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THE APPLICATION OF THE NUREMBERG RACE LAWS ON CHRISTIAN AND NON-CHRISTIAN JEWS BY THE CHURCH OF SWEDEN, 1935–1945

In this paper, I will discuss the effect of the Nuremberg Laws on impediments of marriage in the Church of Sweden, 1935–1945, as an example of how the encounter and relations between Christians and the non-Christian other were problematized after Christians of Jewish descent had been defined as "others" by the National Socialist race laws. Consequently, when dealing with history, we must, at least sometimes, speak about the Christians, the others, and the "other" Christians.

The Nuremberg race laws and the Swedish situation

According to the Nuremberg Laws of September 1935, German citizens of so-called Aryan descent were prohibited from marrying Germans or foreigners of Jewish descent. This effect of German law in several European countries was in accordance with the Hague Convention of 1902, which had been in force in Sweden since 1904. Since the literal interest of the Nuremberg Laws was not to exclude Jews, but to protect "German blood", Jewish refugees from Germany were allowed to marry foreign citizens, Jewish or non-Jewish alike. Formally, the limits were set not for them, but for the so-called Aryans.

Within Germany, the Nuremberg Laws affected approximately 502,000 "full Jews", defined according to "race". Of these, 450,000 were defined as Jews also according to religion, while 50,000 were Christian "full Jews", and 2,000 Christian "three-quarterly Jews". Further affected were between 195,000 and 205,000 *Mischlinge,* of

which 70–75 thousands were "half-Jews" and 125–130 thousands "quarterly Jews"[1]. According to the implementation rules of November 1935, the definition of who was and who was not a Jew was to rely on annotations on religion in the records. This implies that a person's race was judged not only according to the person's own religion, but according to his or her grandparents' religion as well.

Still, one cannot say that the National Socialist definition of "Jews" was based on religion and not on race. The religion of one's grandparents was only one component, though often the most important one. Since no one had been registered according to "race", the investigation was bound to rely on records of the religion of a person's ancestors. This reveals that the very concept of blood-based race legislation was logically flawed[2]. It could suffice to have paid taxes to an Israelite religious community or – for a *Mischling* – to be married to a Jew. This shows that the matter was not a religious one, but covered different forms of recorded extensions to the mythically-understood Jewry[3]. Historian Raul Hilberg has correctly stated that the Nuremberg Laws were "based on the descent: the religious status of the grandparents", and that there was "a sizeable group of people who were Christian by religion and Jews by decree", who became victims to the race laws[4].

Not all European states were parties to the Hague Convention of 1902. In his great study of the Nuremberg Laws and the deprivation

[1] Saul Friedländer, *Nazi Germany and the Jews*, vol. 1, New York: Harper Collins, 1997, p. 151.

[2] Norbert Frei, "Die Juden im NS-Staat", in: *Das Dritte Reich: Ursprünge, Ereignisse, Wirkungen*, Martin Broszat & Norbert Frei (Hg.), 1983, p. 188.

[3] Cf. Michael Ley, "Zum Schutze des deutschen Blutes…", In: *"Rassenschande" – Gesetze im Nationalsozialismus*, 1997, pp. 23, 77.

[4] Ingvar Svanberg, Mattias Tydén, *Sverige och Förintelsen. Debatt och dokument om Europas judar 1933–1945,* 1997, p. 92; cf. Raul Hilberg, *The Destruction of the European Jews,* vol. 1, New York: Holmes & Meier, 1985, p. 73; Raul Hilberg, *Perpetrators, Victims, Bystanders: The Jewish Catastrophe 1933–1945*, New York, NY: Aaron Asher Books, 1993, p. 150. Hilberg writes about religion as the sole criteria for categorization in an "Aryan" or "Non-Aryan" group, though "not the religion of the person involved but the religion of his ancestors". However, this did not concern the Nuremberg Laws, but the earlier race provision of 7 April, 1933.

of the rights of the Jews within civil law, Andreas Rethmeier has shown that, at the time the Nuremberg Laws were adopted, we may distinguish three groups of states. First, those that consequently applied the domicile principle, which means that impediments of marriage were always tested according to the law in power at the actual place of residence or stay. This principle was applied in the United Kingdom, the United States, Denmark, Norway, Iceland, Latvia, Lithuania, Bulgaria, most South American states and for Germans in the Soviet Union.

