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Review

Hitler's American Model: The United States and the Making of Nazi Race Law

James Q. Whitman. Princeton, NJ: Princeton University Press, 2017. 208pp.

Michael J. Kelly*

Yale's James Whitman jumps straight into academic controversy with his new book outlining how the lawyers of the Third Reich modeled their anti-Jewish race laws on older Jim Crow era laws in the United States. Prior American and German scholars had previously tackled this hypothesis with mixed results—some dismissing the idea or playing it down, others acknowledging some limited influence. After plumbing primary sources from the Nazi government, however, Whitman goes much further and plants his flag squarely in the influence camp.

The sources, read soberly, paint a different picture. Awful it may be to contemplate, but the reality is that the Nazis took a sustained, significant, and sometimes even eager interest in the American example in race law.

They most certainly *were* interested in learning from America . . . Nazi references to American law were neither few nor fleeting . . . (4)

Regretfully, as one looks backward, this assertion may not be overly surprising. But Whitman doesn't stop there; he goes on to assert that America's race laws were sometimes even too much for Hitler's lawyers!

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In the early 1930s, the Nazis drew on a range of American examples, both federal and state. Their America was not just the South; it was a racist America writ much larger. Moreover, the ironic truth is that when Nazis rejected the American example, it was sometimes because they thought that American practices were overly harsh: for Nazis of the early 1930s, even radical ones, American race law sometimes looked *too* racist. (5)

Whitman surely gets the reaction he's searching for with that last statement: shock. Even Nazis thought America's race laws went too far. However, stepping back and considering the broader evolution of each polity, this reaction shouldn't be that surprising either. America literally began its political life (whether one fixes this in 1783 with the Treaty of Paris or in 1789 with the seating of the Constitution's first government) as a partially slave-owning state. The arc of our 200-year evolution away from slavery to Reconstruction and Jim Crow to the Civil Rights Movement to something approaching true equality in 2017 is one of progressive movement away from racial laws, albeit not quickly nor assertively enough. Germany's Third Reich began its political life literally in the ashes of defeat and financial disaster after the First World War. Its much shorter 12-year arc devolving from a state of equality for Jews to a state of slavery and death intersects the American arc at interesting point in time—the 1930s.

FDR wasn't really overly concerned with the plight of African-Americans specifically; he was trapped in the Great Depression and was focused on averting further economic collapse. Yet, quite aggressive race laws remained on the books. Hitler was focused on the Jews in his hate speeches, but his policies were further behind. It wasn't until late 1935 that the infamous Nuremberg Laws stripping Jews of citizenship and marriage equality were adopted (17).

As a fellow comparativist, I wanted more from Whitman on this theme as a way to not only further explain what was going on in both Germany and America when these evolving/devolving societal arcs actually intersected at that point of "American influence" on the development of Nazi race laws, but also as a way to provide some context for mutual understandings/misunderstandings that could be reflected in those primary documents that support Whitman's argument. That said, Whitman offers a wonderful vignette involving a New York Jew provoking the Reich into finally promulgating its Nuremberg Laws.

His book is dedicated to “the ghost of Louis Brodsky”—the subject of this vignette. Brodsky was a local magistrate into whose docket happened to fall several rabble-rousers who had gotten on board the *SS Bremen*, pride of the German trans-Atlantic fleet, and ripped down the flag bearing the Nazi swastika in protest of the Reich’s burgeoning anti-Jewish stances. Brodsky’s release of the perpetrators was accompanied by a written opinion condemning the Nazi flag as a new “black flag of piracy” which stood for everything America opposed (21). Although FDR’s state department apologized to Berlin, Whitman asserts that Hitler’s propaganda chief Goebbels decided to use the affront as a rationale for finally adopting the Nuremberg Laws (22–24). “So it was that the Nuremberg Laws were offered to the world as a ‘reply’ to an ‘insult’ delivered by a Jewish magistrate in a Manhattan police court” (24).

The layers of irony in that bold statement are obvious, and on some level I’d love for this to be true—although I seriously doubt that it is much more than an overstatement. The Third Reich was going to do what it was going to do no matter what Brodsky, referred to by no less than Hermann Goering as an “uppity Jew” (25), said or did. Just as Hitler’s government was going to end up with a Final Solution playing out in execution camps like Auschwitz in the 1940s regardless of what American race laws offered by way of instruction. Indeed, the Nazi version of slavery went beyond the private ownership practiced in the U.S. to a form of state ownership in the camps—often farmed out to private corporations.

Whitman also goes a bit beyond the obvious parallels between repression of Jews in German and blacks in the United States to include legal (mis)treatment of Native Americans. Although interesting, Whitman’s treatment amounts to only a glancing blow. Specifically, he explores the research of Heinrich Krieger (German academic and future Nazi) while he was in the United States—beginning with an exposition on American Indian law published in the 1935 *George Washington Law Review* (114–15). But he then chooses to focus more on Krieger’s subsequent work on American race law in the macro sense. Further exploration of the German understanding of U.S. treatment of Native Americans would have been welcome. Although when Krieger was conducting his research, it was in the pre-Felix Cohen era when federal law as such was confusingly schizophrenic (switching abruptly between policies of assimilation and separation), it would be interesting to see what Germany learned about mass population transfer and segregation onto reservations.

While Whitman's book is a slim one, only two chapters spread over 161 pages, it is a narratively interesting one and quite readable. Unfortunately, Whitman goes too far into the "blame America for everything" camp and skirts dangerously close to blaming us for legally setting forces in motion that resulted in the Holocaust. A more strenuous stamp of culpability on the Third Reich for the atrocities it alone committed after all, regardless of any external influences (including ours) should have been registered throughout. That said, Whitman's book would be a good addition as supplemental reading for legal historians.