their contributions were not limited to the work they did daily as a judge, academic and legislator. As jurists did not limit their activities to the legal domain, they were active in NGOs, in public debates or as politicians; another way in which the legal field is linked to other domains. As far as relevant for the topic at hand, I will include these activities.

The first jurist is L.W.C. van den Berg, the legislator. He worked in the Dutch East Indies in various legal positions, as well as in the metropole, as a Professor in Delft, mayor of Delft and member of the Senate. I chose him because he wrote the Mixed Marriages Act (1898), which impacted the legal position of mixed couples for decades to come, in the Dutch East Indies as well as in the metropole. I will put this

Act within the context of his other work. With him, we get an impression of the work of a colonial lawyer who belonged to the white European elite.

The second jurist is W.F. Wertheim, the academic. He started as a legal professional in the Dutch East Indies, and in 1936, he was appointed as a Professor at the Batavia Law School. After the war, he left the legal field to become a Professor of Sociology at the University of Amsterdam. Initially, he was part of the colonial legal system, but later explicitly rejected it as a racist system, and critically reflected on his own role in it.

The third jurist, H. de Bie, the judge, had no colonial links. He is best known as the first children's judge, but was also active in the morality movement of the *interbellum* period. In his work in the Rotterdam court and as a publicist, race and mixture were not central, but were still an integral part of it, although at times hidden and submerged.

The material I collected on these three jurists was diverse in nature. The information on L.W.C. van den Berg is the most limited: although he was publicly visible like the other two, he published less and seemed like the traditional legal professional who just did his job. His personal archive in Delft was quite limited.[4] Besides his legal publications, and letters to the editor in newspapers, I analysed his work in legislative committees and his interventions in Senate debates.

W.F. Wertheim has an extensive personal archive in the International Institute of Social History (*Internationaal Instituut voor Sociale Geschiedenis*).[5] He also published widely on the issues that matter to this lecture, and was quite visible in the media. I relied on an autobiography that he wrote together with his wife and had the honour as well as pleasure of meeting with his daughter Anne-Ruth Wertheim, who was kind enough to share information with me.[6]

For De Bie, I studied a number of his publications, as well as the archives of the Rotterdam juvenile court, from 1922-1932 when he was a children's judge.[7] The archives contained the files of court decisions on minors from which I selected a few files where mixture played a role. His personal archive in the National Archives was of limited use, as it focused on official court dealings during the war.[8]

Delpher, a digital system of the Dutch Royal library that contains newspapers, books and magazines, was used to collect additional information, such as newspaper articles, books, pamphlets, and interviews.[9]

How to Trace Race and Mixture

So far, I have used the terms 'race' and 'mixture' without explaining how they are defined. First, it is important to understand that race thinking is neither exceptional nor aberrational, or limited to the extreme right and (neo)-Nazis; in fact, it is ordinary, like gender, a category that organises society and social relations. Second, 'race' is a 'social construct', a product of social thought and relations. In line with the racial formation theory of Michael Omi and Howard Winant (2014), critical race theory acknowledges that racial signification is necessarily a socio-historical process. Thus, the concept of 'race' has no objective, inherent, or fixed meaning, and does not correspond to a biological or genetic reality. Rather, 'race' is a category invented by soci-

ety and by social actors within society at certain times and places (Delgado & Stefancic 2001).

Hence, society racialises different groups at different times and in different contexts; this is why I use the term 'racialisation'. Racialisation refers to the process by which a certain group's social position is attributed to 'racial' characteristics (Castles & Davidson 2000). Finally, critical race theory shares with gender studies an anti-essentialist and intersectional approach (Crenshaw 1990; Lutz et al. 2011; Yuval-Davis 2011), which means that no person has an obvious unitary identity and race is linked to gender and class. Hence, the construction of 'blackness', 'whiteness', or 'mixture' in legal documents has often depended on other aspects of social identity, such as gender, wealth or poverty, education, language, religion, and not colour alone (Lopez 1997; Saada 2011). Race is never only about colour, nor is it only about the white/black binary. For instance, as we will see below, in the period before the Second World War, the Chinese were definitely seen as a 'racial group', a 'yellow race', in the colony as well as in the metropole (Hsu 2015; Keevak 2011). As already mentioned, the Dutch metropole and the colony should be understood not as separate, but as part of the shared and differentiated space of empire, in which discourses, knowledge, ideas and scholarship on race and mixture circulated (Cooper & Stoler 1997: 7; Peabody & Stovall 2003). In this way the racial divides of the colonial past are part of the genealogy of European modes of exclusion (Balibar 2004; Stoler 2001).

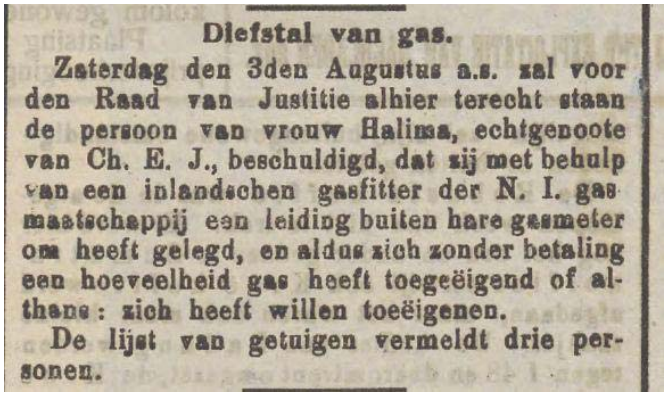
Obviously, if race is a social construct, so is mixture. Who is considered a 'mixed' couple, or a person of 'mixed' descent differs in time and place. What is mixed comes not from pre-existing racial differences between the partners, but it depends on how race is socially and legally constructed. Hence, a mixed marriage is a marriage between partners of two groups that are considered to be distinct racial groups by society at a certain time and place. In other words, what is 'mixed' is in the eyes of the beholder. People who are regarded as having a mixed relationship may or may not consider themselves as such. I will therefore use the term 'interracialised intimacies' as suggested by Haritaworn (2012). Furthermore, it is important to bear in mind that categorisations of 'race' construct not only 'blackness' but also 'whiteness'. In the end, it is 'whiteness' as the sovereign social and legal category that the very idea of 'race' essentially functions to privilege (Boucher et al. 2009; Pascoe 2009; Twine & Gallagher 2008; Ware & Back 2002).

Building on these theoretical perspectives of critical race and critical mixed-race studies, I have assumed that the understanding of 'race' and 'mixture' was constructed in legal texts, court decisions and enforcement practices. This means that the law is not a neutral instrument that operates on society, but rather a constructed social process of racialisation. Unlike traditional human rights approaches, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning and legal principles. It starts from an assumption of the indeterminacy of the law; the idea that not every legal case has one correct outcome (Delgado et al. 2001).

I will use the contemporary terms that can be found in the historical sources on which this research is based, meaning I write about 'race', 'whites', 'Aryans', 'Negroes' and 'natives' (in Dutch: *'ras', 'blanke', 'Ariërs', 'negers', 'inlanders'*), without putting them between quotation marks throughout the text. This may make the reader feel uncom-

fortable at times, as it is supposed to. The intention is to make clear what terminology legal scholars used to explain the meaning of race and mixture in their work. I start each biography with a prologue using a newspaper article that exemplifies the broader context within which each of them worked.

The Legislator: L.W.C. van den Berg (1845-1927)



Diefstal van gas.

Zaterdag den 3den Augustus a.s. zal voor den Raad van Justitie alhier terecht staan de persoon van vrouw Halima, echtgenoote van Ch. E. J., beschuldigd, dat zij met behulp van een inlandschen gasfitter der N. I. gas maatschappij een leiding buiten hare gasmeter om heeft gelegd, en aldus zich zonder betaling een hoeveelheid gas heeft toegeëigend of althans: zich heeft willen toeëigenen.

De lijst van getuigen vermeldt drie personen.

Stealing gas

Saturday the 3rd of August, the person of the woman Halima, wife of Ch.E.J., will stand trial before the Council of Justice, accused of redirecting her pipeline around her gas meter, aided by a native gas fitter of the Dutch Indies gas company, and thus acquiring an amount of gas without payment.

The list of witnesses consists of three persons.[10]

Prologue

In July 1912, a Dutch Indies newspaper reported on the court case of Halima, a native woman who had stolen gas by circumventing her gas meter. In 1913, the High Court of the Dutch Indies ruled on her case.[11] She was around fifty years old and, in 1896. had married a Dutch national of mixed European-Chinese descent. Through this marriage, she had become a Dutch citizen. The journal 'Law in the Dutch Indies' *(Recht in Nederlandsch-Indië*) published the case, indicating the subject as: conflict of jurisdiction, Nationality act, Nationality and racial difference, Art. 75 and 109 R.R. and Art. 15 Transitional Act (*Jurisdictiegeschil, Wet op het Nederlanderschap, nationaliteit en rasverschil, art 75 en 109 RR en art 15 op de wet op de overgang*). The question at hand was whether her case had to be tried according to European or native criminal law. This question was addressed through the issue of race.

In 1848, next to the Dutch Constitution, a Government Regulation (*Regeringsreglement*) for the Dutch East Indies had been established that formed the legal basis for the colonial government. It made a legal distinction between Europeans 'and their equals' on the one hand, and natives 'and their equals' (foreign Orientals including Chinese, Arabs and other Asians) on the other hand. Each of these groups had their 'own' private and public law. This constituted what was called a dualist system (nowadays it would be called legal pluralism), with separate criminal law systems, different family laws, obligatory dress codes according to '*landaard*' (national character), separate living areas and only Europeans had the right to travel freely throughout the colony. Jurists considered this dualist system a system of 'equivalence', in which

European law was not forced upon the natives against their will. In fact, it was a system of apartheid, intended to keep the different racialised groups apart (Bloembergen & Jackson 2006; Wertheim 1991).

Before the Nationality Act of 1892, the entire population of the Indies archipelago had Dutch nationality. From 1892, the racial criteria in the Government Regulation of 1854 became linked to the Nationality Act: natives and their equals were excluded from Dutch citizenship, while those who were legally 'European' remained Dutch citizens (Jones 2007).

According to Article 15 of the Transitional Act of 1848, a non-European who wanted to marry a European became subject to European private law. For Halima, this meant that she was subject to European private law on the one hand, but to native criminal law on the other hand. The difference was relevant, because native criminal law included harsher punishments and fewer procedural safeguards, and if native, her fate could not be decided by the European courts. The lower local court, the *landraad,* had held itself unauthorised to decide Halima's case because they assumed that European law applied to her, as she followed the state of her husband. The High Court did not agree. The concepts of nationality and race, the Court ruled, 'absolutely do not cover each other' (*de begrippen nationaliteit en ras elkaar absoluut niet dekken*). The Court continued:

> that consequently, a native woman, belonging to the race: natives who, in this country, marries a man of the other race: European or their equals, will through that marriage transfer to the nationality of the husband, but not to his race, hence, now that in the Indies the legal procedure rests not on nationality, but on racial difference (art. 75 GR) the legalisation for each race remains applicable to all persons of different races marrying each other in this country (*dat derhalve eene Inlandsche vrouw, als zoodanig behoorende tot het ras: Inlanders, hier te lande in het huwelijk treedt met een man van het andere ras: Europeaan of met dezen gelijkgestelden, door haar huwelijk wel overgaat in de nationaliteit van de man, maar daarom nog niet ook tot zijne ras, zoodat, nu in Indië de rechtsbedeeling berust niet op nationaliteit maar op rasverschil (art 75* RR*), op elk der hier te lande in den echt treedende personen van verschillend ras van toepassing blijft de voor elk ras bestaande wetgeving).*

In this case, tried in the period of the 'ethical policy' in the Dutch East Indies, the colonial High Court in no uncertain terms explained that the colonial legal system was based on race. Mixed marriages like those of Halima and her husband complicated these racial legal categorisations. Although Halima had become a Dutch national through marriage, racially she had remained a native, subject to native public law, including criminal law. This probably meant that she would be sentenced to hard labour; a punishment that did not apply to Europeans.

The case also exemplifies how racial categorisations in colonial law were not stable and far from obvious. The law did not merely reflect the social understanding of racial categories, but actively shaped these racial categories, and subsequently reorganised and recategorised them. What rights (or lack thereof) were connected to being categorised as a particular racial category also shifted in time and place; what remained stable was white European supremacy, both legally and socially.

These instabilities, uncertainties and shifts are reflected in the work of L.W.C. van den Berg, who worked within this colonial legal system for a considerable time and actively helped to shape it. By the time Halima's case was tried, he had already

returned to the Netherlands. But in the late nineteenth century, he wrote an advice on the legal complexities of mixed marriages, which resulted in the Mixed Marriages Act of 1898. Under this Act, Halima would have been spared her fate, as she would have been categorised as European.

Personal Life

Lodewijk Willem Christiaan van den Berg was born in 1845 in Haarlem, to Simon van den Berg and Sophie Charlotte Immerzeel. His parents were an artistic couple, but Van den Berg decided to study law. He defended his dissertation on Muslim law in 1868, written in Latin and later translated into Dutch (Van den Berg 1868). In 1870, he went to the colony for economic reasons, and served in various legal positions. In 1884, he married Marie Francoise Steup, who was born in 1863 in Soerabaja, Dutch East Indies. They had two sons and a daughter, all born in Batavia.

In 1887, Van den Berg returned to the Netherlands and was appointed as Professor of Native Law at the Delft Institute for colonial administrators. After the abolishment of this institute in 1901 – Leiden became the centre for the education of civil servants in the colony – he was involved in the state commission for reform of Indies law and later advisor to the Ministry of the Colonies. From 1910 to 1933, he was a member of the Senate, where he spoke mainly on colonial affairs, and from 1910 to 1920, he was mayor of Delft. Van den Berg died in 1927 (Van den Berg 1928).

He was a well-known public figure and, as expected of a man of his standing, he was socially active as a board member of the health care organisation Bethel, as was his wife, who was also a regent of the reformed orphanage for girls in Delft.[12]

According to a biography written shortly after his death, Van den Berg was of serious character, even more so after an accident during childhood caused him to lose sight in one eye (Van den Berg 1928). Not satisfied in his official positions in the colonial administration, he became depressed and wanted to return to the metropole. This changed when jurist Taco Henny became his superior, and appointed him as an advisor on Eastern languages and Muslim law. This allowed him to travel and come into contact with the Arab population, earning him the nickname 'the Arab' (Van den Berg 1928).

Politically, he was a conservative with strict religious and patriarchal ideas. As we will also see later with De Bie, in the politico-denominational division of Dutch society (pillarisation, *verzuiling*), his political and professional beliefs were strongly influenced by his Protestant background. Dutch society was vertically divided in groups, known as pillars (*zuilen*), that each had their own schools, political parties, social institutions and organisations. Van den Berg was a Senate member for the Protestant Anti-Revolutionary Party, and he opposed voting rights for women, because he felt such rights would undermine the single-headed power of the husband over the wife and disrupt marriage as a result (Stoop 2001: 119). As we will see, these beliefs also influenced his colonial legal work.

Van den Berg was considered an assimilationist, who opposed the colonial dualist legal system in which every population group had its own law. Although he took this assimilationist position in his publications on the Christian natives, there is no sign of this assimilationism in his earlier publications. I start with his advice on the Mixed

Marriages Act of 1898, which aimed to solve the legal and social conflicts resulting from mixed marriages between persons of different racial categories. His advice exemplified his concern with upholding European superiority, which made him oppose extension of the category 'European' to natives and persons of mixed descent. Then I turn to his publications on the subjection of Christians to native law which, in his view, threatened white European superiority. Finally, his publication on the Aceh War and population is further proof of his concern about hybridity and mixture, even among non-European populations.

Advice on Mixed Marriages 1887

Until 1848 in the Dutch East Indies, marriages between Christians and non-Christians were prohibited. Although the prohibition was based on religious categorisation, religion and race largely overlapped and it was understood as a prohibition on racial mixture. When new legislation was prepared, the first intention was to maintain this prohibition, or to maintain it for marriages with Muslims or heathens. In the end, the prohibition was lifted, but not because of a change of heart about the desirability of mixed marriages. Such marriages were still seen as reproachable and the colonial authorities argued that the silence of the law should be understood as a form of prohibition (De Hart 2001).

According to the already mentioned Article 15 of the Transitional Act 1848, a non-European who wanted to marry a European had to become subject to European private law before marriage. Its goal was to prevent marriages between European women and native men; the underlying thought was that those native men would not be willing to become subject to European law and thus would be deterred from concluding a mixed marriage. Later in the nineteenth century, it was thought undesirable that a native man could become subject to European law and the Mixed Marriages Act had to prevent this. It was the result of long preparation in which Van den Berg played a central role.

After seventeen years in the colony, Van den Berg was a member of the colonial elite and a co-founder and secretary of the Dutch Indies Lawyers' Association (*Nederladsch-Indische Juristen Vereeniging*). When, in 1887, the Lawyer's Association's meeting discussed his advice, it was also his farewell, as he was leaving for the Netherlands.

In his more than 60-page advice, Van den Berg (1887) addressed two main issues: the position of European women marrying native men, and the position of children of mixed descent. He framed both of them as issues of race within the colonial hierarchy. He used the word race (*ras*) four times, and the phrases dominant race *(overheerschende ras*) and superior race (*hoogere ras)* to refer to the Europeans. In writing on the marriages of European women and native or foreign Oriental men, he ignored the other gender-race pairing (white male/native female). Although the latter (marriage but above all concubinage) were much more frequent, they were considered less problematic. Within this gendered racial hierarchy, he made a distinction between women, who were European only formally, and 'truly' European women, who were both socially and racially white and European. Only mixed marriages of the 'truly' European women were a real concern to him. He kept close track of their numbers, reporting to have heard of a marriage between a Javanese (*Javaan)* and a 'full blooded'

(*volbloed)* European girl, concluded in the Netherlands. For what he called 'pure' (*zuiver*) European women, he considered a mixed marriage to be politically, morally and socially undesirable, as it upset the racial and patriarchal order. However, he assumed that most mixed marriages would be concluded by women who were only European legally, and socially much closer to their prospective native, Chinese or Arab husbands (Van den Berg 1887:56). This was why he rejected a prohibition on mixed marriages between European women and native men, as suggested by the Indies Council in 1882, as going much too far.

Still, he considered the existing regulation of Article 15 Transitional Act inadequate to address the legal issues resulting from such marriages. A main concern was that it did not properly reflect the subjection of the wife to the husband in a patriarchal order. As Van den Berg explained, a foreign Oriental or native husband subjecting himself to European private law, would still be subject to native public law, including serfdom (*heerendiensten)*. This would be humiliating to the European wife, who would, socially and legally, remain superior to her husband and fail to pay her husband the required respect. His second concern was European supremacy. Article 15 extended the group of legal Europeans too much by including those who were socially native, caused by mixed marriages of European women who were not 'truly' European, whom he considered 'no asset' to European society (*geen sieraad*). In the patriarchal order as Van den Berg saw it, women carried the burden of representing the community, as the symbolic bearers of its identity and honour (Yuval-Davis, 2008 [1997]: 43-45, 67).

