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Onwaarschijnlijke koppels: regulering van gemengde seks en huwelijken van de Nederlandse koloniën tot Europees migratierecht = Unlikely couples: regulating mixed sex and marriage from the Dutch colonies to European migration law

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Onwaarschijnlijke koppels

Unlikely couples

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*Regulering van gemengde seks en huwelijken van de
Nederlandse koloniën tot Europees migratierecht*

Unlikely couples

*Regulating mixed sex and marriage from the Dutch
colonies to European Migration Law*

Rede

in verkorte vorm uitgesproken bij de aanvaarding van het ambt van
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door

Betty de Hart

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1. Introduction: Loving in the Netherlands¹

That we are here today on Friday the 13th is because yesterday was June the 12th, which is an unofficial holiday in the United States called Loving Day.²

Loving Day celebrates the United States Supreme Court decision of 12 June 1967, *Loving v Virginia*, in which it declared the prohibition of interracial marriages to be unconstitutional.³ The court case was started by Richard and Mildred Loving, a white man and black woman, with the support of the American Civil Liberties Union (ACLU). The couple was coincidentally, but very adequately, called Loving. Yesterday, in public debate centre De Balie in Amsterdam, Loving Day was celebrated for the second time in the Netherlands, and that is why this inaugural speech was planned for the 13th of June, as part of this celebration.⁴

One may wonder why it is relevant to celebrate Loving Day and talk about such a topic in the Netherlands in 2014. Aren't interracial marriage prohibitions something of a distant past, of the times of slavery in the American South? Why should we be talking about it today in Amsterdam?

There are three reasons to do so. First, interracial marriage prohibitions were not limited to the American South in times of slavery. In fact, after slavery was abolished in the United States in 1865, black-white intermarriage and intermixture came to be seen as a threat more than ever (Hodes, 1997, p. 1). The term 'miscegenation' (*rassenvermenging*) was invented in this period after the American Civil War. Furthermore, many American states introduced interracial marriage prohibitions as late as the beginning of the twentieth century. Especially in the Western states, these often applied to marriages with Asians, such as Japanese, who migrated to the United States in significant numbers at the time (Pascoe, 2009, p. 118). Hence, interracial marriage prohibitions were not only about slavery, but they also related to migration.

The conviction of the Lovings was based on such an early twentieth century law, the *Racial Integration Act* of Virginia, introduced in 1924. It was the strictest anti-miscegenation law in the United States, because it also prohibited marriages concluded outside its jurisdiction, in another state. Mildred and Richard had done exactly that: they married in a state where intermarriage was not prohibited, using the strategy of what Peggy Pascoe has coined 'geographies of evasion' (Pascoe, 2009, p. 191).

Some time after returning to their hometown in Virginia, the police arrested Richard and Mildred in their bedroom at night, after the police had been tipped off. Richard and Mildred's punishment of one-year imprisonment was suspended on the condition that they would leave Virginia for 25 years. The judge who convicted them, stated:

Almighty God created the races white, black, yellow, malay and red and placed them on separate continents. And but for the interference with this arrangement there would be no cause for such marriages. The fact that he separated the races, shows that he did not intend for the races to mix.

After their conviction, the Lovings went to live in Washington, where intermarriage was not prohibited. However, Mildred, in particular, was homesick and they both missed their families. So, after the Supreme Court in *Brown v Board of Education* ruled that racial segregation at schools was unconstitutional in 1954, Mildred wrote a letter to Robert Kennedy, the Attorney General at the time.⁵ She inquired whether their marriage would now be allowed. Kennedy referred her to the ACLU.

The ACLU had been looking for a suitable couple for a long time to challenge the anti-miscegenation laws. Because they felt the issue was still very sensitive, they were looking for a couple of a white man and a black woman, such as the Lovings. They feared the reverse gender-race pairing, a couple of a white woman and black man, would significantly limit their chances of winning (Pascoe, 2009, p. 232). Although the Lovings were a suitable couple, the ACLU lawyers still had some hesitations about Richard who, in their eyes, looked a bit like a 'redneck'. He stated several times that he did not want to be bothered and that they just wanted to be able to live their lives. He told them: *'Tell the Court I love my wife and it is just not fair that I cannot live with her in Virginia'*.

The Lovings won their case with a unanimous court decision, ordering that the marriage prohibition violated the principle of equal treatment. Chief Justice Earl Warren stated:

Marriage is one of the "basic civil rights of men", fundamental to our very existence and survival. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination. Under our Constitution, the freedom to marry, or not to marry, a person of another race resides with the individual and cannot be infringed by the state. There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.

Although after this decision, interracial marriage prohibitions could no longer be enforced, in two American states, Alabama and South Carolina, the

prohibition remained on the books. Alabama was the last to strike it from the state constitution, as recently as 2000, with forty per cent of the population voting against striking it (Pascoe, 2009, p. 307 ff.). In 2009, there was worldwide press coverage about a white woman and black man whose marriage was refused by a Justice of Peace in Louisiana. The Justice always inquired about the race of the couples and referred them to another Justice if they were interracial. He did this, he claimed, not because he was racist, but out of concern for the future of the children. After a public outcry, he was forced to resign.⁶ Nowadays, the Loving case is frequently referred to in the American academic and public debates on same-sex marriage (Pascoe, 2009, p. 298 ff.). In short, interracial marriage prohibitions are not as much a thing of the past as one may think.

A second reason to talk about the Loving case today in Amsterdam is that interracial marriage prohibitions were not typically American. In relation to Europe, of course, one thinks immediately of the Nazi laws prohibiting interracial sex and marriage between Jews and non-Jews. These laws also applied outside of Germany, including in the Netherlands, even before Nazi occupation. The Nazi laws in Germany were not limited to interracial sex and marriage with Jews, but also applied to mixed marriages with forced laborers of certain nationalities and certain racial groups (Szobar, 2002).

But not all interracial marriage prohibitions in continental Europe came from the Nazis. American prohibitions of interracial sex and marriage were also applied in Europe. In the United Kingdom during the Second World War, the American troops were racially segregated and, from 1942 to the end of the war, under US military law enforced in Somerset, eighteen American soldiers were hanged, six of them for rape and all six of them were Afro-American (Ware and Black, 2002, p. 194). In France, a prohibition of interracial marriage applied in the late eighteenth and early nineteenth century, although by now this is almost entirely forgotten (Heuer, 2009).

What is more, the Second World War was not the first time that prohibitions of marriage and sex between Jews and non-Jews applied in the Netherlands. Marriage and sex between Jews and non-Jews were prohibited during the Dutch Republic before the emancipation of Jews in 1796. Interracial sex and marriage prohibitions were also applicable in the Dutch colonies, in Surinam and the Dutch East Indies. I will discuss these marriage prohibitions in more detail later.

A third reason to talk about the Loving case and marriage prohibitions is that anti-miscegenation laws are not limited to *prohibitions* of mixed sex and marriages. The wealth of Anglo-American literature on regulation of interracial sex and marriage focuses predominantly on interracial marriage prohi-

bitions. Following Thompson, I understand miscegenation laws in a broader sense, not only as prohibition, but as regulation and policies aiming to prevent or restrict mixed relationships (Thompson, 2009). Over time, a shift from prohibition to other forms of legal regulation took place. This shift had more to do with changing conceptions of state and statehood than with a growing acceptance of mixed relationships. The modern state had changed and was less inclined to prohibit and more willing to regulate, facilitate, and produce (Thompson, 2009). In spite of these changes, there were also continuities: the opinions on mixed sex and marriages remained generally the same. They were seen as a threat to individual partners and as a threat to the nation; first as a biological threat and later as a social threat. The forms of regulation changed but not its intentions. I will discuss five forms of legal regulation of mixed sex and marriages and offer examples of all of them.

2. Methodology

In the Anglo-American literature, the regulation of mixture has been studied extensively. This research has always inspired me and has informed this contribution to a large extent. In Europe and the Netherlands, such literature is virtually non-existent. This means that my contribution is based on bits and pieces collected from secondary literature, old newspapers, peculiar old books, and some archival research. It was not easy to collect these materials, as mixed sex and marriages and miscegenation laws are hardly ever a central issue in European and Dutch academic literature. What Everts wrote in 1998 is largely still valid: in academic research, mixture tends to be a side-topic, hardly ever the core, and a way to present zestful quotes about interracial sex, rather than a serious topic of study (Everts, 1998). Archives are not disclosed on the topic of mixed marriages or couples either.

As a result, my analysis is built on a limited number of cases. One could say that these cases are exceptional and do not provide insight into the actual reality of mixed couples and the legal barriers they met with. And, as a socio-legal scholar, I understand they are only the tip of the *legal iceberg*, as most conflicts do not end up in the courts and leave no paper trails. Official legal and archival sources give us a limited view of enforcement practices and only one side of the story, the official story as presented by authorities and officials, not of social life and not the voices of couples and families themselves. Lines between racial and ethnic groups may have been much more porous than becomes clear from these official stories (Bosma and Raben, 2008, p. xv). In how history is described, often these blurred lines have been fixed, allowing

for a seemingly 'white' history of the Netherlands. The reader is invited to keep these limitations in mind. Reading between the lines, at least some of the couples' voices can be heard. By looking at the tip of the legal iceberg, we may get a glimpse of what is under the water. By telling the stories of those who ended up in the courts and in the archives, we may get some insight into the lives of those couples who did not appeal to the courts. In discussing these bits and pieces, I aim to demonstrate that the regulation of mixed sex and marriage, or 'tender ties', in the words of Ann Stoler (Stoler, 2001), are central to the reproduction of legal categories, and Dutch law is no exception to this.

The legal regulation of mixed marriages is an exciting topic of research, because mixture confuses and destabilizes (legal) categories that have become fixed and essentialized in certain times and places; for example, European and native, European Union citizen and third-country national, black and white, citizen and non-citizen, autochtone and allochtone, Muslim and non-Muslim, Jew and non-Jew.⁷ Through the lens of mixed relationships and mixture, it becomes clear that these are legal categories that 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, I look at the power of law in shaping identities, 'race' and 'ethnicity'. Looking at mixed relationships can teach us about how the state tries to manage its population and nation by managing these legal categories. Although most of the concerns discussed here are state concerns, other actors were also important: not only civil registrars, immigration officials, judges, lawyers, and legal scholars, but also churches, NGOs, social workers, and of course the couples themselves. The couples were not always powerless dupes subjected to regulations. In fact, the very existence of mixed marriages and relationships, in spite of regulations trying to prevent the couple from being together, could be seen as a form of resistance. I will discuss some of the strategies that couples employed.

A further cautionary note on methodology requires a mention that contemporary sources, but also the academic literature based on these sources, often depict mixed relationships as being about power and submission and never about love. Of course, love was not a dominant motive for marriage until quite recently. So, if mixed relationships were not about love, that was not exceptional. Furthermore, we should be cautious not to adopt the classifications of the time, of mixed relationships as exponents of whoredom and fornication (*ontucht*). Mixed relationships often were turned into illicit relationships by marriage prohibitions. And until well into the twentieth century, relationships outside of marriage were easily dismissed as fornication and *hoererij* (whoredom), terms which were used to designate all sexual acts out-

side the marital bed. So, if mixed relationships were depicted in certain historical sources as whoredom and fornication, it does not necessarily mean that it was sex for payment (Van der Pol, 2003, p. 14).

On the other hand, we should also be careful not to see these relationships from a modern perspective, romanticizing them as love relationships conquering racial and class boundaries. For example, the fact that in Surinam most slaves who were manumitted were female should not be interpreted as the humane acts of white owners freeing their mistresses and offspring. In fact, of the total of manumissions in Surinam, only a tiny percentage was set free by their white owners who acknowledged their paternity (Brana-Shute, 2009). Nevertheless, couples often claimed that love was the reason for their persistence against the laws trying to keep them apart. Without overly romanticizing mixed relationships, we should also refrain from dehumanizing them, in denying that they can be about love. Love relationships are always also about power. And love always exists against the odds. There have always been people who broke with social norms by marrying the servant, the slave or 'racial other' and loving them.

As far as mixed relationships have been and are about power and submission, this concerns not only relationships between white men and black or 'other' women that are frequently described only in these terms. White women, even poor white women, had more choices than most black men, and this granted women at least a small measure of power, as well as a stake in racial hierarchies, during slavery or colonialism (Pascoe, 2009, p. 14). Using an intersectional approach, where gender intersects with race or ethnicity and class, provides us with a better understanding of the power relationships at stake (Crenshaw, 1990) and shows us that, even today, white women may be in the more powerful position than 'other' men, legally and socially.

Then a mention of terminology is necessary. So far, I have used the terms mixed marriage, mixed couples and mixture rather loosely. However, what is considered a 'mixed' marriage, relationship or sex differs in time and place. What is mixed comes not from pre-existing racial or ethnic differences between the partners, but it depends on how race and ethnicity are socially and legally constructed. Hence, a mixed marriage is a marriage between partners of two groups that are considered to be distinct racial or ethnic groups by society at a certain time and place. How different this can be in various times and places becomes clear by comparing the American and European context. In the United States, the focus is on interracial couples, which means that a couple of an 'allochtone' Turkish and an 'autochtone' Dutch person, who would be considered 'mixed' in the Netherlands, would be considered a mar-

riage between two ‘Caucasians’, white persons, in the United States and thus not mixed. What is ‘mixed’ is in the eyes of the beholder.

For this reason, recent academic studies use the term mixedness in order to express that mixture is a process, rather than a fixed status (Edwards, Ali, Cabalero and Song, 2012). However, the term mixedness does not solve the issue of *what* is mixed, nor the underlying assumption of racial and cultural purity. People who are regarded as having a mixed relationship may or may not consider themselves as such, and their legal and social categorization will surely not have been their only concern (Bosma and Raben, 2008, p. xv). I will therefore use the terms mixed marriage, mixed couples and mixture as shorthand, rather than as terms that adequately describe reality. Also, what is considered mixed is not only about race or ethnicity, but it is also about religion and culture. I will use the contemporary terms of the sources used, meaning I write about ‘race’ or ‘ethnicity’, ‘whites’, ‘Aryans’, ‘Negroes’ and ‘natives’, without putting them between brackets all the time. I include not only regulations explicitly directed at certain racial or ethnic groups, but also regulations directed at nationality-mixed marriages that may or may not be considered ethnically or racially mixed. These marriages were still thought to be undesirable in certain times and places, such as those with Canadian soldiers shortly after the Second World War.

A final cautionary note: in this overview of regulations of mixture, I take the reader from seventeenth century Dutch colonialism, via the Dutch Republic, the 1930s and the Second World War to present-day European migration law. This may come across to the reader as comparing apples and oranges or, even worse, comparing migration law to Nazi laws. This is surely not my intention. It is my intention to give an overview of the regulations of mixed sex and marriages in Dutch law, but that does not mean that I claim they are of the same quality. What the regulations have in common is that they aim to prevent mixed relationships and marriages from happening. The reasons for the aim of prevention may be very different: to uphold colonial racial hierarchies and slavery, to exterminate the entire Jewish population, or to maintain restrictive migration policies. The punishment could also differ significantly in time and place, from being fined, exclusion from the territory, to death. Without suggesting that these regulations are all the same, they all start from the assumption that mixed relationships and couples are inherently problematic, undesirable, and deviant, in short: unlikely couples.

3. Typology of legal regulations of mixture

Prohibitions of interracial sex and marriage

Marriage and sex prohibitions applied in the Dutch colonies, although in different ways. In Surinam, marriage and sex between whites and blacks were prohibited. In the Dutch East Indies, marriage between Christians and non-Christians was prohibited. It would be a misunderstanding to interpret the latter as merely being about interreligious mixture, since the categories of non-Christians – with a focus on Muslims – and natives coincided, and it was understood as being about not marrying natives. I will then look at the marriage prohibitions of sex and marriage between Jews and Christians during the Dutch Republic and the later Nazi laws prohibiting sex and marriages between Jews and non-Jews.

Spatial-legal segregation

Even if marriages were not prohibited, other forms of regulating mixed sex and marriage were introduced. One such form was what I will call ‘spatial-legal segregation’: keeping groups apart spatially, so that they cannot meet and cannot have sex, start relationships or marry. In the United States, racial segregation in schools was often defended by pointing to the danger of interracial sex and marriage (Pascoe, 2009, p. 225). For the Netherlands, three examples of spatial-legal segregation will be discussed: the so-called ‘Negro-cabarets’ during the 1930s, the dance halls in 1945, and the Mollucan living areas in the 1950s.

Regulation of consequences

If the occurrence of mixture could not be prevented by prohibitions or spatial-legal segregation, the state intended to regulate at least its legal consequences. This third form of regulation happened for example through citizenship law: the loss of Dutch citizenship by a woman who married a foreigner, while a foreign woman who married a Dutch man automatically became Dutch, until 1964 (De Hart, 2006). In the Dutch East Indies, a European woman who married a native husband became subjected to native laws, while a European man could make a native woman European by marrying her, and the legal recognition of a native child by a European father turned this child into a European child. International Private Law, until well into the twentieth century, stipulated that a woman who married a foreigner would be subjected

to foreign family law. As I will try to demonstrate, this was about more than just regulating legal consequences. The subjection of women to native or foreign laws was meant on the one hand to prevent those marriages from happening and, on the other hand, if women persisted in their choice for such an unlikely union, they had to bear the consequence. I will discuss three examples of legal regulation: the Mixed Marriages Act of 1898, the loss of custody by native mothers, both in the Dutch East Indies, and the more recent Hague Convention on Parental Child Abduction of 1980.

Marriage counseling

A fourth form of regulation is marriage counseling. Although counseling may not seem that 'legal', law always played an important role in counseling of mixed couples. From the 1930s, civil servants of Dutch municipalities and others tried to protect Dutch 'girls', as they were commonly called, from the 'harem', warning them for what would happen if they would marry a Muslim. As I will demonstrate, these counseling practices were a continuation of colonial discourses in the Dutch East Indies. The attention shifted from Indonesians before the Second World War to Turkish and Moroccan guest workers in the 1960s and 1970s. I will argue that the aim of counseling practices was not to provide objective legal information but was to keep Dutch women from marrying Muslims.

