**The American Influence on Nazi Race Law**

In the decades leading up to the Second World War, the United States was the world leader in white supremacist legislation. As European nations colonized much of the world during those decades, they often looked to American race laws as examples for how to rule over people of color. White Americans had, after all, been crafting such laws for hundreds of years. White southerners, in particular, were considered by many Europeans to be the world’s experts on proper race relations, due to the fact that they had lived amongst and successfully controlled large black populations for many generations. The “white men’s” countries of the British Empire – Australia, Canada, New Zealand, and South Africa – where large populations of white settlers were sent, often considered themselves to be following in the footsteps of the United States.

Nazi Germany emerged in the midst of this wider world of white supremacy, in which it was common for Europeans to study and emulate American race law. Given this fact, it should not be surprising to discover that Nazis were influenced by American race law as well. However, scholars have failed to understand how extensive the Nazi engagement with American race law was until quite recently. On the American side, this is partly because Nazi Germany eventually descended into extremes so much more brutal than anything in the United States, that it was easy to assume that Nazis had nothing to learn about racism from the U.S. On the German side, it is partly because Germans have made a strong commitment to taking full responsibility for Nazi atrocities, making them hesitant to focus on the wider world of white supremacy that Nazis were a part of and where influenced by.

However, this scholarly lapse is also partly because as a society, when Americans think of the race laws of this era, the predominant images that come to mind are of Jim Crow. Because the Nazis did not develop a Jim Crow system of segregation, scholars have sometimes assumed too quickly that Nazis were not influenced by American race law. But as Yale law professor James Q. Whitman has recently documented in his important new book *Hitler’s American Model* – on which this article is based – the American race laws that the Nazis studied the most seriously were laws that applied to states *outside* of the South. These were laws regulating citizenship, immigration, sexual relations, and marriage rights. The fact that Nazis found such laws more helpful than Jim Crow itself should perhaps give us pause.

The figures who crafted Nazi race laws, of course, took Hitler’s perspectives very seriously. Hitler’s own statements regarding American racial practices and racial legislation would have been important to them as they began to study and debate American race law themselves. For this reason, we will start with a brief examination of Hitler’s views before turning to the legal minds of Nazi Germany, and their own engagement with American race law.

**Hitler’s Praise of American Genocide**

In 1928 – five years before he came to power, and over a decade before the outbreak of World War II – Hitler praised the United States for establishing its dominance through the genocide of Native Americans. White Americans, in Hitler’s words, “gunned down the millions of Redskins to a few hundred thousand, and now kept the modest remnant under observation in a cage,” by which he meant reservations. According to Hitler, white Americans had provided a model for other “Aryans.” Just as the United States had transformed itself into an immense global power through the conquest of the West – and the extermination of the “inferior races” that lived there – so too would Germany rise to immense power through a campaign of conquest and extermination in the lands to its east. Once the Nazis began those eastern campaigns, they sometimes referred to the Eastern European Jewish populations they exterminated as “Indians.”

For Hitler, the American conquest of such a vast and resource-rich land had been a turning point in world history, ushering in the first phase of white global domination, which Hitler now sought to complete. Indeed, the United States played a crucial role in the Nazi understanding of world history. According to *Volkisch World History* – a popular Nazi book about world history published in 1934 – “The most important event in the history of the states of the Second Millennium – up until the [First World] War – was the founding of the United States of America. The struggle of the Aryans for world domination received thereby its strongest prop.” In 1936, the popular Nazi text, *The Supremacy of the White Race*,called the founding of the United States “the first fateful turning point” in the rise of worldwide white supremacy. The genocide of Native Americans played a crucial role in that “turning point.”