In explaining the issues involving children, he focussed especially on those of a Chinese father. The Chinese were a particularly problematised group in the colony. Relations between the Dutch and the Chinese had been strained from the beginning of the establishment of the VOC in the Dutch East Indies. During the nineteenth century, the economic and political power of the Chinese came to be increasingly problematised. The colonial authorities considered them parasites who abused the weaker native population, and assigned themselves the task of protecting the natives from this abuse (Shirahshi 2011). The Chinese were also problematised because of their supposedly deviant family patterns (including polygamy and adoption, which were prohibited in the Netherlands) as well as their relationships with and marriages to European or 'native' women (Dharmowijono 2009). As foreign Orientals, the Chinese had a particular legal position (Tjiook-Liem 1009).

Against this background, Van den Berg worried about the children born out of wedlock to a European mother and Chinese father. Based on Article 15 Transitional Act, those children would be legally European although, as Van den Berg assumed, they would be raised by the father as Chinese and perceived as such by their social environment. He imagined problems resulting from the obligatory dress codes: what if a child dressing as Chinese with the traditional pigtail, was prosecuted and forced to cut off the pigtail and wear European clothing? (Van den Berg 1887: 16). He thought it also unthinkable that a native father would have custody over European children. Here, too, he feared that children following the legal status of their European mothers would enlarge the number of Europeans who were only legally and not 'truly' European (Van den Berg 1887: 56).

Hence, he suggested that Article 15 Transitional Act be replaced by the dependant status of a European woman married to a native husband; she would conse-

quently be subject to native private *and* public law. The desired effect would be that 'truly' European women would be discouraged from entering such ill-matched unions, Van den Berg explained:

> Especially the knowledge that through marriage she would come to belong to the native or their equal population, would withhold many women who still attach at least some value to their position as European or their equals from such a step. One would consequently attain, what I find desirable, namely that as few as possible truly European women marry a native or their equals. (*Juist de wetenschap, dat zij door haar huwelijk tot de inlandsche of daarmee gelijkgestelde bevolking overgaat, [zou] menige vrouw die nog eenigszins aan hare positie van Europeesche of daarmede gelijkgestelde hecht, terughouden van dien stap. Men zal dus juist bereiken, wat ik wenselijk acht, namelijk dat werkelijk Europeesche vrouwen zoo min mogelijk met inlanders of daarmee gelijkgestelden huwen.*) (Van den Berg 1887: 58)

In the debate that ensued among the colonial authorities, the members of the Lawyers' Association and the media, the most pressing question was whether the loss of status by the European woman was desirable (De Hart 2001). The answer to this question depended on whether such a marriage was seen as degrading for the European woman, who would be giving up her rights and civilisation to end up in an uncertain and disadvantaged legal position. For this reason, Van den Berg's advice was met with criticism in the colonial press, as it was considered incompatible with the dominance and civilising mission of the Dutch colonial state.[13] Of the Indies Lawyers' Association, nine members voted for and two against the suggested regulation. The chair of the meeting, jurist M.C. Piepers, feared an outrage if a European woman became subject to native criminal punishment (*een ongehoord schandaal*), but he gave in when it turned out that the meeting favoured Van den Berg's solution. He summarised the majority opinion as follows:

> The argument of the opponents comes down to this: the European woman who forgets herself, who degrades herself by marrying a native does not deserve that one is concerned about her. She has it coming to her. This view does not surprise me as it is in line with the spirit of Indies society, that considers such an act for a woman who is truly European deeply dishonouring. (*De reedenering van de tegenstanders komt nu eigenlijk hierop neer : eene Europeesche vrouw die zich zoo vergeet, zoo degradeert om met eenen Inlannder te huwen verdient niet dat men zich om haar bekommert, zij moet maar hebben wat erop staat. Die beschouwing verwondert mij niet; zij is geheel in de geest der Indische maatschappij, die zulk eene handeling van eene werkelijk Europeesche vrouw diep onterend acht.*) (cited in Wertheim 1956).

One of the opponents, J.H. Abendanon, did not share this view and suggested that both marriage partners should be subject to European law, that the European population should be expanded and that no-one should be 'pushed back' into the native population. His opinion was shared by Director of Justice Stibbe, who wanted a gender-neutral regulation in which the 'lower' partner would follow the 'higher' partner. He, too, considered subjecting the European woman to native law to be shocking and reprehensible and wanted to protect her from 'Indies situations' (*Indische toestanden)*, especially criminal law.

The state commission followed Van den Berg's advice, sticking to his categorisation of two types of European women: those who lived 'at the borders of what separates the races' and factually belonged to native society and 'truly' European women for whom such marriages were repugnant. As described in the memorandum of clarification to the Act:

> The woman will enter only very seldom such a marriage, that is in the evaluation of society to which she belongs abhorrent and degrading for her, which cannot be said to be unfortunate, because such marriages are both from a political and a social perspective undeniably the most reprehensible of all mixed marriages. (*Die vrouw zal tot een huwelijk, hetwelk in de schatting der maatschappij, waarin zij verkeert, stuitend en vernederend voor haar zou wezen, zeker niet dan hoogst zelden overgaan, wat trouwens wel niet gezegd kan worden ongelukkig te zijn, dewijl dergelijke huwelijken uit staatkundig en uit een maatschappelijk oogpunt ontegenzeggelijk de verwerpelijkste zijn van alle gemengde huwelijken.*)[14]

Hence, the regulation that Van den Berg had suggested was accepted and made into law.[15] Whether for or against the Mixed Marriages Act, all jurists saw mixed marriages with natives as ill-matched, although some used more explicitly racialised language than others. Their concern about interracialised intimacies was disproportionally directed at mixed marriages between Dutch (European) women and native men and not at those of native women and white males, even though the latter were much more common. This is a consistent pattern that can be found across time and place, across colonies and beyond (Pascoe 2009), and consistently these white women were seen as being of a 'very low type' (Tabili 1996). To be sure, the lack of attention to mixed marriages of native women did not signify greater tolerance towards those women. Rather, it was about reluctance to interfere with white male privilege to choose a woman as they pleased. That a native woman obtained the status of European when she married a European was his right and privilege, not hers. Hence, the position of native women like Halima was of very little concern to Van den Berg and other jurists.

The discussion on the Mixed Marriages Act did not end there. Only a few years after its enactment, the Act was amended, and again, Van den Berg was involved as the secretary of the commission that prepared it. One issue was that the working of the Mixed Marriages Act was extended by making it retroactive.[16] The most important issue addressed was the marriage of a native, Muslim woman marrying a European, non-Muslim man. To conform with the principle of dualism, according to which each population group was to apply their own law, one would have assumed that Muslim women would not have been allowed to marry non-Muslim men, as this was prohibited in Muslim law. However, the 1901 amendment was especially designed to allow such marriages, arguing that Muslim women in the Indies were not subject to theoretical Muslim law, but to *adat* law that did not prohibit them.[17] Because such nuances were thought to be too complex for the native '*panghoeloe*' (administrator) who had to enforce them, it was thought best to explicitly prohibit religious marriage conditions. This resulted in a new section to Article 7 Mixed Marriages Act: Difference of religion, national character or descent can never be an impediment to marriage (*Verschil van godsdienst, landaard of afkomst, kan nimmer als beletsel tegen het huwelijk gelden*).

The tone of the commission's report was somewhat less negative on mixed marriages than the earlier 1887 advice, although it still attached significant social meaning to them, because such marriages caused a radical change in the legal position of the woman (*Het aangaan van een gemengd huwelijk is, op zich zelf reeds, eene daad van meer beteekenis dan een huwelijk tusschen personen aan hetzelfde recht onderworpen, al ware het slechts wegens de radicale verandering in den rechtstoestand der vrouw, welke daarvan het gevolg is*).(Cited in Nederburgh 1902: 74).

However, the report should not be seen as marking a shift in the evaluation of mixed marriages. Rather, the different tone can be explained by the fact that it focussed on the gender-race pairing of native women and European men. The consequences for European women remained the same: the loss of their status. For European men, it extended the range of native women from which to pick their marriage partners. Furthermore, it illustrated that the dualist system was not about true 'equivalence' of the laws of the different population groups. On the contrary, colonial authorities 'discovered', interpreted and determined native *adat* laws in ways that suited the colonial racial and patriarchal order.

We will return to the Mixed Marriages Act later, in the chapter on Wertheim. First, we turn to the issue of Christian natives. Here, Van den Berg started challenging the dualist system.

Race and Religion: The Christian Natives

Conversion of the native population in the colonies mattered greatly to Van den Berg. He believed in the evangelisation of the non-Christian population, based on the superiority of Protestantism, as part of colonial policy (Van den Berg 1907). As he wrote:

> The Christian religion is, in my view, if only for its universal character, so endless far above the Islam that, in this respect, an apology for evangelisation is totally superfluous. (*De Christelijke godsdienst staat naar mijne meening, al ware het slechts om zijn universeel karakter, zoo oneindig ver boven den Islam, dat eene apologie der evangelisatie in dit opzicht volkomen overbodig is.*) (Van den Berg 1890: 68)

Against this background, it is obvious why Van den Berg was especially concerned about the legal position of Christian natives, as they had the superior religious belief, but belonged to an inferior racial group. As natives, they were subject to native law. [18] Although he did not make this explicit, a significant part of the native Christians were of mixed descent and used to be called *mestiezen* until the beginning of the nineteenth century.

The legal position of the Christian natives had been considered problematic for a long time and not only by Van den Berg. Their legal position had changed several times and according to the Government Regulation of 1854 (Article 75) they were no longer considered Europeans, but natives and subject to native law.

In his 1887 advice on the Mixed Marriages Act, Van den Berg had criticised councillor Wichers' opinion that Christian natives were no better than other natives in terms of development, and could only be granted equality on individual decision by the governor. Van den Berg rejected development as a criterion for equality to Euro-

peans, again problematising the category 'Europeans' as too inclusive: many Chinese and African Europeans did not possess the required civilisation either, and on the other hand, he knew non-European Mohammedans who were more civilised than many European Christians. What should be central was, in his opinion, individuals' moral and social needs. He proposed an amendment to Article 75 Government Regulation to apply European law to Christian natives (Tobi 1927: 16). A state commission, with Van den Berg as secretary, was asked for advice and developed a regulation for the voluntary, individual subjection of natives to European law. This made the general subjection of Christian natives to European law superfluous. In 1901, after the Indies Council of Justice and the Governor General advised against this, the Minister of the Colonies decided to let the matter rest (Tobi 927: 16).

In the magazine *De Gids* in 1890 and 1909, and as a Senator, Van den Berg took issue with the position of the Christian natives. He described the dualist system as a system that kept the dominant Western race and the Asians apart, and as a system of inequality, listing the differences that we have already come across, such as the unequal criminal system. He also pointed out that racial categories had become increasingly blurred, as a result of increasing racial mixture that had resulted in persons who were perceived as Westerners, but had no 'Western blood' in their veins. The treatment of the Japanese, since 1899, as 'equal to Europeans' had made it difficult to refuse such equal treatment to other Asian groups. It seemed that almost everybody in the Indies had a privileged position, except 'the children of the country' (*de kinderen des lands*). His third argument was that an increasing number of natives and foreign Orientals strived for assimilation: they aspired to be educated in the Netherlands, to use the Dutch language, they wanted to be naturalised, and the emancipation of native women was moving forward too.

By 1912, still nothing had happened. During the Senate budget hearings, Van den Berg urged the Minister to take action, drawing attention to the increasingly pressing 'race issue' in the Dutch East Indies. He presented the dualist system as alien, Muslim, and unchristian: it might have worked well in the time of the VOC, but no longer fulfilled its purpose now that the Indies had become part of the international global mobility. It was an antiquity.

He repeated his criticism that the dualist system did not reflect who people truly were in terms of race. The category European consisted of many inferior members: those who had become Asian by mixing with Asian blood, Japanese mademoiselles *(juffrouwen*), and Italian organ players. On the other hand, the dualist system treated even 'the noblest Chinese' as inferior. Although Van den Berg thought that the Chinese actually were inferior, with their deviant family norms, they were loyal inhabitants of the colony. Even if there were some bad ones, 'among the Westerners of the most pure Aryan race' (*Westerlingen van het meest zuivere arische ras*) good and bad people could be found too. His plea was, therefore, for unification of the law applying to different racial groups, with the exception of family law.[19] Van den Berg saw unification and successful assimilation as a way to prevent the Indonesians from wanting the Dutch to leave, even if they were able to stand on their own feet.

With his plea for unification, Van den Berg stood against those who promoted equivalence and dualism, most importantly, Leiden Professor Van Vollenhoven, the 'inventor' of *adat* law. Van Vollenhoven 'won' and, for obvious reasons, Indonesians were not asked for their opinion (Fasseur 2007). In the end, Van den Berg's position

served to consolidate Dutch colonial power. His view on Dutch colonial power is also demonstrated by his essay on the Aceh war, which is the next topic.

The Hybridity of a Population: Aceh

As we saw, Van den Berg problematised racial categories that he no longer considered 'pure'. This notion of 'pure' races can also be found in his essay on the Aceh population, which has been quoted as an example of biological racism (Kuitenbrouwer & Leenders 2000: 177). The essay was an elaborate book review of a scientific study of the Aceh population by medical doctor Julius Jacobs, the brother of the famous Dutch feminist Aletta Jacobs (Van den Berg 1895; Jacobs 1894). A discussion of this review helps us to further understand the roots of his ideas on race and mixture.

Jacobs' study sought to question dominant negative perceptions of the Aceh population, based on the newest scientific insights. Van den Berg did not question Jacob's expertise, but claimed he went too far and had come to love his objects of study. Central to their differences was the question of where the negative characteristics of the Aceh people came from. According to Jacobs, the ongoing war was the root cause of any negative traits that the Aceh had. Some of the Aceh people had not known anything else but war, he argued. This war was the result of the 1870 Sumatra Treaty, a deal between the Netherlands and Britain, in which the British acquired the Guinea coast (now Ghana) and left Sumatra, including Aceh, to the Dutch. Subsequently, the Dutch struggled to gain control over the territory, which had become of strategic importance after the opening of the Suez Canal in 1869. The war continued until at least 1914, and it is estimated that 60,000 to 100,000 Aceh people were killed, and 2,000 KNIL soldiers lost their lives. Jacobs described the Aceh struggle as one of independence, but Van den Berg saw this completely differently.

To him, it was all an issue of their lack of morals. From the first contact with the Dutch, the Aceh people had had a bad reputation. They had loose sexual morals, including perverse dispositions (read: homosexuality), loose family ties, and they had always been thieves. Intellectually the Aceh were low, they had no interest in education and had no higher principles but a lust to fight and keep the war going; they had a natural urge to plunder and kill, Van den Berg claimed. The latter arguments are obviously linked to the Aceh's unwillingness to subject themselves to Dutch colonial rule. Van den Berg sought to justify the ongoing war, and if Jacobs was right, he admitted, the war in Aceh was unjust.

However, it was more than just war rhetoric. In strongly racialised terms, Van den Berg claimed that he had seldom seen so many unfavourable physiognomies (*ongunstige physionomiën)* among a people and, contrary to his contact with the Javanese and Malaysians, he had always felt aversion towards the Aceh. Using a combination of common racial knowledge and scientific knowledge, he based these evaluations on his own experiences during his stay in Aceh. He also referred to ethnologist P.J. Veth (1873) where he sought confirmation of the claimed lack of morals and ugliness. Veth, by the way, was more nuanced. He mentioned indeed the bad reputation of the Aceh population and their unfavourable features, but did not exclude that such negative evaluations were unreliable as they could be attributed to prejudice by whites

towards the brown race and Christians towards Muslims. Van den Berg, however, attributed their low moral character to their hybrid origin, explaining:

> Moreover, almost nothing is left of the autochthones of Aceh. What we call the Aceh people is an anthropological mixtum, from which the original type can no longer be recognised, a mishmash that drives even the most industrious and patient anthropologist insane. (*Daarbij komt, dat van de autochthonen van Atjeh sedert lang bijna niets meer over is. Wat wij thans het Atjehsche volk noemen, is een anthropologisch mixtum, waaruit de oorspronkelijke type niet meer te herkennen is, een mengelmoes, dat zelfs den ijverigsten en geduldigsten anthropoloog tot vertwijfeling brengt.*) (Van den Berg 1894: 212).

Hence, Van den Berg argued, the Aceh were not a people; they had less unity than a pile of sand, they were born anarchists. A new war would be a waste of lives and doomed to fail. Therefore, the only thing to do was to drive the Aceh population into the mountains and establish a new population in the valley, thus eliminating the problem:

> No longer on subjection, not on assimilation, but on elimination should our policy be aimed. (*Niet meer op hunne onderwerping, niet meer op hunne assimilatie, maar op hunne eliminatie moet onze politiek zijn gericht.*) (Van den Berg 1894: 238).

Van den Berg was certainly not the only one holding this position. The author P.A. Daum also pleaded for their extermination (*verdelging)*, and in Parliament, liberal MP J.W.H. Rutgers van Rozenburg thought that the opponents of the Aceh War suffered from 'sickening humanity' (*ziekelijke humaniteit*) (Kuitenbrouwer & Leenders 2000: 177).

What I want to focus on here is the meaning of hybridity in such arguments, the mishmash to which Van den Berg referred. The term 'hybridity' was developed in the context of natural science, especially botany and zoology. During the eighteenth century, it came to include humans. Under the influence of scientific racism, hybridity became a major concern. Colonial policies aimed at either assimilation or segregation, which had different concepts of hybrid, but both started from the myth of originary unity and racial purity. Assimilation could mean the mingling of races, so that eventually, the inferior race traits would disappear. On the other hand, the offspring of such interracial unions potentially disrupted racial hierarchies (Brah & Combes 2005: 1 ff). Hence, Van den Berg as an assimilationist, who favoured the inclusion of Christian natives, still saw hybridity as a problem. It rested on the notion of separate human races within a racial hierarchy with the white race at the top. In this hierarchy, some races could become dispensable. As a contemporary German anthropologist noted: in such a hierarchy, lower races who were not at the service of the white men – in this case the Aceh people – could be abandoned and if necessary, exterminated (Young 2005: 7). The law did not play any role in Van den Berg's essay on the Aceh, but in such a situation of dispensable races, one did not need the law.

Conclusion

In the literature, Van den Berg has become largely marginalised, because his traditional research and assimilationist views lost against Snouck Hourgoinje's and Van Vollenhove's perspectives, which were considered more liberal (Fasseur 2007). However, the impact that Van den Berg had as a legislator and a government advisor should not be underestimated. With the Mixed Marriages Act, he helped to produce the racial categorisations in colonial law, which remained relevant for decades after his death. The Act remained in place until decolonisation, and even until 1974 in independent Indonesia. After decolonisation, these gendered and racialised categorisations were at the basis of the attribution of Dutch nationality. Europeans and Indo-Europeans of mixed descent with a Dutch father held Dutch citizenship, while the children of a Dutch mother and native father were considered natives; they lost their Dutch citizenship and acquired Indonesian citizenship (De Hart 2012).