Migration law

Finally, I will discuss migration law as the fifth type of regulation aiming to prevent mixed sex and marriage. Two examples stand out. First, before and during the Second World War, Chinese seamen were prevented from marrying their Dutch girlfriends by document requirements and by imprisoning them as undesired aliens. And second, during the 1970s, the residence permits of guest-workers were refused or only prolonged under the condition of breaking off a mixed relationship.

Since then, times have changed. I will demonstrate how, in European migration law, most significantly in the Union Citizens and in the Family Reunification Directives, as well as the Association Agreement with Turkey, nationality-mixed couples are treated the same legally as non-mixed couples. The same goes for Dutch migration law, since in January 2014 the policy of restricting family reunification by refugees with family members of a different nationality was abandoned. I will argue, however, that in spite of this formal equality, European migration law is still informed by notions of mixed cou-

ples and families as ‘unlikely’. I will discuss two examples of this attitude: the discussions on the Belgium-route and the surveillance of fraudulent marriages.

4. State interests in regulating mixed sex and marriage

Listing these types of regulations raises the question of why regulating mixed sex and marriage was, and is, so important to the state. The academic literature discerns three reasons why this is the case. First, as numerous scholars have argued, the regulation of sex and marriage was motivated by concerns about the health of the individual unions and also of the nation. As sex, marriage and family are central to the nation – without them there is no nation – who married whom and who bedded whom was not left to coincidence (Stoler, 2001).

Second, regulating mixed sex and marriage was motivated by economic considerations. Marriage is an economic union: a way to regulate economic relations, to acquire and pass on property. Regulating interracial marriage was central in keeping property in white hands, thus protecting white male privilege.⁸ According to Pascoe, this had two consequences. Interracial marriage caused more state concern than interracial sex, because marriage had economic consequences and could mean that ‘white property’ and privileges came into black hands. Furthermore, because for a long time only men held white privileges, the interracial marriages and relationships of white women always caused more concern than those of white men. In fact, authorities were sometimes reluctant to restrict white men’s rights to choose, even if they chose the wrong, ‘other’ woman as a wife (Pascoe, 2009, p. 11).

The third reason why regulating mixed sex and marriage was so important to the state is, as Sarah Carter has argued, that racial and ethnic other’s relationships were considered a threat to the ‘monogamous marriage model’ that was central to state formation (Carter, 2008). Carter has demonstrated that the universal, traditional marriage model was not universal at all and that concerns over sex and marriage of racial others had to do with safeguarding the lifelong, monogamous, Christian marriage that was assumed to be based on consent and love and on the submission of wives. Hence, other forms of marital and non-marital relationships, such as polygamy and easy divorce, or economically active wives, were rejected as a threat to this monogamous marriage model.

5. Prohibition of mixed sex and marriages in the Dutch colonies

Surinam

In the early days of the establishment of the Dutch colony in Surinam, after the Dutch took over Surinam from the British in 1667, the monogamous marriage model was not dominant. The few white European men frequently lived in cohabitation with black, Indian and enslaved women. White men married to white women often had one or two black or colored concubines. The so-called *Surinaamsch huwelijk* was a form of informal marriage between white men and black women, which was made public for family, neighbors and friends. After the night was spent together, and an informal ceremony had been held, the couple was considered married.

These relationships occurred in spite of a *Plakkaat* prohibiting interracial sex and marriage.⁹ The first one, dated 1686, stated:

Inhabitants are strictly prohibited from having intercourse and carnal conversation with negresses and Indian women. The one who does will be fined two pounds of sugar.¹⁰

This prohibition was repeated in 1725 and 1749, and in 1761 the fine was set to 200 guilders. In 1784, it was amended, putting a fine of 200 guilders on relationships between whites and enslaved women (*blanken met slavinnen*) only in case this led to disorder on the plantation.

That the prohibition of mixture became less strict over time can be explained by the economic crisis of 1773. Plantation owners remained in the Netherlands, leaving plantation management to administrators, often single white males. As less Dutch white families and women came to Suriname, mixed relationships were regarded with more leniency (Leenders, 1996). Finally, in 1817, the prohibition was stricken from the books.¹¹

At the same time, throughout the nineteenth century and especially after slavery was abolished in 1863, the social acceptance of these relationships declined. White men publicly living together with black women were no longer tolerated; relationships continued, but they were kept out of public life.

In the literature that I came across, there was no mention of any punishment of white men and black or Indian women for having interracial sex or being married. It does, however, mention a few court cases involving white women and black men having sex. There were few white women in the colony, so they married young and remarried quickly if they were widowed. It is

impossible to know how many white women had relationships with black men. These few cases prove they existed, in spite of the legal prohibition and strong social condemnation.

In the first case, in 1711, Barend Roelofs filed for divorce from his wife Maria Keijser, because she had had 'carnal conversation' with a negro, and she had given birth to a '*mulatto meysie*' (mulatto girl). In the case of Judith de Castro, also in 1711, who had given birth to a baby from a negro, but had since married the white man Jean Milton, the Police Council (*Raden van Politie*) decided that the child could never be taken to Paramaribo, thus keeping it out of public sight (Van Lier, 1949, p. 56).

The anxiety caused by these cases resulted in a *Plakkaat* enacted the same year by governor Johan de Goyer (1710-1715), stipulating that unmarried white women who had sexual relations with black men would be banished from the colony, married white women would be banished and branded, and the black men would be put to death, remarkably harsher punishments than the fine of two pounds of sugar. They speak for the different perception of interracial sex and relationships, depending on the gender-race pairing, which also becomes clear from the wording of the *Plakkaat*, strongly condemning these relationships:

To our regret we have found that some females have not refrained from carnal intercourse with negroes, and this is a great shame to the whole colony. As this unnatural whoredom and adultery occurs ever more frequently, we have agreed to order and enact that an unmarried white female, who has had carnal intercourse with a negro, shall be severely whipped and be banished from this colony for life. And if a married woman does the same, she shall not only be whipped, but also branded and banished from the colony for life. The negro shall, without any further consideration, be put to death. This law shall be published, so that everyone will know about it.¹²

That this act was also enforced becomes clear from the case of Ganna, a Jewish woman, the daughter of Levy Hartogh. In 1730, she had had sex with Jantje the Indian, a slave of Jacob Aaron Polack. Ganna and Jantje had known each other since childhood. This was not uncommon, as whites and blacks lived in close proximity to each other. They were caught in the act by a neighbor, and this had severe consequences. Jantje was hanged and Ganna was imprisoned in Fort Zeelandia and banished from the colony for life. The Dutch National Archives contain the verdict and her police statement.¹³ Although it is evident that her statement was made involuntarily, it is the closest we can

get to hearing her voice. She is quite ambiguous about who initiated the sex and whether it was entirely voluntary from her side, possibly as a way to shift the blame to Jantje:

[That] her father Hertogh Levy on Saturday went out to visit Sara Sanders, after he had told the Indian to leave. The Indian answered that he would not hurt the whites. She herself repeated it after her father went out. The aforementioned Indian closed the door and windows and threw her backwards, pulled up her skirts and had carnal conversation with her. She cannot tell what he did, because she had closed her eyes. But she felt what he did. Eight days later the Indian came to her again after her father left for her uncle Jacob Aonse Polak, and he inquired if he could light his pipe. She allowed him. She also asked him, when he wanted to leave, to stay a while longer, that her father would not be angry. After which said Indian closed the windows, came into the house, put her on a chair, pulled up her skirts and had carnal conversation with her a second time.¹⁴

Elisabeth Samson

The interracial marriage prohibition was legally challenged by Elisabeth Samson, a free-born black woman, wealthy and a slave-owner, who wanted to marry a white man.¹⁵ She had lived together with the European man Creutz from at least 1751 until he died in 1762.¹⁶ This seems to have been a love relationship, but they never married. It is not clear from the sources why not. In 1764, Elisabeth Samson requested the Commission of Marital Affairs permission to marry another white man. They referred her request to the *Raden van Politie*, that referred it further to the *Directeuren van de Societeit* (Directors of Society) in the Netherlands, accompanied by a letter setting out the pros and cons of allowing such a marriage. The arguments against allowing an interracial marriage were:

That it is repugnant and horrible, utterly shameful for a white man, that he, from a wrongful sense of lust, or for food, enters such a marriage that has always been despised here. It is also certain that we, from a feeling that the negroes have, are people of a better and more noble nature than they. We are obliged to live and survive among such a wrong and twisted people, and what will they believe of that excellent nature, if they see that it is enough to be free in order to be able to associate with us through holy marriage and their children companions with ours.¹⁷

The racism in this quote is inescapable. Elisabeth, as a free black woman wanting to marry a white man, upset the colonial racial order. Nevertheless, the *Raden van Politie* also saw some advantages in allowing the marriage. First, it would mean that it would put an end to the couple's unlawful cohabitation. A second argument was about economy and the protection of white male privilege: the white husband would acquire Elisabeth's wealth through the marriage, which would then be passed on among whites. This would prevent free blacks from becoming too powerful and would prevent that slaves would get the idea that they could elevate themselves.

The greatest danger, according to the *Raden van Politie*, was that allowing this interracial marriage would open the door to marriages between white women and black men, which they thought 'naturally incestuous' ('*natuurlijk incestueus*'). In using this metaphor of incest, mixed marriages of white women and black men – the same words were not used for the reverse gender-race pairing – were framed as crimes against nature and civilization. Such marriages upset the gender order as much as the racial order.¹⁸ The *Raden* concluded that the marriage should not be allowed and proposed legislation for the prohibition of interracial marriages, including marriages concluded abroad, in order to prevent 'geographies of evasion' (McLeod, 1992, p. 44).

Through the *Directeuren van de Societeit* in Amsterdam, the case was referred back to the *Hof van Politie* in Surinam. By the time they decided not to refuse the marriage, Elisabeth's fiancée had died, but she married her second fiancée, also a white man: Hermanus Zobre. After Elisabeth died in 1771, her husband Hermanus inherited her property. Elisabeth had asked to be married, as an individual case, explicitly stating this need not to have consequences for other cases. Although she was not a human rights activist *avant la lettre*, she challenged existing racial and gender hierarchies.

Dutch East Indies

The *Verenigde Oost Indische Compagnie* (VOC, Dutch East Indies Company) settled in Asia in 1602 in a society that was already highly diverse and mixed. Europeans settled in Asia from the fifteenth century onwards and many European families had roots there for generations, with a high incidence of mixture (Bosma and Raben, 2008, p. xvi).

When European male VOC-employees settled in Batavia, like in Surinam, they had local concubines, often more than one, and interracial marriages also occurred. Shortly after the VOC arrived in Ambon in 1605, it decided to allow marriages between white soldiers and local women, and in 1609, half of the Dutch garrison in Ambon was married to a local woman (Van Marle,

1951-1952). This illustrates that European men were willing to marry their local wives if this was allowed, and mixed marriages were not uncommon at the time, also among higher officials.

In 1617, it was ordered that Christians could not marry non-Christians, heathens and Moors. This was confirmed in a *Plakkaat* of 1625 and in 1642 in the Batavian Statutes: *Voorts en niet sullen niet mogen trouwen Christenen met onchristenen, Heydenen ofte Mooren*. As already stated, this prohibition was not only about religion, but also about race; natives were referred to as *Swarten* (blacks). On the other hand, this prohibition offered more opportunities than the Surinamese prohibition, which was explicitly based on racial categories, to circumvent it by conversion.

The VOC frowned upon interracial marriages and designed various regulations to discourage them. Hence, on 17 September 1636, the Gentlemen XVII (the VOC board in the Netherlands) decided that those European men who were married to black women (*'Swartinne'*) were not allowed to return to the Netherlands. From 1649, this rule not only counted for VOC-employees but also for *vrijburghers* (often former employees). Later that century, it was decided that only the white men, and not their native wives, could travel to Europe (Van Marle, 1951-1952). This regulation not only discouraged mixed marriages, but it also effectively served to keep the Netherlands white.

VOC employees and free citizens needed permission from the authorities to marry and this was often not granted to VOC-officers and merchants. From 1639, consent was only given if one stayed in the colony for at least another five years. Permission for a mixed marriage would only be granted if the native woman understood Dutch reasonably well (Van Marle, 1951-1952).

In short, there were a lot of disincentives for marriage, but that did not prevent the occurrence of mixed non-marital relationships or concubinage. In colonial studies, these relationships have determined the image of the colonial and racial order in the Dutch colony. They are predominantly viewed negatively as exploitive relationships in which native women were easily tossed aside if a European wife came in sight, or the man returned to Europe. However, European men who had local concubines, often provided for them financially, for housing, and they bequeathed their capital to their wives and children after their death. For instance, in 1739 the Dutch employee Willem de Ghy bequeathed each of his two concubines Mey Nooy and Meuka – he had five children with each of them – a house close to the VOC lodge (Bosma and Raben, 2008, p. 12). VOC-employees were not allowed to trade privately, but their concubines did, thus contributing to the family income. Company servants often included a clause in their will that any savings or uncollected earnings of the VOC should go to family relations in the Netherlands, while

illegal possessions in the Indies were left to those relations living there. In this way, many widows could acquire a certain wealth.

When Jan Pieterszoon Coen was appointed as governor (1619-1623), he aimed to end this 'scandalous living' by prohibiting keeping a slave woman or concubine in one's house or any other place, on whatever pretext. He claimed that this was necessary because there had been cases of abortion and concubines who had tried to poison their masters (Gelman Taylor, 1983, p. 15). The prohibition was renewed two years later, adding that no Christian woman was allowed to have sexual relations with 'heathens or Mores'. Coen also asked the VOC several times for the shipment of women and families from the Netherlands and four to five hundred orphan boys and girls between ten and twelve years to populate the colony. However, the VOC stopped bringing women and families to Asia, because it was considered too costly. In 1634, the VOC decided against stabilizing a Batavian colony with Dutch families. In this light, mixed relationships were not altogether a bad thing:

We must aim at attracting several Indian nations who may in course of time choose to settle on a permanent basis. And Dutchmen who want to marry Indian women instead of Dutch women. (Cited in Blusse Van Oud-Alblas, 1986, p. 165.)

Besides the VOC, churches played an important role in managing marital relations. Religious discipline by the church differed from penal justice, but it may have been just as effective through the exclusion from the holy Communion and by withholding poor relief. It was also suspected that natives wanted to be baptized for worldly reasons, to get married or be freed from slavery. It was felt that baptism without further questioning would openly sanction concubinage and fornication (Blusse Van Oud-Alblas, 1986).

The enactment of these formal regulations prohibiting and discouraging interracial marriages and relationships does not necessarily exclude a totally different reality. The churches could not admit members to the last meal if they lived in sin, but excluding them meant having no influence at all. Government in the colonies pointed to the need for women, without them, even more sinful things would occur (implicitly hinting at homosexuality). Authorities thought mixed relationships shameful, but they also asked for understanding, considering the special circumstances (Everts, 1998).

After the VOC ceased to exist in 1799, the marriage prohibitions remained on the books and were still enforced in 1847. One year later, in 1848, marriage was allowed if the native subjected him or herself to European law. Now that this was possible, interracial cohabiting couples turned their relationships

into marriages (Van Marle, 1951-1952, p. 316). However, the general marriage prohibitions for lower ranking officers remained intact.

How marriage prohibitions regulated behavior becomes clear from the experiences of Nicolaas Dumeunier, who went to the colony in 1859. His story survived time through his letters to his mother and siblings in the Netherlands. Shortly after his arrival in the colony, he started living together with a local woman Louise, who was of mixed descent, after obtaining permission from her father. As a lower officer, Nicolaas was not allowed to marry Louise. He was forced to live in sin with her, which caused him pangs of conscience. Nevertheless, they were happy together and with their children, who were all legally acknowledged by Nicolaas. He wrote about Louisa and their children to his family in the Netherlands, explaining why he could not marry her. Shortly after he was promoted in 1868, he married Louise. By then, they had four children. They stayed together until he died in 1880, 49 years old (Matthijs, 2001).

In the academic literature that I came across, no mention is made of relationships or marriages between European women and native men in this early period until 1848. From 1747, such marriages required the special permission of the governor. That the abolition of the marriage prohibitions did not signify a change in perceptions of these marriages becomes clear from the Mixed Marriages Act of 1898, which was enacted in response to the incidental marriages that occurred between European women and native men. I will discuss this Act below. First, we turn to the regulations that applied in the mother country, prohibiting sex and marriage between Jews and non-Jews.

6. Prohibition of mixed sex and marriage in the Dutch Republic

In the Netherlands, it is a common assumption that the Jewish migrants who came to the Netherlands from the beginning of the seventeenth century were welcomed and met with tolerance. However, the Portuguese migrants, Jews who converted to Catholicism after the Spanish Inquisition, were not really appreciated as 'new Christians'. The wave of Jewish refugees that fled the pogroms in Middle and Eastern Europe after 1635 were poorer than the first group of migrants, and they came in larger numbers. Migration historians have described how Jewish migrants were excluded from Dutch society and subjected to unequal treatment in several ways: they were excluded from guilds, certain professions (e.g. the legal profession) and public office. In

Utrecht and Gelderland Jews were excluded from admittance to the territory altogether (Lucassen and Penninx, 1994, p. 34-35).

Part and parcel of this exclusion, although commonly not mentioned in the literature, were the prohibitions of sex and marriage between Jews and Christians. Sexual relationships and marriage between Christians and Jews were a constant cause of anxiety. It seems that Haarlem was the first city to enact a prohibition of marriages between Christians and Jews in 1605.