In the second group, the impediments were tested according to the law in the homeland of the parties. This was the case in Finland, Estonia, Belgium, France, Spain, Portugal, Austria, Czechoslovakia, Yugoslavia, Greece, and Romania. The home law was also applied in the third group of states, yet not because of the national principle, but as it was applied by the Hague Convention of 1902. This group included Germany, Sweden (from 1904), the Netherlands, Luxemburg, Switzerland, Italy, Hungary, Danzig, and Poland[5].

It might seem that there was no difference in practice between the second and the third group: the result should have been identical. However, that was not the case. In the second group of states, based on citizenship only, it was possible to refuse to apply rules that contradicted the national *ordre public.* This did occur while applying the Nuremberg Laws. In the third group, on the other hand, no exceptions could be made because of a national *ordre public,* unless already made in the national legislation which incorporated the Hague Convention into legal systems of different states.

From 1935 to the end of the Second World War, the Lutheran Church of Sweden, in its state function as a civil authority on impediments of marriage, did consider the Nuremberg Laws when making decisions that involved German citizens in Sweden. The Church of Sweden was responsible for all such decisions until 1991. In the 1930s, judicial commentators even emphasized that in their civil

[5] Andreas Rethmeier, *"Nürnberger Rassegesetze" und Entrechtung der Juden im Zivilrecht* (ser. *Rechtshistorische Reihe*, 126). Frankfurt am Main: P. Lang, 1995, pp. 211–213.

administration, ministers had to follow civil law, even if it clashed with their understanding of the Church doctrine[6].

From September 1937, Swedish citizens who wished to marry a German citizen of so-called Aryan descent were forced to sign a declaration stating that none of their grandparents had belonged to the Jewish race or religion. This practise followed a strong recommendation from the Swedish Foreign Office that had no historical or democratic legitimacy. Since 1863, Christian and Mosaic believers had been officially allowed to marry each other in Sweden, and no race legislation had even been proposed.

Clerical resistance

Not all ministers of the Church of Sweden followed the recommendations of the Foreign Office, but public criticism was as muted on this matter as on the effects of the Nuremberg Laws in Sweden in general. There was no debate in Parliament. Some clergymen actively recommended the use of these declarations as late as autumn 1942.

In connection with international discussions of resistance, I have extended Paul A. Levine's theoretical model of "bureaucratic resistance", sometimes nuanced as "reluctance", emphasizing also the "bureaucratic acceptance" shown by the majority of clergymen. This "bureaucratic acceptance" must be clearly distinguished from the "bureaucratic enthusiasm" shown by only a very small fraction of civil servants and clergymen. It is doubtful whether acceptance should be understood as a form of collaboration. Alf Lüdtke has defined *Mitläufer* as "just to follow along", which in Germany meant "accepting (if not sustaining) state-organized mass murder"[7]. This reveals the difficulties in applying German historical terminology on circumstances in a non-allied and non-occupied country like Sweden. In Germany, characterizing someone

[6] Birger Ekeberg, "Giftermålsbalken", in: *Minnesskrift ägnad 1734 års lag. I.* Stockholm 1934, p. 205.

[7] Alf Lüdtke, "The Appeal of Exterminating 'Others': German Workers and the Limits of Resistance", in: *Resistance against the Third Reich 1933–1990*, Michael Geyer and John W. Boyer (ed.), 1994, pp. 59, 61.

as a "Jew", at least from 1941 onwards, could lead to quick death for the one so identified, but in Sweden, this never meant any life threat, at least not for individuals holding a Swedish permit of residence.

Oftentimes, bureaucratic resistance was quite inventive in finding ways around the law and the recommendations of the Foreign Office. I will give some examples.

One day in late July 1936, a young hopeful couple entered the Parish Office of St. Petri in Malmö to ask for the banns of marriage. Jakob Friedrich (Fritz) Mayer was 29; Emma Sara Schulmann was almost 24 years old. They were both German citizens. They met with Rector Albert Lysander, who identified them both as German citizens and the woman as a Mosaic believer. The banns were going to be read in church on Sundays, August 16, 23, and 30. All seemed hopeful. Sometime later, Lysander added: "The banns were signed by mistake and never published"[8]. This was due to a strong advice from the Foreign Office in Stockholm.