In the colony and the metropole, the Mixed Marriages Act contributed to public and political discourse in which marriages with Muslims were problematised as a danger to Dutch white women. In the metropole, this resulted in a practice, until the 1980s, in which civil registrars warned Dutch women against the dangers of marrying Muslim men (De Hart 2017a).

When later in his career, Van den Berg became to be more critical of the dualist legal system, at least for Christian natives, he was rather unsuccessful. His consistent plea to subject Christian natives to European private law, were rebutted by the perception of dualism as equivalence of different laws and population groups. In spite of the obvious inequalities in colonial law, the discourse of colour-blindness made it rather unsusceptible for critique.

The Academic: W.F. Wertheim (1907-1998)

NEDERLANDSCH-INDIE.

Een Zedenschandaal.

SOERABAJA, 9 Sept. (*Aneta*). De politie kwam een zedenschandaal op het spoor waarbij vele minderjarige jongens betrokken zijn.

Terzake is gearresteerd een zekere M.

A moral scandal

The police tracked down a moral scandal involving many minor boys.

A certain M. was arrested.[20]

Prologue

This short news report on a 'moral scandal' left unmentioned what the scandal entailed. However, the readers, white elite colonials, would have understood perfectly what it was about. The involvement of minor boys indicated that the scandal was of a homosexual nature.

Such arrests of homosexuals were exceptional in the colony. The colonial regulation of interracial sex focussed largely on heterosexual sex. Homosexuality was seen as less of a threat than heterosexual interracial sex, as it produced no mixed-race children. This implied that colonial societies were relatively permissive towards homosexuality (Young 2005: 24). For European homosexuals, the colony could even function as a place of refuge where they were safe from prosecution and heterosexual marriage; especially Bali in the Dutch East Indies had such a reputation. On the other hand, homosexuality did not fit within the 'civilising mission' of colonial power, and was racialised, as it was regarded as a degenerative product of miscegenation, constituting a threat to European prestige (Aldrich 2003: 4).

Under Dutch law, already since the nineteenth century, homosexual contact between adults was no longer punishable. However, under the influence of the increasing political power of confessional parties, in 1911, homosexual contact with a minor was treated differently than heterosexual contact with a minor. While the age of majority was set at 21, homosexual contact was punishable with a minor below the age of 21, heterosexual contact with a minor below the age of 16 (Article 248 bis Criminal Code) (Salden 1980). This distinction between homosexual and heterosexual contact with a minor remained in place until 1971.

However, if homosexual acts were tolerated in the colony, it was only tolerated for certain combinations of sexual partners. In this newspaper article, the race of the boys was not mentioned. This meant that they were most likely native boys. If they had been European, the scandal would have been bigger and the media attention greater. For the same reason M., the suspect, was most likely European.

When a decade later, W.F. Wertheim was working in the Dutch East Indies, he was confronted with mass arrests of often high-ranking European men who had committed sexual acts with minor native boys. He sided with the European homosexual men, against the colonial authorities. However. as I will argue, this position confirmed rather than disrupted the colonial racial order.

Personal Life

Willem Frederik Wertheim was born in 1907 in St. Petersburg, Russia, where he grew up with his parents Jonas Wertheim and Heintje van Gelder, and his brother Hans. The family left Russia after the Russian Revolution and Wertheim went to high school in the Netherlands. He studied law, and finished his PhD thesis on legal accountability for damage outside contract in 1930, at Leiden University with Professor E.M. Meyers (Wertheim 1930).

He married Hetty Gijse Weenink and the couple left for the colony out of economic necessity during the economic crisis. They had two daughters and a son. He started as a member of the *Landraad*, a local court, in South Sumatra, which he did not enjoy. Life became better when he started working for the Justice department in Batavia and, in 1936, he became a Professor at the Batavia Law School.

In his autobiography, Wertheim mentioned that the colonial mentality never fully got to him and his wife. He attributed this to their meeting, shortly after their arrival, with an Indonesian who had studied in Leiden. In Leiden, this Indonesian man had been part of student life, but in the Indies he met with segregation policies. He was not allowed in the society club, or in the swim club, and for meetings with the native authorities, separate events were organised for Europeans and non-Europeans (Wertheim & Wertheim-Gijse Weenink 1992: 146). Wertheim's autobiography also attested to gatherings of Indonesians that he and his wife visited, the mixed couples who were part of their social network, as well as their overall discomfort with strict colonial hierarchies. Nevertheless, his legal work attests to being part of the colonial order, as he also admitted in his later publications.

During the Second World War, he and his family were interned in Japanese camps. During this internment, he came to realise that things would not be the same after the war ended. After Indonesia declared its independence on 17 August 1945, he returned to the Netherlands with his family in 1946. In the same year, he published an article arguing that Indonesia's independence should be accepted (Wertheim 1946), which probably cost him his appointment as a law Professor at Leiden University (Breman 2016). Instead, he was appointed as a Professor of Sociology at the University of Amsterdam. While he had been part of the white colonial elite before the war, he now became a controversial figure because of his anti-colonial and anti-racist position and, later, because of his lasting support for Mao's communism.

Wertheim's work covers several decades from the 1930s to the 1990s. In the pre-war period, he wrote on the Mixed Marriages Act discussed above, and submitted a legal advice on the prosecution of homosexuals. In this work, he did not question the colonial legal order; these writings fitted within the traditional colonial legal scholarship informed by racial and gendered logic. Subsequently, his work for the Visman Commission will be discussed. The Visman Commission was established at the be-

ginning of the war in Europe, and started from the assumption that Dutch colonial rule would be reinstated after liberation. Within the restrictions of this context, Wertheim attempted to write critically on existing racial legal categorisations. After the war, he was free from the colonial order and, now a sociologist, from the legal discipline. Without these earlier constraints, he questioned the colonial order as a racial order without hesitation, which completely changed his evaluation of the Mixed Marriages Act. However, as we will see, these early after-war publications remained informed by colonial and scientific stereotypes on mixture. First, we return to his legal advice on the prosecution of homosexuals.

Homosexuals, Minors and *Adat* Law

In his autobiography, Wertheim described the mass arrests of, mainly European, homosexual men, as follows:

> Around Christmas 1938 Batavia was in turmoil because of the startling arrests of homosexual men, among them quite a few prominent ones. It was based on the offense of art 292 Indies Criminal Code: fornication with a minor of the same sex. In the past, colonial opinions had been lenient towards deviant sexual behavior. In Indonesian circles it was also not strongly objected. The island Bali was well-known among artists with homosexual inclinations as a sort of free-haven, where quite a few male prostitutes could be found. (*Omstreeks de kerstdagen van 1938 was heel Batavia in rep en roer vanwege opzienbarende arrestaties van homosexuele mannen, onder wie nogal wat prominenten. Het ging om het delict, omschreven in art 292 van het Indisch wetboek van Strafrecht: ontucht met een minderjarige van hetzelfde geslacht. In het verleden hadden in de koloniale samenleving nogal tolerante opvattingen geheerst ten opzichte van sexueel 'afwijkend' gedrag. Ook in Indonesische kringen werd daar in het algemeen niet erg zwaar aan getild. Het eiland Bali was in het bijzonder bij Europese kunstenaars met homosexuele neigingen bekend geweest als een soort vrijplaats: er kwam bij dat daar nogal wat mannelijke prostituees te vinden waren.*) (Wertheim & Wertheim-Gijse Weenink 1992:159).

Based on the literature, the following had happened (Bloembergen 2011; Aldrich 2003: 198 ff; Kerkhof 1992).

It all started with some media reports in the colonial newspapers on homosexuals in the colony. For the Indies Christian State Party, these media reports were reason to urge the governor to take action. After nothing happened, the Christian State Party in the metropole lobbied the Minister of the Colonies Colijn, resulting finally in the mass arrests.

Between December 1938 and May 1939, around 225 mostly European men, often of good standing, including 38 government officials, were arrested. Although the arrests were justified by prosecution for the offence of fornication with minors of the same sex, it was clear that all homosexuals were being targeted. The arrests were widely reported in the colonial press, using phrases such as 'purification process' (*zuiveringsproces*) and 'cleaning process' (*reinigingsproces*).[21]

Most of the arrested men were sentenced to imprisonment, varying from two months to two years. Of the government officials, those who had been arrested for homosexual acts were honourably discharged or transferred. Those who had committed homosexual acts with minors were dismissed from the service. Under a new regu-

lation, new officials arriving from the Netherlands needed official confirmation, stating they were not a communist or 'like that' (Kerkhof 1992: 43). Three of the arrested men committed suicide. The native youngsters were considered to be prostitutes. The adults were jailed for violating the ban on streetwalking, while minors were sent to the juvenile facility at *Pro Juventute* (Bloembergen 2011: 139). According to Kerkhof (1992), the raid was an attempt to consolidate colonial rule. The Dutch wanted to extend their control of Bali, where artists, intellectuals and bohemians lived in too close contact with the native population. Bali needed to be freed from this colony of artists, opened up for private companies and for the churches' mission activities. Furthermore, as in the metropole, it was also a period of economic crisis, and increasing international tension in which the colony felt threatened.

For the question of whether the homosexual men had committed a crime, it was relevant to ascertain whether or not the native boys were minors (below the age of 21). This was where Wertheim became involved.

In his autobiography, Wertheim explained the legal complexities of determining minority in the colonial context. Normally, to conform with the principle of legal pluralism or *intergentiel* law, *adat* law would have applied here.[22] Under *adat* law, the age of majority was much lower than the 21 years in Dutch law. However, Wertheim explained, a 1931 colonial circular determined that in criminal law the Dutch understanding of majority would be applied, hence, 21 years.

Hence, the age of minority was an important issue in the prosecution of the European men. It was also a highly racialised and sexualised issue. In the colony, natives were often considered more sexual than Europeans, as we already saw in Van den Berg's article on the Aceh people (De Vries 2005). Native children were considered to be precocious, to look older than they actually were and already sensual at an early age (Boudewijn 2016: 104). For instance, gay activist Joannes Henri François, who had colonial experience and who criticised the arrests, argued that the native population had different norms for homosexual acts and that it was often difficult to determine who was a minor (also because natives were not registered in the civil registry).[23] Thus, in response to the scandal, medical experts started developing methods to determine the age of native boys (Bloembergen 2011).

Wertheim wrote a legal advice for lawyer Sinninghe Damsté who defended one of the arrested men, a school director, who had been accused of having sex with four native minor boys.[24] The lawyer's plea, based on Wertheim's advice, focussed on the issue of minority. It argued that the boys were from Bali, a region with self-government, and that the question whether they were minors had to be determined according to *adat*, Muslim law, in which it was set at 15 years. This would mean that the boys in question, who were aged 17-20 years, were not minors, and that no crime had been committed. The prosecutor rejected this argument and stated that, for the sake of legal security, the minority age for criminal law had been set at 21 years for all population groups. In his advice, Wertheim concluded that although legally the actions were justified, he considered them politically and socially nonsensical (*onzinnig)*, even from a colonial standpoint, as European colonial prestige had been severely damaged. He knew some of the men personally and had visited them in prison (Wertheim & Wertheim-Gijse Weenink 1992: 161). Hence, Wertheim sided with the European homosexual men and not the colonial administration. He focussed on the consequences for the European men, but not on the native boys and their punish-

ment. He employed *adat* law in service of the interest of the European homosexual men.

Therefore, I argue that his tolerant position towards homosexuality largely fitted with colonial racial legal hierarchies. As mentioned, the 1938 raid was the exception to a permissive practice towards homosexuality in the Indies, that only applied as long as the contacts were with native or Indo-European boys and not when they involved non-native, white European boys. This permissive attitude was also contrary to the much stricter moral policing of the prostitution of minor native girls by foreign Oriental (e.g. Chinese) men. This was not because the contact between European men and native boys was less exploitative (Bloembergen 2011). Although Wertheim stressed the voluntary character of these relations, many of the native boys were prostituting themselves for money, out of economic need. In the end, colonial permissiveness towards homosexuality served the availability of the native population for sex with white men. Victimisation of native girls and boys – who were almost immoral by nature – implied a critique of white men. This shows that European white males could transgress sexual and racial boundaries by virtue of the fact that they were the only ones who possessed sexual agency (De Vries 2005).

Mixed Marriages Act and Interracial Marriage Prohibitions

We go back a few years in time when, in 1936, Wertheim held his inaugural lecture at Batavia Law School. One of the topics he dealt with was the Mixed Marriages Act. Like Van den Berg before him, he paid special attention to mixed marriages between European women and Muslim men. According to Wertheim, this combination appealed most to the imagination, although he did not explain why this was the case (Wertheim 1936: 26). Also as legal scholars had done before him, he saw the consequences of the subjection of the European woman to native, Islamic law as hurtful (*krenkend*), referring to polygamy and repudiation. However, he argued, that in itself was not a valid legal argument, because the starting point was the equivalence (*gelijkwaardigheid*) of both legal systems. He did not offer a clear solution for these problems.

In his lecture, Wertheim advocated a sociological perspective on the law that could tell us about the aims of the institutions of monogamy and protection from repudiation: lifting up the woman from her position of dependence, which was necessary to uplift the Oriental (Wertheim 1936: 27). As we have seen, legal scholars often mentioned the topics of repudiation and polygamy as a way to problematise mixed marriages. He remained in line with the dominant general legal opinions before him on the Mixed Marriages Act, as well as the colonial discourse in which natives needed to be uplifted in a civilising mission. He did not use the word 'race' at all, and wrote of *intergentiel* law, designating the underlying thought of equivalence of different laws applying to different population groups.

What is more, he expressed these dominant legal perceptions of the Mixed Marriages Act, in spite of the growing criticism of this Act, especially because of the consequences of polygamy and repudiation (Locher-Scholten 2000). These objections had been put forward by feminist jurists such as Betsy Bakker-Nort, discussed in the Dutch parliament and increasingly among more traditional legal scholars. These con-

cerns started in the Netherlands where the few marriages between Dutch women and Indonesians stirred extensive attention. Already in 1899, Izak Alexander Nederburgh, director of Justice in Batavia and Professor of Colonial Law at Utrecht University, feared that:

> The best of European women who marry natives, would be subjected to such a hard fate, undeserved and unexpectedly; those who marry in the Netherlands with a native who is living there and who, through his oriental appearance, sometimes has a mysterious appeal. They do not know what they get themselves into. (*De beste der Eur. Vrouwen die met inlanders trouwen, onverdiend onverwacht aan zulk een hard lot zullen worden onderworpen; zij die in Nederland trouwen met een daar vertoevenden en door zijn Oostersch voorkomen soms een geheimezinnige bekooring uitoefenden Inlander. Deze beseffen niet wat haar te wachten staat.*) (Nederburgh 1899: 122-123).

In the Dutch parliament, feminist MP Betsy Bakker-Nort worried that a woman marrying an Indonesian Muslim in the Netherlands was not aware of the 'repugnant consequences' of Islamic family law. This would certainly result in 'a world of marital misery' and 'endless tears'.[25] Similar criticism was uttered in the colony, for instance during a meeting of the Indies Association for Women's Rights in 1934, where jurist van Hinloopen Labberton discussed the legal complexities of mixed marriages. He warned against such marriages between European women and native men, because of the dangers of polygamy, 'although there are of course very positive exceptions.' (*daarom was er ook alles tegen, dat een Europeesche met een inlander trouwt, hoewel er natuurlijk zeer gunstige uitzonderingen zyn*).[26]

Of course, the racialisation and orientalism in those criticisms, based on negative stereotypes of abusive native men and harem-like imageries, are quite obvious (De Hart 2017a). The point here is that to Wertheim, at the time, the subjection of European women to polygamy and repudiation seemed just the unavoidable consequences of the equivalence of different laws and populations.

The Mixed Marriages Act also mattered in Private International Law (PIL) issues in the colony. Just before the war in April 1940, Wertheim used the Mixed Marriages Act in a legal advice that he wrote at the request of substitute Attorney General Bruïne.[27] It involved the issue of the application of American interracial marriage prohibition in the colony. A white American husband from Maryland had requested annulment of his marriage to a woman of Malay race (*Maleischisch ras)*. The husband argued that his marriage was not valid according to Maryland marriage law, which prohibited interracial marriages.[28] Such annulment cases, based on race claims, were common in the United States and offered a way out of marriages in a period when no-fault divorce did not exist and divorce was still a complicated matter. It also freed the husband from financial obligations; as the marriage had never existed, any financial or other consequences of the marriage became non-existent too (Pascoe, 2009: 124; Onwuachi-Willig, 2013, Walker 2008).

An American counsellor of law was consulted as well as the Private International Law series *Bergmann-Ferid* to confirm that Maryland indeed prohibited interracial marriage.[29] Consequently, according to Maryland law, the marriage would be null and void. The marriage would, however, be perfectly legal according to Indies PIL, Wertheim concluded. He first argued that, assuming that the Maryland Marriage Law was legally valid, the marriage would be open to annulment only by a judge. With refer-

ence to Article 7 Mixed Marriages Act, he further argued that marriage prohibition based on race violated the Indies' public order, and consequently, the marriage would be valid and could not even be annulled by the court. He concluded that the husband should start regular divorce proceedings.

Wertheim referred to R.D. Kollewijn, who had been a Professor at Batavia Law School before him, and who had come to the same conclusion on the Nazi interracial marriage prohibition. Kollewijn (1935) stated that this prohibition, based on the perceived superiority of one race (the 'Aryan' race) to the other, lower 'non-Aryan' races, could not be applied in the Dutch East Indies, a country that 'harbours so many different races and where equality of different races was enshrined in the legal order'. Appealing to Article 7 Mixed Marriages Act, Kollewijn claimed that this provision expressed the legislators' reproach of race-based marriage prohibition, so that it could not be introduced through foreign legislation.

Interestingly, this was different in the metropole: due to the Hague 1902 *Convention relating to the Settlement of the Conflict of the Laws concerning Marriage*, which prohibited religious-based conditions for marriage, but not race-based ones, the Netherlands was one of the countries that had concluded that the Nuremberg Laws had to be applied to marriages involving Germans (Caestecker & Fraser 2008; De Hart 2014). Hence, foreign interracial marriage prohibition allowed both legal scholars to present the colonial legal racial order as colour-blind and not tolerating interracial marriage prohibition. However, as the war came nearer, Wertheim started to question this colour-blindness, especially during his work in the Visman Commission.

The Visman Commission

In 1940, Governor Tjarda van Starkenborh Stachouwer installed the Visman Commission to explore opinions among the colonised population for a reorganisation of colonial rule after the end of the war. The governor was a proponent of modernisation of the colony and striving to help the colony towards independence. The commission consisted of European and Indonesian members from the Council of Justice, the People's Council, the Justice department and Batavia Law School, as well as a Chinese lawyer. The government's standpoint was that nothing could be changed in the Indies-Dutch constitutional relations as long as the war continued. Hearings were held to ascertain the desires of the Indonesian population, with the same weight being attached to the much smaller European and Chinese communities as to the natives.

