



**Some cursory remarks on race,
mixture and law by three Dutch jurists**

Betty de Hart

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

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

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L.W.C. van den Berg, photo Piet Stek
W.F. Wertheim, source: Spaarnestad
H. de Bie Source: stadsarchief Rotterdam

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Introduction

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

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

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

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This lecture addresses the question how race-thinking was part of the Dutch legal system and legal scholarship as a way to explore the 'legal archive'. It discusses the legal work on race and mixture of three Dutch jurists: L.W.C. van den Berg (1845-1927), a colonial legislator who wrote the Mixed Marriages Act for the Dutch East Indies; W.F. Wertheim (1907-1998), professor in colonial law, who later distanced himself from the Dutch colonial system of which he had been part, and H. de Bie (1879-1955) who, as the first children's judge in Rotterdam, worried about Dutch girls and their intimate relationships with Chinese men. This study argues that understanding our legal past (the 'legal archive') is crucial to further our knowledge about how race and mixture work in law today, and that such knowledge is vital for social justice.

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