But the rector did not let the matter drop. He wrote a long article in protest, with the aim of changing the law or at last the consequences of Sweden's acceptance of the Hague Convention. However, the national newspaper *Svenska Dagbladet* refused to run the article.

On December 17, 1936, the young couple was married at the Copenhagen Magistrate, probably on the advice of Lysander. Since Denmark had not accepted the Hague Convention of 1902 and marriages concluded in a foreign country according to that country's law were valid in Sweden, the case was clear. One and a half years later, the woman was baptized by Lysander. The couple was not accepted as Swedish citizens until October 1946[9]. A German lawsuit aimed at annulling the marriage was initiated in 1940, but was never upheld. The German minister of justice had requested the chief prosecutor in Stuttgart to state an *Ehenichtigkeitsklage*. To avoid this, Mayer declared

[8] In: Sweden, Malmö stadsarkiv, Malmö S:t Petri E I:14. 1936 nr 137, A II a:111 f. 225.

[9] *Malmö stadsarkiv*, Malmö S:t Petri E I:14. 1936 nr 250, bil. H V b:45, A II a:111; Malmö S:t Pauli B I:14 f. 111, A II a:448 f. 165; *Västra Skrävlinge* A II a:83 f. 219, A II a:145 f. 170, C I:13 f. 115.

that he was going to divorce his wife. He was also falsely named a Swedish citizen. In February 1943, he was summoned to the German consulate about his military service, but in October of that same year he lost his German citizenship[10]. Germans of Jewish descent residing in foreign countries had lost their German passports back in 1941.

Lysander's conduct may be described as bureaucratic resistance. He also showed a continuing reluctance to have anything to do with the race declaration forms recommended by the Foreign office. Instead, he let the German consul handle the 'German' part of the impedimental process. In some cases, this was done simply with a telephone call. Here, Lysander acted independently, creating a new space of action.

In another case, Dean Svenæus in Karlstad actively tried to help a mixed couple to get married in Norway, though the outbreak of the war eventually prevented the marriage from happening. He had been advised to do so by Gösta Engzell, the new chief of the Law Department in the Foreign Office, who himself showed a good example of bureaucratic resistance. The contrahents were both baptized Christians, the man in the Roman Catholic Church and the woman in the Old Catholic Church. He was of so-called Aryan descent, whereas she was of Jewish ancestry. They got married later in Stockholm, on the false pretension that both were stateless, although only the bride had in fact lost her German nationality.

The bureaucratic resistance was not directly motivated by theological reasons. Still, one might say that theology was made visible in the actions of these clergymen before the application of the Nuremberg Laws. When facing the demands of bureaucracy, it was clear to them that the bureaucratic perspective was not the only one. Like almost everyone at the time, they shared the 'self-evident' assumptions of the racial

[10] In: *Auswärtiges Amt Politisches Archiv*, Berlin, R99963, Inland II A/B: Ausbürgerungen, 300. Liste, 1943, Oct. 2 (Jagusch/Der Reichsführer-SS und Chef der Deutschen Polizei to Auswärtiges Amt 1940 Jan.18, also to Abteilung I des Reichsministeriums des Innern 1940 Jan.18, Kirchoff/Deutsches Konsulat Malmö to Der Reichsführer-SS und Chef der Deutschen Polizei 1940 Feb.6, Nolda/Deutsches Konsulat Malmö to Auswärtiges Amt 1943 March 27, Nischke/Der Reichsführer-SS and Chef der Deutschen Polizei to Auswärtiges Amt 1943 June 15, Deutsches Konsulat Malmö to Auswärtiges Amt 1943 July 15).

paradigm, but they were simultaneously motivated by the Christian interest and caring for every single human being and his situation, probably also supported by the theological understanding of their vocation as clergymen. Their resistance to the race laws is interesting as it shows that the prevailing racial paradigm did not dominate or determine entirely their understanding. They refused to adhere to foreign concepts of law that clashed with the teachings of the church and wellbeing of the individual.