Wertheim had the task of writing a report on the racial distinctions in law and society. In his autobiography, he described his discomfort with this unrealistic and insufficient attempt to meet the nationalist desires of the Indonesian population. It was a phantasm world (*schijnwereld)* (Wertheim & Wertheim-Gijse Weenink 1992: 200).[30]

Nevertheless, Wertheim wrote the more than one hundred-page chapter entitled 'Differentiation on racial basis and Indies citizenship' (*Differentiatie op raciale basis en Indisch burgerschap)* as part of the official report (Visman Commissie 1941). This chapter shows how he struggled in his first attempt to question racial categorizations in law. In his autobiography, he also described it as a struggle with the chair, because Visman did not want to acknowledge that the distinction between different popula-

tion groups was a racial one (Wertheim & Wertheim-Gijse Weenink 1992: 212). It is this chapter that will be discussed in the following paragraphs.

The chapter studied the racial categorisations in law, the possibility of the introduction of Indies citizenship, as well as replacing the term 'native' (*Inlandsch*) that had come to be considered derogatory with another, more neutral term. It was argued that each of these questions was strongly connected to the racial criteria used in the colony, and the need to deal with this issue. The chapter took issue with the racial criteria prescribed by law and the dualistic legal system that resulted in differentiation of rights. It challenged the assumption that this racial categorisation in the dualist legal system was 'natural', and explained how it had developed over time, especially since 1848, when it was inscribed in colonial law by the Dutch legislator, without explaining why this was necessary. Furthermore, the chapter explained that the dualist system had never applied to the totality of the law, but that different choices had been made over time.

Changes in racial categorisation, such as the inclusion of the mixed blooded along paternity lines, grouping the Japanese with the Europeans, and the possibility of individual requests for equal treatment to Europeans, did not eliminate the racial aspect from the dualistic system; they were merely incidental deviations from the general racial distinction, the chapter argued. This was the only instance in the report where people of mixed descent were mentioned, mixed marriages and women were totally absent.

Although from the start of the twentieth century some of the most obvious examples of unequal treatment had been abolished, with the introduction of equal taxes for all population groups, abolishment of forced labour replacing taxes for natives, free travel rights for everyone and abolishment of separate living quarters, the need to abolish all racial criteria remained urgent.

The commission was swamped with requests to deal with the race criterion, and the wish for full equality and citizenship rights. However, the chapter also reported the different opinions, with some arguing that all racial distinctions had to be abolished in order to create a sense of togetherness (*saamhorigheidsgevoel)*, while others felt it remained necessary to differentiate without hindering togetherness. Only the Chinese group thought that any differentiation had to be abolished in all domains. Among the Indonesian witnesses, the idea of equivalence held little appeal as they rejected the notion that different population groups had different needs based on race, and felt the different treatment of well-off Indonesians as compared to European wealthy people to be unsatisfactory. In their view, abolishment of racial distinctions had to be the first priority. Some suggestions were made to ground the distinctions in wealth, or intellectual capacity, but others objected that this would equally result in racial differences. The general feeling was that differentiation was needed in relation to family law and religion, which was not seen as unequal treatment.

Reading the chapter, one gets the impression that the author walked a thin line and was cautious in drawing strong conclusions. It concluded that not all racial differentiations could be abolished at once, that the future of the country depended on cooperation from all groups (*hartelijke samenenwerking*), for which every group had to give up something. No clear recommendations were made on the issue of citizenship, and here too, the reluctance to let go of differentiation was noted, as well as the problem of the alleged lesser loyalty of the Chinese. The one concrete suggestion was to

replace the phrase native (*Inlander)* with indigenous (*inheemsch)* and Indonesian. The chapter clearly served to reinstate Dutch colonial rule, disregarding power imbalances between groups and the Indonesian nationalist claims for independence.

Wertheim and National Socialism

When he was working on the Visman report, the Japanese had not yet occupied the colony; this happened in January 1942. Still, Wertheim had been already strongly and personally affected by the rise of fascism and the outbreak of the war in Europe. He was of Jewish descent, although his parents were converted Protestants and were not part of the Jewish community. During his youth in St. Petersburg, he and his brother had attended a German Protestant primary school. After the Russian Revolution, just before they were sent to the Netherlands, his father took him and his brother aside to tell them that they were Jewish. It came as a shock to Wertheim, who had seen himself as Protestant. That they were told so late, made being Jewish seem like something to be ashamed of, Wertheim recalled (Wertheim & Wertheim-Gijse Weenink 1992: 61-62). He was told never to talk about his Jewish descent and explained that because he was good at learning, playing the piano and chess, he should have had a great time at high school, but he did not, because of all the secrecy. He confessed to his fiancée, later his wife, that he was Jewish when they started dating, and she laughed because she had figured that out for herself already. [31]

In 1929, when Wertheim went to the colony, his father found a job in Berlin, but was faced with exclusion and discrimination from 1933 onwards. From the Indies, Wertheim worried about his parents. Letters to his brother showed that he had been very concerned about the developments in Germany from an early stage and had no illusions about how it would turn out.[32] His parents fled from Germany to the Netherlands, but they were no longer safe there after the Germans occupied the country. Wertheim's parents committed suicide just a few days after the invasion of May 10, 1940, as many Jews did.[33] His brother married a non-Jewish French woman, so that he could more easily escape Nazi persecution. In the colony Wertheim felt safe; as a Jew he belonged to the racial category of the European population, and discrimination focused on natives (Wertheim & Wertheim-Gijse Weenink 1992: 151-157).[34] During the war, however, Jews were interned in separate internment camps.[35]

He became active in various ways. When, in January 1934, a monthly debating club was established to discuss Nazi ideology; Wertheim was one of the six members; others were R.D. Kollewijn and Hendrik Hoetink (Blaas 2010). Hoetink returned to the Netherlands and became a member of the Committee of Vigilance of Anti-national-socialist Intellectuals (*Comité van waakzaamheid van antinationaal-socialistische intellectueelen)* that was founded in Amsterdam in July 1936.[36]

Although the Dutch government had stated that the colonies were not suitable for Jewish migration, Wertheim was actively involved in efforts to arrange the emigration of Jewish refugees, for which a small committee was established in Batavia. Letters in the archives show that efforts were made to have Jewish refugees migrate to the colonies of Suriname and Angola, as well as the East Indies.[37] As Wertheim wrote: 'No means can be left unused to end the untenable situation of Jews' (*geen middel onbenut mocht worden gelaten om aan onhoudbare toestand der joden een einde te maken).*[38]

The question of how his Jewishness influenced his position on colonialism and racism in the law is not easy to answer. Although he did link anti-Semitism, colonialism and racism in his later work, especially when he explained them through the concept of economic competition, he only referred to his colonial experience, and not his experiences with anti-Semitism in this analysis. Furthermore, his statements on how he developed his anti-colonial and anti-racist positions were contradictory. In an interview, Wertheim said that he became politically interested in 1938, when racism became an important issue in Europe (Mrazek 2010: 108). In a 1986 interview with *NRC*, under the heading '*I too was influenced by racist thought',* he described this as a gradual process.[39] In his autobiography, he referred to his contact with Indonesian nationalist students and his time in the Japanese internment camps, where he was educated in socialist political theory, raising his awareness that the colonial system was wrong and had to go (Wertheim & Wertheim-Gijse Weenink 1992: 153). I did not find any publications in which Wertheim wrote against National Socialism specifically. According to his daughter, he recognized discrimination and racism because he had experienced it himself. He identified especially with the Chinese because their social position in the colony was similar to that of the Jewish population in the metropole. He also helped Indo-Europeans and homosexuals to 'come out' as he understood the consequences of secrecy.[40] This raises questions about the positionality of jurists and how this influences their legal work. In any case, Wertheim would speak out publicly after the war.

Writing Against the Race Myth

From 1946, Wertheim intervened in the public debate on race and racism, often mentioning his personal colonial experiences.[41] He came to the conclusion that racism was deeply ingrained in white people and their psychology and could be found everywhere in society, including in himself. As we have already seen, he had started reflecting on his own position and work within colonialism. This was quite an exceptional position at the time.

In 1950, UNESCO published a Statement on Race.[42] It was drawn up by a committee of experts, the majority of whom were sociologists, and was meant to be an anti-racist answer to the Nazi era of scientific racism. It did not mention colonialism and racial segregation policies that existed in the United States and South Africa. 'Race is less a biological fact than a social myth' was its starting point. It suggested that the best option was to drop the term 'race' altogether. It stated that scientists had been unable to find any such thing as a pure race, and that race mixing had no negative consequences.

The declaration met not only with praise, but also with severe criticism from biologists, geneticists and physical anthropologists, who felt excluded and wanted to hold on to race as a scientific concept. In response, a second Statement on the Nature of Race and Race Differences, published in 1951, emphasised that all people should be treated equally, but restored race as a valid scientific concept, defined as an 'anthropological classification showing definite combinations of physical (including physiological) traits in characteristic proportions' (Brattain 2007; Caballero & Aspinall 2018). Harkema and Sysling (2018), who studied the reception of the first UNESCO

declaration in the Netherlands, came to the conclusion that Dutch scientists were, overall, not enthusiastic either. Although Dutch scientists had distanced themselves from Nazism, most of them thought that race was a useful scientific concept. After the war, they continued to do what they had been doing before the war. The UNESCO declaration led to an academic debate which also involved legal scholars, e.g. Van Hamel, who praised UNESCO's intentions, but thought racial differences should not be discarded as irrelevant, but, rather, accepted. This was the general attitude among Dutch scientists, which Wertheim, who supported the first UNESCO declaration, resisted (Harkema & Sysling 2018).[43]

His book 'The race-issue. The decline of a myth' (*Het Rassenprobleem. De ondergang van een mythe)* was published in 1949, even before the first UNESCO declaration (Wertheim 1949). It was based on lectures held in 1948, and aimed to deal with the position of the Indo-Europeans and Chinese in Indonesia as well as incite interest in race issues in the Netherlands.

Now that Wertheim was free from the restraints he had experienced while writing for the Visman report, he argued for a sociological concept of race. As said, he explicitly linked racism and colonialism to Nazism, even if only briefly in the introduction:

> In the Netherlands we met this ghost in the form of colonial mentality, of looking down on the dark-coloured Indonesian people. Every derogatory judgement about 'the natives' who cannot do anything, at least not without 'us', hides something of this racial delusion, that we thought we had to fight under Hitlerism. (*In Nederland ontmoeten wij dit spook nog in de vorm van de koloniale mentaliteit, van het onwillekeurig neerzien op de donker gekleurde Indonesische volkeren. Elk geringschattend oordeel over 'die inlanders', die niets kunnen, althans niet zonder 'ons', bergt iets van die rassenwaan in zich, die wij meenden in her Hitlerisme te moeten bestrijden.*) (Wertheim 1949:9).

The booklet was based on United States literature on the race issue, by sociologists like Gunnar Myrddal and Everett Stonequist.[44] He did not present new empirical findings, but combined this American literature with the much more limited Dutch East Indies sociological and anthropological studies.

Although his book was explicitly directed against race thinking, there was an obvious tension as he simultaneously continued it. He used the words race, *mestiezen*, *mulat*, coloured, Negroid, Nordicus, Mongoloid and yellow race without hesitation. He did not deny differences between racial groups, including differences in character, but attributed them to cultural rather than biological causes. He did not even entirely exclude the possibility of hereditary differences. He claimed that the science was inconclusive on this issue, although he suggested that these differences too could probably be explained by cultural rather than biological factors. Traits that the colonial elite often considered to be hereditary, like the myth that the native in Indonesia was lazy, servile and restrained (*lui, serviel en gesloten*) were, therefore, most likely the result of the elite rationalising its superior position. Turning to the impact of the law, he opined that the law did not merely reflect social reality, but also artificially maintained existing racial relations. He referred to Article 284 Civil Code that stipulated that a native woman could never exercise custody over her child, even if the European father was absent; in such a case, custody went to the colonial authorities. How-

ever, now that he was no longer a legal scholar, the law was not central to his argument.

Wertheim devoted ample attention to the mixed blood (*mengbloed*). As Van den Berg had done before him, Wertheim problematised 'mixed bloods' as a group, although on sociological rather than on biological grounds, but still in stereotypical ways.[45] He took his inspiration from Everett Stonequist (1937), who considered the 'racial hybrid' the 'most ambiguous type of marginal man', who was placed between two different races by his biological origin. Following this line of thinking, Wertheim argued that the mixed blood united in him the 'battle field' of the clash of cultures; he was a 'border human' *(grensmens*), living at the borders of two cultures. The Indo-Europeans formed a middle group, a sub-caste, although an anthropologist could probably find many children with 'some portion of European blood' among the native population (suggesting that race was determined by blood-portions). He mentioned the imbalance (*onevenwichtigheid)* of Indo-Europeans and their tragic fate as marginal men.[46]

With his approach to mixture, he built on the classic trope of 'the tragic mulatto', a stereotype that claimed that mulattoes occupied the margins of two worlds, fitting into neither, accepted by neither; striving to be white but always failing (Caballero & Aspinall 2018: 5).[47] This trope was also a familiar one in the Indies (Boudewijn 2016; Jacobson-Rosen 2018). Maybe, instead of relying on Stonequist, it would have helped him to read the work of American anthropologist Franz Boas and Afro-American sociologist W.E.B. du Bois, who challenged race thinking more radically (Liss1998; Williams 1996). Sociologists like Stonequist reproduced these stereotypes in their sociological work; stereotypes that were discarded in the 1980s, under the influence of mixed race studies (Root 1996; Spickard 1991; Ifewunigwe 2009).

Wertheim's explicit rejection of the colonial racial order also translated into his writings on colonial law. Where before the war, Wertheim had supported the dominant discourse of equivalence of different laws and population groups, now he criticised his own former position. He did so in a review of a collection of publications by Kollewijn (Wertheim 1956). He paid due respect to Kollewijn's contribution to the development of *intergentiel* law as a legal discipline, but rejected Kollewijn's analysis of the Mixed Marriages Act as proof of the equivalence of the different legal systems. Wertheim admitted that he had defended this principle of equivalence in his 1936 lecture, but had reconsidered after reading Gouw Giok Siong's (1955) dissertation on this Act. Gouw Giok Siong (aka Gautama) was the first Indonesian to defend his PhD in Indonesia, and became one of Indonesia's most prominent legal scholars. Gouw Giok Siong analysed the Mixed Marriages Act not as an expression of equivalence of different laws, but rather of the 'caste' system of nineteenth century Dutch colonial society. Gautama and Kollewijn based their opposite claims on the 1878 Lawyers' Association meeting, where Van den Berg had presented his advice and that we already came across. According to Kollewijn, the meeting accepted the fundamental equality of Western and Eastern private law.

Rereading the material at hand, Wertheim came to the same conclusion as Gautama. He pointed out that the state commission that designed the Mixed Marriages Act (hence: Van den Berg) had also developed the already mentioned Article 284 Civil Code. This provision cut all ties between native mother and child, once the European father acknowledged paternity of the child. Kollewijn himself had criticised

this provision that aimed to prevent European fortunes from ending up in the 'wrong hands', namely those of natives. According to Wertheim, the Mixed Marriages Act and Article 284 Civil Code were based on the same lines of thinking. Citing from the 1887 Lawyers' meeting and Van den Berg's advice, he concluded that equality existed only in as far as either one of the legal systems might be applied to a particular case. Socially and politically, the Act fitted the colonial pattern in which Europeans were seen as a caste, distinct from and superior to the mass of the native population. The marriage of a European woman to an Indonesian was a breach of the caste system, which had to result in her expulsion from European colonial society. Considering natives speaking Dutch as 'impertinent', the criminalisation of dress codes and the regulation of mixed marriages were in his view all part of the Dutch anti-acculturation policy. Wertheim also argued that Van Vollenhoven's, Kollewijn's and the *Stuw*-members' approach – who were all seen as 'ethical', liberal and progressive – of helping others 'on their way, that is not our way' was similar to nineteenth century apartheid.[48] In his view, they all supported Dutch colonial rule and a segregated society.

Conclusion

Wertheim started as a traditional colonial civil servant, contributing to the colonial racial order. He confirmed the discourse on colonial law as colour-blind, reflecting equivalence of the different population groups, as well as the effective use of *adat* law in the service of European interests. When after the war, his work became anti-racist and anti-colonial, he intended to prove that race was a sociological and not a biological concept. However, he did not entirely escape the racialised stereotypes that were still common in much of the international and Dutch sociological literature of the time. Later, in 1991, when he could rely on additional research on Dutch colonialism and scientific racism, he directly challenged Dutch academic research in the colony and the metropole as informed by racist thought. Here, he linked colonial racism, anti-Semitism and racism in the metropole through the concept of economic competition (Wertheim 1991). However, after he had (involuntarily) left legal academia, this work fell outside the scope of the legal discipline. Law had become less important in his academic work, offering fewer opportunities to influence legal debates. Still, even if he had remained a legal scholar, it is questionable whether his anti-racist and anti-colonial stance would have gained wider acceptance in the immediate afterwar social legal field.

The Judge: Hendrik de Bie (1879-1955)

Dezer dagen ontving de commissaris van politie te Dordrecht een verzoek uit Amsterdam om opsporing van een 16-jarig meisje, dat er van door was vermoedelijk in gezelschap van ..... een neger! En de Dordtsche politie heeft haar gevonden op het kermisterrein, in een tentje, waar zg. fakirs hun kunsten in het vuur- en glaseten enz. vertoonen; het meisje was haar zwarten minnaar behulpzaam in het aangeven van tangen enz. Zijn kunsten had zij blijkbaar nog niet aangeleerd; en vooreerst zal haar daartoe ook geen gelegenheid worden gegeven, want zij is zonder haar nikker naar Amsterdam teruggebracht, naar haar ouders.

These days the Police Commissioner of Dordrecht received a request from Amsterdam to look out for a 16-year old girl who had eloped, presumably in company of ….. a negro! And the Dordrecht police found her at the fair, in a small tent, where fakirs show their art in eating fire and glass: the girl aided her black lover in giving him tongs etc. She had not learned his arts yet and will not have an opportunity to do so, as she was returned to Amsterdam to her parents, without her nigger.[49]

Prologue

This news report was first published in the *Dordrechtsche Courant* (on June 10, 1903); the *Haagsche Courant* probably replicated their news item. Between 10 and 13 June 1903, sixteen other newspapers in the Netherlands and the Dutch East Indies reported on the case, with more or less the same text, mostly under 'varied news', sometimes under the headlines: A 16-year old girl (*Leeuwarder Courant*), A Black Don Juan (*Sumatra Post*), Black love (*Het Volk*) and Bad Company (*De Tijd*).