In 1615, The Staten of Holland sought legal advice on how to deal with the Jewish population from Adriaan Pauw and Hugo Grotius. Only Grotius' advice has survived time.¹⁹ He was liberal in advocating for the admittance of Jews as migrants and he rejected ghettos for Jews and special markers for them to wear. However, he did not propose the integration of Jews, and he supported the marriage prohibition that Haarlem had introduced in 1605 and that punished marriage between Jews and Christians with death:

No Jews and Christians shall marry each other, on punishment of death, according to the law.²⁰

Grotius proposed a regulation that punished marriage more severely than sex, thus confirming Pascoe's argument that marriage met with more objections than sex. According to Grotius, it was obvious that God had prohibited marriage to non-believers. Nevertheless, many had been 'tempted' to intermarry, and this caused 'confusion' in the administration. His proposal contained the following:

No Jewish man shall be allowed to take a Christian woman into marriage, nor a Christian man a Jewish woman, on punishment of the sword, both man and woman, both Christian and Jew.

If a Jewish man or woman has carnal conversation with a Christian man or woman outside marriage, they will be punished by banishment from the country and confiscation of goods.²¹

Meanwhile, the Amsterdam authorities took measures after an affair between a married Jewish apothecary and his Christian maid-servant had caused a public outcry. On 6 November 1616, the members of the Jewish nation were instructed to:

(...) – refrain from any written or spoken attacks on Christians;

- not to attempt to convert Christians to Judaism or circumcise them;
- not to have sexual intercourse with married or unmarried Christian women, including prostitutes. (Cited in Huussen, 2002, p. 32.)

Note that this regulation only mentioned sex and marriage between Jewish men and Christian women, not the reverse. In 1619 the Mayor of Amsterdam again acted upon complaints by Remonstrants who felt violated in their religious freedom because:

Many Jews who fled Portugal mixed with the daughter of the country and caused an uproar, especially with Remonstrants.²²

Hence, both marriage and sex between Christians and Jews, including sex of Jews with prostitutes, was illicit, making all relationships of Christians and Jews unlawful.²³ The prohibition of sex with prostitutes was not just symbolic, but it was actually enforced. Generally speaking, single men visiting prostitutes were left alone, while married men were prosecuted for adultery. But Jewish men were prosecuted in both cases. A study of prostitution in Amsterdam found 115 court cases involving Jewish men; probably many more will have bought off their prosecution (Van der Pol, 2003, p. 147).

These prohibitions did not solve all concerns, as the members of the city councils now feared that many Christians, especially women, would convert to Judaism to make a marriage possible and to fulfill an existing passion (*om een heerschende hartstocht te voldoen*) (Koenen, 1843, p. 272). According to the literature, it happened frequently that Christian women converted to Judaism in order to marry (Roodenburg, 1990, p. 112).

In 1650, the council of the Reformed Church in Amsterdam complained that Christian daughters had let themselves be seduced into 'immorality' by Jews. By putting it in these terms, these relationships were depicted as being irrational and about sex and passion, not about long term commitments, and thus not conforming the monogamous marriage model.

Marriages that were concluded in violation of the regulations were declared void. The Christian women were fined and the Jewish men were fined and banished from the city. Families sometimes turned to (church) authorities in order to prevent their daughter's marriage (Van der Heijden, 1998, p. 201). In 1671, a Jewish man was put on the scaffold in Amsterdam because he had claimed to be Christian so that he could marry his Christian fiancée (Roodenburg, 1990, p. 112).

Such conversions involving marriage sometimes became part of struggles over identity between Christian and Jewish communities. Some of the stories of these struggles survived time, such as that of Eva Cohen. Eva was the daughter of a wealthy Jewish merchant in Amsterdam, who wanted to convert to Christianity and marry a former servant of her father, a Christian, Michael Verboon.²⁴ As her widowed mother Rebecca Pallache strongly opposed Eva's conversion and marriage, the couple fled to London in July 1680, where Eva converted to Christianity, adopted the name Elisabeth and married Michael Verboon. Then, the couple wanted to return to the Netherlands and tried to marry in Delft. However, they still needed the permission of Eva's mother, who refused and even sued the couple in the Provincial Court of Holland. The court ruled in favor of the mother and told Eva to '*onthouden van de bijwooninghe*' (refrain from cohabiting) with Michael Verboon and establish herself in a 'decent' reformed civil house. On appeal, the couple asked the High Court (*Hoge Raad*) whether a Jewish mother could refuse a daughter of 23 years old, who converted to Christianity and had been baptized in the Reformed Church, to marry 'an honest young man', also reformed, according to the laws of our land.²⁵ The story of Eva and Michiel became part of popular culture, for example in a pamphlet called 'The true Conversions and violent persecution of Eva Cohen, now named Elisabeth (*De Ware Bekerige en Vio-lente vervolgingen van Eva Cohen, Nu genaemt Elisabeth*), first published in London and later in the Netherlands (Garcia-Arenal and Wiegiers, 2003, p. 124). In this pamphlet, the mixed marriage between Eva and Michiel was celebrated as the rescue of a minority woman from the wrong faith and wrong group. It is quite anti-Semitic, painting a picture of corrupt, barbaric and cruel Jews, and Eva's conversion as a heroic one, against the villainy of her family and the larger Jewish community in attempting to obstruct or punish it. At the time, the only good Jews were converted Jews who denounced their Jewish descent; nevertheless, they always remained a Christian Jew at best (Lasiter, 2004; Felsenstein, 1995).²⁶

Emancipation of Jews

The prohibition of sex and marriage between Jews and non-Jews was not limited to Amsterdam, but was introduced nationwide by the States General in 1656, prohibiting marriages between Christians and Jews, Mohammedans and heathens on punishment of banishment (Van Apeldoorn, 1925, p. 166). This prohibition remained on the books for another century until it was questioned during the Bataafse Revolution (1794-1799). On 28 March and 29 April 1795, *Felix Libertate*, a society of Jews and Christians, petitioned the Provincial

Representatives of the People of Holland to allow intermarriage between Christians and Jews (Huussen, 1975, p. 103). The Provincial Court of Holland strongly advised against allowing such unions, although marriage had been declared a civil matter since March 1795. The court argued that the Jewish religion was strongly linked to Jewish politics and that Jews formed a state within the state. The Court saw Jews as a group whose morals and behavior deviated from those of other inhabitants of Holland. The Court indicated that the Jewish religion itself did not allow intermarriage, that the request to allow these marriages was not submitted by legitimate representatives of the Jewish nation and that most Jews would reject the request. The Court further mentioned the consequences for individual couples: they would lose the love and respect of their families; they would be excluded from their communities and live in hate. It would also cause difficulties between the spouses, because of the differences in religion and civil behavior:

Are there among the Jewish traditions not such against which a mother who was Christian, out of natural tenderness for her lovely infant, would have an invincible disgust and to which the Jew as the special marker of the children of Abraham, would be strongly attached?²⁷

Finally, the court pointed out that Jews were not citizens. Hence, although marriage was declared a civil matter in March 1795, this did not result in the acceptance of Jewish-Christian marriages. The Provincial Representatives postponed discussing the matter and never talked about it again. The National Assembly discussed the matter on August 1, 1796, after a report from a commission on voting rights for Jews.²⁸ Here it was concluded that marriage was a civil matter only. Equality was granted in the Emancipation Decree of 2 September 1796 that considered Jews as equal citizens. It ended the exclusion of Jews from professions and ended other forms of exclusion, including marriage prohibitions. The Netherlands was earlier in abolishing the marriage prohibitions than some other countries. In Germany the prohibition of Jewish-Christian intermarriage lasted until 1876 and in Austria it lasted until 1918. In these countries, it would take only a few decades before they were prohibited again by the Nazis, although with entirely different intentions (Bukey, 2011).

7. Prohibition of sex and marriage with Jews during the Second World War

On Sunday 15 September 1935, the Nazi government in Germany adopted the infamous Nuremberger laws, prohibiting marriages between 'Jews' and 'Aryans', prohibiting extra-marital sex between Jews and Aryans and prohibiting Jews from hiring Aryan maids.

Two days later, on Tuesday 17 September 1935, a couple, a Dutch man and a German woman, was invited to come to the Amsterdam civil registry to discuss their marriage, scheduled for the following day. The civil registrar doubted whether their marriage could be concluded, as the woman was of Jewish descent. In an interview with the newspaper *De Tribune*, the head of the Amsterdam civil registry Versteegh stated to have no other choice than to apply the German (Nazi) law.²⁹ After Alderman De Miranda – who was of Jewish descent himself – intervened, it was established that the wife was Catholic and that the marriage could be concluded the next day, as planned.

Dutch civil registrars were the first officials confronted with the consequences of the Nuremberger laws. Their practice was divergent, but mixed couples were more than once denied the right to marry. The attitude seems to have been one of wanting to uphold the law, even though it was a German racist law. This is exemplified by the expressed wish that German authorities provide a clear description of which marriages were prohibited.³⁰ The civil registrars lamented that there was no case law providing guidance and that the Minister of Justice, who wanted to await court decisions, had given no clear guidelines.

The problems with Jewish mixed marriages were said to be caused by the 1902 Hague Convention on Marriage.³¹ This Convention stipulated that the conclusion of marriage was governed by the national law of those who wanted to get married and that couples had to prove that there were no legal impediments according to their national law. As the Netherlands and Germany had both ratified this convention, German law had to be applied to Germans marrying in the Netherlands. Although the Convention exempted the application of religious marriage prohibitions, it said nothing about racial marriage prohibitions, probably because none of the – European – signatory states had legal impediments to interracial marriage at the time (Caestecker and Fraser, 2008).

The regular refusal by civil registrars to conclude mixed marriages led to a small but significant stream of case law and extensive discussions among legal scholars about this case law (Lenaerts, 2012, p. 176). Already in 1933, which was even before the introduction of the Nuremberger laws, a Rotterdam civil

registrar refused to conclude the marriage between a German Jewish man and German 'Aryan' woman, as they could not provide a German document proving permission to marry. In Germany, marriages between Jews and non-Jews were already refused before the legal prohibition of 1935 was introduced. The court decided that the marriage could be concluded as mixed marriages were not, at the time, prohibited in German law.³²

In the years that followed, several courts came to contradictory conclusions. Between 1935 and 1939, nine cases were published in the *Nederlandse Jurisprudentie*, but these couples were certainly not the only ones affected. Some couples may have given up the plan to marry, maintaining the relationship or cohabiting without marriage, or they may have married abroad, using 'geographies of evasion' as a strategy. The refusals were not limited to mixed marriages between Jews and non-Jews. One case involved the marriage of a German Aryan woman and a man from the Dutch East Indies.³³ The public persecutor Van Asch Van Wijck came to the conclusion that the marriage could be concluded, applying a peculiar set of arguments, based on German, Nazi law. He argued that public order was not violated when the authorities of a foreign country found it necessary to take measures preventing mixture of *volks-genooten* and alien or harmful elements. As a consequence of the Hague Convention, anyone who wanted to marry a national of that country was confronted with these legal impediments. As the birth certificate of the groom proved that he was not a Jew according to the definition in German law, the question was whether other legal impediments existed. According to article 6 of the Nazi *Verordnung* of 14 November 1935, a marriage was not to be concluded if the children born from this union would 'endanger German blood'. Referring to the German *Handbook on the Nuremberger laws*, written by Stuckart and Globke (1936), he concluded that this article applied to '*anderen art-fremden Rasse als der judische*' (other distinct races than the Jewish) only if the husband was German.³⁴ In the case at hand, the wife and not the husband was German, so that the marriage could be concluded. Legal gender inequality worked out in favor of this couple.

In other cases, the courts tried to get around the Neurenberger laws by different lines of argument and identity constructions. In one case of a Dutch Jewish husband and German non-Jewish wife, Leopold David de Jong and Frieda Johanna Pleij, the court came to the conclusion that the permission to marry was refused only because the husband was Jewish. Applying Dutch law, the court determined that, religiously, Leopold was not Jewish and that there was no other way he could be Jewish. As German law did not apply to non-Germans living abroad, that did not make him Jewish either. The court went on to argue that it was impossible to determine the descent of a people that

had left Palestine centuries ago and that the indeterminate race characteristics were reason to use religion as a marker. The court ordered that the marriage should be concluded.³⁵ In another case, the court ruled that since the woman was Austrian, and Austrian law did not have the concept of Jew, the Neurenberger laws did not apply. This was before the *Anschluss* of Austria in 1938.³⁶ The couple, Margareta Borovec, who was Austrian and Jewish, and Detmar Bruno Funke, who was German, was married on 1 July 1936.³⁷

In other cases, the courts applied the Nazi laws directly. So did the Arnhem court, in the shortest dictum of all, arguing that the marriage between a German man and Dutch Jewish woman could not be concluded, because, although the wife had converted to the Catholic faith, according to German law she was still Jewish. Here, the court, in accordance with Nazi laws interpreted Jewish as a racial and not a religious category.³⁸ The Den Bosch court was the only one that univocally declared that the German Nazi laws violated Dutch public order, because the category Jew was non-existent according to Dutch law.³⁹

In parliament, this practice of refusals did not go unnoticed. Two MPs, the liberal lawyer Boon (Liberal Union) and the feminist Betsy Bakker-Nort (Liberal Democratic Union) asked the Minister of Justice for a reaction, arguing that it was impossible to determine who was German or of *'artverwantes Blut'* and who was Jewish. In their view, the German laws violated Dutch law that did not differentiate on the basis of religion or race. Minister of Justice Van Schaik (Catholic party) denied that there were serious problems. In his view, case law demonstrated that a marriage could be concluded even without the permission of German authorities and that the laws only applied to German Jews. Since Dutch law did not have the categories of Jews and Aryans, there should be no hindrances to conclude a mixed marriage. That the Nazi marriage prohibitions applied to marriages between two Germans was, in the view of the Minister, a consequence of the Hague Convention of 1902 that had to be accepted.⁴⁰

Compared to other European countries faced with the consequences of the Nuremberger laws, the Dutch practice was among the strictest; together with Switzerland and Sweden it adhered to the Hague Convention of 1902. In Belgium, Denmark and the United Kingdom, for instance, the Nuremberg laws were considered to be a violation of the public order and marriages could be concluded without having to go to court (Caestecker and Fraser, 2008; Szobar, 2002).

Mixed families during Nazi occupation

Once the Netherlands was occupied by the Nazis on 10 May 1940, the measures against Jews became directly applicable in the Netherlands. At the Wannsee conference, held in January 1942, where the decision on the deportation and extermination of Jews was made, the position of mixed families was not regulated. According to some, this was because Hitler feared the reaction of the Aryan family members of mixed couples and *Mischlinge*.⁴¹ Others claim that it was because the Nazis just could not agree on what to do with them (Hetzl, 1997, p. 146). Stuhldreher concluded that the Nazi documents about mixed marriages expressed such hatred for this group that it was just a matter of time before they would have been deported too, probably including their Aryan family members (Stuhldreher, 2007, p. 194). Furthermore, although, for the time being, Jews who had a mixed marriage were protected from deportation, a mixed marriage did not protect them from prosecution entirely. Stuhldreher, who studied the legislation concerning mixed couples and its enforcement in the Netherlands, concluded that mixed couples were not spared from anti-Jewish measures (Stuhldreher, 2007). The only privilege Jews in a mixed marriage had was the privilege not be murdered, and even that 'privilege' did not always apply (Hetzl, 1997, p. 14).⁴²

On 13 January 1941, *Verordnung VO 6/41* was introduced that obliged all Jews living in the Netherlands to register. One was defined as Jewish if one grandparent was racially a full-blooded Jew. A grandparent was considered Jewish if he or she had belonged to the Jewish religion. Although the Nazis considered Jewishness a racial category, they turned to religious markers, because they had nothing else to fall back on, as race could not be determined. However, conversion did not help a Jewish person; he or she would still be considered racially Jewish. This definition was broader than the one applied in Germany, where only those with two or three Jewish grandparents were considered Jewish (Stuhldreher, 2007, p. 42, p. 48). The enforcement was in the hands of Dutch authorities that, according to Stuhldreher, were obliging towards the German occupying forces concerning the registration. Everyone that was Jewish was obliged to fill in and return a form to the municipality. On May 3 1941, 156,000 forms were returned. Cases of doubt were decided by the *Abteilung Innere Verwaltung* led by the German civil servant and lawyer, Hans Calmeyer.⁴³

Not surprisingly, many cases of doubt occurred because people had no information about the religion or marriage of their grandparents. Mayors were asked to provide background information to determine people's descent. Even one drop of Jewish blood in the ancestry could result in being registered

as Jewish. Stuhldreher describes various cases of people who tried to be exempted from the obligation to be registered or the obligation to wear the star, because they were intermarried and did not identify with being Jewish. One such case concerned a Jewish man who had married a Dutch Christian-reformed woman in 1905, who had converted to the Christian-reformed religion himself and had seven children who were all married to Christian-reformed partners. The man was said to have sworn off everything that was Jewish, that he was proud to be Dutch and hoped to be considered a normal Dutch person. The Amsterdam municipality added that he did not look Jewish and that his 'honest grey eyes' pointed at 'a Dutch seaman'. The man was said to have never experienced anything as bad as having to wear the star. Decision: *unbegründet* (unfounded). Of the eight hundred files of cases of doubt that were preserved – most were destroyed in an allied bombing at the end of the war – in 311 cases further investigation was performed and in only 33 cases registration was considered unnecessary. There was no appeal for such decisions (Stuhldreher, 2007, p. 196-197).