Bureaucratic acceptance

In another case comparable to the one in Malmö, German activities proved much more effective. German citizen Erwin Mühl wanted to marry Swedish citizen Rico Gordin, a woman of Mosaic faith. Since they could not marry in Sweden, the couple got married on April 15, 1937, in St. Pancras in England[11]. The German legation in Stockholm started an investigation. In March 1938, the findings were sent to Germany and on August 1, 1938, the chief prosecutor at the Landgericht Berlin wrote to the German minister of justice about the annulment of that marriage. The National Socialist machinery of law worked for several days to ensure a legally correct application of this perverted legislation. In a psychological sense, this intense work served to legitimize the "legal injustice" of the Nuremberg Laws[12]. The case was sent to the German Foreign Office, which returned it to the German legation in Stockholm, sending it to Erwin Mühl himself, who openly declared that his wife was of Jewish descent. On December 22, 1938, the Gestapo asked for further information about Mühl. The German legation wanted to confirm that Mrs. Mühl's parents had been married according to

[11] Certified Copy of an Entry of Marriage. Given at the General Register Office, Application Number R 402137, 25 April 2002.

[12] Rainer Faupel, Klaus Eschen, *Gesetzliches Unrecht in der Zeit des Nationalsozialismus. Vor 60 Jahren: Erlaß der Nürnberger Gesetze*, Baden-Baden: Nomos, 1997, p. 46, "nicht als legalistische Camouflage von Unrecht, das man selber als solches bewertet, sondern als den gewollten Höhe und Schlußpunkt für das Recht des neuen Staates des Nationalsozialismus, der ja bewußt mit allen gebrochen hatte, was es vorher gab".

Jewish rite and even asked the Mosaic community in Stockholm for a certificate. In November, 1939, the case was reclassified to one of loss of German citizenship. On September 30, 1939, Landgericht Berlin declared the marriage invalid, and the verdict was valid since November 22, 1939[13].

Now the Swedish Foreign Office contacted the Parish Office of Solna and six more months later, the Foreign Office wrote to the Parish Office in a rather undecided way that the German verdict should probably be entered into the Swedish church records. This meant also that the couple's child was to be retroactively made illegitimate. There is no sign whatsoever of any reluctance in the handling of the case at the Parish Office. First, the marriage was registered as having been dissolved, which did not alter the status of the child. Later this was changed into a notation about the the marriage having been annulled, rendering the child illegitimate[14].

The Swedish Foreign Office could have refused the notation, since 'Jew' according to Swedish legal understanding was a matter of religion only. However, this possibility had been excluded by the race declaration introduced by the very same office in September 1937. The Foreign Office could also have objected on the grounds that the Jewish party was born as a Swedish citizen and that the verdict had been passed without any possibility for the plaintive to defend their case.

A more practical way would have been simply not to enter the verdict, since the couple had lost their German citizenship. Because of that, they now had a full right to marry according to the Swedish law. As well as letting them marry again, the notation could have been ignored. Still, such notations are not legally constitutive. The correct, legal way would have been to let a Swedish court examine the foreign verdict's legality in Sweden. Instead, the Law Department in the Foreign Office examined the case and made a decision, acting totally against its

[13] Akten der Gesandtschaft Stockholm 497, D Pol 3 Nr. 3, Dr. Janz t. Büro R; Schumburg to Reichsministerium des Innern 1939, Dec.18, in: *Austwärtiges Amt, Politisches Archiv*, Berlin; Auswärtiges Amt to Deutsche Gesandtschaft in Stockholm 1940, Feb. 9; Verbalnote 1940, March 27, also in UDA R 34 Ct IX, 1939, Oct.-1940, Dec.

[14] *Stockholms stadsarkiv*, Stockholm. Solna A II a:92.

own statements that it had no right to interpret the law. When the war was over, this marriage had not been considered legitimate until 1955. Furthermore, this example reveals the complex nature of the effects of the Nuremberg Laws, since the personal situation in these cases could have been even worse for Swedish citizens of Jewish descent than for foreigners.

