

On June 5, 1934, about a year and a half after Adolf Hitler became Chancellor of the Reich, the leading lawyers of Nazi Germany gathered at a meeting to plan what would become the Nuremberg Laws, the notorious anti-Jewish legislation of the Nazi race regime. The meeting was chaired by Franz Gürtner, the Reich Minister of Justice, and attended by officials who in the coming years would play central roles in the persecution of Germany's Jews. Among those present was Bernhard Lösener, one of the principal draftsmen of the Nuremberg Laws; and the terrifying Roland Freisler, later President of the Nazi People's Court and a man whose name has endured as a byword for twentieth-century judicial savagery.

The meeting was an important one, and a stenographer was present to record a verbatim transcript, to be preserved by the ever-diligent Nazi bureaucracy as a record of a crucial moment in the creation of the new race regime. That transcript reveals the startling fact that is my point of departure in this study: the meeting involved detailed and lengthy discussions of the law of the United States. In the opening minutes, Justice Minister Gürtner presented a memo on American race law, which had been carefully prepared by the officials of the ministry for purposes of the gathering; and the participants returned repeatedly to the American models of racist legislation in the course of their discussions. It is particularly startling to discover that the most radical Nazis present were the most ardent champions of the lessons that American approaches held for Germany. Nor, as we shall see, is this transcript the only record of Nazi engagement with American race law. In the late 1920s and early 1930s many Nazis, including not least Hitler himself, took a serious interest in the racist legislation of the United States. Indeed in *Mein Kampf* Hitler praised America as nothing less than "the one state" that had made progress toward the creation of a healthy racist order of the kind the Nuremberg Laws were intended to establish. . .

. . . The Nazi persecution of the Jews and others, culminating in the Holocaust, counts for all of us as the supremely horrible crime of the twentieth century, and the notion that Nazi policy makers might have been in some way inspired by American models may seem a bit too awful to contemplate. It may also seem implausible: we all think of

America, whatever its undeniable faults, as the home of liberty and democracy—as a country that put all of its might into the battle against fascism and Nazism that was finally won in 1945. Of course we also all know that America was home to its own racism in the era of the Nazi ascent to power, particularly in the Jim Crow South. In the 1930s Nazi Germany and the American South had the look, in the words of two southern historians, of a “mirror image”: these were two unapologetically racist regimes, unmatched in their pitilessness. In the early 1930s the Jews of Germany were hounded, beaten, and sometimes murdered, by mobs and by the state alike. In the same years the blacks of the American South were hounded, beaten, and sometimes murdered as well. (2)

Nevertheless the idea that American law might have exerted any sort of direct influence on the Nazi program of racial persecution and oppression is hard to digest. Whatever similarities there may have been among the racist regimes of the 1930s, however foul the history of American racism may be, we are accustomed to thinking of Nazism as an ultimately unparalleled horror. The crimes of the Nazis are the *nefandum*, the unspeakable descent into what we often call “radical evil.” No one wants to imagine that America provided any measure of inspiration for Hitler. In any case, it may seem inherently improbable that Nazis would have felt the need to look to any other country for lessons in racism—perhaps least of all to the United States, which is, after all, whatever its failings, the home of a great constitutional tradition founded in liberty.

. . . 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. In fact, as we shall see, it was the most radical Nazis who pushed most energetically for the exploitation of American models. Nazi references to American law were neither few nor fleeting, and Nazi discussions took place in policy-making contexts that had nothing to do with producing international propaganda on behalf of the regime. Nor, importantly, was it only, or even primarily, the Jim Crow South that attracted Nazi lawyers. 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.

Be it emphasized immediately that there was certainly never anything remotely like unmixed admiration for America among the Nazis, who aggressively rejected the liberal and democratic commitments of American government. The Nazis were never interested in simply replicating the United States in Central Europe. Nevertheless Nazi lawyers regarded America, not without reason, as the innovative world leader in the creation of racist law; and while they saw much to deplore, they also saw much to emulate. . .

--James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law*, 2018.