It seems that newspapers became interested in this very common incident of a minor girl running away from home because she did so with a black man, who had the added entertainment value of being a fire eater. Of course, girls walking away from home were reported in the media more frequently. However, in the year 1903, this occurred mainly in cases of force (abduction) or trafficking ('white slavery'). This was not the case here, as it was reported that she had left of her own free will (eloped) and was in love.

The police intervention took place at the request of the girl's parents. In 1903, state institutions could only intervene at the request of the parents, as custody could not be taken away from them. This changed with the introduction of the Children's Act in 1905 and children's judges (juvenile courts) in 1922.[50] From then on, the

courts could take custody away from parents without their consent, if the children were threatened with 'moral demise' (*zedelijke ondergang*).

Hence, the children's judge was tasked to protect minors from themselves and their parents, and to protect society from their behaviour. H. de Bie was one of the first children's judges, appointed in 1922 in Rotterdam. In a case like that of the girl in this news report, it is not unlikely that he would have intervened by taking away the girl from her parents.

Personal life

Hendrik de Bie was born on 12 September 1879 in Rotterdam. He came from a well-off Rotterdam family; his parents were Hendrik de Bie and Regina Louise Geertruid Constantia van Nierop. His father was the director of an insurance company, served as member of the municipality council, as an alderman, and member of the Provincial State.

In 1905, he married Christine Thomassen Thuessink van der Hoop van Slochteren, and they had seven children. He was an active member of the Reformed Church. He studied law in Utrecht, and in 1904 he defended his PhD there on disciplinary law (De Bie 1904). He started his career as a lawyer in Zwolle, where he also was an alderman, and a Member of the Provincial States of Gelderland. He became a judge in 1914 in Winschoten (in the north of the Netherlands) before being appointed to Rotterdam.

In recent legal literature, De Bie is mainly known as a pioneer of child protection law, and one of the first children's judges in the Netherlands (De Groot-van Leeuwen 2011). From 1922 until 1955, he worked in the court in Rotterdam. In the years 1922-1933 he was a children's judge, later vice president and then president of the court. As a children's judge, he made civil law (custody) and criminal law (youth criminal law) decisions. Next to his work as a judge, he was active in the 'morality movement', which consisted of political and social elite groups that were concerned about the moral decline (*zedelijk verval*) in Dutch society, especially in Dutch working-class youth (Van Ginkel 2000). His two-volume handbook on children's law was reprinted numerous times and is still referred to in the literature on children's rights (De Bie 1927).

In an obituary, he was said not to be interested only in law, but in justice, and that until the very last moment, he devoted all his strength to the mental and social relief (*herstel*) of those in need.[51] He was also characterised as a man 'of one piece' (*uit een stuk*): he did not drink, he did not smoke, he was a straight believer, he spoke clearly and had no contradictions. The obituary also mentioned that he sometimes lacked the kindness and patience that a criminal judge needed during court sessions, but he was not tough in his sentencing (Van Vierssen Trip 1956).

De Bie held numerous positions: Member of the General Commission that supervised the observation homes for the youth (*Algemene Commissie van Toezicht, Bijstand en Advies voor het Rijkstucht en opvoedingswezen)*, chair of the commission of care for the elderly in Rotterdam, chair of the youth home Hoenderloo, first chair of the association of the children's and police court (which later became the now influential Dutch association of courts and judges). From 1937 onwards, he was the Dutch representa-

tive on the Social Commission of the League of Nations. He served on several government advice commissions: the commission on the dancing issue, the commission on the arrangement of child protection and, after the war, the commission on restrictions to divorce; all issues that he felt strongly about.

As an activist in the morality movement, one could consider him a conservative. Modern youth pastimes, such as dancing to jazz music or going to the movies, were of great concern to him. However, morality was not only a concern for conservatives or religious organisations, but also for liberals, socialists and feminists. De Bie was also connected to members of the feminist movement (Clara Wichmann), and favoured the appointment of female judges. It is no coincidence that, in 1947, when De Bie was president, the first female judge, Johanna Hudig, was appointed in Rotterdam. During the *interbellum* period, he had pleaded publicly for making divorce easier; a remarkably progressive standpoint for a man of his position, which he shared with the feminist movement.[52]

In the following paragraphs, I first look at his publications on the morality issue and child protection. This discussion demonstrates that 'race' and 'mixture' were not central to De Bie's work, however, they popped up at specific moments, in cursory remarks, providing a picture of how they mattered in the work of legal professionals in the metropole at the time. His work as a chair of the state commission on the dancing issue illustrates this point further. A study of court files addresses the question how, if at all, race and mixture come up in his decisions on the well-being of minors. Finally, we see how De Bie confronted Nazism. Like Wertheim, he was active in supporting Jewish refugees. During the Second World War, De Bie played an important role in keeping the Nazis out of the Rotterdam Court.

Child Protection, Morality and Mixture

De Bie wrote numerous articles, in newspapers and magazines and gave countless talks across the country at conferences, public events and in churches on the morality issue. He also edited several books e.g. on a conference on child protection, and to the memory of A. de Graaf, a lawyer and activist against prostitution (De Graaf 1937; De Bie 1951).

De Bie's work for the protection of children was pioneering as, contrary to earlier in the nineteenth century, the general opinion was that children could be saved. De Bie opposed the criminal prosecution of children below the age of sixteen, because he thought their acts were caused by a lack of proper parental guidance and lack of morals (Delicat 2001: 171). As modern society became more complicated, a lack of social cohesion endangered the youth (Komen 1999: 19).

Rotterdam was, and still is, one of the most diverse cities in the Netherlands. Many migrants lived for shorter or longer periods in this harbour city, including Chinese migrants, in the largest 'China town' at the time in Europe (Amenda 2012). From the 1920s, the idea of a ' Chinese problem' (*Chinezenprobleem*) emerged, growing even stronger when, after the economic crisis of 1929, the number of Chinese migrants increased due to shipping companies that simply dumped their Chinese sailors in Rotterdam. Other groups of Chinese migrants were merchants, street venders and students; the latter came from the Dutch East Indies (Pieke & Benton 2016). The

first Dutch academic study on migrants, conducted by sociologist Frederik van Heek (1936), was on these Chinese. The study was characterised by racialised, gendered and class discourses and paid extensive attention to sexual relationships and marriages between Chinese men and Dutch women. These were described as relationships between different 'races' resulting in 'half-caste' children that 'physically have the characteristics more of the Mongolian than the white race' (Van Heek 1936: 65). The Chinese migrants were also confronted with exclusion measures, initiated by Rotterdam police commissioners A.H. Sirks and his successor L. Einthoven, who registered them, photographed them, fingerprinted them, and counted them on a yearly basis (De Hart 2019).

That De Bie was well aware of the presence of migrants in Rotterdam, including Chinese migrants, and considered them a threat to Dutch girls, is demonstrated by several of his publications on the morality issue. In 1919, he had warned that girls who ran away from the countryside to the city were in danger of walking 'the wide road', getting involved with 'all kinds of aliens' (De Bie 1919). In a 1926 article, entitled *Sheep without shepherds*, he addressed the 'extensive mental and moral needs' in society: in large cities, in the countryside, and 'among "Schweizer's" Negroes' (De Bie 1926). He encountered these needs especially among the families with which he worked, in which children were threatened with 'moral decline'. Some families had lost any moral sense, and any sense of the Christian religion. The first example he mentioned in this respect was of the parents who allowed their seventeen-year-old daughter to marry a 'Chinese sailor rather than an unemployed Hollander', although they could not communicate with him and he might have already been married in China. De Bie equated such parents with those who sent their children out stealing, as they were both without morals, sheep without shepherds, estranged from Christian religion and culture.

In a last, 1930 publication, he described a family consisting of an elderly father, sick mother, three daughters and a son living in a neighbourhood 'filled with aliens'. This obviously referred to Katendrecht, a notorious harbour and working-class neighbourhood where Chinatown was located. It was suspected that the daughters associated 'too freely' with the Chinese migrants. During the court hearing, the 68-year old father denied these allegations, claiming that one of his daughters was engaged 'with a dignified, noble Chinese'. After De Bie ordered additional investigations, it soon turned out that all three sisters were 'delivered to the urges of the Chinese', providing the family with an income through prostitution (*lusten van de Chineezen werden overgeleverd en dat het gezin ervan leefde*) (De Bie 1930a: 31-32). In response, the father was imprisoned, the daughters taken out of the home, while the mother died soon afterwards.

In these publications, De Bie problematises interracalised intimacies in two ways. First, he constructs them as part of the morality issue. Girls running away from home and ending up in prostitution were problems in themselves, leading to the girls' moral demise. Both of these problems were enough to take the girls out of their homes, away from their parents. Prostitution was especially a great concern, which had prompted elite groups into action since the second half of the nineteenth century (De Vries 1997). Against this background, De Bie's concern about the moral behaviour of these girls is only logical. However, although he really did not need this to justify placing the daughters outside of the home, he racialised both issues by linking them

to aliens and Chinese. As his publications and lectures were aimed at explaining the urgency of the matter, linking morality issues to the Chinese can be understood as stressing this urgency.

However, even outside of the scope of the morality issue, he still problematised interracialised marriage. For girls, even 17-year olds, marriage was the proper thing to do; marriage could save them from moral demise, turning them into wives and mothers. However, in De Bie's view, marriage to a Chinese man, even one who could adequately perform the role of breadwinner, threatened not only the young woman, but also society as a whole. Marriage to racialised others, a non-Christian race such as the Chinese, did not fit within the Christian, Protestant society that he envisioned.

In other publications, on child protection, the Chinese were not mentioned, but race popped up here and there. De Bie edited the volume 'The first quarter of a century Children's Acts' (*De eerste kwarteeuw der kinderwetten*) (De Bie 1930b). It represented basically everyone and every institution involved in child protection in the Netherlands, commemorating those men (and a few women) who had been important in its development. This included Klootsema, whose pedagogical insight that children with criminal behaviour had a lack of morals and could be bettered, had had a significant impact on the development of the 1905 Children's Act.

At first sight, race was absent from the book, but rather casually still there. Two chapters explained that the Children's Act did not apply in the colonies of Suriname and the East Indies, exemplifying once more how the colonies had a deviant legal order, as circumstances were thought to be fundamentally different (Van Walsen 1930; Schalkwijk 1930).

Amsterdam children's judge De Jongh's contribution illustrates how race and mixture were casually mentioned (De Jongh 1930). De Jongh related the story of Jeanne, a young girl who was working in an office but did not earn enough to live on her own. The situation at home had become difficult after her father died and her mother 'lost her way', having relations with several men. It was arranged that she could have a room in a home for working girls.

> It was necessary that she left home, because her mother had since the death of her father taken life lightly, resulting in two little brothers born out of wedlock as the living witnesses. Specifically two men from Curacao had found a welcome there. (*Het was anders wel nodig, dat zij de deur uitging, want moeder had sedert de dood van haar man het leven niet heel ernstig opgevat en twee onechte broertjes waren daarvan de springlevende getuigen. Vooral hadden een paar Curaçaoërs er hun zoete inval gevonden.*) (De Jongh 1930: 144).

Mentioning *'Curaçaoërs'* (Curaçao was an island in the Dutch West Indies) was a reference to black presence in the household. Here, again, mixture was not the main concern, but offered an added urgency to De Jongh's lobby for the establishment of homes for working girls.

Elsewhere in the book, Dr. Grewel, a psychiatrist in an Amsterdam observation home drew attention to the importance of collecting relevant data on children: their physical and psychological behaviour, family, and hereditary aspects (syphilis, alcoholism). These hereditary aspects included what Grewel called 'deviant race characteristics' (*afwijkende raskenmerken*) like Jew, Negro, Indian, 'in short everything that points at a physical exceptional state' (Grewel 1930: 67; Grewel 1935). Collecting such data

fitted within the Minister of Justice's instructions accompanying the Children's Act: 'Notes must be kept on everything, that is of importance for [obtaining] knowledge of the personality; an extensive description, which is as precise as possible, of [the child's] descent, past, physical and mental state' (Bultman 2016: 93). Collecting such data also fitted with the Dutch academic discourse in which social Darwinism and hereditary racial characteristics were mainstream (Eickhoff, Henkes & Van Vree 2000).

While in this edited book race was explicitly mentioned, in other instances De Bie ignored the racialised aspects of cases. In one of the volumes of his handbook on the Children's Act, De Bie discussed several court cases on proof in paternity suits for children born out of wedlock. An amendment of law in 1909 had made such paternity suits, to establish who was the father of a child born out of wedlock, possible.[53] De Bie wrote:

> The resemblance of father and child can be relevant for the proof of descent, while the expert report is also of importance. A request for an expert report to prove resemblance in features, physical condition and organism must be ignored if there is no single fact of characteristics of resemblance. Blood type research can be very important, especially for proof to the contrary. (*Gelijkenis van vader en kind kan voor het bewijs der afstamming van belang zijn, terwijl ook het deskundigenrapport van gewicht is. Een verzoek om door deskundigenbericht gelijkenis in uiterlijk voorkomen, lichamelijke gesteldheid en organisme te bewijzen, moet worden voorbijgegaan als geen enkel feit betreffende kenmerken voor de gelijkenis is gesteld. Bloedonderzoek kan van veel belang zijn, in het bijzonder voor het tegenbewijs.)* (De Bie 1937: 216).

The case law to which De Bie referred was not just about resemblance, but about *racial resemblance* of father and child. Professor Leonard Bolk, ethnologist at the University of Amsterdam, had been asked to give his expert opinion and had established that both father and child were of the 'Nordic race'.[54] In another case, the father was Jewish, had very distinctive features, and the child shared these distinctive, 'typically Jewish' features, Bolk opined.[55] His expert opinions allowed the unwed mothers to claim financial support from the fathers for their children born out of wedlock.

It is relevant to point out that during the debate in the Senate on the 1909 Act, which allowed paternity suits, the use of race in establishing paternity was taken into account. Minister Anton Nelissen (Roman Catholic State Party) argued that it was unnecessary to put into law how the judge had to determine paternity, using the example of racial mixture:

> I cannot imagine that, out of intercourse between a man and a woman of pure Germanic blood, a child would be born with the clear traces of the Chinese race; the judge can take from that the conviction that the Germanic is not the father. I believe, one can leave this judgment to the judge. (*Ik kan mij niet best voorstellen, dat er uit de gemeenschap van een man en vrouw van zuiver Gernnaanschen bloede een kind zou geboren worden dat duidelijke sporen van het Chineesche ras vertoont: de rechter kan daaruit al de overtuiging putten, dut de aangesproken Germaan niet de vader is. Ik geloof, dat men de beoordeling gerust aan den rechter kan overlaten.*)[56]

These cases show that legal scholars, like scientists in Europe and the United States, believed that paternity could be read through race (Milanich 2019: 130). However, De

Bie and other legal scholars who discussed these cases never mentioned the word 'race' (Vellinga 1925; Van Oven 1926a; Van Oven 1926b). I suggest that it was so self-evident to them that it was not worth mentioning. In effect, by using the more general legal principle of 'resemblance between father and child', they deleted the racialisation that was at the heart of these court cases from the legal archive.

The construction of mixture as part of the morality issue that we came across in De Bie's publications can also be found in the 1931 report on the dancing issue, to which we turn next.

The Dancing Issue

As mentioned, De Bie was involved in several state commissions to advice on government policy. One of these commissions dealt with the dancing issue. In the 1920s and 1930s, dancing was seen as a symptom of the declining morals of Dutch youth. More generally, young people going out dancing, going to the pub or to movies were a matter of concern. Although initially, the media response to jazz had been positive and open, this changed after a few years, partly due to a notorious and much cited brochure on dancing by journalist and writer Henri Borel, published in 1927 (Borel 1927; Wouters 1999). In this brochure, 'Negro music' was linked to sex. Borel claimed that modern dance was leading to wild orgies; he depicted black female dancers as hyper-sexual, and modern dance as a sign of white weakness. MP Ms. Meijer (Roman Catholic State Party), who urged the government to take action against dancing, referred to Borel's writings. It was her intervention that resulted in the instalment of the commission on the dancing issue, of which De Bie became chair.[57]

By the time the commission on the dancing issue published its report in 1931, the issue had lost its urgency due to the economic crisis (Commissie Dansvraagstuk 1931). It was based on questionnaires to children's judges, custody boards, the police, and municipalities, and looked at the regulations on dancing in other countries.

The report was not as blatantly racialised as Borel's brochure, but was still based on the same ideas, lending them legitimacy by its official status, and resulting in amendments to the law. The introduction, written by De Bie, described dancing as a problem of modernisation, of race and of gender.[58] Dancing to him was a symptom of modern times, of technological innovation and specialisation of labour. He attributed this partly to the influence of American culture, which he considered superficial, and which put pressure on the organic links of society (*organische verbanden*). His strict religious beliefs made him see jazz music as taking attention away from the seriousness of life, leading people to live by primitive impulses (*prikkels).*

Dancing was an issue of race, because dance music and dancing was performed by 'Negroes'. De Bie attributed the wild nature of jazz music to the supposed primitive and instinctive nature of American 'Negroes', and saw it as a form of degeneration. He explained this partly from the difficult social circumstances of Negroes in the US, but mainly from biological characteristics. This is demonstrated by the following citation:

> It is no coincidence, that in dance and in music in America negroes determine rhythm and tone, because they have the largest spirit in their instinctive life. They possess a contagious joy

of life, that is particularly apt to incite the whirl, which makes life easy for those who find a deeper sense of life too difficult from the perspective of the technology of life. 'Don't bother', dance and sing your troubles away and choose sound and rhythm in a way that the souls jointly find rest nowhere, as they are pushed up in the most crazy transitions. We do not intend to speak ill of the negroes, and we can imagine very well that in days of pressure they thought to need the capability to forget about reality. However, it is questionable that with their inflated carelessness they have to contribute to the general popular culture to now 'keep up the spirit' with the white civilisation, for whom they did not count.
(*Het is niet toevallig, dat in dans en muziek in Amerika de negers rhytme en toon aangeven, omdat, wat hun instinctieve leven betreft, de negers de grootste levenskracht hebben. Zij hebben daarbij een zeer aanstekelijk werkende levensvreugde, die bij uitstek geschikt is de roes te verwekken, waarin het gemakkelijk leven wordt voor wie een dieper levensbesef uit oogpunt van levenstechniek te lastig is. 'Don't bother', …dans en zing je narigheid weg en kies geluid en rhytme zoo dat de zielen gezamenlijk nergens een rustpunt vinden, opgestooten als ze aan alle kanten worden in allerdolste overgangen. Wij bedoelen van de negers geen kwaad te spreken en wij kunnen ons heel goed voorstellen, dat in dagen van druk het vermogen de werkelijkheid te vergeten zeer meenden nodig te hebben. Het geeft echter veel te denken, dat zij met hun opgeschroefde zorgeloosheid bijdragen moeten leveren voor de algemeene volkscultuur om nu bij de blanke beschaving, voor wie ze vroeger niet meetelden, 'de moed erin' te houden*) (Commissie Dansvraagstuk 1931: 12).