Hitler not only praised the methods used to conquer the American West, he praised the racial order the United States had then created to prevent “racial mixing,” which had allowed white Americans, in his opinion, to maintain the “racial purity” of their supposed “Aryan” ancestry. Although Hitler certainly had no problems with the race-based totalitarianism of the Jim Crow South – according to his officials he praised the widespread practice of lynching there – the racial order he was most interested in involved policies that were found *outside* of the South. In the second volume of his notorious autobiography *Mein Kampf,* published in 1927, Hitler praised the American Immigration Act of 1924, which forbade Asian immigration and greatly restricted immigration from Southern and Eastern Europe. Immigrants from these European countries were seen as racially inferior both by Nazis, and by many white Americans. As Hitler put it in *Mein Kampf*: “The American union categorically refuses the immigration of physically unhealthy elements, and simply excludes the immigration of certain races.” Germany, he said, ought to do the same.

Some of Hitler’s fellow Nazis believed that the United States would gradually decline in power due to “racial mixing,” which would lead to a weakening of the “racial purity” of white American’s supposed Aryan ancestry. Hitler disagreed, arguing that due to its recent immigration laws, the United States was on the right track to maintain a racially pure Aryan nation, which would ensure its global strength. Although white Americans had once viewed their nation as the refuge of all oppressed people, and had therefore hesitated to limit any immigrant groups, they had learned from their experience with Asian immigration that such idealistic visions were naïve and posed a threat to them. This, at least, was the Nazi interpretation. The United States had learned their lesson, and Hitler warned that it was a lesson that Europe needed to learn as well. According to Hitler, Europe would soon be unable to compete with the United States unless it too embraced race-based immigration policies. Hitler was less concerned with the question of how to segregate “inferior” races, and was much more concerned with how to build a “racially pure” nation. American immigration policies, he felt, pointed towards an effective form of the population engineering he was interested in.

Hitler, in other words, saw a certain model in the United States: conquer a vast empire of land. Wipe out the “racially inferior” people who lived there. And then, create policies to ensure “racial purity” within that land.

**1933: The Prussian Memorandum**

Shortly after Hitler ascended to power in 1933, a team of Nazi legal experts gathered to discuss the creation of a new system of criminal law that would suit their purposes. These men were extreme even by Nazi standards: their team was led by Roland Freisler, who later became president of the murderous Nazi People’s Court, and attended the Wannsee Conference that endorsed the total extermination of the Jewish people. They composed a radical Nazi manifesto that became known as the Prussian Memorandum, which called for a harsh new system of criminal law. The memorandum would have a major impact on events to come.

The Prussian Memorandum called for the creation of “race crimes.” One of the proposed crimes was “Causing Harm to the Honor of the Race,” which specifically targeted people of color. It criminalized public affection – such as dating or dancing – between “Aryans” and people of color, under the claim that public displays of interracial affection would create scandals and would dishonor the “German race.” In describing the criminalization of interracial public displays of affection, the Memorandum noted that in the American South, the criminalization of such actions was more severe: in the South, even completely private interracial romance was often criminalized. In other words, these most radical of Nazis who gathered in 1933 to produce a new framework for Nazi criminal law advocated a law that was *less* severe than similar laws in the American South, and they knew it. After a few months of debate, they eventually decided against the law entirely, out of their concern that it would damage foreign relations with “colored” nations, and would thereby weaken Germany’s position in the world.

The Prussian Memorandum also proposed a criminal offense called “Race Treason.” According to the memorandum, “Every form of sexual mixing between a German and a member of a foreign race is to be punished as *race treason,* and indeed both parties are to be subject to punishment.” When the Prussian Memorandum was first circulated in September of 1933, this proposal set off a huge debate in Nazi circles. Would it be considered treasonous to marry and have children, or have sexual relations of any kind, with someone who had only a small amount of Jewish ancestry… as many “Aryans” did? Who exactly would be counted as a Jew? The most extreme Nazis argued that anyone with at least one Jewish grandparent should be counted as a Jew. Although such a definition was not nearly as extreme as the American “one-drop” rule – through which a person was counted as African American if they were known to have any African ancestry at all, even if they looked entirely white – many Nazis argued that it was still too extreme. Those who were “moderate” – by Nazi standards – argued that a person should have to have at least three Jewish grandparents to be legally categorized as a Jew.