On March 27, 1942, a few months before the deportations of the Jewish population began, the Jewish Council was informed that interracial sex and marriage was prohibited. Although in Germany the prohibition included marriages to negroes, Pygmies, Hottentots, Australians, Mongols, Indians and Polynesians, in the Netherlands it applied strictly to Jews. However, as we will see later, the authorities lamented this limitation and tried to prevent Chinese-Dutch marriages by other means. The prohibition of marriages between Jews and non-Jews was not introduced by formal law, but it was simply announced in the *Jewish Weekly*:

As informed by the responsible German authorities, Jews are forbidden to marry or have sexual intercourse with non-Jews.⁴⁴

Immediately after that announcement, a few couples that had given notice of their marriage in Amsterdam were arrested and taken to concentration camps; no one returned (Stuhldreher, 2007, p. 254). To some extent the enforcement of Nazi laws to mixed couples in the Netherlands was even stricter than in Germany. In Germany, Jews who had a mixed marriage were exempted from the obligation to wear the yellow star, but in the Netherlands, they were only exempted if they 'voluntarily' got sterilized. A plan to oblige registered Jews to put up a sign marking their house as a Jewish one, and prohibiting non-Jews, even family members, from living there, did not materialize because the authorities in Germany resisted it (Stuhldreher, 2007, p. 48-49). Also, in Germany there was a category of legally privileged mixed

marriages: marriages with children and marriages in which the woman was Jewish. They were better protected than other mixed families. In the Netherlands, such a privileged category was never formally adopted (Lenaerts, 2012, p. 214).

Because of the insecure position of mixed couples after the Nazi occupation, on the one hand, mixed marriages with Jews were concluded in great haste and, on the other hand, divorces were requested, also in great haste. After it became clear that a mixed marriage protected against deportation, couples tried to remarry; but after 27 March 1942, this was no longer possible (Kisch, 1981, p. 356).

Other strategies were used to try to prevent deportation. One such strategy could be called *passing*. In the United States context, the term passing refers to the possibility due to certain physical markers, to cross color lines and to step into the better positioned racial category. The American literature is filled with so-called 'passing narratives' (Kennedy, 2003, p. 281 ff). In the context of marriage prohibitions, one of the spouses could claim to be either white or black, in order for the marriage to be allowed as a marriage between two legally categorized whites or blacks.

To circumvent the Nazi laws, people categorized as Jewish sometimes tried to challenge this racial categorization. In this way, persons categorized as Jewish could be made Aryan (*arisering*) (Kisch, 1981, p. 365; see also Meihuizen, 2010, p. 239 ff.). This happened for instance by filing paternity suits, denying the legal father was also their biological father (Bukey, 2011, p. 26). Sometimes their Aryan mothers claimed that their child was the offspring of an illicit adulterous relationship with an Aryan lover (Bukey 2011, p. 29). Published Dutch case law involves a half-Jewish woman who contested her registration as a religious member with the synagogue, after she had married a Jewish man in a civil ceremony; the son of a non-Jewish mother who converted after her marriage to a Jewish husband, who contested his registration with the synagogue; and a Jewish man who sued his mother, arguing that his diseased Jewish father was not his biological father.⁴⁵ These procedures were awkward and difficult and could turn out against plaintiffs, but sometimes they were successful. And as it was about survival, it was worth trying.

Although formally deportation measures did not apply to those in a mixed marriage, it happened that Jewish men and women who were intermarried were taken into custody in Westerbork and other camps and, from there, they were deported to the extermination camps. According to Stuhldreher, at least 763 Jews who had a mixed marriage were deported, while more than 12,000 were arrested and interned, if only temporarily (Stuhldreher, 2007, p. 272). Furthermore, Jews in a mixed marriage were not protected from the

other measures such as expropriation and harassment by the Nazis. Aryan family members were sometimes treated as half-Jews and some cities excluded them from public events such as football matches. And, of course, one could never be sure what the Nazis would come up with next, or that the protection offered by a mixed marriage would be permanent.⁴⁶

A change in marital status could also hamper the protection offered by a mixed marriage. Pascoe describes how in the United States miscegenation laws not only tried to prevent the marriage from happening, but they also played a role in ending marriages. An unhappy white wife or husband could use miscegenation laws to seek divorce or an annulment by claiming that the marriage had been void from its inception or that the spouse had lied about his or her race before marriage. The annulment of a marriage also added a patriarchal moral to the white supremacist plot, when white men used such a claim to try to avoid the economic and social responsibilities they would be expected to carry in legally sanctioned marriages to white women (Pascoe, 2009, p. 124; Onwuachi-Willig, 2013).

During the Nazi period, race-based annulment claims could be found in Germany and Austria, in which the Aryan partners claimed that they did not know that the partner was Jewish, or that they had not been fully aware of the meaning of Jewish identity. Sometimes this offered a window of opportunity to end a bad marriage that could not be dissolved otherwise since, at the time, divorce laws were still very strict. Sometimes, the Aryan partners wanted to be freed from the discrimination and persecution they suffered as family members of Jews. But others asked for an annulment for plain racist reasons, and they could not care less about the consequences for their former spouse (Hetzel, 1997, p. 197).

Even without race-based claims, divorce could mean death for the Jewish partner. After the war, a Dutch woman was convicted to one-and-a-half years imprisonment, because she had delivered her Jewish husband to the Nazis. The woman, Eefje de Groen, was a pianist and had married her Jewish husband, a magician and artist named Levie van Collem (born in Amsterdam, artist name Melloc), in 1934. Their marriage deteriorated already before the war and they had been living separately for years. In February 1944, Eefje wrote to the police, requesting them to take steps against her husband, so that she would be free of him. In her statement to the police she declared: 'that I cannot live next to this Jew, who terrorizes my life'. Levie was arrested and died in Auschwitz on 26 March 1944.⁴⁷ During her trial in 1953, Eefje defended herself by stating that her actions had been self-defense against his abuse.⁴⁸

In other cases, the non-Jewish partners were pressured to file for divorce, as a Dutch woman declared in a 1946 court case, requesting that her divorce be annulled:

On 5 August 1942 my (Jewish) husband was arrested by the infamous NSB-policeman Steenwijk, ordered by the even more infamous Oberscharführer Lehnhoff. I immediately took steps to get my husband out. After a lot of effort and in spite of many threats I persuaded Lehnhoff to release my husband, under the condition that I first went to attorney U.P. Okken to get a divorce. My husband would not be deported in any case. As I saw no other way out, I went to Mr. Okken and indeed, afterwards, my husband was released.⁴⁹

Of course, the Nazis did not keep their promise and in September of the same year, the husband was sent to a concentration camp, where he died.

In reaction to the history of Nazi prohibitions of interracial marriages described here, article 8, which protects the right to family life, was included in the European Convention on Human Rights, which was drafted in 1950. The drafters of the Convention wanted to make sure that states would never interfere with the racial composition of families again: 'racial restrictions on the right to marriage made by totalitarian regimes should be absolutely prohibited' (Opsahl, 1973, p. 182). Nowadays, this article 8 ECHR is of significant importance in migration law.

8. Spatial-legal segregation

We have already seen that in the Dutch Republic, Jews were not allowed to hire Christian women as maids. As an example of church regulation, even as late as 1924, Dutch Catholic bishops prohibited Catholic maids from working in Jewish households (Lucassen and Penninx, 1994, p. 136). This is an example of spatial-legal segregation, which required spatial segregation of groups considered racially or ethnically different, in order to prevent mixed relationships and marriages. Examples of spatial-legal segregation can be found throughout the world. For instance, in 1912 in Canada, the *White Women Labour Act* was introduced, prohibiting Chinese men from hiring white women as employees, because this would cause all kinds of problems of morality, such as prostitution and drug abuse, or relationships (Ferguson, 2002).

In the Netherlands, three examples of spatial-legal segregation can be found: during the 1930s relating to the 'Negro cabarets', immediately after the

Second World War, concerning the dance halls and relationships with allied soldiers and finally, in connection with the Moluccan living areas during the 1950s.

Negro-cabarets

In the 1930s, Dutch authorities were greatly concerned about dancing in public places and especially about black jazz music, which was seen as a cause of 'zedenverwildering' (moral decline). A special government commission, installed to study the issue of dance, expressed great concern related to gender, class and race in its 1931 report: gender, because females' moral decline was seen as much worse than that of males; class, as it was feared that especially the lower classes were involved in these dangerous dance practices; and race, because it was not only the musical genre, but also its musicians, mostly Afro-Surinamese men, who caused concern (Kaal, 2008, p. 121).

In Amsterdam, the police was busy controlling the so-called 'Negro cabarets', night clubs such as the *KitKatclub* and the *Negro Palace*, where black musicians played jazz music. The police was especially concerned about Dutch girls visiting these clubs and the relationships they would develop with the Afro-Surinamese musicians, who apparently had a 'special sexual attraction' to white women and who sought these relationships. Hence, both parties were to blame, as both the white women and the black men were ascribed sexually aggressive behavior. In a police report of 5 November 1936, on the occasion of the opening of the *Negro Palace*, the Chief Police Commissioner wrote:

Watch closely (...) these niggers look for relationships with white women.⁵⁰

Although during checks of the clubs nothing out of the ordinary was found, Police Commissioner Versteegh worried that providing the clubs with licenses would result in fornication between white women and negroes. He suggested that licenses should only be granted on the condition that no colored personnel would be hired. Although such a stipulation was legally impossible, the employers of the *KitKatClub* and *Negro-Palace* fired their Surinamese employees out of fear of losing their license (Kaal, 2008, p. 122).

This was not only a local practice. The Minister of Interior Affairs Van Boeijen (CHU, Colijn-government) issued a circular to other municipalities proposing the same measure. In response, the Mayor of The Hague wrote to club owners in his city stating that negroes could only be hired in case the

police had no objections. By the use of such formulations the authorities tried to give the measures an appearance of voluntariness and to hide its discriminatory character.

The measures concerning the Negro cabarets received media and political attention.⁵¹ In Dutch parliament, the first Indonesian MP Effendi (Communist Party), inquired about the circular. The Minister claimed that he had merely sent a letter recommending the measure of not hiring Negro personnel to some of the larger cities and only if this was necessary because of the behavior of the negroes. The circular was not discriminatory, the Minister argued, as its aim was to protect women and girls. The Social Democrat MP IJzerman condemned a general recommendation not to hire Surinamese musicians, which would further weaken the already vulnerable labor market position of Surinamese migrants. But he supported measures based on the individual behavior of Surinamese workers, some of whom proved to have a 'black soul in the contact with the white daughters of Eva'.⁵² The Minister, rejecting these critiques, pointed at the seriousness of the actions of Surinamese negroes – although no criminal behavior could be proven – that were not only a danger to morality but also to national health, as it were minor girls, sixteen or seventeen years old, who got into their hands. Although the Minister presented them as hapless victims of Surinamese negroes, most of them were well-off HBS-students who were fascinated by Jazz music.

Dancehalls and allied soldiers

Concern about moral decline and dancehalls reemerged immediately after the end of the Second World War. The country was devastated as a result of the war and reconstruction took years. The liberation caused intense anxiety about moral decline and again the focus was on female moral behavior: their *geknakte maagdelijkheid* and *geschonden huwelijken* (impaired virginity and damaged marriages, Okkema, 2012, p. 52-53). This moral panic after the war has been described extensively in the literature.⁵³

The anxiety had to do with the specific circumstances of allied soldiers shortly after the war. On the one hand, Canadian soldiers stayed the longest, for logistic reasons, in the Netherlands, until November 1945. On the other hand, allied soldiers in Germany were not allowed to 'fraternize' with Germans and they came to the Netherlands for amusement. The general understanding was that allied soldiers, after liberating the country from the Nazis, deserved to have fun and the Netherlands felt obliged to actively organize the fun. The *Entertainment Committee of the Netherlands*, under the guidance of princess Juliana and prince Bernard, provided women for them to dance with.

Busloads of women were brought to Germany to dance with soldiers and dance parties were organized across the Netherlands (Okkema, 2012, p. 57).

Still, the authorities wanted to control the ways the fun took place, out of a concern of moral decline. Dancing was encouraged but not entering relationships. Relationships with allied soldiers were often equated with prostitution. In countries like Germany and Japan, that were not liberated but occupied by allied soldiers, the concern focused on relationships with Afro-American soldiers. In Germany, so-called '*Negerweibern*' were attacked, and a terrorist group was established to punish the German women who went with colored soldiers (Buruma, 2013).

In the Netherlands, relationships with the Canadian liberators were frowned upon, but I have found no indication that the fact that some of the troops were Canadian Aborigines was reason for specific racial anxiety. Nevertheless, throughout the country, women were warned not to enter relationships with Canadian soldiers, in numerous newspaper articles, songs, pamphlets and poems.⁵⁴ Riots broke out across the country, and women's hair was cut off in public, just as had happened to women who had dated German soldiers.⁵⁵ These reactions make clear that not only the individual honor of women but also male and national honor was at stake: Dutch men were defeated militarily in 1940, and sexually in 1945. Women going out with Canadians damaged the honor of the fatherland, as it was phrased in the song: *Meisje, let op uw zaak* (*Girl, mind your business*):

Many that were in league with the Krauts
Have already burned for it,
Girl, you too are a traitor,
Of the honor of your fatherland.⁵⁶

In response, mayors throughout the Netherlands took measures to prevent contact between Dutch women and Canadian soldiers. In Eindhoven, within three weeks after liberation, it was no longer allowed to organize dance parties without the mayor's permission (Okkema, 2012, p. 55). The police in Rotterdam warned parents and girls that women were no longer 'war bait' (Okkema, 2012, p. 61). Morality Squads were installed, checking parks, cafes, and hotels. Girls under the age of 21 found with Canadian soldiers were arrested. Girls younger than 18 who were found on the street after 11 pm were checked for venereal diseases. They had to fill in a questionnaire: whether they had had earlier relationships with Germans, whether they used protection or were being paid. In Enschede, girls under the age of 20 were not allowed to be outside between 11 pm and 4 am, and in Groningen between 9 pm and 4 am. The

concerns were not only about sex and short-term relationships but also about marriages. For example, the Roman Catholic bishop Mutsaers warned in a local newspaper in February 1945 of the dangers of engagement or marriage after a short acquaintance, without taking into account the 'differences in national character, morals, habits, and above all: religion'.⁵⁷

All these measures did not prevent 'warbabies' from being born and mixed marriages from being concluded. In 1946, 7,041 children were born out of wedlock and, at the end of 1947, more than 7,000 women hoped to travel to Canada as warbrides. After the war, newspapers reported on the experiences of warbrides in Canada: although some lived happily with their husband in comfortable circumstances, others ended up in homes that looked like shacks, with husbands that turned out to be a '*mengelmoes*' of mixed Indian origin.⁵⁸

Mollucan living areas

The end of the Second World War not only brought an end to the Nazi occupation of the Netherlands but also to the Dutch colonial power in Asia, although the Netherlands had a hard time accepting this. After a bloody colonial war, in 1949 it finally had to accept the independence of Indonesia. As the KNIL, the Royal Dutch Indisch Army was dissolved as a consequence, in the years 1950 and 1951 more than 17,000 former KNIL-military personnel, their families and other Molluccans were transported to the Netherlands. They were not Dutch nationals, and both sides expected their stay in the Netherlands to be only temporary.

The Molluccan families were housed in camps spread across the Netherlands, in old monasteries or former concentration camps, separated from the rest of Dutch society. Nevertheless, mixed relationships with Dutch men and women developed and especially those between Dutch women and Molluccan men worried authorities and social workers. The *Comissariaat Ambonezenzorg* (Commission care for the Ambonese, CAZ) was a state institution that played an important role in formulating a policy that resulted in government intervention in private relationships, described by Charlotte Laarman (Laarman, 2013, p. 113 ff.). It was the Commission's conviction that mixed families needed guidance. As 'problem cases', they were under surveillance with regular visits by social workers. More importantly for the purpose of this contribution is that, in 1957, the Commission prohibited Dutch women from entering the living areas of the Moluccans, in order to prevent a further increase of the number of mixed marriages. Sometimes the parents of the young women asked the police or Ministry of Justice to keep their daughter from entering the camps (Laarman, 2013, p. 116). One of the reasons was that the Dutch

government wanted to hold on to the thought that the residence of the Moluccans would be temporary, but also to prevent what the first female Minister of Social Work Marga Klompé (Catholic People's Party) called 'racial mixture'.

The prohibition for Dutch women to enter the Moluccan living areas was discussed in the Senate, where the Minister explained the difficulties of enforcing it. MP Luyckx-Slijger (Catholic People's Party) thought that more could be done to protect the girls and proposed prosecuting them for trespassing.⁵⁹ Although the Minister supported this suggestion, it is not clear to what extent this policy was actually enforced.⁶⁰

9. Regulation of legal consequences

Mixed Marriages Act in the Dutch East Indies

We have seen that in the Dutch East Indies, until 1848, marriage between Christians and non-Christians was prohibited. In the second half of the nineteenth century the colonial authorities, instead of prohibiting, chose to regulate the legal consequences of mixed marriages in a special regulation, the *Mixed Marriages Act of 1898* (De Hart, 2001a).

This shift from prohibiting to regulating mixed marriages did not signify a change of opinions and acceptance of mixed marriages between Europeans and natives. Other forms of regulation were chosen to discourage their occurrence, while at the same time protecting white male privilege (Gimer, 2011).

What is more, the act was introduced out of a growing concern about mixed marriages between European women and native men. Although these marriages were thought to occur ever more frequently, their actual numbers were quite low.⁶¹ Hence, the act can be explained by anxiety about the future of racial hierarchies and colonial power, more than actual social or legal problems.

