

Remembering the Holocaust in the Context of U.S. Memory

How are the Holocaust and genocide encountered and remembered in the context of national memory? How do we interpret the past and how does it inform us in the present?

To begin a classroom conversation, I use a pre-test that asks participants to examine twelve pictures of individuals who lived during the Nazi era. Students must choose if a person was a perpetrator, bystander, rescuer, victim, or away-looker. Making it clear to them that this is simply my chance to find out if they have any knowledge of the topic and that there are no risks because they are encountering an image without any context, participants are encouraged to guess. In fact, all the images are of rescuers. On the surface it is an exercise in not judging a book by its cover. Just because someone has a Hitler moustache or looks like a doctor does not make him a perpetrator. However, the point of the exercise is to highlight how categories reduce the complexity to a level that we might easier engage. Short term memory is limited to 5-7 characters (such as five categories of behavior or a phone number), but complex identities and choices cannot be contracted into a few categories. Reduction does allow us to initially process overwhelming information, but we must be cautious about quick conclusions. It is in the process of reduction that memory is created.

In a 2007-2006 study, images of individuals were flashed before participants (or, in one series, written descriptions) who had to make a split-second decision to “shoot” or not shoot. In “self-defense” subjects were quicker to pull the trigger on “aggressive” blacks and Muslims. Of course, the images being shown were from a few actors wearing different sets of clothing. The test was actually measuring how implicit bias works. How do we respond and make rapid decisions when faced with overwhelming information? We reduce, quickly process, take mental short cuts, place the information into a category, and then respond. It is only after the response that we assign meaning or attributes (such as good, bad, dangerous...) to the stimulus. These subconscious biases help us process information and respond to perceived threats quickly. Although subconscious, the assigned attributes are not random, but assigned by cultural and individual context and experience. The first task in exploring memory formation is to question our own implicit biases. In *Star Wars: The Empire Strikes Back*, Luke Skywalker is training to become a Jedi knight. He finds himself in a cave, shrouded in fog and darkness. Out of the darkness he is suddenly confronted by evil in the construct of Darth Vader, Nazi helmet and all. Luke draws his light saber in self-defense and kills the threatening Vader only to watch Vader’s mask explode into an image of Luke himself. Luke acted in a very human way: he processed information quickly, acted in self-defense in a way that he could later justify. Which, of course, is the point. Implicit biases, unchecked and unexplored, can make us reduce complexities and allow us to rush to judgements that are in the end self-destructive.



Memory is also socially constructed. It gives us a sense of community, informs our social identity, and mediates history through symbols that reduce complexity. Memory itself often reflects the needs of the present as much as the past. Nazi Germany did not have a monopoly on racism or identity formation through memory. Before exploring the memory of Holocaust history Americans must unmask another history when another state, based on white supremacy and racist ideologies, was bent on enslaving millions and suffered a catastrophic military defeat: The Confederacy.

U.S. Civil War

Slavery was the root cause of the Civil War (1861-1865). Every seceding state clearly stated they were rebelling for slavery and against states' rights. The Confederacy never claimed to be fighting for states' rights when war broke out. In fact, it can be argued, as Texas did, that the South was fighting against states' rights; specifically, against the fact that northern states had passed legislation refusing to enforce the federal Fugitive Slaves Act. The antebellum South was a violent, class-driven culture rooted in massive human rights crimes. Edward Pollard's *The Impending Crisis of the South* (1859) deeply frightened enslavers as it outlined the growing break between aristocratic enslavers and poorer whites. In states about to secede and form the Confederacy only about one third of southern families owned slaves.¹ Fearing disunity as the war approached, those in power used the fear of the abolition of slavery to frighten poor southerners. Southern elites convinced them that Lincoln and the Republican Party were going to fight a war to free the slaves (although both explicitly stated the opposite in 1861) that would then potentially lower the poor whites' status even more. Racists lie. The use of the racist imagery of the "Black brute" proved useful in motivating many who perceived "lawless" and "violent" Black slaves as a threat. It was a convincing argument and utilized fear and the threat of losing social position to "unify" the Confederacy whose fight was to preserve an aristocratic slave-based culture. Unity was a myth.

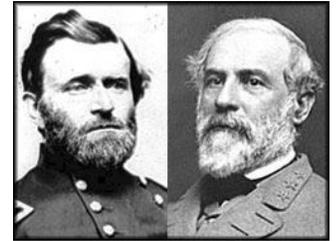
Blacks and whites were not passive. Blacks fled plantations and tried to set up their own communities and some whites deserted the southern armies, fought against secession, and became disillusioned about fighting a war for the enslavers. In some cases, escaped slaves and southern deserters rebelled against their common enemy, white landowners. Alexander Jones from North Carolina wrote "...aristocratic fools have been in the habit of driving negroes and poor helpless white people until they think ...that they themselves are superior [and] hate, deride and suspicion of the poor."² A war that began to preserve slavery did become a war against slavery. President Lincoln, General Grant, the Republican Party, and many white southerners, came to see slavery as a moral outrage and the Confederacy was defeated. A second war began soon thereafter over memory.