Nazis also debated the proposed criminalization of interracial marriage. Although mixed marriages were considered scandalous throughout the West, and were generally not recognized as valid, they were rarely criminalized. The United States was the major exception. However, because the criminalization of mixed marriages did not exist elsewhere in Europe, not all Nazis felt comfortable – at this early stage – with this proposed law.

**1934: The Commission on Criminal Law Reform**

Nazi circles debated these issues for months. On June 5, 1934, a team of Nazi legal experts gathered to officially consider the demands made by the Prussian Memorandum. The meeting, called the Commission on Criminal Law Reform, included some of the most extreme Nazis who had drafted the memorandum, as well as Nazis who thought that the memorandum went too far.

It appears that in the months of debate between the circulation of the memorandum and the meeting, that some Nazis had discussed whether or not a Jim Crow-like system of segregation would work in Germany: for the meeting opened with one of the more extreme Nazi figures – Fritz Grau – presenting an argument against Jim Crow in Germany. Grau argued that African Americans were only able to be subjected to Jim Crow because following the end of their enslavement they were kept in a politically and economically powerless position. German Jews, Grau argued, had far more political and economic influence than African Americans did, which would make it impossible to simply force segregation on them. What needed to be done, according to Grau, was to create a harsh new system of laws that would isolate Jews from society and strip them of whatever influence they had in Germany. Many such steps were already being taken: just months into Hitler’s rule, Jewish participation in the professions of law and government were outlawed. Within another few months, journalism was added to that list, and Jewish participation in universities was targeted. At this meeting, Grau argued that after Jewish participation in German society was ruthlessly criminalized – and their position thereby greatly weakened – that perhaps other steps could be taken.

With that, the meeting left the notion of segregating Jews behind, and turned towards criminalizing them. The Nazi Minister of Justice, Franz Gurtner, laid the foundations for the following discussion by explaining that he had prepared a memo to help the participants think through the topics under debate: the legal classification of Jews, and the criminalization of interracial sex and marriage. Gurtner said: “I possess here a thoroughly comprehensible synoptic presentation of North American race legislation.” The memo contained descriptions of the race laws of 30 different American states, the ways they classified African Americans and other people of color, and the different laws and variations of punishments they had regarding interracial sex and marriage. The Minister of Justice, speaking to the assembled Nazis, continued: “I am ready to make this breakdown available to you.”

Although no copies of the document that Franz Gurtner then handed out have survived, it is clear from the transcript of the conversation – first made available in 1989 – that the document was based on the work of Heinrich Krieger, a Nazi who had studied law in the United States. Krieger published articles in prestigious American journals about the laws legitimating the subjugation of Native Americans, and would soon publish a major work titled *Race Law in the United States.* Based on Krieger’s work, the memo shared by Gurtner that day would have mentioned that in five states, “Coloreds are persons who have 1/8 or more Negro blood,” that in two states the proportion is 1/4, and that in others, the one-drop rule applies.

In describing the one-drop rule, Krieger wrote that in the United States, there was a “tendency in judicial practice to assign a person to the group of coloreds whenever there is even a trace of visible Negro physical features, and beyond that to do so when the Negro descent of the individual is common knowledge, without regard to how far the degree of descent reaches back.” Based on Krieger’s work, the memo also would have mentioned the variations of punishment for mixed marriages in different states: it was a misdemeanor in Nevada, a felony in Tennessee, an “infamous crime” in Maryland. Krieger wrote, “In several states imprisonment of up to ten years may be imposed, in others six months in the highest possible sentence.”