In 1848, article 109 of the Government Regulation for the Dutch East Indies introduced a legal distinction between 'Europeans and their equals' (Europeans, Christians and all non-natives), and 'natives and their equals' (natives, Arabs, Moors, Chinese, Mohammedans and heathens). As a consequence of the Mixed Marriages Act of 1898, European women, in the Dutch Indies and in the Netherlands alike, were subjected to the native law of their husbands. Legal scholars argued that the Act was an example of personal status law (*intergentiel recht*), that started from the acceptance and equality of native laws to European law. Wertheim has rejected this claim of equality

(Wertheim, 1956). That he was right becomes clear from the explicitly stated aim of the Act, namely discouraging European women from concluding such an undesirable union:

The woman will seldom conclude such a marriage, which is in the eyes of her society repulsive and humiliating for her. This is not unfortunate, since such marriages are the most repugnant of all mixed marriages, both from a political and social viewpoint.⁶²

Another aim was to prevent native men from concluding fraudulent marriages that would provide them with the privileges of Dutch nationality (Stoler 1992: 543). Again, it was not only about concern for the fate of individual women but also about the social consequences of mixed marriages; especially the protection of European privilege. Participants in the debate on the Act had nothing positive to say about the women entering such marriages. A pastor who participated in a discussion organized by the Indies Legal Association stated:

The European woman who enters such a marriage has often already before sunken so low, socially or morally, and the marriage does not result in uplifting her from this condition.⁶³

The legal scholar Taco Henny, later president of the Amsterdam Court of Appeal, added:

The woman who marries into the *kampong*, factually belongs there and should stay there.⁶⁴

The chair of the meeting concluded that the participants agreed that a woman who married a native degraded herself and did not deserve any concern for her fate; she deserved, however, any consequence from her marriage (Wertheim, 1956, p. 171). So, on the one hand, the subjection to native law was what the woman deserved; it was the consequence of her unsound choice for the wrong marriage and wrong man. On the other hand, the consequences of subjecting Dutch women to so-called *Indische toestanden*, such as polygamy and repudiation, caused anxiety in the East Indies, but even more in the Netherlands; the monogamous marriage model was in peril. Politicians, legal scholars and women's organizations feared that women in the Netherlands did not know what they had gotten themselves into. Nederburgh, an expert on colonial law, thought that the European woman who had been so 'weak' to

marry a native husband had to be protected from the 'haremsfeer' (sphere of the harem).⁶⁵ He 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 through his oriental appearance sometimes has a mysterious appeal. They do not know what they get themselves into. (Nederburgh, 1899, p. 122-123.)

Dutch MPs pleaded for an amendment of law, so that Dutch women would no longer be subjected to Islamic family law. The feminist MP Bakker-Nort remained worried that women's lack of awareness while marrying a Muslim Indonesian in the Netherlands about the repugnant consequences – polygamy and repudiation – would result in 'a world of marital misery' and 'endless tears'.⁶⁶

In response, the Dutch government started preparing a bill that would protect Dutch women from at least some of the feared consequences, but it had to withdraw the bill after protests from the Indonesian nationalist movement, including Indonesian women's organizations (Locher-Scholten, 2000). Instead, the government referred to the Dutch civil registrars who would have to provide counseling to Dutch girls about the consequences of marriage to an Islamic husband. I will return to the topic of marriage counseling by civil registrars below. First, we look at regulations concerning custody of children of Dutch fathers and native mothers born out of wedlock in the Dutch Indies.

Custody of children of mixed parentage in the Dutch Indies

Concerning the relationships of European men and native women, the Dutch colonial government was above all interested in protecting white male privilege. Article 284 Civil Code for the East Indies stipulated that in case a child was legally acknowledged by the European father, all civil law relations with the native mother were severed. The legal acknowledgement by the father made the native child a European child. Hence, legally, child and mother were strangers to each other: the mother had no custody over the child; the child did not need the mother's permission to marry; they had no obligation to care for each other and could not inherit from each other. The legal bond between mother and child could be reinstated in one way and one way only: if the European father married the mother, making her European, after which she could recognize the child as hers upon marriage.

Article 284 was introduced in 1896, two years before the Mixed Marriages Act. It was not new that native mothers did not have custody over their children. Already in 1848, it was determined that if the European father who had acknowledged the child was out of the picture, custody of the child did not go to the native mother but to the Council of Justice. The Council appointed a custodian even if the mother was still alive. In the same year, it was stipulated that if the European father was absent, the child did not need the permission of the native mother but of the Council of Justice in order to marry. Hence, the new element of the amendment of 1896 was economically motivated and not about the person, but about the child's possessions (Kollewijn, 1955).

The colonial government thought it undesirable that, if the European father had died before the child, and there was no will stipulating otherwise, the estate would go to the native mother. Important European capital would end up in native hands, where it, in the words of the State Commission for the amendment of Indies legislation, 'did not belong and, as shown from experience, was of no use at all' (Kollewijn, 1955, p. 140).

In this period, mixed relationships between European men and native women came to be viewed more critically, as a threat to European prestige, the 'cancer' of Indisch society and a cause of pauperism. The State Pauperism Committee (1900) considered 17.5% of the European population in the Indies to be paupers, one third of them had a European *totok* breadwinner, usually an ex-military man who could hardly survive on his pension and who had taken on an indigenous lifestyle. The Committee especially blamed the influence of indigenous mothers, whose upbringing included 'native ideas, grounded in Mohammedan principles or native *adat*'; under these circumstances it was impossible to foster good citizens for the state (Dirks, 2011, p. 55-57). From the late nineteenth century onwards, children born out of wedlock, whose European father had not acknowledged them, and did not provide for them, were seen as abandoned children, even if the native mother took care of them. These children were institutionalized in foster homes. In this context, discouraging mixed relationships was seen as a means for social improvement and combating pauperism (Stoler, 1992).

Although the State Commission for the amendment of Indisch legislation presented the amendment as a confirmation of existing law, the High Court in the Indies in 1865 had ruled that a native mother could have a right to the inheritance of her European child (Kollewijn, 1955, p. 141). The State Commission pointed to the voluntary character of the act by which the native mother gave up her child, but two members of the Council of State argued that even if it was voluntary, a mother should never be put before the choice between the interests of her child and giving up all her rights. Other lawyers also rejected

the arrangement as harsh and unsound.⁶⁷ Nevertheless, the law withholding custody from the native mother remained law until well into the twentieth century. The articles 40 and 354 Indisch Civil Code, that withheld custody from the native mother, were abolished in 1927 as superfluous. But article 284 remained on the books and the native mother remained excluded from custody of her European child (Kollewijn, 1955, p. 145).⁶⁸

The consequences of article 284 are vividly described by Reggie Baay in his book *De Njai* (Baay, 2008). His father, who was born in the Dutch East Indies, never wanted to talk about his mother, Reggie's grandmother. Even if pressured by his son, he claimed to know nothing about her. Only once had he indicated that she was Javanese. After his father died, Reggie found a document of his father's legal acknowledgement as a child, dated 1926. After indicating the legal acknowledgment of the child (Reggie's father) by the father, the document further stated:

Further appeared before me [the civil registrar, bdh] the native woman Moeinah, by appearance twenty five years of age, without profession, living in Solodjengkiloeng, who according to article two hundred eighty four of the Civil Code declares to agree with the legal acknowledgement. (Baay, 2008, p. 10.)

It was a construction of a voluntary act, by women who really had no choice or did what they considered best for their child, that would now become European and would thus have the privileges connected to that status. Shortly after the birth of her child, Reggie's father, Moeinah was sent away to the kampong and replaced by a European woman. Nothing was heard from Moeinah since. The act of legal acknowledgement erased her from family history. Reggie Baay's book is an effort to save these *njais* from oblivion. His book makes clear how deeply these regulations affected the relationships between parents and children, even families across generations, and consequently, the image of the Netherlands as a nation.

Parental Child Abduction

From the colonies to Europe. After the Second World War, large numbers of migrant workers from the Mediterranean were recruited to meet Dutch labour shortages. By 1964, 134,800 foreign nationals were living in the Netherlands (less than 2% of the total population), predominantly Belgians and Germans, but also Italians (11,400) Spaniards (8,500), Yugoslavians (1,300), Turks

(1,200), and a small number of Moroccans (300).⁶⁹ Turkish and Moroccan migrants form the largest migrant groups in the Netherlands today.

Although migrant workers who came from Muslim majority countries never married Dutch women in large numbers, the obsessions over Islamic family law, Muslim sexuality, marriage practices and the status of women (Clancy-Smith and Gouda, 1998, p. 5) that travelled from the Dutch East Indies to the Netherlands were transmitted onto them. This led to the establishment of the *Working Group Marriage and Family* and the development of leaflets to be distributed by civil registrars to Dutch women eager to marry a Muslim husband. I will discuss these marriage counseling practices below.

It was also in this period, that parental child abduction came to be seen as a social issue requiring legal remedies. It resulted in international legislative activity, more specifically the Hague Convention on the Civil Aspects of International Abduction of Children (1980).⁷⁰ The main rule of the Hague Convention is that a child that is taken by one of the parents across national borders, has to be returned to the country of habitual residence, where a judge has to decide about custody and visiting rights, unless this violates the interests of the child.

One of the reasons that parental child abduction came to be seen as a social issue in this period was because in many European countries divorce had become easily obtainable in the years before (Fass, 2007), in the Netherlands in 1971. But another reason was that the drafters of the Hague Convention assumed that parental child abductions were predominantly performed by non-custodial fathers unsatisfied with their visiting rights, and that it concerned mostly mixed marriages with guest workers that broke up because of 'significant cultural differences' (Dyer, 1978, p. 22).

Before the Hague Convention was drafted in 1980, parental child abduction was a non-issue in the Netherlands that drew no political or media attention (De Hart, 2010). Already before the political debates on parental child abduction began, a Dutch study indicated that parental abductions by Muslim fathers were exceptional (Oost, 1984). Nevertheless, when in 1988 the government submitted the ratification bill to parliament, it connected the issue to the failed marriages of guest-workers who wanted to return home. Dutch MPs from right (conservative liberal VVD) to left (Communist party CPN) made the same connection:

How does the minister see a safeguard for women who were married to foreigners and are afraid that the man may use the visiting rights to take the child to his country of origin, a collision both between parents as well, as it happens, between cultural patterns?⁷¹

Hence, not surprisingly, the Association for the Judiciary had reservations about ratifying the Convention that would easily cause conflict with 'prevalent norms in the Netherlands about the interests of rights of children and the rights of parents (De Hart, 2010). Even nowadays, common sense notions are that most parental child abductions are performed by Muslim fathers, despite statistics published yearly by *Centrum Internationale Kinderontvoering* and the Dutch government indicating that most abductions are committed by western mothers.⁷²

Initially the Hague Convention was heralded as a great success by politicians, media and legal scholars, because it would end the 'law of the jungle' and return children to their mothers (Eekelaar, 1982; Bruch, 1996). But soon after its ratification by the Netherlands in 1990, the mood changed. Nowadays the Convention is viewed much more critically, both nationally and internationally, as not protecting but harming mothers and children. These critiques are that it would lock up mothers in the foreign country of the father to allow him to have visiting rights with the child, not protect women against domestic violence and separate mothers from their children, if the latter are sent back (Nygh, 1996; Kaye, 1999). In recent years, political and media debates in the Netherlands have focused on cases of Dutch women who had to return their children to their fathers in the United States or Canada, after which a judge there had to decide about custody and access.⁷³ As a law professor put it in a comment to a judgment in which the judge decided that the child had to be sent back to Australia:

This decision proves once more the risks for a woman who starts a relationship with a foreigner and starts living in the country of her husband. At least once a year all women's magazines should publish in violent colours the story of a mother who, after the relationship with her foreigner broke down, returns with her children to her country of origin and is subsequently accused of child abduction. Good chance that the children are returned to their father and that the mother has hardly any practical or legal opportunities to be with them.⁷⁴

Here, the issue of parental child abduction is turned into a warning for women not to marry foreigners. Moreover, the law professor need not worry: women's magazines have been warning women about the dangers of international marriages for decades; the danger of child abduction is definitely part of these warnings (Hondius, 1999, p. 176; De Hart, 2001b; De Hart, 2010). Although in these stories, the women are often depicted as victims of their failed mixed marriages and foreign legal systems, Carlisle (Carlisle forthcoming

ing) has demonstrated that occasionally they are perceived as being a ‘certain kind of woman, of the lower classes and not too bright’, and are reproached for marrying a foreign husband by stakeholders working on the issue of parental child abduction.

Meanwhile, cases with Muslim majority countries still gain sometimes extensive press coverage, often intentionally sought as a last resort by the parent left behind. The ‘embassy-children’, Sara and Amar, who fled into the Dutch embassy in Syria in 2006, after being abducted by their Dutch-Syrian father, dominated the headlines for a period of more than five years in the Dutch national and even the international press. Their plight received support from popular TV-shows, from Paul de Leeuw to Ali B (a Dutch-Moroccan rapper). Minister of Foreign Affairs Bot went to Syria personally to collect the children, in December 2006. It was a Christmas story with a happy ending. But it also resulted in an instruction to the Dutch embassies worldwide, not to offer refuge to children in the same situation (Altena and De Hart, 2014).

Hence, an international convention that was drafted to protect western women from the consequences of the break-up of their marriages with Muslim men is now perceived as not offering this protection; instead, it has turned into a warning for women not to marry foreigners, not even Americans or Canadians.

10. Marriage counseling

Marriage counseling is the fourth form of regulation. Two examples of marriage counseling by the Dutch state, civil registrars and the Working Group Marriage and Family, will be discussed. Their counseling activities were developed during the 1930s and from the 1960s until the 1980s. Although one could argue that counseling is strictly speaking not a form of regulation, I think there are two reasons to include it in this overview of regulations of mixed marriages. First, law played an important role in the counseling practices described here. Especially Islamic family law was central in warning women of the consequences of marriage to a foreigner. Secondly, marriage counseling can be seen as a form of disciplining, making individual women responsible for their choices. Marriage counseling was not just about individual marriages and preserving individual happiness, but it was about solving social problems (Davis, 2010, p. 246-250). The preposition was that ‘happy’ marriages resulted from marrying ‘someone like yourself’ (Celesso, 2010) and a person from a different ethnic or racial background was considered quite

different from 'yourself'. Hence, for mixed marriages, counseling often meant advising against the marriage.

Civil registrars

Because each marriage in the Netherlands has to be concluded by a civil registrar in the municipality in order to be legally valid, each couple eager to marry meets with the civil registrar. The first mention of the advice tasks for mixed couples of Dutch civil registrars occurred in the 1930s in the context of political debates about marriages between Dutch girls and men from the Dutch East Indies, that we already came across in the discussion of the Mixed Marriages Act. As we have seen, this Act subjected Dutch women who married Indonesian men to Islamic family law, even if the marriage was concluded and the couple remained in the Netherlands.

In the anxiety about *Indische toestanden* (Indies situations), the few marriages that occurred in this period caused an uproar and were reported in the media. It was claimed that 'common natives' were perceived as 'princes' in the Netherlands. They made Dutch women's head spin and made them want to marry them.⁷⁵ Dutch civil registrars were assigned the task of advising Dutch girls about the consequences of marriage to an Islamic husband. Assigning this task to them was widely supported, including by women's organizations, such as the Dutch Women's Union.⁷⁶ Based on the available material, it is not possible to determine to what extent civil registrars actually started giving advice.

After Indonesia became independent in 1949, the discussion about Islamic family law shifted from marriages with Indonesians to those with migrant workers from the Muslim majority countries. In the 1960s, civil registrars, following the example of their German colleagues, developed information flyers for Dutch women marrying Islamic husbands. As far as I have been able to find out, at least Amsterdam and Utrecht, two of the four main cities in the Netherlands, distributed the flyer, in different versions, until at least 1986. In Utrecht, women were required to sign the flyer as an indication that they had taken notice of its content.⁷⁷

The flyer was reported in the press occasionally under headings with an alarming tone: 'Sometimes far-reaching consequences: marriage to a worker from abroad' and 'Girls who want to marry a Moslim are being warned: Flyer points out many dangers to girls'.⁷⁸ In one of these reports, the journalist observed that couples sometimes got angry when confronted with the flyer, and the head of the Amsterdam registry had to defend himself against the accusation of racial discrimination. He stated that it was not the intention to

prevent marriages, only to warn the girls about what could happen. The newspaper pointed out that he spoke from his experience as a former civil servant of the Dutch East Indies; implying a continuity between the Dutch East Indies and the Netherlands in discourses about mixed marriages with Muslim men and in the officials producing them.⁷⁹

In a debate on the budget in 1965, Members of the Senate inquired whether the flyer could be distributed in cities other than Amsterdam and Utrecht and what the Minister could do to provide the necessary expertise.⁸⁰ In reaction, the Minister of Culture and Social Work Marga Klompé explained that the flyers were meant to warn Dutch girls against marriages with Muslims, although data about the number of such marriages was not available.⁸¹ She referred to an article in the legal journal *De Practijk-gids* that would suffice as information for other municipalities.

This article, written by Th.J. van der Heijden, published the full text of the flyer and provided background information to its aim. It was reported in several regional newspapers.⁸² The full text of the flyer was:

To the bride who is about to marry a Mohammedan

In states with a partial or total Mohammedan population, the Koran has an impact on marriage and family law.

The husband is the absolute head of the family, he decides every issue. Equal rights of men and women are unknown in the laws of Islamic states. Hence, the status of the married woman is completely different from her status in Europe.

Mohammedans are allowed four legal wives. The husband has a right to repudiate the wife; divorce takes place through a declaration before the wife (*Talaq*). He does not have to present grounds for divorce in a legal procedure. The wife does not have such a right to divorce.

A Mohammedan may forbid his wife any contact with the outside world.

The husband decides about the children, excluding anyone else. The wife only has a limited right to care for the child during its first years. If the father dies, the mother will in general not obtain custody right. (Quoted in Van der Heijden, 1967.)

From the same article in *De Praktijkids* comes the following quote that gives some insight in the underlying thoughts:

The residence of guest workers in our country caused problems. One of those problems is the gratification of their sexual needs. Single women who befriended guest-workers became pregnant and wanted to marry our 'guests'. Strongly built, tanned men and their relative helplessness were often attractive for those women, who did not have a puritan outlook on life and could not find someone of their choice in the Dutch marriage market. It is a fact that the libido of the Oriental is much stronger than of the Westerner. (Van der Heijden, 1967.)

