Racist US Laws Provided Inspiration To The Nazis: An Interview With James Q. Whitman

James Q. Whitman is the Ford Foundation Professor of Comparative and Foreign Law at Yale Law School

At a time when white supremacist ideas are thriving in the United States, a recently published book by James Q. Whitman, professor of comparative and foreign law at Yale Law School, provides a chilling account of the way US race law provided inspiration for the Nazis, including Hitler himself, in the making of the Nuremberg Laws and their pursuit of a "perfect" racist order. In an exclusive interview for Truthout, Professor Whitman explains the connection between the centerpiece anti-Jewish legislation of the Nazi regime – the Nuremberg Laws – and US race law.

C.J. Polychroniou: Professor Whitman, most scholars before you have insisted that there was no direct US influence on Nazi race law, yet Hitler's American Model argues something quite the opposite: that the Nazis not only did not regard the United States as an ideological enemy, but in fact modeled the Nuremberg

Laws after US racist legislation. First, can you briefly point out some of the evidence for your thesis, and then explain why others have failed to see a direct connection?

James Q. Whitman: The evidence is pretty much in plain sight. Hitler himself described the United States in *Mein Kampf* as "the one state" that was making progress toward the creation of a racial order of the kind he hoped to establish in Germany. After the Nazis came to power, German lawyers regularly discussed American models — not only the model of Jim Crow segregation, but also American immigration law, which targeted Asians and southern and Eastern Europeans; American law establishing second-class citizenship for groups like Filipinos; and American anti-miscegenation statutes. Some of the most dramatic evidence comes from a stenographic transcript of a planning meeting for the Nuremberg Laws in 1934. In the very opening minutes of that meeting, the Nazi minister of justice presented a memorandum on American law, and the participants engaged in detailed discussion of the laws of many American states.

As for why other scholars haven't seen the connections: One reason is that they have focused too much on the question of whether the Nazis were influenced by Jim Crow segregation. The answer, for the most part, is no – though there were some Nazis, including some especially vicious ones, who did want to bring Jim Crow to Germany. Another reason is that America did not have law [specifically] persecuting Jews. That is true enough, but it did not prevent the Nazis from taking an interest, and sometimes a pretty enthusiastic interest, in the law that America *did* have. Maybe the biggest reason is that it just seems too awful to be true.

During the 1920s and 1930s, both US and Nazi Germany were keen on eugenics. Is this another example of the influence of American racist culture and legislation on the Nuremberg Laws?

It certainly is, and there's an excellent book by Stefan Kühl that tracks the history down. The Nazis frequently expressed admiration for American eugenics in the 1930s. Still, we have to be a bit cautious in talking about the eugenics connection. Eugenics was an international movement, and one that seemed fairly respectable at the time. Countries like Sweden had eugenics too. The race law of the United States and Nazi Germany was different. Some of it involved eugenics, but a lot of it involved nasty forms of legal degradation like second-class citizenship, and

harsh criminal punishment for miscegenation. That kind of hard-edged race law was unusual: There were not many examples outside the US and Nazi Germany.

How did the Nazis work around the fact that US law was not always open about its racist goals? Isn't that a significant enough of a factor not to draw a strong parallelism between US's racist legislation in the Jim Crow era and Nazi efforts toward the creation of a "perfect" racist order?

Well, in some respects America *was* open about its racist goals. That's especially true of American anti-miscegenation law, which was explicit in naming the various races: not only Blacks and whites, but also Asians and Native Americans. There were anti-miscegenation laws in 30 of the American states, and the Nazis studied them carefully. Precisely because those statutes were open about their racist aims, it was American anti-miscegenation law that had the most direct influence on Nazi policy-makers. You are absolutely right, though, that other aspects of American law were different. The Thirteenth and Fourteenth Amendments guarantee the equal rights of African Americans, at least on paper, which means that American racists had to use various legal subterfuges to achieve goals like suppressing Black voting rights. When it came to those aspects, the Nazis could not have borrowed directly from American statutes. That does not mean that American law did not matter: Even if its law was not "perfect," in Nazi eyes, the fact remained that the United States, the richest and most powerful country in the world, was manifestly a *racist* power. Inevitably that excited and emboldened Nazi lawyers. That said, we must not forget that there *were* the Thirteenth and Fourteenth Amendments. Thankfully, racism was not all there was to American law.

The Nazis also seemed, you argue in your book, to find the US "common law" approach to jurisprudence perfectly suitable to their own preferred version of a legal culture. Why was that so?

Yes, indeed. In one startling moment, one of the most frightening and brutal Nazi lawyers said that American jurisprudence "would suit us perfectly." What attracted radical Nazis was the open-ended and pragmatic style of American law-making. Traditional German lawmakers believed that the law had to be based on clear and scientifically defensible definitions. That presented problems when it came to the definitions of race. How were you supposed to know whether a person of, say, half-Jewish descent counted as a racial Jew? What was the

scientific basis for making such a determination? American courts and legislatures were much less troubled about those sorts of problems. Sometimes they would cheerfully define anyone with one drop of Black blood as Black. Sometimes courts would simply eyeball the people before them, or base their judgment on rumors or public opinion. Radical Nazis, who wanted to implement the Nazi program without worrying about [precision], found that attractive — though even for radical Nazis, American approaches like the "one-drop" rule seemed to go too far.

How would you describe the United States' place in the international history of racism?

Racism … [has] played a uniquely formative role in the making of the United States. At least there are few parallels among the other traditions I know … what makes America important in the international history of racism is no different from what makes America important in the history of corporate law, or many other areas. When Americans make law, they display a kind of unbridled, and sometimes terrifying, willingness to experiment. We see that terrifying willingness to experiment in contemporary American criminal justice.

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