Finally, De Bie linked dancing to gender, as it, in his eyes, mainly endangered girls. Couples dancing closely would inevitably result in extra-marital sex which was seen as a danger to girls rather than boys. However, girls were also partly to blame as, by their very nature, they were more inclined to dancing.

No matter how De Bie saw the dancing issue, the surveyed municipalities reported few problems. The only exception was Utrecht, which reported troubles in two cabarets. Although race was not mentioned explicitly, 'cabarets' referred to clubs where black musicians played jazz music (Negro cabarets). The problems that occurred were attributed to the loose behaviour of the women who frequented these clubs (Commissie Dansvraagstuk 1931: 54). The report made no direct link between jazz music and interracialised sex but, as we will see, that link was made a few years later.

The report resulted in a change in the Liquor Act, in 1933, which allowed dancing only in establishments with permission to sell alcohol. [59] The Act also included restrictions on the size of the dance floor, the number of couples allowed on the floor (one per square metre), lighting and age restrictions (Wouters 1999: 20). Although race was not mentioned, the amendment to the Liquor Act was informed by the wish to limit the dangers of 'Negro music', especially for girls.

The report set the stage for understanding dancing as related to sex and race that led to further measures being taken a few years later, in 1937. These measures, initiated by Amsterdam police commissioner J. Versteegh (who had been a member of the commission on the dancing issue) specifically targeted so-called 'Negro cabarets'. The measures, supported by the Minister of Justice and by parliament, threatened the cabarets across the country with closure if they did not fire their black, Afro-Surinamese musicians, because of the danger that they would enter into a relationship with the white girls who frequented those clubs. This time, the link between dancing, music and interracial sex was made quite explicitly (De Hart 2014).

Working as a Judge in Rotterdam

To see whether the link between morality and interracialized intimacies influenced De Bie's decisions as a children's judge, the files of the Rotterdam juvenile court were studied.[60] All the files considered young boys and girls, who had got themselves into trouble. For the boys, 'trouble' mainly meant theft, for the girls it was almost always about 'immoral behaviour'; going out dancing, or to pubs, and (sexual) relationships with boys and men. The minors were from poor, working-class families that struggled to make a living, especially after the 1929 economic crisis. Almost all of them had a Dutch background, although some were of migrant, mainly German, background.

The files confirmed that Dutch girls involved with Chinese men were a concern to De Bie that informed his decisions. In one of the files, a girl was put under surveillance because she had been going out with boys, including a Chinese young man. It was suggested that he kept her financially, at least for some time (hinting at prostitution). One of the last reports mentioned with relief that she was now going steady with a *'Hollandse'* boy with good prospects and that they had plans to get engaged.[61]

Another file showed that it was enough for minor girls to come into contact with the police if they were found talking with Chinese men on the street. One family had already been under surveillance because of the behaviour of the oldest sister, who was not married. In this file on several sisters from the same family, both the sisters and the Chinese men had been taken to the police station after they were found in a shop where the men had bought the girls fish.[62]

Having contact with a Chinese man was not merely mentioned in the reports of the police and family guardian, but also in De Bie's motivation of a supervision order. In 1932, he ruled that a 19-year old girl was threatened with moral decline because she had been:

> [writing] indecent notes to other girls; makes a very unreliable impression; had relations with a Chinese; visited Katendrecht several times; spent a night together in a room with students and still has relations with these men in suspicious ways. *([schrijven] van onzeedijke briefjes aan andere meisjes; zij erg onbetrouwbare indruk maakt; met een Chinees omgang had; meermaals op Katendrecht kwam; een nacht met studenten op een kamer doorbracht en nu nog op verdachte wijze met deze mannen omgaa*t.).

He ordered that she be taken into an observation home for three months; his motivation no longer mentioned the night with the students or the indecent notes, but merely the unreliable impression she made, the relations with the Chinese and her visits to Katendrecht. Soon after being admitted to the observation home, it turned out that she was pregnant. The file ends with a letter informing De Bie about this pregnancy.[63]

De Bie and National Socialism

In the years before the outbreak of the war, De Bie continued his work on child protection, but also started to speak out against Nazism. At a child protection conference held in 1934, he condemned fascism in his opening speech. His critique was that fascism put the community before the individual, and saw social work as relevant

only as long as it protected the 'race'. In De Bie's opinion, religion should be central.[64] As already mentioned, in the Netherlands, social work was organized according to religion, with separate custody boards and homes for Catholic, Protestant and Jewish children. In a publication in the same year (before the introduction of the Nuremberg Laws in 1935), he criticised German fascism again, although he also saw some good in their attention for the decline of marriage, family and morality (De Bie 1934: 3).

As the consequences of fascism became increasingly obvious, De Bie became involved in the Protestant Committee that supported Jewish-Protestant refugees from Germany, chaired by Professor of Roman Law, Rutgers from VU University Amsterdam, who later died in a German prison (Hoekema 2011: 12).

In order to understand the activities of this committee, it is important to briefly sketch the Dutch policy towards Jewish refugees. Refugees started fleeing Germany after Hitler came to power in 1933, with peaks after the introduction of the Nuremberg Laws in 1935, and the *Kristallnacht* in 1938. According to historian De Jong, around 40,000 Jewish refugees fled to the Netherlands. The Netherlands, like most European countries, had a restrictive migration policy. This was motivated not only by the economic crisis, but also by the danger of increasing anti-Semitism – although there were frequent protests against the Nazi policies in Germany and the strict Dutch migration policy. The government's starting point was that the Netherlands could only function as a transit country. A Ministry of Justice circular of May 1938 considered all refugees to be undesirable aliens, to be refused at the border and expelled, and only in cases of individual 'real life danger' could the Minister make an exception. No money was made available for the reception of refugees and Jewish organisations had to take care of their reception, and support them financially. This put a huge burden on the international Jewish community (Van Eijl 2005: 171 ff). It is why Jewish organisations asked Catholic and Protestant organisations to share this burden and take care of Catholic and Protestant Jews. Pillarisation mattered even in these circumstances.

The Protestant Aid Committee for Fugitives on grounds of Race and Religion (*Protestantsch Hulpcomité voor Uitgewekenen om Ras en Geloof),* in which De Bie was involved, was founded in January 1938. Its aim was to support Protestants who had to flee Germany because of their Jewish descent or because of their marriage to a Jewish partner. However, its main objective was not to help them to flee Germany, but to offer financial support to refugees already residing in the Netherlands, arrange for their reception in camps and, in line with government policy, help them to emigrate to elsewhere in the world. The committee did not criticise the restrictive government policy.

De Bie was board member of a regional subcommittee. He was involved in the establishment of separate reception camps for Jewish, Catholic and Protestant refugees.[65] He made an effort to establish Camp Sluis for Protestant refugees, who had previously been interned in a notorious refugee camp in Hoek van Holland.

The *Protestantsch Hulpcomité* succeeded in bringing around 180 people to the Netherlands. They published the 'most urgent cases' in brochures asking for donations to allow for their emigration. The group stated to be supporting 23 adults and nine children, almost all suited for emigration.

Strikingly, those brochures used Nazi terminology on several occasions, e.g. the phrase 'non-Aryan Christians', or 'Full-Aryan', 'a protestant man (non-Aryan) is married to a protestant woman (Full-Aryan)'.[66] The brochures sketched some of the cases they supported:

> A protestant girl did not want to break off her engagement with a Jewish man and they both fled to the Netherlands. For a considerable time they both worked independently. One year ago he was sent to Argentine by the Jewish committee, where he is doing well as a waiter. He is not able yet to send for her. She managed by sewing, but came to us last June, destitute.[67]
>
> A protestant young man, of a mixed marriage, defended his sister in the street, when she was attacked because of her Jewish appearance. He fled to prevent deportation to a concentration camp. Excellent dressmaker. Emigration will cost 900 guilders.
>
> A protestant couple, the man is Jewish, but converted, two children who are baptised. Has a shop as a painter, lost customers first as a consequence of his baptism, then because of his Jewish descent. Wife refused to follow the advice to divorce him, she would rather follow her husband, whose life became impossible in Germany, into exile. Money is missing for emigration, 1,600 guilders. [68]
>
> (*Een protestantsch jong meisje wilde haar verloving met een jood niet opgeven, waarop beide naar Nederland uitweken. Zij werkten een tijdlang beide zelfstandig. Een jaar geleden werd hij door het joodsche Comité uitgezonden naar Argentinië, waar het hem goed gaat als kellner. Hij is echter nog niet in staat haar na te laten komen. Intusschen redde zij zich met wat naaiwerk, maar kwam in juni totaal berooid bij ons aan. Met fl. 600,- zijn zij te helpen.*
>
> *Protestantsche jongeman uit gemengd huwelijk verdedigde op straat zijn zuster, die gemolesteerd werd wegens haar joodsch uiterlijk. Om concentratiekamp te ontgaan, week hij uit. Uitstekend kleermaker. Emigratie zal f 900,- kosten.*
>
> *Protestantsch echtpaar. Man van joodsche afkomst, twee kinderen, gedoopt. Goede schilderszaak, verloor klanten, eerst wegens doop van man, toen wegens joodsche afkomst. Vrouw weigerde gehoor te geven aan raad om te scheiden, volgde liever man, wiens leven in Duitsland onmogelijk werd, in ballingschap. Voor emigratie alles in orde, maar geld ontbreekt. f 1600,-*.)

As the first case of the brochure already shows, the division between the different Jewish, Catholic and Protestant committees and camps sometimes resulted in couples being separated. De Bie tried to help a couple of a Jewish man and Evangelic woman. The husband was released from the refugee camp because of his age. The couple had travelled to Cuba but after being refused admittance, they had returned to the Netherlands. The man wanted to stay with his wife because she needed his care. He wrote to De Bie, and his wife visited De Bie and his wife at their home. De Bie suggested that the Jewish committee should help the man, and the Protestant committee the woman, and that the only option was to release them. He could not join her in the camp in Sluis, as he was not Protestant.[69]

The committee tried to do what it could in difficult circumstances, with limited financial means and a government determined to limit the number of refugees and

refusing to spend any money on their reception. Nevertheless, although in many cases it helped especially mixed couples, the focus on those with a Protestant background may have resulted in separating families; a choice that was not made in the same way by the Catholic sister organisation that was open to all refugees.[70]

After the Germans occupied the Netherlands in May 1940, De Bie, as vice president of the Rotterdam court, actively resisted Nazi measures. The president of the Rotterdam Court at the time, A.F. Zwaardemaker, was 'oriented towards fascism'.[71] De Bie was one of the initiators of judges' protests against the maltreatment of prisoners in camp *Erica* in Ommen, he protested against the firing of judges F.F. Viehoff and J. Wedeven in response to these protests, and he tried to prevent minors under state protection from being sent to Germany as forced labourers or as SS members. He also resisted several changes to the procedural rules of the courts. The Nazis fired him on 25 August 1944. Immediately after the war on 8 May 1945, he was reinstated and became president of the Rotterdam court after Zwaardemaker was fired.[72] De Bie was also a member of the High Council for the purification of the judiciary (*Hoge College tot Zuivering van de rechterlijke macht)*, which had to de-Nazify the judiciary.

Conclusion

Although De Bie was evidently anti-Nazi, race and mixture were not absent from his work. De Bie's work at the court shows how apparently 'neutral', colour-blind laws to protect the youth could be enforced in racially specific ways, to prevent mixture. Studies have shown that, after the war, it remained common to problematise race and mixture in child protection cases. Registrations at observation homes mentioned the children's racial appearances, their inferior 'racial characteristics' and the 'internal struggles' that children of mixed descent went through (Dimmendaal 1998: 186; Bultman 2016: 284).

Furthermore, through his publications, De Bie actively produced a legal and public discourse in which mixture (relationships as well as marriages) were seen as a form of moral decline. Just like in the colony, the focus was on Dutch white women and girls and racialised men. His passion for child protection included race-thinking: even though it was not a central concern, it proved its urgency.

Conclusions: Lessons from the Legal Archive

Race Matters

In this lecture, I have analysed the legal work of the three Dutch jurists as a way to explore the legal archive. Again, it is not about these individual jurists and their intentions or motivations, but rather about how they functioned in a legal system in which race and mixture were relevant.

My exploration of the legal archive has demonstrated that race and mixture did matter in Dutch law. Even though full of contradictions and inconsistencies, the work of the three jurists has shown that race mattered to them; they were not colour-blind, as the legal system they worked in was not colour-blind. This means we have to take further stock of how race worked in law. As Moschel (2014: 122) points out, what is lacking is an account and collection of cases, statutes, decisions, and interpretations to demonstrate how law in mainland European nation-states had its fair share in creating, constructing, and perpetuating race thinking in and through law. In other words: we should start exploring the legal archive.

Once one starts looking, race and mixture can be traced in traditional legal sources, *Nederlands Juristenblad*, *Nederlandse Jurisprudentie*, *Weekblad voor het Recht* and in legal handbooks. At times, it was more blatantly racialised than I would have expected. In other instances, it was obscured in the formulation of general legal principles, such as 'dualist system', 'moral decline' or 'resemblance of father and child'. Sometimes, it was hidden, intentionally or not, but it is definitely not absent.

Exploring the legal archive is not just of historical value. We stand on the shoulders of our predecessors. Traces of what I have discussed here can still be found in the law that we work with nowadays.

The problematisation of mixture that we came across is not limited to the past, nor is the disproportionate attention paid to the marriages of white women to black or migrant men. As I have argued in my earlier work, these traces can be found in the gendered and racialised discourses on family reunification (Bonjour & De Hart 2013), on marriages of Dutch women and Muslim men (2017a) on marriages of convenience in migration law (De Hart 2017b) and in the media and official responses to the so-called 'refugee crisis' in 2015 (De Hart 2017c).

The histories that I have described also show that 'mixture' does not in itself make 'race' disappear, contrary to what is often assumed. More mixture does not result in a post-racial world. Time and again, new categories of mixture are constructed and problematised. That makes the question of how the law should respond to it impossible to escape. The common assumption of the colour-blindness of law is not helpful in this respect. If, as I hope to have demonstrated, law was not colour-blind in the past, it is not colour-blind today either. According to critical race theory, the assumption of the colour-blindness of law is part of the problem. This assumption makes it impossible for us to see and to study the systematic and material consequences of race-thinking in law and legal practice today. It also makes race-thinking into incidental, individual racist acts committed by neo-Nazis and other crazy people. And it makes individuals affected by racism responsible for the solution, by making use of anti-disclination laws.

The assumption of colour-blind law also makes it difficult to see mixture. The law still struggles with how to deal with mixture, either ignoring its existence, characterised as it is by a 'monoracial family norm' (Onwuachi-Willig 2013), trying to force it into existing categories. As the law is said always to need to categorise, 'mixtures' are considered a problem because they are simultaneously not, and are more than the sum of the original parts. If categorisation in the law is inevitable, is the maximum result we could achieve the development of new and better categories? These questions have a greater impact than just for the regulation of mixture. I hope to further explore some of these questions in the coming years.

How to Continue

Obviously, this lecture is just a small, modest start in exploring the vast legal archive. It is incomplete, full of contradictions and unanswered questions. Luckily, I have a few years left and a great team to help me. In my ERC-funded Euromix-project PhD researchers Rebecca Franco, Nawal Mustafa and Andrea Tarchi study the regulation of interracialised mixture in France, the United Kingdom and Italy respectively. Postdoc Elena Zambelli looks at the experiences of interracialised couples today, and Guno Jones at how race and mixture work in present-day European law. I feel privileged to work together with such a great team of critical and inspiring researchers.[73]

My own plans for the coming years are to look at more Dutch jurists. This lecture was limited to white male jurists. In the coming years, I would like to take a further look at female and feminist jurists, for instance the already mentioned Betsy Bakker-Nort who was involved in the debate on Dutch 'girls' marrying Indonesian Muslim men. I also intend to study the work of Indonesian lawyers who were either part of the colonial legal system, or actively resisted it. Maybe Oei Jan Lee. a lawyer of Chinese descent from the Dutch East Indies who, late nineteenth century, did everything he was not supposed to do, according to his 'race': obtaining a PhD in law, marrying a Dutch white woman, converting to Christianity, naturalising and entering the court fully dressed as a European.[74] And indeed, Nazi jurists are of interest, such as the mentioned J.J. Schrieke and his dealings with Chinese-Dutch marriages during the Second World War. I also intend to look at the role of jurists in international organisations and networks that dealt with issues related to race and mixture.

Furthermore, I hope to dig up more case law, in which race and mixture played a role, from the legal archive. As we have seen, they may be difficult to find because of how the legal archive works, but I am convinced they are there. It just requires continued and persistent digging to find them.

I hope you will join me in the exploration of the legal archive. Especially in times of increasing populism, and race0thinking returning to the public and political arena, it is vital that we take a close, and sometimes painful, look at race thinking in our own legal past and how it has influenced the laws, regulations and legal scholarship with which we work today, with profound, real-life, material effects for in the lives of individuals, couples and families affected by these laws.

. This is all the more relevant for us at VU University, one of the most diverse universities in the Netherlands – at least in terms of its students- and should have

consequences for how we teach law and for our curriculum. With my research, I hope to make a small contribution.

Bibliography

Aldrich, R. (2003). *Colonialism and homosexuality*. London: Routledge.

Backhouse, C. (1999). *Colour-coded: A legal history of racism in Canada, 1900-1950*. Toronto: University of Toronto Press.

Amenda, L. (2012). '"Chinese quarters", maritime labor, Chinese migrants, and local imagination in Rotterdam and Hamburg 1900-1950'. In: V. Künnemann & R. Mayer, *Chinatowns in a transnational world: Myths and realities of an urban phenomenon*. New York: Routledge, p. 45-61.

Balibar, E. (2004). *We, the people of Europe. Reflections on transnational citizenship*. Princeton: Princeton University Press.

Birrell, K. (2020). '"An Essential Ghost": Indigeneity Within the Legal Archive'. *Australian Feminist Law Journal,* 33(1), p. 81-99.

Blaas, P.B.M. (2010). *Henk Hoetink (1900-1963): een intellectuele biografie: recht en geschiedenis*. Hilversum: Uitgeverij Verloren.

Bloembergen, M. & B. Jackson (2006). *Colonial spectacles: the Netherlands and the Dutch East Indies at the world exhibitions, 1880-1931*. Singapore: NUS Press.

Bloembergen, M. (2011). 'Being clean is being strong. Policing cleanliness and gay vices in the Netherlands Indies in the 1930s'. In: K. van Dijk & J.G. Taylor, *Cleanliness and Culture. Indonesian histories*. Leiden: KITLV Press, p. 117-145.

Bonjour, S. & B. de Hart (2013). 'A proper wife, a proper marriage. Constructions of "us" and "them" in Dutch family migration policy'. *European Journal of Women's Studies*, 20(1), p. 61-76.