The sexual and racial anxieties about 'guest workers' and immoral and 'left-over' Dutch women are hard to escape. Furthermore, even if we would presuppose that it may be useful to provide this form of premarital counseling, the flyer's information is so general, incorrect and imprecise – too much to go into here – that it was unlikely to have assisted the women in preparing themselves for the legal consequences of marriage to a Muslim. My argument is that the flyer was not so much about providing objective legal information but about preventing mixed marriages, in a period when migration caused anxiety about the future of families, morality and the nation. It made women individually responsible, after being informed, to come to their senses and not marry the guest-worker.

The Working Group Marriage and Family

In 1962, the Dutch government established the Working Group *Marriage and Family*. The Working Group was active for a period of seven years, until 1969, after which it led a sleeping existence until early 1970s. It was established by the ministries of Social Affairs, Justice and Cultural Affairs and consisted of civil servants of these ministries, churches, and social work organizations such as International Social Service and the catholic NGO Peregrines, that worked with migrant workers employed in the steel industry.

The occasion for its establishment were the riots that occurred in the Eastern part of the Netherlands between Italian and Dutch men about Dutch girls. These riots drew attention to the social (sexual) needs of guest workers and relationships between guest workers and Dutch women. They were widely reported in Dutch media and counted for the link made between relationships with guest workers and public order (Groenendijk, 1990; Mak, 2000).

In fact, these riots were the start of the development of the Dutch minority policy (Hondius, 2000).

The Working Group aimed to give information and advice and made an inventory of the problems of mixed relationships, based on actual cases presented to them by social workers. Its members answered hundreds of letters, developed brochures for premarital counseling directed at mixed marriages and presented itself in newspapers, women's magazines and on national television. Together with the activities of civil registrars, it generated a level of media attention for mixed marriages that had not existed before (Brinkgreve and Korzec, 1978).⁸³

The Working Group dealt exclusively with relationships with Mediterranean guest workers, including Spaniards and Italians, and not with relationships with Surinamese men, although these relationships continued to cause anxiety after the Second World War. A 1965 report drawn up at the request of the Dutch government paid ample attention to interracial relationships between lower-class Surinamese men and Dutch women. Dutch women, the report wrote, were taken in by the 'gallantry' of Surinamese men and the sexual 'adventures' they could offer, but they came out in bad luck because, once pregnant, the men would not marry them because of different family norms (Jones, 2007, p. 217-218). As this quote demonstrates, the relationships with Surinamese men were perceived as sexual and casual. That may explain why the Working Group did not focus on the relationships with Surinamese men, because marriage across borders was seen as more threatening than sex across borders (Pascoe, 2009, p. 13). Another possible explanation is that the Working Group built its activities on earlier discourses traveling from the East Indies on Islamic family law.

That the Working Group aimed to prevent mixed marriages becomes clear from the research by Dienke Hondius (Hondius, 1999, p. 156-165). Hondius pointed to the negative and paternalistic attitudes in the advice given. Most of the women did not seek advice on their own initiative, but they were sent by their parents or social workers. Often, the women showed no interest in the information provided to them and no intention to postpone or even call off the wedding. As a social worker lamented about a Dutch woman who wanted to marry a Tunisian:

I have tried to point out to her all the consequences, maybe she is aware of them, but still! She has read *Ehen mit Ausländern (Marriages to Foreigners)*, a German information brochure, and was startled by it. However, she is so strongly influenced by this man that I have not yet succeeded in changing her mind. (Quoted by Hondius, 1999, p. 159.)

The class concerns become clear from the ways the members of the Working Group saw the 'girls' as coming from 'common and low-educated background. And girls who could not get a Dutch boy. They loved it when such a boy paid any attention to them' (Hondius, 1999, p. 160). Hence, the women were seen as 'leftovers' on the marriage market who entered such relationships, not out of choice, but out of lack thereof.

11. Migration law

Finally, migration law. That migration law has been used to protect morality through the prevention of mixed relationships has been described for the Netherlands by Barbara Henkes and Geertje Mak, among others (Henkes, 1995; Mak, 2000). One of the most interesting episodes in this respect is the attitude of Dutch authorities towards the marriages and relationships of Chinese men and Dutch women in the 1930s and during the Second World War.

Chinese seamen

Concern about Chinese migrants and their relationships with white women was not limited to the Netherlands and has been extensively described for the United States and Canada. Both countries had a Chinese Exclusion Act, limiting migration of 'Orientals', introduced in 1882 and 1923 respectively (Calavita, 2000). The Netherlands had its own way of dealing with them.

Chinese seaman started coming to the Netherlands from 1911. Shipping companies used them to break the strike of seamen in Rotterdam and Amsterdam and they remained in the Netherlands afterwards. At first, authorities did not pay attention to them, but from the 1920s the idea of a '*Chinezenprobleem*' (Chinese problem) emerged. These concerns grew even stronger when, after the economic crisis of 1929, some shipping companies simply dumped their Chinese sailors in Rotterdam (Zeven, 1987).

Relationships and marriages with Dutch women were seen as part of this *Chinezenprobleem*. Not that there were that many: in 1936 sociologist Van Heek counted 10 marriages and 10 permanent relationships in Amsterdam, and 13 marriages and 19 long-term relationships in Rotterdam (Van Heek, 1936). However limited their numbers, they were a cause of concern and caused interventions by the police. The National Archives contain a file entitled '*Documents concerning surveillance and measures against marriages of Chinese and Dutch women*' that gives insight into these interventions.⁸⁴

One of the reasons for concern was that these relationships were seen as a threat to the monogamous marriage model. As polygamy was allowed in some parts of China, the Chinese husbands to be were required to provide a certificate from China proving their bachelor status. As these documents did not exist in China, a written statement by the husbands' parents could suffice initially. Later, the Dutch authorities no longer accepted this and required a document provided by the Chinese authorities. If the husbands could not provide these documents, couples were not allowed to marry (Chong, 2005, p. 43). Hence, cohabitation was not necessarily a couple's choice but was the consequence of document requirements. Nevertheless, its informal character made these relationships all the more suspect. The attitude towards these relationships and marriages is exemplified by a quote from a civil servant scribbled on a decision not to allow the establishment of an association of Chinese migrants:

When a people loses its sense of nationality, its women will be misused by Chinese and other Asian vermin. (Quoted in Wubben, 1986, p. 95.)

Shortly before the Second World War, some couples married in haste because they feared they would no longer be allowed after the war broke out. The concerns that had existed before the war about the assumed misuse of Dutch women by Chinese 'vermin' got new vigor in the context of Nazi ideology that considered these relationships a racial shame. In September 1941, Police Commissioner of Rotterdam Roszbach wrote that 389 Chinese, who could not leave as a result of the war, lived in the Katendrecht neighborhood. Their stay caused the danger of close relations with the Dutch population, especially because of the lack of Chinese women.⁸⁵ Roszbach had already been with the police before the war, but he had become a member of the Dutch National Socialists party (NSB) in 1941, half a year before he wrote this. He stated that he had for a long time, although unsuccessfully, tried to prevent families of mixed blood. Because the Chinese had no income of their own, they were likely to use marriage to act as a parasite on the Dutch population. Nevertheless, returning the family to China would be unjustifiably harsh. The authorities were faced with the problem that there was no prohibition applying to marriages with Chinese. Consulted lawyers warned that a policy of preventing only marriages of Chinese by cooperation between civil registry and police would be discriminatory. However, in individual cases, it was attempted to prevent relationships by arresting Chinese men just before a planned marriage. This practice was hampered by the fact that the Dutch fathers often saw the Chinese men as suitable marriage partners for their daughters and

refused to file a complaint. Roszbach suggested placing the Chinese in internment camps; this did not materialize because the camps were meant for other purposes – the internment of Jews. In response to his writings, the higher ranking authorities urged to constantly check the contacts between Chinese men and Dutch women. A list of couples of Chinese men and Dutch women, married or cohabiting, was compiled; of the first three names on the list, of couples cohabiting and without children, the Chinese men were arrested and put into custody. The men were released after promising to break up their relationship and promising not to consort with white women any more. The men who had children were not arrested, because separation from their families would mean that poor relief would have to be provided. Here, the interests of racial purity collided with economic interests.

These surveillance activities relating to marriages between Dutch women and Chinese men continued during the whole war period. The police in The Hague, Rotterdam and Nijmegen were involved, as well as civil registrars, immigration officials, public prosecutors and the Secretary General of the Ministry of Justice. Although marriages with Chinese were never prohibited legally, wartime authorities tried what they could to prevent them.

Guest workers

As we have already seen, concerns over relationships between Dutch women and guest workers increased in the 1960s and 1970s. These relationships were a sensitive issue in the media, connected to criminality and public order (Wentholt 1967: 177-178). An example of the link made between these relationships and public order are the words of female MP Wttewaall van Stoetwegen (Christian Historical Union) during a debate on a new Aliens Act in 1967, six years after the riots between Dutch and Italian men over Dutch girls:

‘I want to devote a few words to foreign guest-workers. This is a difficult problem. Dutch employers go to far-away countries to look for workforce. We offer them well-paid jobs, but we have hardly any housing and care for these people. They must leave their families behind and have to stay away from our girls. Can one wonder that things sometimes go wrong? In the weekends one can see groups of foreign workers walking through the cities, shivering with cold because of our cold climate. Then one understands why this may turn out wrong. They meet with girls in cafes, start a fight – sometimes over these girls, and a knife is easily used. Expulsion is then often the result. I have seen these people before the Advice Committee (of Alien Affairs, bdh), accompanied by a lawyer, an interpreter, some-

times witnesses, for instance a woman who provided them with shelter and was not only filled with motherly feelings towards the man that appealed to the Committee.⁸⁶

This public order discourse also influenced the issuing of residence permits. In the interest of public order, special conditions could be connected to residence permits.⁸⁷ In two published court cases from 1970 and 1973, migrant workers were ordered to stay away from their Dutch girlfriends and move elsewhere. If this order was ignored, the residence permit could be withdrawn.⁸⁸ This happened to the Turkish migrant worker I.C. who came to the Netherlands in 1966. His request for an extension of his residence permit in August 1967 was refused because of the public interest. I.C. had been living together with a Dutch woman. Because I.C. was already married in Turkey, the authorities thought it unlikely that their relationship would result in marriage. They also feared the tensions that the couple's relationship had caused in the Turkish community in the Netherlands. On appeal, the Advisory Committee of Migration Affairs, after hearing the couple and the local police, suggested that the Minister of Justice grant a prolongation of the residence permit, but only under specific conditions:

‘That the local police succeeds to end the social abuse, to transfer the Turks who originally were housed in families of weak social structure to hotels and pensions; that the public moral and herewith the public order as protected by the police cannot be maintained if the alien in question continues living in the family of Mrs. E. (...); that if the alien upon first notice leaves to live in a hotel or pension, or starts working elsewhere in the Netherlands, and does not maintain regular contact with the family of Mrs. E.; in that case, the public interest does not resist an extension of his residence permit.’⁸⁹

I.C. declared that he was willing to leave Mrs. E, after which his residence permit was indeed extended, under the conditions that he left her house within 14 days and refrained from regular contact with her family. After a while however, it turned out that he had kept in touch with Mrs. E. He appealed the conditions of his residence permit, arguing that no such measures were taken against Dutch people living together and that the conditions were based on the personal interpretations of the controlling official. On appeal, the Council of State ordered that the condition to refrain from contact was difficult to control, and it was in fact an encouragement of decent moral behavior. However, the Council upheld the condition that I.C. should leave the house of

Mrs. E. and live elsewhere, which was not seen as an interference in the private sphere and in accordance with the Aliens Act of 1965.

European migration law: Belgium-route and fraudulent marriages

After this historical exposé, I come to present-day migration law. Times have certainly changed. Under the influence of human rights and equality principles, the regulations and policies that I have described so far, that directly restrict sex and marriage on the basis of differences in ‘race’ and ‘ethnicity’ between the partners, are nowadays unthinkable. Still, in this part of my contribution I argue that mixed marriages are still a sensitive issue in current migration law.

Elsewhere I have argued, together with Saskia Bonjour, that even present day family reunification policies are shaped by conceptions of what the role of men and women ought to be, what marriage ought to be, what parenting ought to be, and what family ought to be; norms that define who ‘we’ are and what distinguishes ‘us’ from the ‘others’ (Bonjour and De Hart, 2013). Against this background, mixed marriages are still perceived as ‘unlikely couples’. What is more, part of the struggles between Member States and the European Commission and EU Court of Justice over the limits of national sovereignty in relation to family reunification policies focus on nationality-mixed couples.

At first sight, no direct distinctions have been made between mixed and non-mixed marriages in migration law. However, until January 2014, Dutch migration law made a distinction in family reunification policy for refugees based on the nationality of their family members. Family members who reunited with a refugee immediately or within three months after a refugee status was granted to the sponsor could also obtain a so-called ‘derivative refugee status’. The important advantage of such a status, compared to a regular status, is that it is not dependant on the relationship with the refugee. Hence, if the marriage breaks up, the derivative refugee status is not affected, while a regular status dependant on the family relationship is. This difference became all the more important now that since 2012, an independent residence status is granted after five years of marriage and residence instead of three years.

The derivative refugee status was not granted to family members if they did not have the same nationality as the refugee, in other words, in case of a nationality-mixed marriage or family. The background of this policy was the proposition that the family members did not need protection, as they could establish themselves in the country of the other nationality. Only if they could prove that they could not find protection there, the family members could obtain a regular residence status (De Hart and Zwaan, 2014).

In 2012, the Advisory Committee on Migration Affairs and the Legislation Section of the Dutch Council of State both advised that the nationality-requirement be abolished, because the Family Reunification Directive and the Qualification Directive of the European Union did not allow excluding family members of 'mixed' families. According to the Netherlands Institute for Human Rights it constituted a violation of article 8 (family life) and article 14 (equality) of the European Convention on Human Rights.⁹⁰ Although the government initially rejected their advice, as the result of an amendment submitted by the Social Democrats (PvdA) and Progressive Liberals (D66), since January 2014 nationality-mixed families are no longer excluded from the more favorable derivative refugee status.⁹¹

The abolishment of the exclusion of nationality-mixed families was the result of domestic political pressure, but it also derives directly from European migration law. Different treatment of nationality-mixed families is not allowed in European migration law; their equal treatment is the starting point. The Union Citizens Directive grants a right to family reunification for Union citizens, regardless of the nationality of their family members, even if they are third country nationals (TCN, nationals from outside the European Union).⁹² This has in fact been the starting point of European migration law from the moment the right to free movement was developed, in 1968.⁹³

Nevertheless, it is especially in relation to these nationality-mixed families, of Union citizens and TCN family members, where transposition problems of the Union Citizens Directive were identified by the European Commission.⁹⁴ This concerns especially the 'own nationals' ('static citizens') with a TCN family member who, after having made use of their right of free movement, return to their country of nationality; herewith, their family reunification is no longer covered by national migration law but by the more favorable European migration law for Union citizens. I will return to this issue below, with the discussion of the Belgium-route.

In 2012, the EU Court of Justice ruled that the Association Agreement with Turkey also applies to nationality-mixed families.⁹⁵ In this case the Court answered prejudicial questions from Germany, involving a Thai woman who had been married to a Turkish husband. She claimed a prolonged residence right on the basis of the Association Agreement, after their marriage of almost seven years broke up. Before the Court, the German, Italian and Austrian government argued that the Association Agreement only applied to Turkish family members of Turkish workers, fearing that a different interpretation would stretch the rights of the Agreement too extensively to a seemingly countless number of TCNS. Here, the Member States clearly expressed a fear

of losing sovereignty over migration control. The same goes for discussions of the so-called Belgium-route.

The Belgium route

To adequately understand debates on the Belgium-route, it is important to know that the legal position of Dutch nationals with a TCN family member who have not made use of their right to free movement is not covered by the Family Reunification Directive, nor by the Union Citizens Directive. As a consequence, Dutch nationals with a TCN family member do not have a right to family reunification, and their legal position is covered by national, Dutch family reunification policy. This means that a Belgian woman with a Moroccan husband in the Netherlands is better off than a Dutch woman with a Moroccan husband in the Netherlands. This situation is referred to as 'reverse discrimination'; I will not go into that issue here (see Walter, 2008).

However, Dutch nationals with TCN family members can become Union citizens with TCN family members by making use of their right to free movement, by establishing themselves with their family in another Member State. Upon return to the Netherlands, they can reunite with their TCN family members under the more favorable Union Citizens Directive, which means that they are excluded from the visa requirements, the pre-entry test (*Wet Inburgering Buitenland*) and the income requirement of 100% of the minimum wage. As a strategy of 'geographies of evasion', some couples have made use of their right of free movement under EU law, especially with the purpose of circumventing the restrictive Dutch family reunification policies. This has become known in the Netherlands as the 'Belgium route'. However, the same strategy has been used by couples in Britain, moving to Ireland, in Denmark, moving to Sweden and in Germany, moving to France or the Netherlands. These strategies are occasionally openly prorogated by lawyers and NGOs such as *Stichting Buitenlandse Partner* (Foundation Foreign partner, an NGO of Dutch nationals with migrant family members).⁹⁶ Nevertheless, a study of the Belgium route indicated that this strategy was not frequently used, nor that those using it were involved in marriages of convenience (Groenendijk and Fernhout, 2010).

Although some Member States, among them the Netherlands, have vehemently reproached the use of 'geographies of evasion', the EU Court of Justice has decided more than once that its use cannot be seen as abuse of EU law.⁹⁷

Fraudulent marriages

Another issue in the struggles of Member States and the EU over family reunification policies are fraudulent marriages or marriages of convenience.

