

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

Jair Santos

To cite this article: Jair Santos (2017): Hitler's American Model: The United States and the Making of Nazi Race Law, *Politics, Religion & Ideology*, DOI: [10.1080/21567689.2017.1360238](https://doi.org/10.1080/21567689.2017.1360238)

To link to this article: <http://dx.doi.org/10.1080/21567689.2017.1360238>



Published online: 03 Aug 2017.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)

## BOOK REVIEW

**Hitler's American Model: The United States and the Making of Nazi Race Law**, by James Whitman, Princeton, NJ, Princeton University Press, 2017, 224 pp., \$24.95 (hardcover), ISBN 978-0-691-17242-2

In 1935 Adolf Hitler made it very clear, as if any proof were still necessary, what the new German law would exactly look like. The promulgation of the Nuremberg Laws gave European anti-Semitism a juridical status for the first time in history, and transformed the idea of race into the major principle of law. In doing so, the Third Reich endorsed the theory developed some years earlier by Helmut Nicolai, a legal philosopher quickly seduced by Nazism who published on behalf of the Nazi party in 1931 (before Hitler's arrival to the Chancellery) the book *Die Rassengesetzliche Rechtslehre*, intended to be a synthesis of the Nazi 'philosophy of racist law'. According to Nicolai, only if a deep legal revolution were seriously implemented would the political reform be complete, and the devastating liberal legacy of the Weimar Republic left behind. First of all, law had to recognize the natural superiority of the Aryan race, and that other races, particularly the Jewish one, could damage its purity if they were not separated once and for all. This was the idea behind the Nuremberg Laws: to deprive Jews of any legal protection and classify them as an inferior race, to whom not even the concept of 'citizen' could be applied. Three different statutes were part of the decree: the Flag Law, the Reich Citizenship Law, and the Law for the Protection of German Blood and German Honor. Even though anti-Semitism was clearly at the core of all these norms, did Nazis have any legislative example in mind to formulate the Nuremberg Laws? This is the provocative question that the American legal historian James Whitman sets out to answer in his latest book.

Whitman's book begins from simple but disturbing fact: Nazi lawyers studied different legal systems and they found a very convenient example of racist law in the United States. American law had long adopted racial legislation based on forms of second-class citizenship, mainly targeting Afro-Americans. In addition, the Immigration Act of 1924 established conditions for entry to the United States based on race and national origins, and a unique system of anti-miscegenation laws was implemented by different states in order to interdict race-mixing. Whitman's method is both of a legal historian and comparative lawyer and his book offers a clear and well-documented account of the history of Nazi law, by exploring the context of elaboration of the Nuremberg Laws. Also, it is a significant example of how comparative law works in practice—not simply imitating statutes, but by gradual transplants of legal ideas, later adapted and developed by national legislations. The emphasis on legal history and comparative law is totally justified by the fact that they meant a great deal for Nazi lawyers, for reasons that are easily understandable. First, Nazis sought to identify the essence of their legal system in the ancient normative experiences of the Aryan race, that is, the collective morality that permitted them to shape their own norms of conduct based not on external legal impositions, as in most countries of civil law, but instead in the ancient mores of the Volk. Second, finding concrete examples in foreign racial legislations would unquestionably facilitate the legitimation and the social acceptance of their own actions in Germany.

The book is divided in only two chapters, and they each try to identify the exact role played by American racial legislation in the various statutes of the Nuremberg Laws. The first one focuses on the Nazi flag and citizenship laws. The author shows how a diplomatic incident between the United States and Germany indirectly inspired the flag law. In July 1935, a

group of opponents of Hitler clambered aboard the German ship SS Bremen which was anchored in New York, took down its swastika flag, and threw it into the Hudson River. Five people were arrested for this act of vandalism, but they were released only a few weeks later by the judge Louis Brodsky, famous at the time for his progressive decisions. The Third Reich responded to this 'insult' to the German national symbol—endorsed by a Jewish judge, no less—by declaring the swastika to be the sole national flag. Regarding the Law on the Protection of German Blood and German Honor, the American inspiration was more direct. Racist immigration laws of the United States, particularly the Emergency Quota Act of 1921 and the Immigration Act of 1924, aimed to shut the borders entirely for undesirable races. American citizenship law also created forms of second-class citizenship for Native Americans, Afro-Americans, Puerto Ricans, and Filipinos. Even though they had nothing against Jews, these laws provided Nazis with a meaningful prototypical of racial legislation.


In the second chapter, Whitman concentrates his analysis at what he considers to be the most provocative evidence of the American influence on Nazi Law: the Blood Law, designed to ban mixed marriages between Germans and Jews. Once again, the American example was relevant: 30 states had laws criminalizing marriages between white and black people often carrying severe punishment. American law also contained a statute on how to define who belongs to which race, as well as how to legally classify 'mongrels'. Whitman recognizes that even radical Nazi lawyers considered some laws in America too radical to be followed in Germany. For instance, the Prussian Memorandum, which was meant to be the Nazi program for the German criminal law in September 1933, not only mentioned the Jim Crow regime of segregation but also observed that whereas in the Reich the Nazi party intended to restrict only public relations between Germans and 'coloreds', the laws of the United States went far beyond and outlawed both public and personal interactions. Through a careful examination of the debates related to the criminal reform and the texts published by its participants, the author demonstrates that Nazi lawyers had carefully studied the American legislation on anti-miscegenation in different states.

Despite the diversity of sources studied by the author, one may certainly regret the brevity of the book. Whitman's work is surprisingly short, only 224 pages, and the great amount of documents available on the question of Nazi law suggests that important details may have been left behind. For instance, to Nazi lawyers, judges and precedents played a crucial role in the survival of the regime. Courts had above all a political task and they were indeed much more relevant than statutes. Hitler, unlike Napoleon, had no interest at all for codification, since a code is necessarily a closed and rigid frame in which judges' arbitrariness has limited space. Though Whitman mentions it when he shows that legal positivism actually was not a theory endorsed by Nazis, no deeper developments are made on how the major courts reacted to race law comparatively in Germany and in America.

On the other hand, the book offers a good example of the methodology of comparative law. It is not always obvious that one can posit identity even similarity between different legal systems. One might argue that the fact that Germany has a civil law system while the United States follows the common law tradition would be enough to invalidate any utility in the comparison. However, when it comes to ideas underlying legal practice, the distinction between civil law and common law is no less porous than the borders between countries and the history of law testifies a continuous circulation of institutes and legal concepts. Behind laws and court decisions, one finds a wide universe of ideas constructed in relation with values and social claims that are often common to different countries. In this sense, a history of the circulation of a particular legal idea (i.e. race law) between Nazi Germany and America is what this book aims to provide. Whitman makes it very clear—and perhaps even too repetitively—

that no one could reasonably suggest that the United States were somehow responsible for the Nazi dreadful laws. The fact is that Americans did also have their own frightful laws, based on values of racism and segregation and Nazi lawyers took a great interest on them.

Different scholars have recently explored the shadows of Nazism from a legal perspective in order to understand how such an evil regime was possible in spite of a complex legal system that ought instead to have protected people from the dangers of insane ideologies. In Europe, the works of Bernd Rüthers, Michael Stolleis, Johann Chapoutot and Olivier Jouanjan are some great examples of essential accounts on this topic that still deserves further investigation. And now in America, despite the brevity of his contribution, so is James Whitman.

Jair Santos  
*Ecole Normale Supérieure*  
 jair.santos@ens.fr

© 2017 Jair Santos  
<https://doi.org/10.1080/21567689.2017.1360238>