However, in another parallel case, a local pastor simply did not note the German annulment of marriage, so it did not affect any legal consequences in Sweden – a clear example of bureaucratic resistance.

A comparison with the Netherlands and Switzerland

A comparison with the situation in the Netherlands, where the 1902 Hague Convention was in force, shows that mixed marriages between German citizens were rejected there as well. However, Dutch authorities refused to use "Jewish" or "Aryan" as descriptions of Dutch citizens and sometimes rejected all use of German definitions of "Jewish". The public climate was completely different, with debates in Parliament immediately after the publication of the Nuremberg Laws. When the Dutch envoy to Stockholm, in November 1935, asked the Swedish foreign minister how the new German law was applied in Sweden, the answer he received was that the Swedish authorities had not taken any stance on this law but accepted it in practice.

In 1938, Sweden – with a delay of four days – followed Switzerland in introducing the so-called J-stamp in German Jewish passports. Both states wanted to strictly limit the number of Jewish refugees, Christian or non-Christian, without accepting the National Socialist racist ideology, with the consequence that several persons were treated in a special way only because of their Jewish descent. Switzerland had introduced two different J-stamps as early as 1936 within the civil service, to mark personal documents of foreign Jews[15]. By introducing the J-stamp,

[15] *Die Schweiz und die Flüchtlinge zur Zeit des Nationalsozialismus*, Zürich: Chronos, 2001, p. 97.

the Nuremberg Laws were accepted in practice as a base for bilateral agreement[16].

Officially, the Swiss government showed even more acceptance than the Swedish Foreign Office, but the federal constitution of the state made for different decisions in practice. In one case of 1938, the government of Basel referred to the Swiss *ordre public* as grounds not to consider impediments of a religious or political character. In another statement, a national authority in 1940 declared that the Swiss *ordre public* was to be applied when one of the parties was a Swiss citizen, but not when both were German refugees[17].

Concluding remarks

For many Swedish citizens, their everyday contacts with the Church of Sweden in matters of civil registration and impediments of marriage were what shaped their perceptions of the Church. Thus, as an example of ecclesiastical history of everyday life (*Alltagsgeschichte*), my study is of great interest from the point of view of Church history. It illustrates how the performance of its civil duties by the Church of Sweden was shaped by Swedish government policies, often applied from an administrative level only, and without theological considerations. The application of the Nuremberg Laws according to the Hague Convention of 1902 created a new group of people, besides the Christians and "the others", a group that was recognized as Christians but because of their descent treated differently in matters of marriage, if they wanted to marry a

[16] Georg Kreis, "Anhang. Amtlicher Antisemitismus? Zu den zivilstandsamtlichen 'Arierbescheinungen' in den Jahren 1936–1945", in: Georg Kreis, *Die Rückkehr des J-Stempels. Zur Geschichte einer schwierigen Vergangenheitsbewältigung*, Zürich 2000, p. 127; see *Die Schweiz und die Flüchtlinge zur Zeit des Nationalsozialismus*, Zürich: Chronos, pp. 97–113, see also Uriel Gast, "Aspekte schweizerischer Fremden und Flüchtlingspolitik vor und während des Zweiten Weltkrieges", in: Irène Lindgren, Renate Walder, *Schweden, die Schweiz und der Zweite Weltkrieg. Beiträge zum interdisziplinären Symposium des Zentrums für Schweizerstudien an der Universität Örebro, 30.09–02.10.1999*, Frankfurt am Main: Peter Lan, 2001, pp. 212–215.

[17] *Die Schweiz, der Nationalsozialismus und der Zweite Weltkrieg: Schlussbericht*, Zürich: Pendo, 2002, p. 430.

German citizen. To this, the Christian clergy and laymen reacted with different attitudes, ranging from bureaucratical resistance, reluctance to acceptance.

To conclude with, the German authorities defined "the other" by race, not by religion, but in order to determine who was Jewish and who was Aryan, they had to rely on registrations of religion, both in Germany and abroad. In Nazi Germany, Jewish Christians were to a large extent excluded from the Christian community. This was not the case in Sweden, but the dichotomy of Christians and the non-Christian other was supplemented with another one, that of Christians and "the Christian other", since in one important area, some Jewish Christians were excluded from the social community.