In response to the critique by Member States on the implications of the Union Citizens Directive, the European Commission pointed out that Community law cannot be relied on in case of abuse or fraud.⁹⁸ The guidelines to the Union Citizens Directive define marriages of convenience as:

marriages contracted for the *sole* (emphasis in original, bdh) purpose of enjoying the right to free movement and residence under the Directive that someone would not have otherwise.⁹⁹

The Commission also formulated 'indicative criteria' that national authorities may take into account in detecting fraudulent marriages, as 'possible triggers for investigation':

- Couple has never met before marriage;
- Inconsistencies about personal details, first meeting, or other personal information;
- Do not speak language understood by both;
- Evidence of some of money or gifts handed over (except if as a form of dowry);
- Past history of one or both spouses (earlier marriage of convenience or fraud);
- Development of family life after expulsion order;
- Divorce shortly after acquiring right of residence.¹⁰⁰

To aid Member States, the Commission has developed a *Handbook on fraudulent marriages* that further sets out what is allowed and what not. The guidelines and Handbook also set limits to what Member States can do: the burden of proof lies with the authorities, they may not deter from the use of the right to free movement or discriminate on grounds of nationality, and systematic checks of all migrants or whole classes of migrants, for example those from a given ethnic origin are not allowed.¹⁰¹

In spite of these clear limitations, the Commission has in fact guided Member States to the surveillance of fraudulent marriages as a way of maintaining at least some of their national sovereignty in family reunification matters. In the guidelines to the Family Reunification Directive, it is even recommended that Member States take 'firm action' in relation to fraudulent marriages.¹⁰² The Commission did so, although during the negotiations on the Green Pa-

per to the Family Reunification Directive it established that none of the Member States had been able to provide statistics on the magnitude of the problem of fraudulent marriages.¹⁰³

The Netherlands is one of the Member States that has jumped at this opportunity and has significantly stepped up its surveillance of fraudulent marriages. Since the introduction of the Fraudulent Marriages Act of 1994 (Jesurun d'Oliveira, 1998), this surveillance had become infrequent and ineffective. Nowadays, couples who apply for family reunification already have to provide details about their relationship on the application form. Couples who are considered suspect can be invited to the office of the Immigration and Naturalization Service (IND) for an interview and can be interviewed separately.

The published case law demonstrates a shift from Dutch sponsors with TCN partners to EU sponsors with a TCN partner. Moreover, the case law also demonstrates that the practice of checks on fraudulent marriages is grounded on the persistent perception of mixed marriages as deviant and unlikely; this is what makes them object of surveillance practices.

In two 2013 court cases, the Dutch Minister of Justice put forward the argument that the marriage of a Turkish husband and Eastern European wife was fraudulent, among other things, because it constituted a combination of nationalities that was not 'obvious', considering 'the cultural and/or religious background'.¹⁰⁴ They were, in other words, framed as fraudulent because they are culturally and religiously mixed. The Arnhem court ordered that the checks were justified, because earlier experiences by the IND had proven that the number of marriages between Union citizens of Eastern European nationality and third-country nationals had increased, and some of them had turned out to be marriages of convenience. Although having a certain nationality alone could not be sufficient for further checks, in this case the court thought that there had been other circumstances that justified suspicion. These circumstances were that the Eastern European woman had left Turkey shortly after their wedding and that the couple did not share a common language. Hence, in the court's opinion there were no systematic checks made which would be in violation of the European Directives.¹⁰⁵

It may be true that marriages between third-country nationals and Eastern European Union citizens occur more frequently than before. However, this is probably the result of the increasing travel opportunities for Eastern Europeans after the fall of the Berlin Wall and the accession of countries like Poland and Bulgaria to the European Union. This has not only made them into sizeable migrant groups in Western European countries but also into tourists, travelling across Europe, including Turkey. More than before, Eastern European and Turkish men and women have the opportunity to meet each other

and, as we have learned in this contribution, where people from different groups meet, they start relationships and marry, regardless of how law categorizes them or what the social environment may think about their differences.¹⁰⁶

As to the 'indicative criteria', they are highly subjective. Even if one may think that it is peculiar if the spouses do not share a common language, this says little about their motives to marry each other. However, it speaks volumes about how immigration authorities and courts still have a stake in protecting the monogamous marriage model and what they think to be a proper marriage. Whatever one may think of the size of the problem of fraudulent marriages and the need for their surveillance, it is remarkable that such practices are still, explicitly, built on the notion that religious and cultural differences make some couples unlikely couples.

12. Conclusions: studying mixture and law

When I started doing the research for this contribution, I had little idea what I would find, and what I have found has far exceeded my expectations. However, this overview of regulations of mixed sex and marriage in the Netherlands is far from complete, nor was it intended to be. It raises more questions than it answers. I intend to answer some of the questions raised in the coming years.

As this overview demonstrates, mixture and mixed relationships are nothing new and not a consequence of modern globalization, but they have always been there, in spite of strong forces against them. Law has played its role in writing them out of Dutch history, making for a seemingly 'white' history of the Netherlands, in which mixed relationships appear as something new. It is time that we acknowledge the extent to which the Netherlands has always been mixed and how mixture was dealt with legally; this is part of Dutch history.

Much more research is required. In spite of the lip service being paid to the intersectionality of race/ethnicity, gender and class, most studies still assume families to be mono-racial or mono-ethnic in composition. Instead, mixture and mixed relationships and marriage should be taken out of the footnotes and endnotes and into the core of academic research, including legal studies (Twine, 2010).

In studying migration law, it is important to transcend the common assumption that underlies so much of the academic writing, namely that family members share the same legal status. In the United States, Fix and Zimmer-

man (1999) concluded that one in ten American families was a mixed-status family: a family consisting of both citizens and non-citizens. There is no reason to believe this would be entirely different in Europe and the Netherlands. In the Netherlands, most sponsors of family reunification with TCN family members are not third country nationals themselves, but Dutch nationals, naturalized or by birth. Hence, families may consist of insiders and outsiders at the same time. They may be made up of any combination of legal migrants, undocumented migrants and citizens. Their composition may change over time, as undocumented migrants become legalized, legal migrants naturalize, or a migrant status or citizenship is lost. Family relationships may lead to the inclusion of outsiders but also to the exclusion of insiders. The number, complexity and fluidity of mixed-status families complicate the design and implementation of the already complicated arenas of migration law. This is why they are an excellent case to study the complexities of European migration law; a study that I intend to do in the coming years.

The discussion of regulation of mixed sex and marriage has demonstrated how law categorizes and identities are constructed through law; law produces 'race' and 'ethnicity'. As law is manmade, by legislators, lawyers, legal scholars, judges and officials, it is they who are doing the law's work in shaping identities and constructing mixed couples as unlikely. It is vital that, as lawyers, we remain aware and are critical about how we contribute to these constructions.

Categorizing and identity construction does not only happen in the texts of law (law in the books), but also in its enforcement. As we have seen, enforcement policies (law in action) have always differed significantly from law in the books. As Calavita (2000) has argued, the indeterminate, continually shifting and sometimes even chaotic-nature of enforcement stemmed not merely from the inevitably vague nature of the law on the books, nor simply the ambiguities of the wording of legal texts, but it was fundamentally related to the contradictions and paradoxes of prevailing assumptions about race, class, and identity more generally.

In this contribution, I have covered various fields of law: family law, international private law and European migration law. In my work as professor of migration law at the University of Amsterdam, I understand 'migration law' in this broad sense, not only including the admittance and residence of migrants on Dutch or European territory, but including different fields of law linked to migration, where identity constructions of race/ethnicity and mixture may take place. Except for the fields already covered here, this includes for instance nationality law, anti-discrimination law, custody and adoption.¹⁹⁷

The discussion of the regulation of mixed sex and marriage has revealed continuities and change. As already argued, the changes concern the shift from prohibition to regulation and the motives for regulating mixedness: from mixedness as a biological threat, to a social one. The acceptance of mixed couples has increased and this is demonstrated in the way they are regulated, most significantly in European migration law.¹⁰⁸ Still, I have argued that even nowadays mixed couples are perceived as unlikely couples and this has effects for the ways in which they are regulated.

But some mixed couples are more unlikely than others. Another continuity over time has been that relationships of Dutch white women and black, migrant or 'other' men have always caused more concerns than those of Dutch white men and black, migrant or 'other' women. Even if the numbers of the gender-race pairing of white woman-black men were quite low, they were the ones causing anxiety and moral panic; but they were also the object of spectacle and amusement (Altena, 2012). They were often the reason that regulations were instigated. This applies even nowadays in the case of fraudulent marriages that are still ascribed predominantly to Dutch and European white women and 'other' TCN men, although there is no evidence that they occur in large numbers (Bonjour and De Hart, 2013). In the coming years, I intend to acquire a deeper understanding of the surveillance of fraudulent marriages and how enforcement practices relate to notions of nation, economic privileges and the monogamous marriage model. In the context of European migration law, how are the limits set by the European Directives, guidelines to the Directives and Handbook translated into domestic enforcement practices and how can variations between different national contexts be explained?

Finally, we have seen that mixed couples and families were not powerless, but developed and employed strategies in response to the law. Just like Richard and Mildred Loving, many couples that were meant to be kept apart by law found ways to get around the law or navigated the law (De Hart, Van Rossum and Sportel, 2013). More than one author writing on mixed couples and the law has noted how couples persisted in their wish to be together, in spite of sometimes harsh legal measures and social contempt. This insight is equally relevant for present-day family reunification policies that not only keep families divided, but even more, they increase the price to be paid to be together (Leerkes and Kulu-Glasgow, 2011; Strik, De Hart and Nissen, 2013). In order to fully understand law, it is vital to look at the impact of law in the everyday lives of people.

If the people affected are long dead and gone, as most of the people that we came across here, it is not easy to make their voices heard. But sometimes we can learn about the past of regulating mixed sex and marriage by using 'oral

history' as a method. In the coming years, I plan to realize a life-history project, interviewing Dutch women who married a foreign husband before 1964 and automatically lost their nationality as a consequence. Until quite recently, I considered this loss of nationality as something of a distant past, until I met Marleen, a Dutch woman who had automatically lost her Dutch nationality at the end of the 1950s, when she married her Turkish husband. She regained her Dutch nationality as recent as 2003. I also came across Dita, who married an Egyptian husband in 1962 and always had been able to prolong her Dutch passport without problems. Until two years ago, when she was told that she had not been a Dutch national since her marriage and her passport was withdrawn. And about a month ago, I talked to Helen, who married a South African in 1945, and has not regained her Dutch nationality since. The stories of Marleen, Dita and Helen can tell us about how mixture was regulated in the past. They can tell us about the history of Dutch citizenship law, but also about the meaning of citizenship more generally. This is especially relevant in times in which deprivation of citizenship seems to become more and more common, as exemplified by the government plans to make so-called jihadists, Dutch youngsters with dual citizenship who may have one or two parents or grandparents born elsewhere, automatically lose their Dutch citizenship (see also Mantu, 2014).¹⁹⁹ It is not just their story, but the story of all of us.

Notes

1. This text is an extended version of my inaugural speech held on 13 June 2014 at the University of Amsterdam.
2. See <http://www.lovingday.org/>, last visited 16 April 2014.
3. *Loving v Virginia*, 388 U.S. 1 (1967). See also the documentary *The Loving Story* by Nancy Buirski, Docuramefilms 2011, with contemporary footage about the trial before the Supreme Court.
4. www.Lovingday.nl, last visited 21 April 2014.
5. *Brown v Board of Education*, 347 U.S. 483 (1954).
6. CNN 4 November 2009, <http://edition.cnn.com/2009/US/11/03/louisiana.interracial.mar-riage/index.html?eref=onion>, last visited 16 April 2014.
7. 'Autochthone' and 'allochthone' are policy terms used to distinguish between people of Dutch birth or ancestry and non-Dutch birth or ancestry. Allochthones are further divided into 'western' and 'non-western' allochthones. Yanow and Van der Haar (2013) argue that these categories are linked to race.
8. Pascoe (2009, p. 13) uses the term 'white supremacy'.
9. From the sixteenth to the eighteenth century in the Netherlands, a Plakkaat was an ordinance to announce a government regulation to the population.
10. 'Inwoonders worden scherpelijck verbooden, haar met de negerinnen of veel meer met de vrije Indiaaninnen gemeen te maecken en vleeschelijke conversatie met die te pleegen, op verbeurte van die sulx doet, van twee ponden Zuycker.' (Cited in Van Lier, 1949, p. 55.)
11. Gouvernements and Advertentieblad Suriname 1817, nr. 3.
12. 'Dat wij tot ons leetweesen ondervonden hebben dat sommige vrouwspersoonen sig niet hebben ontsien van vleeschelijk gemeenschap te houden met negers ende dewijl dat saken sijn streckende tot een groot schandaal voor de geheele colonie: Soo ist dat wij om diergelijke onnatuurlijke hoerereien en overspellen in toenevende voor te comen, goedgevonden hebben te ordonneren ende statueren soals wij ordonneren en statueren bij desen, dat in gevalle sal wreden bevonden dat eenig blank vrouwspersoon, ongehuwt sijnde, vleeschelijke gemeenschap zal hebben gehouden met een neger, hetselfve vrouwspersoon strengelijck sal worden gegeselt ende voor haar leven uit dese colonie gebannen. Ende in gevalle eenig getrouwt vrouwspersoon daertoe mogte komen te vervallen, sal deselve niet alleen strengelijck werden gegeselt, maer ook gebrandmerkt ende voor haar leven uyt deese colonie gebannen ende sal de neger daarmede hetselve sal zijn geschiet sonder eenige conniventie met de dood worden gestraft. Ende opdat niemand eenige ignorantie soude kunnen pretendeeren sal dese alomme worden gepubliceert ende geaffigeert daermen gewoon is publicatie en affixie te doen. Source: Plakkaat 240, West-indisch Plakkaatboek.' (Cited in Neus, 2007).
13. National archives, Nummer toegang: 1.05.03, inventarisnummer: 258, folio 407.
14. I thank Inge Stet for transcribing the document. 'Dat haar vader Hertogh Levij op zaterdag den — laastleden is uijtgegaan naa Sara Sanders naadat hij alvorens aan de Indiaan genaamt a — aan coomende haar gedetineerde oom Jacob Aronse Polak gezegt heeft gij moet heenen gaan, waarop door de Indiaan geantwoord is,

ik zal de blanken geen quaad doen. 't Welk zij, gedetineerde, herhaalt heeft toen haar vader uijt was. Waarop de voornoemde Indiaan die deur en vensters heeft toegedaan en haar op de kelder zettende heeft agterovergegooijt en naa haar de rokken opgeraapt hebbende vleeselijk heeft bekend. Maar niet kan zeggen wat door hem verrigt is alzo haar oogen zijn toegeweest. Maar wel gevoelt heeft wat hij deede dat daarop verder gebeurt is dat de voornoemde Indiaan agt dagen daar naa, zijnde geweest den —, bij haar weder is gekoomen als haar vader bij haar Oom Jacob Aonse Polak was, en aan haar gevraagd heeft off hij zijn pijp mogte aansteeken. 't Welke zij aan hem heeft toegestaan. Alsmede dat zij teegens hem gezegt heeft, ten tijde als hij woude heenen gaan: blijft nog wat mijn vader zal niet quaad worden. Dat daarop de voornoemde Indiaan de vensters van haar vaders huijs is toegedaan doen ende in huijs gecoomen zijnde haar heeft nedergeset op een stoel en, naa haar alvorens de rokken opgenoomen hebbende, heeft haar voor de tweede maal vleeselijk bekend.'

