

Adolf Hitler and United States Law

by Michael Curtis



Perhaps the saddest song in the Great American Songbook is *Strange Fruit*, a protest ballad written by a Jewish songwriter from the Bronx against racism and lynching in the United States, made famous by Billie Holiday in 1939. Lynching in the United States is rare today, although some compare the killing by police of black men equivalent to lynching. Much discussion focuses on the ideology of white supremacy as the original sin of the U.S., a belief system that determined the present, and on whether violence has remained ingrained in American culture from the heritage of slavery.

Aside from that discussion, for a long time the U.S. has been involved in divisive issues of discrimination, of immigration and limits on certain kinds of refugees. It can be argued that the effects of racial terror lynching are still felt today. Systematic bigotry, as the American writer Ta-Nehisi Coates has said recently, is still a toxic force and central to U.S. policies. Certainly, politics today is bedeviled on issues of equal rights, deportations, limits on entry from Muslim countries, fear of Islamic terrorism, and racism.

The view first expressed by the British sociologist Ashley Montague, and reaffirmed by contemporary American historians

like Nell Painter that race is an idea, largely a social construction, not a significant biological difference between peoples, has been confirmed in recent years by scientists who hold that theories of racial purity and hierarchy of races do not rest on any scientific foundation.

Nevertheless, the reality is that racism and racial discrimination, based on cultural as well as biological factors, is present throughout the world in ever changing forms, not only in the U.S. and Western countries but also in a variety of countries such as Lebanon, Egypt, Libya, Yemen, or Rwanda, where Blacks, Asians, or other ethnic groups are not welcomed or treated unequally or as inferior persons.

In the U.S., the problem of racism can be traced back to the Constitution itself in which individual slaves counted as $3/5^{\text{th}}$ of a person. The March 1790 Naturalization Act, repealed a few years later, was explicitly racist in that citizenship was only for free white persons "of good character." The problem persisted in many later laws, that in 1929 which allocated visas on the basis of national origin, and the 1952 McCarran-Walter Act which set quotas for immigrants and favored white Western Europeans. Anti-miscegenation laws lasted until outlawed by the U.S. Supreme Court in *Loving v. Virginia*, 1967.

Everyone is familiar with past and present examples of racism in the U.S., and de facto and de jure categories of U.S. African-Americans, Native Americans, Filipinos, and Puerto Ricans as second-class citizens. However, the arguments and the questions raised in a new book, *Hitler's American Model; the United States and the Making of Nazi Race Law* by James Q. Whitman, Yale Law Professor go further and come as an unpleasant surprise. This is a disturbing book, made even more so by the Nazi swastika on the cover, and it is not easy to talk about, but its thesis, the impact of U.S. race law on the Nazi regime, cannot be easily dismissed.

Whitman disagrees with other writers who hold that American race laws, while noted, were insignificant for policies and legal thinking in the German Nazi regime. On the contrary, he argues that Nazi lawyers and ideologues had a sustained interest in American race law and practices, not only in the Jim Crow South but in the whole U.S. Indeed, the Nazi lawyers viewed the U.S. as the innovative world leader in the creation of racist law, and found examples and precedents in the American legal race order on which to draw. Whitman quotes Adolf Hitler who praised the U.S. as the one state that had made progress towards the creation of a healthy racist order.

Whitman indicates the importance of a meeting on June 5, 1934 of 17 Nazi legal practitioners, a pivotal meeting on the road to the Nuremberg Laws during which repeated and detailed discussion of the American example of race law and segregation laws took place from its very opening moments.

The essential question is not whether the American legal system inspired Nazi racial discrimination but to what degree. The argument and questioning is stark. To what extent did U.S. laws have an impact on the Nuremberg Laws of September 15, 1935, which Whitman calls the most notorious anti-Jewish legislation of the Nazi race regime. Among the more important of those Laws were the Citizenship Law which subjected Jews to second class citizenship, and the Blood Law which held that sex and marriage between Jews and non-Jews was a criminal offence.

Whitman examines the impact of two issues, citizenship and blood. Nazi lawyers were interested in the limits of citizenship of U.S. blacks and in the 1857 case *Dred Scott v. Sandford*, which denied citizenship status for blacks, and in practice denial of civic rights and the right to vote. It is not accurate to say that Nazis borrowed directly from U.S. law regarding citizenship, but they believed that the U.S. was the leader in developing explicit racist policies of nationality and immigration.

Hitler paid obeisance to the U.S., at least in its tentative first steps, as an example of the *volkisch* conception of the state. The American racist immigration statutes of the 1920s were seen by Hitler as the mainstay of *volkisch* citizenship. Hitler saw this as akin to his policy to exclude strangers from mingling with the blood of the ruling class. Hitler proclaimed his admiration for the US conquest of the West and the killing of "Redskins."

Whitman holds that it was the Blood Law, aimed at preventing race defilement, in the Nuremberg Laws that bore the mark of U.S. law as *the* model of anti-miscegenation legislation. The book cites 30 American states, not all in the South, where racially mixed marriages were legally invalid. Ironically, Whitman states that Nazi lawyers found that U.S. miscegenation law, the law of "mongrelization" too harsh to be embraced by the Third Reich.

Nazis further insisted the US was the global leader in racist law. America gave the loudest cry about the danger of race mixing, and therefore produced the most race-based immigration legislation. Above all, Nazis paid attention to U.S. law on naturalization, to the law on denaturalization on marriage, and to black disenfranchisement.

Were the Nazis, in some meaningful way directly influenced by American miscegenation practice in their decision to rid the world of Jews? Whitman argues they were, though U.S. law did not expressly target Jews. Blood law decreed both civil invalidity and the criminality of mixed marriages. The U.S. role is clearest in the case of the criminalization of racially mixed marriages. But it was also influential in Nazi discussion of what they called racially inferior "mongrels."

Whitman concludes that it was not American inspiration that led causally to Nazi crimes. Yet the question remains, why were the Nazis so taken by U.S. law? He suggests that US had ugly race law in early 20th century. The history of American

racism is not just that of the Jim Crow South, but that of national programs of race based immigration, race based second-class citizenship, and race based miscegenation law. This is what appealed to Nazi Germany, not simply Jim Crow legislation. Nazis cited U.S. national laws over and over again. Whitman contends that American white supremacy and to some extent Anglophone white supremacy provided some of the working materials for the Nazism of the 1930s. That he argues is also part of the national American narrative.

Yet there is a fundamental difference. Unquestionably, the most serious form of racial discrimination was proposed and implemented by the German Nazi regime with its objective to end the existence of inferiors and Jews. In his speech of January 30, 1939, Hitler promised the end of the Jewish people in Europe. At first, emigration, then deportation to Madagascar, or to other places, then transcontinental travel to east Europe, and then death.

The United States may have slavery, segregation, Native American reservations, internment camps, and discrimination in schools, housing, employment, and education opportunities. Yet no one proposed extermination of the black population or any other group. However, Whitman also argues that the racial laws are part of the American narrative, and can't be ignored.

Disturbing as is Whitman's book, the world is now conscious of the underlying problem, and perhaps ready to act. On December 21, 1965, the UN General Assembly ratified a resolution, that entered into force on January 4, 1969, to eliminate all forms of racial discrimination. It held that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous. There is no justification for racial discrimination, in theory or in practice, anywhere. The existence of racial barriers, or discrimination based on race, color, descent, or national or ethnic origin, is repugnant to the ideals of any human society.