Borel, H. (1927). *Over de Moderne Dansen*. Mariënburg/Den Bosch: Geert Groote Genootschap.

Bosma, U. & R. Raben (2008). *Being 'Dutch' in the Indies. A History of Creolisation and Empire 1800-1920*. Singapore: NUS Press.

Boucher, L., K. Ellinghaus & J. Carey (2009). *Re-orienting Whiteness*. New York: Palgrave Macmillan.

Boudewijn, P. (2016). *Warm bloed: de representatie van Indo-Europeanen in de Indisch-Nederlandse letterkunde (1860-heden)*. Hilversum: Verloren.

Bourdieu, P. (1987). 'The force of law: Toward a sociology of the juridical field'. *Hastings Law Journal,* 38(5), p. 814-853.

Bovenkerk, F., H.J.M. Ciaessen, B. van Heerikhuizen, A.J.F Köbben & N. Wilterdink (1978). *Toen en Thans: De sociale wetenschappen in de jaren dertig en nu*. Baarn: Ambo.

Brah, A. & A. Coombes (2005). *Hybridity and its discontents: Politics, science, culture*. London: Routledge.

Brattain, M. (2207). 'Race, Racism, and Antiracism: UNESCO and the Politics of Presenting Science to the Postwar Public'. *American Historical Review,* 112(5), p. 1386-1413.

Breman, J. (2016). 'W.F. Wertheim, een tegendraadse kroniekschrijver van maatschappelijke omwenteling'. *Sociologie*, 12(3), p. 321-350.

Bultman, S.M. (2016). *Constructing a female delinquent self: assessing pupils in the Dutch State Reform School for Girls, 1905-1975*. (Thesis). Enschede: Ipskamp Printing.

Caballero, C. & P.J. Aspinall (2018). *Mixed Race Britain in The Twentieth Century*. London: Palgrave Macmillan.

Caestecker, F. & D. Fraser (2008). 'The Extraterritorial Application of the Nuremburg Laws. Rassenschande and 'Mixed' Marriages in European Liberal Democracies'. *Journal of the History of International Law,* 10(1), p. 35-81.
Castles, S. & A. Davidson (2000). *Citizenship and migration: Globalization and the politics of belonging*. New York: Routledge.
Coleborne, C. (2005). 'Crime, the legal archive and postcolonial histories'. In: N. Godfrey & G. Dunstall, *Crime and Empire 1840-1940*. London: Routledge, p. 92-105.
Commissie Dansvraagstuk (1931*). Rapport Regeringscommissie voor het Dansvraagstuk*. Den Haag: Algemene landsdrukkerij.
Cooper, F. & A.L. Stoler (1997). *Tensions of empire: Colonial cultures in a bourgeois world*. Berkeley: University of California Press.
Crenshaw, K. (1990). 'A black feminist critique of anti-discrimination law and politics'. In: D. Kairys, *The Politics of Law. A progressive critique*. New York: Pantheon, p. 339-343.
De Bie, H. (1904). *Eenige beschouwingen over tuchtrecht.* (Thesis). Utrecht: P. den Boer.
De Bie, H. (1919). 'De kinderwetten'. *Katholiek Sociaal Weekblad*, 18(9), p. 70-71.
De Bie, H. (1926). 'Schapen zonder herder'. *Weekblad voor Christendom en Cultuur*. 15 January, p. 1.
De Bie, H. (1927). *Kinderrecht I*. Zwolle: Tjeenk Willink.
De Bie, H. (1930a). *Het zedelijkheidsvraagstuk*. Delft: Meinema.
De Bie, H. (1930b). *De eerste kwarteeuw der kinderwetten, 1 december 1905-1930*. Leiden: Sijthoff.
De Bie, H. (1934). *De Christen en de moderne beschouwing van verloving en huwelijk*. Hoenderloo: Drukkerij Stichting Hoenderloo.
De Bie, H. (1951). 'Mr A. de Graaf: Waardig zoon van het "réveil", 1867-1945'. *Reeks Lichtstralen op de akker der wereld*, 52(3). Den Haag: Voorhoeve.
De Graaf, A. (ed. by H. de Bie) (1937). *Feest en strijd: Uit de geschriften van mr. A. de Graaf: 1867-17 mei-1937*. Amsterdam: H.J. Paris.
De Groot-van Leeuwen, L.E. (2011). 'Hendrik de Bie, 1879-1955'. In: M.W. van Boven & P. Rood, *Tweehonderd jaar rechters*. Hilversum: Verloren.
De Hart, B. (2001). 'De verwerpelijkste van alle gemengde huwelijken. De Gemengde Huwelijken Regeling Nederlands-Indië 1898 en de Rijkswet op het Nederlanderschap 1892 vergeleken'. *Jaarboek voor Vrouwengeschiedenis*, 21, p. 60-80.
De Hart, B. (2012). *Een tweede paspoort. Dubbele nationaliteit in de Verenigde Staten, Duitsland en Nederland*. Amsterdam University Press
De Hart, B. (2014). *Unlikely couples. Regulating mixed sex and marriage from the Dutch colonies to European migration law*. Oisterwijk: Wolf Legal Publishers.
De Hart, B. (2017a). 'Protecting Dutch Girls from the Harem. Premarital Counselling for Mixed Marriages with Muslim Men'. *Journal of Migration History*, 3(1), p. 78-103.
De Hart, B. (2017b). 'The Europeanization of Love. The Marriage of Convenience in European Migration Law'. *European Journal of Migration and Law*, 19(3), p. 281-306.
De Hart, B. (2017c). 'Sexuality, Race and Masculinity in Europe's Refugee Crisis'. In: C. Grütters, S. Mantu & P. Minderhoud, *Migration on the Move: Essays on the Dynamics of Migration*. Leiden: Brill Nijhoff, p. 27-53.

De Hart, B. (2019). 'Regulating Dutch-Chinese marriages and relationships in the Netherlands (1920-1945)'. *The History of the Family*, 24(3), p. 539-559.
De Jongh, B.Th. (z.j.). *Wat de Indische zedenmisdrijven ons te zeggen hebben*. Amsterdam: Ploeger.
De Jongh, G.T.J. (1930). 'Jeanne'. In: H. de Bie, *De eerste kwarteeuw der kinderwetten, 1 december 1905-1930*. Leiden: Sijthoff, p. 244-246.
De Vries, P. (1997). *Kuisheid voor mannen, vrijheid voor vrouwen: de reglementering en bestrijding van prostitutie in Nederland, 1850-1911*. Hilversum: Verloren.
De Vries, P. (2005). '"White slaves" in a colonial nation: The Dutch campaign against the traffic in women in the early twentieth century'. *Social & Legal Studies,* 14(1), p. 39-60.
Delgado, R. & J. Stefancic (2001). *Critical race theory: An introduction*. New York: New York University Press.
Delicat, J. (2001). *Van ijzeren vuist naar zachte hand? Idee en praktijk in de rijksopvoedingsgestichten 1901-1961*. (Thesis University of Amsterdam).
Derrida, J. & E. Prenowtiz, E. (1995). *Archive fever: A Freudian impression*. Chicago: University of Chicago Press.
Dharmowijono, W. (2009). *Van koelies, klontongs en kapiteins: Het beeld van de Chinezen in Indisch-Nederlands literair proza 1880-1950*. (Thesis University of Amsterdam).
Dimmendaal, G. (1998). *Heropvoeding en behandeling: meisjes in Huize de Ranitz, Groningen 1941-1967*. Assen: Van Gorcum.
Eickhoff, M., B. Henkes & F.P.I.M. van Vree (2000). *Volkseigen. Ras, cultuur en wetenschap in Nederland 1900-1950*. Zutphen: Walburg Pers.
Fasseur, C. (2007). 'Colonial dilemma. Van Vollenhoven and the struggle between adat law and western law in Indonesia'. In: J.S. Davidson & D. Henley, *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism*. London: Routlegde, p. 50-67.
Gouw (Giok Siong). (1955). *Segi-segi hukum peraturan perkawinan tjampuran (Staatsblad 1898 No. 158)* (Thesis). Jakarta: Djambatan 1961, c1958.
Grewel, F. (1935). 'De Observatieinrichting beschouwd van psychologisch-psychiatrisch oogpunt'. In: *Nederlandsche Vereniging voor Geestelijke Volksgezondheid (Vereeniging voor Psychische hygiëne), verslag landelijk congres 6-7 mei 1935*. Amsterdam: Geestelijke Hygiëne en Jeugdbescherming, p. 80-98.
Gross, A.J. (2008). *What blood won't tell: A history of race on trial in America*. Cambridge/London: Harvard University Press.
Hadler, J. (2004). 'Translations of antisemitism: Jews, the Chinese, and violence in colonial and post-colonial Indonesia'. *Indonesia and the Malay World*, 32(94), p. 291-313.
Halliday, T.C., & L. Karpik (1997). *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries*. Oxford: Oxford University Press.
Haritaworn, J. (2012). *The biopolitics of mixing. Thai multiracialities and haunted ascendancies*. Farnham: Ashgate.
Harkema, B. & F. Sysling (2018). 'Dutch scientists and the UNESCO Statement on Race'. *Studium*, 11(4), p. 229-244.

Hoekema, A.G. (2011). *'Bloembollen' voor Westerbork: hulp door Zaanse en andere doopsgezinden aan (protestants-) Joodse Duitse vluchtelingen in Nederland, 1939-1945*. Hilversum: Verloren.

Hondius, D. (2014). *Blackness in Western Europe. Racial patterns of paternalism and exclusion*. New Brunswick: Transaction.

Hsu, M.Y. (2015). *The good immigrants. How the yellow peril became the model minority*. Princeton: Princeton University Press.

Jacobs, J.K. (1894). *Het familie- en kampongleven op Groot-Atjeh*. Leiden: Brill.

Jacobson-Rosen, L. (2018). *'The Eurasian Question': The Colonial Position and Postcolonial Options of Colonial Mixed Ancestry Groups from British India, Dutch East Indies and French Indochina Compared*. Hilversum: Verloren.

Jesserun d'Oliveira, H.U. (2015). *Ontjoodst door de wetenschap: de wetenschappelijke en menselijke integriteit van Arie de Froe onder de bezetting*. Amsterdam: Amsterdam University Press.

Jones, G. (2007). *Tussen onderdanen, rijksgenoten en Nederlanders: Nederlandse politici over burgers uit oost en west en Nederland, 1945-2005*. Amsterdam: Rozenberg.

Joosens, K. (1985). 'J.H. François. Anders dan anderen'. *Maatstaf*, 33, p. 69-82.

Keevak, M. (2011). *Becoming yellow. A short history of racial thinking*. Princeton: Princeton University Press.

Kerkhof, G. (1992). 'Het Indische zedenschandaal: een koloniaal incident'. In: R. Feddema, *Wat beweegt de bamboe? Geschiedenissen in Zuidoost Azië*. Amsterdam: Spinhuis, p. 93-118.

Kollewijn, R.D. (1929). *Interracial Private Law*. Batavia: Java.

Kolllewijn, R.D. (1935). 'Het Duitse verbod op huwelijk van Ariërs en niet-Ariërs'. *Indisch Tijdschrift voor het Recht*, 4, p. 473-482.

Komen, M.M. (1999). *Gevaarlijke kinderen – kinderen in gevaar: De justitiële kinderbescherming en de veranderende sociale positie van jongeren, 1960-1995*. Utrecht: SWP.

Kuitenbrouwer, M. & M. Leenders (2000). *Geschiedenis van de mensenrechten: bouwstenen voor een interdisciplinaire benadering*. Hilversum: Verloren.

Ligtenberg, L. (2017). *Mij krijgen ze niet levend. De zelfmoorden van mei 1940*. Amsterdam: Balans.

Liss, J.E. (1998). 'Diasporic Identities: The Science and Politics of Race in the Work of Franz Boas and W.E.B. Du Bois, 1894-1919'. *Cultural Anthropology*, 13(2), p. 127-166.

Locher-Scholten, E. (2000). 'Monogamous marriage and female citizenship in the Dutch East Indies'. In: M. Grever & F. Dieteren, *Een vaderland voor vrouwen, A fatherland for women: the 1898 'Nationale Tentoonstelling van Vrouwenarbeid' in retrospect*. Amsterdam: Stichting beheer IISG., p. 136–148.

Lopez, I.H. (1997). *White by law: The legal construction of race*. New York and London: New York University Press.

Lutz, H., M.T.H. Vivar & L. Supik (2011). *Framing intersectionality: Debates on a multifaceted concept in gender studies*. Burlington: Ashgate Publishing.

Mawani, R. (2012). 'Law's archive'. *Annual Review of Law and Social Science* 8, p. 337-365.

Meijers, E.M. (1922). 'Het Middeleeuwsche recht als hulpmiddel bij het onderzoek naar de verspreiding der rassen en stammen in West-Europa'. *Etudes d'histoire du droit*, Leyde 1956, p. 3-17.

Milanich, N. (2019). *Paternity: The elusive quest for the father*. Cambridge: Harvard University Press.
Motha, S. & H. Van Rijswijk (2016). *Law, memory, violence: uncovering the counter-archive*. London: Routledge.
Mrázek, R. (2010). *A certain age: Colonial Jakarta through the memories of its intellectuals*. Durham: Duke University Press.
Nederburgh, I.A. (1899). *Wetgeving voor Nederlandsch-Indië. Gemengde Huwelijken. Staatsblad 1898, no. 158. Officiële bescheiden en aantekeningen*. Batavia: Kolff.
Nederburgh, I.A. (1902). *Wetgeving voor Nederlandsch-Indië, rangschikking, benoeming, ontslag, enz. II. Gemengde Huwelijken. Vervolg. (Staatsblad 1901 N°. 348)*. Weltevreden: Boekhandel Wissel & Co.
Omi, M. & H. Winant (2014). *Racial formation in the United States*. New York: Routledge.
Onwuachi-Willig, A. (2013). *According to our hearts. Rhinelander v Rhinelander and the Law of the Multiracial Family*. New Haven & London: Yale University Press.
Pascoe, P. (2009). *What comes naturally: Miscegenation law and the making of race in America*. New York: Oxford University Press.
Peabody, S. & T. Stovall (2003). *The color of liberty: Histories of race in France*. Durham: Duke University Press.
Pieke, F.N. & G. Benton (2016). 'The Chinese in the Netherlands'. In: G. Benton & F.N. Pieke, *The Chinese in Europe*. London: Palgrave, p. 125-167.
Pols, H. (2007). 'Psychological knowledge in a colonial context: Theories on the nature of the "native mind" in the former Dutch East Indies'. *History of Psychology*, 10(2), p. 111-131.
Postma, H. (1927). 'De grootte van het hoofd bij het meisje in de puberteitsjaren'. *Kinderstudie*, 7(1-2), p. 1-14.
Root, M.P. (1996). *The multiracial experience: Racial borders as the new frontier*. London: Sage.
Saada, E. (2011). *Empire's children: race, filiation, and citizenship in the French colonies*. Chicago: University of Chicago Press.
Said, E. (1978). *Orientalism: Western representations of the Orient*. New York: Pantheon.
Saini, A. (2019). *Superior: The Return of Race Science*. Boston: Beacon Press.
Salden, M. (1980). 'Artikel 248 Bis wetboek van Strafrecht de geschiedenis van een strafbaarstelling'. *Groniek*, 66, p. 38-48.
Sangster, J. (2002). 'Defining Sexual Promiscuity, "Race", Gender and Class in the Operation of Ontario's Female Refuges Act, 1930-1960'. In: W. Chann & K. Mirchandani, *Crimes of Color: racialization and the criminal justice system in Canada*. Toronto: Broadview Press, p. 45-66.
Schalwijk, F.G. (1930). 'De kinderweten in Suriname en Curaçao'. In: H. de Bie, *De eerste kwarteeuw der kinderwetten, 1 december 1905-1930*. Leiden: Sijthoff, p. 53-57.
Scheingold, S.A. (1999). 'Taking Weber seriously: lawyers, politics, and the liberal State'. *Law & Social Inquiry*, 24(4), p. 1061-1081.
Sevenhuijsen, S.L. (1987). *De orde van het vaderschap. Politieke debatten over ongehuwd moederschap, afstamming en huwelijk in Nederland 1870-1900*. Amsterdam: Stichting Beheer IISG.
Sharafi, M. (2007). 'A new history of colonial lawyering: Likhovski and legal identities in the British empire'. *Law & Social Inquiry*, 32(4), p. 1059-1094.

Shirahshi, T. (2011). 'Anti-Sinicism in Java's new order'. In: D. Chirot & A. Reid, *Essential outsiders: Chinese and Jews in the modern transformation*. Seattle: Washington University Press, p. 187-207.
Spickard, P.R. (1991). *Mixed blood: Intermarriage and ethnic identity in twentieth-century America*. Madison: University of Wisconsin Press.
Stoler, A.L. (2001). 'Tense and tender ties: The politics of comparison in North American history and (post) colonial studies'. *The Journal of American History*, 88(3), p. 829-865.
Stoler, A.L. (2002). 'Colonial archives and the arts of governance: on the content in the form'. *Archival Science,* 2(1-2), p. 87-109.
Stonequist, E.V. (1937*). The marginal man: A study in personality and culture conflict*. New York: Russell and Russell.
Stoop, J.P. (2001). *Om het volvoeren van een christelijke staatkunde: de Anti-Revolutionaire Partij in het Interbellum*. Hilversum: Verloren.
Sysling, F. (2015). *De onmeetbare mens. Schedels, ras en wetenschap in Nederlands-Indië*. Nijmegen: Uitgeverij Vantilt.
Tabili, L. (1996). '"Women of a Very Low Type": Crossing Racial Boundaries in Imperial Britain'. In: L. Frader & S.O. Rose, *Gender and Class in Modern Europe*. Ithaca: Cornell University Press, p. 165-190.
Tjiook-Liem, P. (2009). *De rechtspositie der Chinezen in Nederlands-Indië 1848-1942: Wetgevingsbeleid tussen beginsel en belang*. Leiden: Leiden University Press.
Tobi, A.C. (1927). *De vrijwillige onderwerping aan het Europeesch privaatrecht (Ind. stbl. 1917, n° 12)*. Leiden: SC Van Doesburgh.
Trouillot, M. R. (1995). *Silencing the past: Power and the production of history*. Boston: Beacon Press.
Twine, F.W. & C. Gallagher (2008). 'The future of whiteness: A map of the "third wave"'. *Ethnic and Racial Studies*, 31(1), p. 4-24.
Valverde, M. (2009). *Law's dream of a common knowledge*. Princeton: Princeton University Press.
Van den Berg, L.W.C. (1868). *De Contractu 'do ut des' jure mohammedano*. (Thesis). Leiden: SC Van Doesburgh.
Van den Berg, L.W.C. (1887). *Huwelijken tusschen personen behoorende tot verschillende categoriën der bevolking van Nederl. Indië: Praeadvies*. Batavia: Ernst.
Van den Berg, L.W.C. (1890). 'Het Kruis tegenover de Halve Maan'. *De Gids,* 54, p. 67-101.
Van den Berg, L.W.C. (1894). 'De Atjehers'. *De Gids*, 58, p. 195-238.
Van den Berg, L.W.C. (1907). 'Javaansch Christendom'. *De Gids*, 71, p. 235-269.
Van den Berg, S.J. (1928). 'Levensbericht van Mr. L.W.C. van den Berg'. *Jaarboek van de Maatschappij der Nederlandse Letterkunde*, p. 16-26.
Van den Brandhof, N.W. (1948). *Christelijke moraal en burgerlijk recht in Zuid-Afrika*. 's-Gravenhage: De Kern.
Van den Brandhof, N.W. (1949). 'Ras en recht in Zuid-Afrika'. *Mens en Maatschappij*, 24(3), p. 129-151.
Van Eijl, C.J. (2005). *Al te goed is buurmans gek. Het Nederlandse vreemdelingenbeleid 1840-1940*. Amsterdam: Aksant.
Van Ginkel, R. (2000). *Volkscultuur als valkuil: over antropologie, volkskunde en cultuurpolitiek*. Amsterdam: Het Spinhuis.