15. See the novel by Cynthia MacLeod, *Elisabeth Samson*, Amsterdam: Sirene 2002. Her story was also made into a theatre play in 2014, written by Karin Amatmoekrim, named 'Elisabeth Samson against the Dutch state'.
16. The white population in Surinam, as in the Dutch East Indies, consisted not only of Dutch nationals, but also of Europeans of various nationalities.
17. 'Dat het repugnant en afschuwelijk is, schandelijk ten hoogsten voor een blanke, dat hij, het zij uit een verkeerde Wellust, of om voedsel, zodanige huwelijk aangaat, alsoo sulx altoos in minachting hier is geweest. Het is ook zeeker, dat Wij meerder door een gevoele die de Negers hebben, van een preamentie boven hun dat Wij Lieden zijn van een beetre en edelder Natuur als zij. Ons moeten in 't midden van so een verkeert en verdraait geslacht staande houden, als door onse weselijke magt, en wat sullen Sij van die Exellente Natuur al meer geloven, als zij Sien, dat Sij maar Vrij hebben te wezen, omsig te verbinden, door een Solemnee huwelijksband met Ons, en dus hun kinderen pair en compagonon met de Onze Sijn, sal die Lachensiteit van Blanken, die sig So vernederen, niet in aanmerking komen?' (Cited in Van Lier, 1949, p. 49.)
18. The same metaphor was used in the US to describe marriages of white women and black men (Pascoe, 2009, p. 72).
19. It is kept in the Jewish Historical Museum (see Huussen, 2002, p. 25). The text can also be found in Meijer (1949).
20. 'Zullen ook ghene Joden en de Christenen tezamen mogten trouwen, op peyne van metter doot gestraft te werden als naer rechtens.' (Meijer, 1949.) I have not found any references to the actual enforcement of such executions in the literature.
21. 'Geen Joodsche man zal een Christen vrouw moghen nemen in huwelijk, nocte geen Christen man een Joodsche vrouw, op pejne van met den swaerde gestraft te werden, zoo man als vrouw, zoo Christen als Jode. Indijen een Joodsche man ofte vrouw met een Christen vrouw ofte man buijten huwelijk vleeschelijk converseeren, zullen zijde gestraft werden met geesselingen, banissement vijfde landen ende confiscatie van de goederen.' (Meijer 1949: 119-120.)
22. 'Dat vele joden uit Portugal voortvluchtig en meest in dezen landen gekomen, zich zoo gedroegen en zich met de dochteren dezer landen vermengden, dat het

- tot groote opspraak strekte, in het bijzonder van de remonstranten.’ (Cited in Koenen, 1843.)
23. In his novel *Een Schitterend gebrek* (2003), Arthur Japin describes how the heroin Lucia, Casanova’s first love, ends up in Amsterdam working as a prostitute. One day, when two very nice young men visited her, they were raided and the men, who were Jewish, arrested.
 24. In contemporary sources he is also mentioned as a servant of her brother and is both named Michael and Jacob. In the archives of Delft, I found the marriage announcement (*ondertrouw*) on 28 June 1681 between Jacob Verboon and Elisabeth (Eva) Cohen. I assume this is the couple. On the same date there is a document stating ‘om redenen op te houden’, which implies that the marriage could not be concluded. Burgerlijke Stand Delft, Archiefnummer 14, inv. 132, folio, 155.
 25. Description of this story based on ‘den galanten mercurius. voortbrengde wonderlijcke geschiedenissen, deftige staets-redenen, aerdige bejegeningen-verscheyde boerterijen, notable spreucken, verstandige brieven ende verschyct van Poezei, 1684’.
 26. Another story of a Christian-Jewish couple is that of Sophia van Noortwijk and Salomon de Pereira, see Le Bailly 2013, also described by Van Lennep 1856.
 27. ‘Zijn er onder hunne Joodse gebruiken niet zoodanigen waartegen een moeder, die een Christin was, uit natuurlijke tederheid voor haar lieflijke zuigeling, de onverwinnlijkste afkeer zoude hebben, en waaraan de Jood, als het bijzonder ken-teken van de kinderen van Abraham, natuurlijk ten sterkste gehecht zoude zijn?’ (Cited in Huussen, 1975, p. 104.)
 28. Dagverhaal der handelingen van de nationaale vergadering nr. 140.
 29. *De Tribune*, 24 September 1934, Het rein-arische huwelijk in Amsterdam.
 30. Cited by MP Boon in Dutch parliament, *Handelingen II* 21 November 1935, p. 501.
 31. Convention du 12 juin 1902 pour régler les conflits de lois en matière de mariage. http://www.hcch.net/index_en.php?act=text.display&tid=13.
 32. Court Rotterdam, 18 December 1933, *NJ* 1934, 546.
 33. Court The Hague, 28 August 1936, *NJ* 1936, 920.
 34. German women until 1974 had no right to pass on their nationality to their children. See De Hart 2012: 67 ff.
 35. Court Rotterdam, 22 May 1936, *NJ* 1936, 454.
 36. Court Den Bosch, 15 June 1936, *NJ* 1936, 479.
 37. Burgerlijke Stand Eindhoven, Deel 78, Jaar 1936, Akte 415. Detmar was naturalised in 1937: Margaretha would have been naturalized automatically with him. *Handelingen II* 14 December 1937, p. 772.
 38. Court Arnhem, 2 March 1939, *NJ* 1939, 930. For another refusal, see Court Amsterdam, 21 January 1938, *NJ* 1938, 331.
 39. Court Den Bosch, 31 July 1936, *NJ* 1936, 860.
 40. *Handelingen II* 21 November 1935, p. 501. Memorie van Antwoord, Bijlage A Tweede Kamer 1937, 2. IV. 8-9, p. 16.
 41. The only public protest in Germany against the deportation of Jews came from German women married to Jewish man, the famous *Rosenstrasse* protest. The women demonstrated before the building where their husbands were held captive, after which the husbands were released (Stoltzfus, 1996).

42. See also: M. Arian, 'De laatste groep die is blijven zwijgen spreekt.' In: *Auschwitz Bulletin* 54, no. 4, December 2010.
43. Calmeyer is a controversial figure. According to some he is a hero who saved the lives of many Jews by categorizing them as non-Jewish. On March 4, 1992, Yad Vashem honored Hans Calmeyer posthumously with the title 'A Righteous Man Among Nations'. (Stuhldreher, 2007, p. 134) views his contribution much more critically, portraying him as a legalist German civil servant, who supported the anti-Jewish policy, but intended to apply it correctly. See also e.g. Van Galen-Herrmann 2009; Middelberg 2005.
44. 'Wie uns von den zuständigen deutschen Autoritäten mitgeteilt wird, ist den Juden die Eheschließung und der Geschlechtsverkehr mit nicht-Juden verboten.' (Cited in Stuhldreher, 2007, p. 243.)
45. Appeal Court The Hague, 25 October 1943, *NJ* 1945, 583 (successful); Court Amsterdam, 18 March 1941, *NJ* 1944, 87 (rejected); Appeal Court Amsterdam, 25 November 1942, *NJ* 1942, 485 (inadmissible). My thanks to student-assistant Dion Kramer for providing me with the relevant case law.
46. See diary Victor Klemperer, *Ich will Zeugnis ablegen bis zum letzten*, Berlin: Aufbau Verlag 2000.
47. <http://www.joodsmonument.nl/person/462638>, last visited 8 March 2014.
48. *Leeuwarder Courant*, 24 March 1953; *De Waarheid*, 24 March 1953, Geldzucht werd verraadster noodlottig.
49. Appeal Court Leeuwarden, 17 April 1946, *NJ* 1946, nr. 317 (cited in Kisch, 1981, p. 154).
50. Stadsarchief Amsterdam, http://stadsarchief.amsterdam.nl/english/amsterdam_treasures/for-eigners/negro_palace/index.html, last visited 4 April 2014.
51. *Algemeen Handelsblad*, 25 August 1937, Surinamers in dienst van caféhouders. Waarom te Amsterdam maatregelen zijn genomen; *Volksdagblad*, 8 June 1937, De Amsterdamse politie en de negers (letter to editor); *Suriname*, 18 June 1937, Surinamers voelen zich tenachtergesteld; *Het Vaderland*, 28 July 1937, Surinamers te Amsterdam.
52. *Handelingen II* 1936-1937, 16 November 1937, p. 202.
53. See e.g. Groen, 1979 and De Liagre Böhl and Meershoek, 1989. Earlier, in the First World War, relationships of women with 'colored' colonial soldiers in the French army, especially the ones occupying the Rhineland, had been a cause of concern and public uproar that involved the media and women's organizations throughout Europe (Van Galen van Last, 2012).
54. *De Waarheid*, 5 May 1945, Een ernstig woord aan de Groninger Vrouwen en meisjes. Pamphlet Meisje look out for a baby, www.geheugenvanNederland.nl, last visited 19 April 2014.
55. Migration historian Marlou Schrover argued in her inaugural speech 'About the girls, for the girls' that in the Netherlands, over a period of decades, riots between Dutch men and migrant men were about Dutch girls (Schrover, 2011).
56. 'Velen die met de moffen heulden, Hebben daarvoor reeds gebrand, Meisje, ook gij zijt verraadster, van de eer van uw vaderland.' Source: Nederlandse Liederensbank, www.liederen-bank.nl/text.php?recordid=80749&lan=nl, last visited 19 April 2014.

57. *Nijmeegs Dagblad*, 20 February 1945 (cited in Okkema, 2012, p. 56).
58. *Dagblad van het Noorden*, 29 June 1947, Van Canadese velden.
59. *Handelingen I* 25 February 1958, p. 3022.
60. *Handelingen I* 26 February 1958, p. 3049.
61. Between 1887 and 1897 40 marriages between European women and native men were concluded, against 1,008 of European men and native women (Nederburgh, 1899, p. 107). It is however possible that an unknown number of marriages was concluded according to the native law of the husband (e.g. informal Muslim marriages), that were not registered in the civil registry that was only meant for Europeans (Van der Meer, 2006).
62. Clarification to the proposal Mixed Marriages Act by the State Commission (Nederburgh, 1899).
63. 'De Europese vrouw, die zulk een huwelijk wil aangaan is tevoren reeds altijd hetzij maatschappelijk hetzij zedelijk meestal in beide opzichten diep gezonken, en het huwelijk heeft niet tot gevolg dat het haar of voor haar zelve of voor het oog der maatschappij uit die toestand van vervallenheid opricht.' (Quoted in Wertheim, 1956, p. 171.)
64. 'De vrouw die in de kampong trouwt, behoort er feitelijk thuis en moet er maar blijven.' (Quoted in Wertheim, 1956, p. 171.)
65. For a later and different view, see Kollewijn, 1955.
66. *Handelingen II* 27 February 1931, p. 1866-1867.
67. Cowan and Abendanon, cited in Kollewijn, 1955, p. 148.
68. This regulation was legally challenged, although unsuccessfully, by the Javanese woman Paira, the mother of Melanie Lucie Preijer, who was born out of wedlock from a relationship with a European father. High Court, 9 September 1897, *Het recht in Nederlandsch-Indië*, vol. 69, p. 128-132.
69. Source: Dutch Central Bureau Statistics, History Population.
70. *Tractatenblad* 1987, 139. It was ratified by the Netherlands in 1990. There is also a European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, also from 1980, that is much less important in practice and will not be discussed here.
71. *Handelingen II* 1 April 1981, p. 4397-4399.
72. In 2010, 2011 and 2012, both parental abductions from the Netherlands to abroad and vice versa were mostly performed by mothers; abductions to and from the Netherlands mostly involve neighbouring countries. Source: letter Secretary of Justice to parliament, 3 May 2013.
73. E.g. NRC, 26 september 2008, Moeder zonder kind; NRC *Handelsblad*, 3 May 2014, 'Ze wilde liever dood dan naar haar vader in de VS'.
74. High Court, 25 April 2008, *NJ* 2008, p. 539.
75. *Gooi en Eemlander*, 3 januari 1930, Nederlandsch Indië. Inlanders in Nederland. En onze omgang met hen. Een ernstig woord. Bij de intrede van 1930. In 1936, 766 Dutch women lived in a marriage with a non-Dutch husband, mostly of other European nationalities. The number of marriages with Indonesian husbands is unknown (Hondius, 1999, p. 65).

76. *Het Vaderland*, 22 March 1933, Gemengde huwelijken een waarschuwing (Mixed marriages. A Warning); *Haarlems Dagblad*, 17 June 1933, De vrouw in de XXe eeuw, huwelijken met andere rassen.
77. Copy on file with author of a flyer, stamped March 1986 by the Utrecht municipality. Kindly provided to me by Leila Jordens-Cotran.
78. *Trouw*, 5 April 1966, Meisjes die met een moslem trouwen krijgen waarschuwing. Stencil wijst meisjes op veel gevaren (Girls who marry a Muslim are being warned. Flyer points out many dangers to girls).
79. *Leeuwarder Courant*, 25 October 1966, Huwelijk met arbeider uit het buitenland. Soms verstreckende gevolgen.
80. *Handelingen I 1965-1966*, nr. 124, preliminary report budget Ministry of Culture, Recreation and Social Work, p. 10.
81. *Handelingen I 1965-1966*, nr. 124a, final report budget Ministry of Culture, Recreation and Social Work, p. 12.
82. *Leidse Courant*, 6 July 1967, Th.J. van der Heijden raadt Nederlandse meisjes aan: Bij (gedwongen) huwelijk met een Marokkaan nationaliteit behouden (Th.J. van der Heijden advises Dutch girls: Retain citizenship upon a (forced) marriage to a Moroccan); *De Tijd/Maasbode*, 17 July 1967, Trouwen.
83. Brinkgreve and Korcz (1978, p. 46) analyzed advice columns in *Margriet*, one of the major women's magazines in the Netherlands in the 1950s and 1960s, and concluded that interethnic or interracial marriages hardly appeared as a topic. As far as they did, they discussed relationships with Indonesian and Surinamese men. Although racism was rejected, the advice columns warned against mixed marriages, because 'Negroes' were different.
84. 921, Stukken betreffende het houden van toezicht op en het nemen van maatregelen tegen huwelijken van Chinezen met Nederlandse vrouwen, 1941-1944. Inventaris van het archief van de Rijksvreemdelingendienst (RVD) en taakvoorgangers van het Ministerie van Justitie, 1918-1945 (-1981), 2.09.45, nr. 42.
85. Letter 23 September 1941, Roszbach to Central Bureau Ministerie van Justitie: Rijksvreemdelingendienst (RVD) en Taakvoorgangers, 921. Inventaris van het archief van de Rijksvreemdelingendienst (RVD) en taakvoorgangers van het Ministerie van Justitie, 1918-1945 (-1981), 2.09.45, nr. 42.
86. 'Ik wil een enkel woord over de buitenlandse werknemers zeggen. Het gaat hier om een moeilijk probleem. De Nederlandse werkgevers gaan naar verre landen om werkrachten te zoeken. Wij bieden hun goed betaalde functies aan, maar wij hebben voor deze mensen nauwelijks huisvesting en verzorging. Hun gezinnen moeten zij achterlaten en van onze meisjes moeten zij afblijven. Moet men zich er dan over verbazen, dat er wel eens iets mis gaat? (...) Als men in het vrije weekend groepjes buitenlandse werknemers door de steden ziet lopen, bibberend van de kou vanwege ons kille klimaat, dan begrijpt men, dat dit vaak op ellende uitdraait; zij ontmoeten meisjes in cafés, gaan vechten – soms om die meisjes – en een mes wordt vaak zeer gemakkelijk gehanteerd. Uitwijzing is dan vaak het gevolg (...). Zo heb ik deze mensen vaak voor de adviescommissie zien verschijnen, begeleid door een advocaat, een tolk, getuigen in allerlei vorm – bijvoorbeeld in de vorm van de vrouw, waarbij zij onderdak hebben gevonden en die vaak niet

- alleen van moederlijke gevoelens is vervuld jegens de man, die beroep op de commissie heeft.’ *Handelingen II* 1968-1969, 22 April 1969, p. 2647.
87. Article 11 section 2 Aliens Act 1965.
 88. KB 4 maart 1970, no. 99, ARB 1970, p. 490-492, Rekers D8-1 and KB 23 oktober 1973, no. 92, Rekers D8-1.
 89. ‘Dat de politie ter plaatse erin is geslaagd, zulks om aan maatschappelijke wan-toestanden een eind te maken, om de Turken die aanvankelijk in Nederlandse gezinnen van zwaksociale structuur gehuisvest waren, over te brengen naar hotels en contractpensions; dat de publieke moraal en daarmee de openbare orde ter plaatse, als voren door de politie bevorderd, niet kunnen worden gehandhaafd indien de betrokken vreemdeling blijft wonen in het gezin van mevrouw E.; dat het aldus in strijd met de publieke moraal en daarmee met de openbare orde is dat de vreemdeling langer bij het bedoelde gezin inwoont; dat, indien de vreemdeling na eerste aanzegging onverwijld zijn intrek neemt in een hotel of pension dan wel elders in Nederland gaat werken, en hij geen geregelde contacten met het gezin van mevrouw E. onderhoudt, het algemeen belang er zich niet tegen verzet dat de vergunning tot verblijf van de vreemdeling wordt verlengd.’
 90. Advisory Committee Migration Affairs, *Signalering gezinsmigratie met vier aandachtspunten voor het beleid*, September 2012; *Kamerstukken II* 2011-2012, 13 293, nr. 4, p. 7. College Rechten van De Mens, Advice 2013/02, Nareiscriterium gezinshereniging.
 91. *Kamerstukken II* 16 April 2012-2013, 13 293, nr. 8.
 92. Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004/38.
 93. Regulation (EEC) 1612/68 of the Council of 15 October 1968, art. 10 section 1; *Official Journal*, Nr. L 257 19/10/1968, p. 0002-0012.
 94. In its report on the implementation of Directive COM (2008) 840 final. See also Communication from the Commission to the European parliament and the Council to Directive 2004/38, COM (2009) 313 final.
 95. EU Court of Justice, 19 July 2012, C-451/11 (*Dülger*).
 96. www.stichtingbuitenlandsepartner.nl has information on their website on the Belgium route, last visited 20 April 2014.
 97. Case 109/01, EU CoJ, February 27 2003 (*Akrich*); Case C-127/08, EU CoJ (Grand Chamber), 25 July 2008 (*Metock*).
 98. COM (2009) 313, p. 14 ff.
 99. COM (2009) 313, p. 15.
 100. COM (2009) 313, p. 16.
 101. COM (2009) 313, p. 16, note 62.
 102. Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014) 210 final, p. 26.
 103. A comparative study of the European Migration Network concluded there was no indication that fraudulent marriages were a significant problem in the sense of their numbers (EMN 2012).
 104. Court Den Bosch, 13 August 2013, *MigratieWeb* ve13001772 ECLI:NL:RBDHA:2013:11310. The Dutch government had mentioned Poles with Egyptians

- and Bulgarians with Turks earlier as unlikely combinations during political debates in 2009. Source: *Kamerstukken II* 2009-2010, 32175 (6): 4.
105. Court Arnhem, 9 April 2013, AWB12/23279, on file with author. The appeal before the Highest Administrative Court was dismissed because of lack of issues of unity of law, development of law, or legal protection. Afdeling Bestuursrechtspraak 13 March 2014, 201304300/1/V4.
 106. In 2011, 4,925 Poles, 2,260 Czechs, 2,992 Hungarians and more than 87,000 Bulgarians travelled to Turkey as tourists. Source: Turkish Ministry of Culture, <http://www.kultur.gov.tr/EN,36568/number-of-arriving-departing-visitors-for-foreigners-and-ci-.html>, last visited 9 May 2014.
 107. See Onwuachi-Willig, 2013; Kennedy, 2003.
 108. Another example is offered by nationality law, where both the migrant and the Dutch partner in a nationality-mixed marriage, as well as their children are allowed to have dual nationality (De Hart, 2012, p. 60).
 109. Wijziging van de Rijkswet op het Nederlanderschap ter verruiming van de mogelijkheden voor het ontnemen en verlies van het Nederlanderschap bij terroristische activiteiten, 30 August 2013. The Bill has not been submitted to Dutch parliament yet, but can be found on the government website, <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/08/30/wijziging-rijkswet-op-het-nederlanderschap.html>, last visited 20 May 2014.

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