

**Pariser Tageblatt, 25 November 1935: editorial regarding the absurdity
of the definition of race according to the Nuremberg Laws¹**

*Nuremberg trinkets.*² *Legally unenforceable bans on marriage*
by Dr Ernst Frankenstein³

The *Pariser Tageblatt* has already reproduced in detail the implementing provisions to the Nuremberg Jewish Laws of the Third Reich.⁴ We have also already availed ourselves of the opportunity provided by publication of the texts to criticize these implementing provisions, which only make the laws even more curious. Nonetheless, the following expert comments by the universally esteemed specialist in the problems of international civil law ought still to be of great interest to our readers.

It has taken two months for the implementing regulations to the Law for the Protection of German Blood and German Honour to appear.⁵ One may thus assume that they not only were drawn up with great care but also take into account the numerous objections that have already been raised to the wording of the law. The impression created by the regulation is all the stronger. It certainly confirms very clearly that, despite intense efforts, the concept of race has not been successfully defined.

What is prohibited is marriage between German subjects of the state of German or related blood and Jews. What constitutes a Jew is defined by § 5 of the First Regulation to the Reich Citizenship Law: 'A Jew is someone who is descended from at least three grandparents who are full Jews according to race. A grandparent is automatically considered to be a full Jew if he has been a member of the Jewish religious community.' Therefore, race is determined not by a biological characteristic but rather by the legal concept of membership of a religious community. But that is, as the phrase '*automatically* considered to be a full Jew' shows, only one instance in which one can belong to the Jewish race. And the other instances?

Here the lawmaker falls short. He is unable to define the concept of the Jewish race. Admittedly, he works with the concept of descent from Jewish grandparents who are 'full Jews according to race', but can explain this comprehensive term only by using a

1 'Nürnberger Tand. Juristisch undurchführbare Eheverbote von Dr. jur. Ernst Frankenstein', *Pariser Tageblatt*, 25 Nov. 1935, pp. 1–2. Excerpts published in *UuF*, vol. 11, pp. 177–179. This document has been translated from German.

2 A reference to the saying 'Nürnberger Tand geht durch alle Land' (Nuremberg trinkets pass throughout the land), which itself referred to the city's heyday between 1470 and 1530, when Nuremberg's products were traded throughout the world.

3 Dr Ernst Frankenstein (1881–1959), lawyer; practised law in Berlin; he emigrated to Paris in 1933 and in 1936 to London; author of works including *Internationales Privatrecht (Grenzrecht)* (vols. 1–4, 1926–1935) and *Justice for My People: The Jewish Case* (1943).

4 See 'Vier Kategorien 'Nichtariern'. Die Ausführungsbestimmungen zu den Nuernberger Judengesetzen erlassen – Die Vorschriften ueber die Eheschliessung – Regelung der Beamten- und Dienstbotenfrage', *Pariser Tageblatt*, 16 Nov. 1935, p. 1, and 'Wie die Nuernberger Gesetze angewendet werden. Die ersten Ausführungsbestimmungen – Sondervorschriften fuer *Mischlinge* – Pensionierung der letzten juedischen Beamten – Aufnordnung von Nichtariern – Der gemilderte Hausangestelltenparaph', *ibid.*, 17 Nov. 1935, p. 2.

5 This refers to the First Regulation to the Reich Citizenship Law, 14 Nov. 1935: see Doc. 210.

less comprehensive one, that is, by referring to those who 'are automatically considered to be full Jews'. The law does not state who is not 'automatically considered to be a full Jew' based on membership in the Jewish religious community but is nonetheless a full Jew. Here there is a yawning gap that cannot be filled.

Whether grandparents who have been raised in a different religion or with no religion by their Jewish parents are 'full Jews according to race', the law does not and cannot say, because the concept of race in the legal sense simply does not exist. For the third generation, the law swaps the concept of race for the concept of religious affiliation but is unwilling to acknowledge it, and thereby enters an insoluble contradiction. One must either abandon the concept of race on which the world view of the present-day German lawmaker rests, or one must define it in a way that is legally comprehensible, which is impossible.

This internal contradiction is exposed in every detail. For example, under § 5 of the Regulation to the Reich Citizenship Law, the 'Jewish Mischling' who descended from two Jewish grandparents, who also belonged to the Jewish religious community when the law was enacted or subsequently joined this community, is considered a Jew. While race is thus obviously something biological to which one is inescapably subject, for the 'Jewish Mischling', being a member of the Jewish race (more precisely, being a Jew) depends on whether he professes membership in the Jewish religious community, that is, on his will. Conversely, in the case of the Aryan who has converted and joined the Jewish religious community or is converting, it is not his denomination, not his will, that is decisive, but rather the biological factor of race. *This Jew is not a Jew.*

Indeed, there is more. If the Jewish son of a Jewish father and a non-Jewish mother marries a non-Jewish (Aryan) woman who converts to Judaism, and raises his children in Orthodox Judaism, these Jewish children, whose male ancestors were always Jews, are not Jews. They are 'Jewish Mischlinge', who under § 2 of the implementing regulation are even forbidden to marry Jews, because only one of their grandparents was a full Jew.

These observations suffice. The concept of the Jew, against whom the ban on marriage is aimed, is a pseudo-concept that eludes all definition. The fundamental concept of 'grandparents who were full Jews' is not universally defined at all, but rather is defined for only one of its cases of application (belonging to the Jewish religion), while the other cases of application remain open. Among the offspring, however, someone who professes the Jewish religion is a 'Jew' one moment and not a 'Jew' the next, and even finds himself forbidden to marry members of his own faith.

The confusion of concepts rises to the point of complete absurdity in the provision of § 4, which prohibits marriage between Jewish Mischlinge who have only one full Jew as a grandparent. In other words: the Orthodox Jews mentioned in the example above may marry only Jews who are of pure Aryan descent ...

No, the implementing regulations have not improved the law. They continue to permit marriage between German subjects of the state 'of German or related blood' and Negroes and mulattos, but fall short when they try to define the 'Jew' whom one is not allowed to marry. One can call someone who belongs to the Jewish religious community a Jew. One can also extend the term to the previous members of this community and to the non-Jewish descendants. But one cannot create a concept of the Jewish race that, as an umbrella concept, includes both the narrower concept of adherents of the Jewish religion and an undefined unknown. No one can say what, under the law, a 'fully Jewish

grandparent according to race' who does not belong to the Jewish religious community is. And yet, this is what the regulation requires.

A work of legislation that uses something unknown and indeterminable as an initial concept may be interesting. For the application of law outside the country of origin, it is out of the question, because it lacks the most important prerequisite of the law: determinability of its concepts.