Van Heek, F. (1936). *Chineesche immigranten in Nederland*. Amsterdam: NVJ Emmering's Uitgevers Mij.
Van Oven, C.H.J. (1926a). 'De gelijkenis van vader en kind over erkenning en fysieke gelijkenis'. *Nederlands Juristenblad*, 1(1), p. 8-15.
Van Oven, C.H.J. (1926b). 'De vaderschapsactie'. *Nederlands Juristenblad,* 1(21), p. 285-290.
Van Vierssen Trip, G.W. (2956). 'In memoriam mr. Hendrik de Bie', p. 173-177. Available at http://rjb.x-cago.com/GARJB/1956/12/19561231/GARJB-19561231-0193/story.pdf, last visited 13 July 2019.
Van Walsen, F. (1930). 'De kinderwetten in Ned. Oost-Indië'. In: H. de Bie, *De eerste kwarteeuw der kinderwetten, 1 december 1905-1930*. Leiden: Sijthoff, p. 46-52.
Vellinga, N.J. (1925). 'Ingezonden bijdragen. Bloedige rechtspraak'. *Weekblad van het Recht* 4 december, nr. 11427, p. 8.
Veth, P.J. (1873). *Atchin en zijne betrekkingen tot Nederland: topographisch-historische beschrijving*. Leiden/Gualth: Kolff.
Visman-Commissie tot Bestudeering van Staatsrechtelijke Hervormingen (1941). *Verslag van de commissie tot bestudeering van staatsrechtelijke hervormingen ingesteld bij gouvernementsbesluit van 14 september 1940*. Batavia: Landsdrukkerij.
Walker, B.A. (2008). 'Fractured bonds: Policing whiteness and womanhood through race-based marriage annulments'. *DePaul Law Review*, 58(1), p. 1-50.
Ware, V. & L. Back (2002). *Out of whiteness: Color, politics, and culture*. Chicago: University of Chicago Press.
Wekker, G. (2016). *White innocence: Paradoxes of colonialism and race*. Durham: Duke University Press.
Wertheim, W.F. (1930*). Aansprakelijkheid voor schade buiten overeenkomst* (Thesis). Leiden: Eduard Ydo.
Wertheim, W.F. (1936). *De verhouding tusschen rechtswetenschap en rechtspractijk*. Groningen/Batavia: Wolters.
Wertheim, W.F. (1946). *Nederland op de Tweesprong: Tragedie van de aan traditie gebonden mensch*. Arnhem: Van Loghum Slaterus.
Wertheim, W. (1947). 'The Indo-European problem in Indonesia'. *Pacific Affairs*, 20(3), p. 290-290.
Wertheim, W. (1952). 'Intelligentieverschillen in het licht der sociologie'. *De Nieuwe Stem: Maandblad Voor Cultuur en Politiek,* 7, p. 9-18.
Wertheim, W.F. (1956). 'Boekbespreking, prof. Mr. R.D. Kollewijn, Intergentiel recht. Verzamelde opstellen over intergentiel recht'. *Indonesië*, 19, p. 169-173.
Wertheim, W.F. (1972). 'Counter-insurgency research at the turn of the century: Snouck Hurgronje and the Acheh war'. *Sociologische Gids,* 19(5-6), p. 320-328.
Wertheim, W.F. (1991). 'Koloniaal racisme in Indonesië. Ons onverwerkt verleden?'. *De Gids*, 154(5-6), p. 367-385.
Wertheim, W.F. & H. Wertheim-Gijse Weenink (1992). *Vier wendingen in ons bestaan: Indië verloren, Indonesië geboren*. Breda: De Geus.
Williams, V. (2015). *Rethinking race: Franz Boas and his contemporaries*. Lexington: University Press of Kentucky.
Winsemius, J. (1936). *Nieuw-Guinee als kolonisatiegebied voor Europeanen en van Indo-Europeanen*. Purmerend: Muusses.

Wouters, C. (1999). *Ongewenschte muziek: De bestrijding van jazz en moderne amusementsmuziek in Duitsland en Nederland, 1920-1945*. Den Haag: Sdu Uitgevers.
Young, R. J. (2005). *Colonial desire: Hybridity in theory, culture and race*. London: Routledge.
Yuval-Davis, N. (2008 [1997]). *Gender and Nation*. Los Angeles and London: Sage.
Yuval-Davis, N. (2011). *The politics of belonging: Intersectional contestations*. London: Sage.

Notes

1 About the return of scientific racism, see Saini 2019.
2 Many of them build on Derrida's work on the archive, Derrida & Prenowtiz, 1996.
3 Wet tot het tegengaan van de ontucht in de Z.A. Republiek. Goedgekeurd bij besluit van den Uitv. Raad art. 112, dd. 8 Februari 1897, In: *Het Maandblad; Getuigen en Redden*, vol. 19, 1 April 1897, p. 1. Art. 7 and 8 of this Act punish the white women who had voluntary sex with a coloured men with five years imprisonment, with or without hard labour and banishment from the Republic; the coloured man with six years imprisonment, hard labour and a maximum of 50 beatings.
4 Inventaris van het archief van de secretarie van de gemeente Delft, 1813-1938, Nummer Toegang: 2. It contains, however, a pile of letters that his parents sent to Van den Berg during his stay in the colony that were not included in this research.
5 Archief Willem Frederik Wertheim, period (1907) 1921, 1925-1998, https://iisg.amsterdam/ nl/search?search=inventaris%20archief%20wertheim.
6 Interview with Anne-Ruth Wertheim, 27 May 2019.
7 Inventaris van het archief van de Arrondissementsrechtbank te Rotterdam, 1838-1939 (1976), Nummer archiefinventaris: 3.03.17.01, 951-1035 Dossiers van burgerlijke en strafzaken, welke zijn behandeld door de kinderrechter, 1922-1930; 1036-1088 Dossiers van strafzaken, welke zijn behandeld door de kinderrechter, 1930-1939.
8 Nationaal archief, Inventaris van het archief van mr. H. de Bie [levensjaren 1879-1955], 1926-1950, Nummer archiefinventaris: 2.21.023.
9 https://www.delpher.nl/.
10 *Nieuws van de dag voor Nederlandsch-Indië*, 6 July 1912, 'Diefstal van gas'. Quotes were translated from Dutch into English by author. My thanks to Beverley Slany for her invaluable editing work.
11 Hooggerechtshof van Nederlandsch Indië, 22 January 1913, *Recht in Nederlandsch Indië*, vol. 99, 1912, p. 436-441.
12 *Delftsch Jaarboekje 1923*, Delft: W.D. Weinema 1923, p. 185.
13 *De Locomotief*, 24 juni 1887, 'Gemengde huwelijken'.
14 Toelichting op het ontwerp Gemengde Huwelijken Regeling door de Staatscommissie (Nederburgh 1899: 20).
15 Regeling op de zoogenaamde gemengde huwelijken, *Staatsblad voor Nederlandsch Indië*, 1 May 1898, nr. 25.
16 This had already been decided by the High Court on 9 January 1900, see comments on the decision by I.A. Nederburgh, *Recht In Nederlandsch Indië*, 1900, vol. 74, p. 335-350.
17 *Adat* law was a term used to describe native common law.
18 He also wrote on the Christian natives in articles in the colonial newspaper *Bataviaansch Nieuwsblad*, 10 September 1902, 'Een gewichtig maar vergeten Indisch belang, deel I'; *Bataviaansch Nieuwsblad*, 13 September 1902, 'Een gewichtig maar vergeten Indisch belang II'.
19 Eerste Kamer, *Begrooting van Nederlandsch-Indië voor het dienstjaar 1913*, 28 December 1912. 47, p. 155 ff.
20 *Bataviaansch Nieuwsblad*, 10 September 1924, 'Een zedenschandaal'.
21 E.g. *Soerabajaansch Handelsblad*, 19 January 1939, 'De hoogheid van het ambt'; *Bataviaansch Nieuwsblad*, 25 January 1939, 'Het reinigingsproces'.

22 Intergentiel law was the term used to describe the system of rules applying to legal relations between members of different population groups living in the colony who each had their own law.
23 Under the pseudonym B.Th. de Jongh (no year given). On François, see Joosens 1985.
24 IISG archives W.F. Wertheim, particuliere stukken 1933-1997; stukken betreffende werkzaamheden als ambtenaar en hoogleraar rechten in Batavia 1930-1946, Correspondence between Wertheim and Sinninghe Damsté, May 1939.
25 *Second Chamber Proceedings* 27 February 1931, p. 1866-1867.
26 *Nieuws van de dag voor Nederlandsch Indië*, 23 March 1934, 'Gemengde Huwelijken. Lezing van Mr. R. van Hinloopen Labberton'. See further De Hart 2017a.
27 Particuliere stukken 1933-1997; stukken betreffende werkzaamheden als ambtenaar en hoogleraar rechten in Batavia 1930-1946, Letter Wertheim to De Bruïne, 26 April 940.
28 Maryland was the first state in the US to introduce anti-miscegenation laws in 1664, and repealed them just before in 1967, the Supreme Court held interracial marriage prohibitions unconstitutional in *Loving v Virginia*, Pascoe 2009: 20.
29 Bergmann-Ferid was a standard work with information on family, youth and nationality law in countries around the world. It still exists: A. Bergmann, M. Ferid, D. Henrich, *Internationales Ehe- und Kindschaftsrecht mit Staatsangehörigkeitsrecht*, Frankfurt am Main/Berlin: Verlag für Standesamtswesen GmbH 2019.
30 Correspondence from the 1960s shows that he tried to retrieve the written transcripts of the hearings by the Visman-commission, but failed. The Ministry of Foreign Affairs informed him that these transcripts had been either destroyed or handed over to the Indonesian government. IISG archive, particuliere stukken 1933-1997; stukken betreffende werkzaamheden als ambtenaar en hoogleraar rechten in Batavia 1930-1946. Letter Ministry of Foreign Affairs to Wertheim, 10 August 1961.
31 Interview Ann-Ruth Wertheim, 27 May 2019.
32 Anne-Ruth Wertheim read part of a letter to me during the interview.
33 The suicide of Wertheim's parents is also described in Ligtenberg 2017, which takes stock of the Jewish suicides during the first days of German occupation, chapter 6.
34 Although the colony was not free of anti-Semitism and Nazism, Hadler 2004.
35 Zie Anne-Ruth Wertheim, *De Groene Amsterdammer* 15 August 2019, '"Hugo speelt met Ronnie". Een briefkaart uit een joods jappenkamp', https://www.groene.nl/artikel/hugo-speelt-met-Ronnie, last visited 1 September 2019.
36 *Nieuws van den Dag voor Nederlandsch Indië*, 10 July 1936, 'Een "Comité van Waakzaamheid"'.
37 IISG archive, particuliere stukken 1933-1997; stukken betreffende werkzaamheden als ambtenaar en hoogleraar rechten in Batavia 1930-1946. Letter Dr. Moresco to Wertheim, 22 December 1938.
38 IISG archive, particuliere stukken 1933-1997; stukken betreffende werkzaamheden als ambtenaar en hoogleraar rechten in Batavia 1930-1946. Letter Wertheim to Dr. Moresco, 2 December 1938.
39 *NRC Handelsblad*, 13 February 1986, 'Prof. dr. W.F. Wertheim, "Ik ben ook beïnvloed geweest door die racistische gedachtenwereld"'.
40 Interview Anne-Ruth Wertheim, 27 May 2019.
41 Daughter Anne-Ruth Wertheim continues this part of his work in her publications, *De Groene Amsterdammer*, 18 August 2017, 'Politionele acties. Onverklaarbare geluiden drongen ons Jappenkamp binnen'.

42 UNESCO, *The Race Question 1950*, Publication 791, Paris: UNESCO 1950, https:/unesdoc.unesco.org/ark:/48223/pf0000128291, last visited 11 August 2019.
43 This debate was not only about race, but also about class. Scientists like M.J. Sirks and Ph.M. van der Heijden thought that intelligence was hereditary and explained the social position of lower class people, Wertheim 1952.
44 In a later publication he pointed out that most Dutch academic research was conducted in the service of Dutch colonial power (Wertheim 1972).
45 He referred to a PhD defended at the University of Amsterdam medical faculty (Winsemius 1936).
46 In the same vein, Wertheim 1947.
47 See also *The Tragic Mulatto Myth*, Jim Crow Museum of Racist Memorabilia, Ferris State University, Big Rapids, https://www. ferris.edu/jimcrow/mulatto/, last visited 25 July 2019.
48 The *Stuw* was an organisation that advocated the colonies' gradual development towards independence.
49 *Haagsche Courant*, 11 June 1903 (no headline).
50 Wet van 6 Februari 1901 (*Staatsblad* No. 62), tot wijziging en aanvulling van de bepalingen in het Burgerlijk Wetboek omtrent de vaderlijke macht en de voogdij; Wet van 12 Februari 1901 (*Staatsblad* No. 68), houdende wijziging in de bepalingen betreffende het straffen en de strafrechtspleging ten aanzien van jeugdige personen; Wet van 12 Februari 1901 (*Staatsblad* No. 64), houdende beginselen en voorschriften omtrent maatregelen ten opzichte van jeugdige personen. Wet van 5 Juli 1921, *Stbl.* 834, houdende invoering van den Kinderrechter en de ondertoezichtstelling van minderjarigen.
51 *Het Vrije Volk*, 16 november 1955, 'Oud-kinderechter H. de Bie overleden'.
52 'Uit de pers. Steun aan het comité der hervorming huwelijkswetgeving', *Vrouw en Gemeenschap*, 1938, 6, p. 68.
53 Wet van 16 November 1909 S. 363, houdende wijziging en aanvulling van enkele artikelen van het Burgerlijk Wetboek, ter opheffing van de bezwaren, waartoe het bestaande voorschrift betreffende het onderzoek naar het vaderschap aanleiding geeft. See Sevenhuijsen 1987.
54 Rechtbank Alkmaar 30 June 1927, *Nederlandse Jurisprudentie* 1927, p. 1153.
55 Rechtbank Den Haag 8 April 1924, *Weekblad van het Recht* 11186, p. 3; Hof Den Haag, 28 June 1926, *Weekblad van het Recht* 11528, p. 8.
56 *Proceedings Senate*, Bill nr. 7, 12 November 1909, p. 77.
57 *Proceedings Second Chamber* 22 November 1929, p. 622.
58 I am convinced that De Bie wrote the introduction because it rejects American children's judge Ben Lindsey's views on marriage in the same wording as used by De Bie in numerous publications writing against Lindsey.
59 Koninklijk Besluit 27 April 1933, 235. Besluit, tot uitvoering van artikel 56, lid 2, der Drankwet (*Staatsblad* 1931, n°. 476), gelijk deze is gewijzigd bij de wet van 29 Maart 1933 (*Staatsblad* n°. 123).
60 National archives, Court Rotterdam until 1939. Inv. nr. 3.03.17.01. Hundreds of files can be found in this archive. The years 1922, and 1926-1932 were studied. The research was not systematic, but merely intended to identify a number of files where mixture played a role in the decision. The research was stopped after finding four such files. Based on this research, the conclusion can be drawn that it happened, but not how often it happened.
61 National archives, Court Rotterdam until 1939. Inv. nr. 3.03.17.01, 959.

62 National archives, Court Rotterdam until 1939. Inv. nr. 3.03.17.01. 962.
63 National archives, Court Rotterdam until 1939. Inv. nr. 3.03.17.01. Court decision 9 March 1932, 2334.
64 *De Tijd*, 10 April 1934, 'Bond voor Kinderscherming. Naastenliefde'.
65 NIOD, Map, inhoudende circulaires, aantekeningen en correspondentie van- en aan het Protestantsch Hulpcomité voor Uitgewekenen om Ras of Geloof betreffende de werkzaamheden van dit Comité, 3 januari-24 mei 1939. Letter H de Bie, January 1939, fol. 149.
66 NIOD, 7 Map, bevattende circulaires, persberichten, correspondentie en een aantekenboekje, hoofdzakelijk betreffende de financiële toestand van het Comité, 10 maart 1938-16 juli 1940, fol. 99, dated October 1938.
67 NIOD, 7 Map, bevattende circulaires, persberichten, correspondentie en een aantekenboekje, hoofdzakelijk betreffende de financiële toestand van het Comité, 10 maart 1938-16 juli 1940, fol. 99, dated October 1938.
68 NIOD, Map, bevattende circulaires, persberichten, correspondentie en een aantekenboekje, hoofdzakelijk betreffende de financiële toestand van het Comité, 10 maart 1938-16 juli 1940, fol. 71-72.
69 NIOD, Map, inhoudende circulaires, aantekeningen en correspondentie van- en aan het Protestantsch Hulpcomité voor Uitgewekenen om Ras of Geloof betreffende de werkzaamheden van dit Comité (o.m. een brief aan de minister van Binnenlandse Zaken omtrent een verzoek om geldelijke steun. Voorts notulen van enkele vergaderingen van het Comité), 8 januari-31 juli 1940. Letter De Bie, 14 February 1940, fol. 18.
70 Nationaal archief, Inventaris van het archief van mr. H. de Bie [levensjaren 1879-1955], 1926-1950, Nummer archiefinventaris: 2.21.023, geschiedenis van de archiefvormer, p. 7.
71 Nationaal archief, Inventaris van het archief van mr. H. de Bie [levensjaren 1879-1955], 1926-1950, Nummer archiefinventaris: 2.21.023, geschiedenis van de archiefvormer, p. 7.
72 Nationaal archief, Inventaris van het archief van mr. H. de Bie [levensjaren 1879-1955], 1926-1950, p. 7.
73 See http://euromixproject.nl for more information on the research project.
74 De Hart, B. (2018). *An Exceptional Marriage Upsetting Colonial Orders?*. Online publication on Website, Retrieved from http://euromixproject.nl/an-exceptional-marriage-upsetting-colonial-orders/.