The purpose of this memo was to give the Nazis who were assembled a range of options to consider as they discussed how to best classify Jews and the criminalization of sex and marriage between Jews and “Aryans.” Throughout the entire rest of the discussion, these men made constant reference to the information presented in the memo about race laws in the United States. The transcript of this meeting includes one of the most extreme Nazis, Roland Freisler, saying: “This jurisprudence would suit us perfectly, with a single exception. Over there they have in mind, practically speaking, only coloreds.” But that didn’t matter to the men assembled: the same ideas could just as easily be applied to Jews as well.

A few months after this meeting took place, the massive *National Socialist Handbook for Law and Legislation* was published. The *Handbook* was a guide for crafting Nazi law, and included articles on a wide variety of legal subjects. The section on how to craft race legislation was titled “*Volk,* Race, and State.” It described the United States as the forerunner to Nazi Germany. A full quarter of the article was dedicated to describing American models of race legislation.

**1935: The Nuremberg Laws**

The Prussian Memorandum of 1933 and the Commission on Criminal Law Reform of 1934 involved deep and studious reflection on the race laws of the United States. These events helped lay the foundations for the infamous Nuremberg Laws of 1935, which created a full-scale racist state in Nazi Germany by stripping Jews of their citizenship and by outlawing sex and marriage between Jews and “Aryans.” The first of the three Nuremberg Laws, the “Flag Law for the Reich,” made the black swastika on a red background the official flag of Nazi Germany. It was this law that grabbed the headlines of most major American newspapers. The second law, called the “Reich Citizenship Law,” restricted citizenship in Germany to those with “German blood, or racially related blood.” The Reich Citizenship Law thus made it impossible for people of color to become German citizens, but its primary purpose was to strip Jews of their citizenship, and to thereby greatly decrease whatever remaining legal protections they had.

The Nazis had, of course, studied U.S. citizenship laws. When they looked to the United States, they found many forms of diminished, second-class citizenship. Native Americans, for example, had been considered “nationals,” but not citizens, until 1924. When the Philippines and Puerto Rico became colonies of the United States after the War of 1898, the United States engaged in complex legal maneuvers to avoid granting the people of those lands full citizenship despite the fact that the Constitution demanded that when the United States acquired new territories, that the inhabitants become citizens. The Nazis studied all of this. They were, however, primarily interested in the citizenship status of African Americans.

The constitutional amendments that had been passed after the Civil War granted people born on American soil citizenship and voting rights, regardless of the color of their skin. This meant that when white Americans prevented African Americans from participating in the democratic process, they could not explicitly say that that was what they were doing. Nazis were fascinated by the many techniques that white Americans invented that did not mention race at all, but were designed to effectively strip African Americans of their citizenship. From the Nazi perspective, this was a clumsy, rather than a straightforward process, designed to maneuver around America’s earlier idealistic but naïve attempt at egalitarianism. When the Nazis passed the Reich Citizenship Law, they viewed themselves as doing what white Americans did, but doing so openly and more efficiently.

The third and final of the Nuremberg Laws was the “Law on the Protection of German Blood and German Honor,” commonly referred to as the “Blood Law.” The Blood Law banned sexual relations and marriages between Jews and “Aryans,” under threat of imprisonment at hard labor. As we have seen in the discussion of the Prussian Memorandum and the Commission on Criminal Law Reform, Nazis had studied and discussed the American laws about this subject quite seriously. American race law, in other words, had a direct influence on the Nuremberg Laws, which were a major turning point in a Nazi Germany quickly descending towards ultimate extreme of genocide.

**Bibliographical Note**

This article is based on James Q. Whitman’s new book, *Hitler’s American Model: The United States and the Making of Nazi Race Law*, published by Princeton University Press in 2017. Sections describing the wider world of white supremacy, and of “white men’s countries,” were also supported by *Drawing the Global Colour Line: White Men’s Countries and the International Challenge of Racial Equality,* by Marilyn Lake and Henry Reynolds, published by Cambridge University Press in 2008.