The Extraterritorial Application of the Nuremberg Laws. 
*Rassenschande* and “Mixed” Marriages in European 
Liberal Democracies*

Frank Caestecker and David Fraser

Department of Modern and Contemporary History, University of Ghent, 
Belgium; Professor of Law and Social Theory, School of Law, University of 
Nottingham, United Kingdom

1. Introduction

In this article, we examine the question of Nazi laws prohibiting “race 
defilement” (*Rassenschande*) from a new historico-legal perspective. After 
establishing the centrality of the legal prohibition of sexual relations between 
“Jews” and “Aryans” to the worldview and political project of the National 
Socialist regime in Germany, we then study the contemporary impact of 
the Nuremberg Law prohibitions on “racial” inter-marriage in European 
countries outside Germany. More specifically, we offer the first socio-legal 
and historical study of the interactions between and among principles and 
rules of private international law, particularly understandings of the ideas of 
*ordre public* and public policy, internal, domestic juridical, administrative and 
constitutional law considerations, the treaty regime of the Hague Convention 
on marriage and conflicts of law, and domestic and international political
concerns arising out of the international refugee crisis of the late 1930s. This complex set of factors is elucidated in order to examine the different reactions of European liberal democracies to the practical and ideological impact of Nazi law. Our analysis underlines the dynamic, fluid and differential extra-territorial impact of the Nazi legal regime in various jurisdictions. In order to understand both historical and current understandings of the nature and impact of Nazi law, we highlight the way in which the key National Socialist bio-legal category of *Rassenschande* was dealt with outside Germany under democratic rule of law norms.

The comparative study of the responses of several European liberal states to the phenomenon of so-called “mixed” marriages on their territory, a legal and political question which arose in the wake of the flight of Jews and others from Germany after Hitler’s rise to power, raises intriguing and vital jurisprudential issues of law and legal history. Although the number of German emigrants involved in these marriages was limited, the passion of the debates which arose in legal and governmental circles underlines the importance of these issues. “Mixed” marriages caused legal and political tensions within Western European polities not only because of the innovative antisemitic discrimination of Nazi law, but also as a result of the political and practical challenges to migration management raised by forced emigration from Nazi Germany. Basic jurisprudential considerations of the possible identification of the binding nature of Nazi racial prohibitions in an extraterritorial context raised fundamental questions about the definition of law itself within democratic systems, and about institutional roles and competencies, not to mention internal and international political questions of major import. This study is the first to consider these issues in a comparative socio-legal context informed by archival research and an extensive review of secondary materials.

A point of clarification is perhaps required. Two kinds of “mixed” marriage were at issue in Europe in the 1930s. Bi-national marriage was most commonly referred to as mixed marriage. During the refugee crises of the 1930s, these marriages were criticized by some as creating gender-biased barriers to entrance to the territory of the liberal states of Western Europe.1 The

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1) See e.g., Karen Knop and Christine Chinkin, “Remembering Crystal Macmillian: Women’s Equality and Nationality in International Law”, *22 Michigan Journal of International Law*