Out of defeat came northern occupation and Reconstruction of southern institutions and society. Out of trauma came the need to reshape the narrative. Pollard, who had written to defend slavery before the war, now argued in 1866's *The Lost Cause: A New Southern History of the War of the Confederates*, that the defeat was actually a victory and noble sacrifice against northern aggression. Even though the Confederates fired the first shots, they had come to believe falsely (in 1861) that they did so to prevent Lincoln from freeing the slaves. A new war against Reconstruction (literally, a war for states to discriminate) needed a founding myth. Pollard argued that the Confederacy fought a war of noble and heroic defense of "states' rights" against northern aggression. Symbols that reduced and reshaped the complexity of the issues were needed. General Lee came to represent the noble, reluctant leader while General Grant was perceived as a self-promoting drunkard who sought personal advancement by the callous use of brutal force against an overwhelmed foe. This reductionist "memory" was deeply flawed and ignored uncomfortable truths about Lee's racism, desertions and casualties from Confederate forces and Grant's taming (mostly) of his demons in a superior strategic effort that won the war. Grant acted perhaps more nobly and magnanimously than did Lee at the war's conclusion. Indeed, the leaders who fought to defend the Confederate's culture of cruelty did not have to account for slavery. Lee,

¹ Andy Hall, "Small Truth Papering Over a Big Lie," *The Atlantic*, August 9, 2010.

² Ibram X. Kendi, *Stamped From the Beginning: The Definitive History of Racist Ideas in America* (New York: Nation Books, 2016), 217.

himself a brutal slave owner, never had to face justice and the former slaveholder perpetrators received restitution and lived out their retirements in comfort. Regardless, neo-Confederates saw themselves as “victims” by outside forces. Trauma was transformed to purpose as they perceived themselves as martyrs to a holy cause. That cause was rooted in racist myths rooted in the caste of white supremacy. Slavery was remembered as a patriarchal, caring, and noble system that, in their view, saved Blacks from their own innate violent or lazy behaviors. Lee was perceived as a “kind” aristocratic enslaver. In addition, the myth of southern self-reliance that rebuilt and resurrected the South ignored that it was the new “Black Codes” and Jim Crow that forced many Blacks into forced labor and in many cases a new form of slavery.



Generals Grant and Lee.

While the rise of the Nazis was raising uncomfortable questions for Americans about racism and targeting of racial and ideological enemies, “white” Americans felt a kinship with their former foes, embracing a common caste status while rejecting and re-subordinating the “Black” caste. They delighted in Hollywood’s embrace of the “Lost Cause” myth with *Gone With the Wind* (1936). The much lauded and academy award-winning film embraced the noble white Southerner, acting paternally to its contented slaves (who at one point in the movie actually want to fight for the South), to fight against northern aggression. One of the most beloved characters in Hollywood history was Mammy who lovingly served her White masters. Her “Aunt Jemima”



image of the content, asexual, well fed and compliant servant fit the stereotype that soothed white consciences. During slavery, few Black women were well fed, were emaciated, or often raped. It should also be noted that she stood in stark contrast to Scarlett O’Hara, the white beauty who, true to myth, demonstrates singular self-reliance (while ignoring the re-enslavement that rebuilt the southern economy). In the face of defeat and trauma. O’Hara declares, “I’m going to live through this and when it’s all over, I’ll never be hungry again!”³

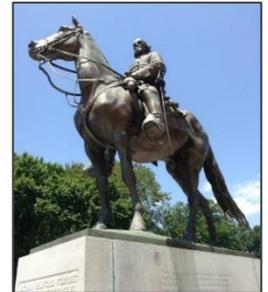
As Professor James Young observes, “Memory is never shaped in a vacuum, the motives of memory are never pure.”⁴ Denial and distortion breeds ignorance, but more so, are part of the process of mass atrocity. As the United States began to encounter Nazism many refused to look within and argued that our white supremacists were nicer than Nazi ones. How are the Lost Cause and Nazi ideology similar? Each create a mythical history out of military defeat.

Like the neo-Confederates the Nazis manipulated memory as a false nostalgia for an idealized lost past. Both created a mythical reconstruction of the past that was rooted in racial constructs. Both were fixated on the influence of Blacks – the Nazis initially focused and learned their trade with the “Rhineland bastards” issue. They too saw themselves as victims of outside aggressors while ignoring their responsibility for having started a war. Both reframed historical memory in religious terms of self-sacrifice and martyrdom. What made Nazi racism different was their belief in a hidden international conspiracy of Jews against Germany. Conspiracy thinking combined with racism quickly shifts the balance towards genocide. The resurgent confederate flags of today have nothing to do with heritage, but are hate symbols rooted in misinformation.

³ <https://www.imdb.com/title/tt0031381/quotes>

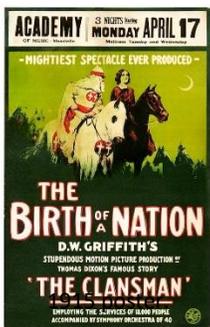
⁴ James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven Yale University Press, 1993), 2.

It is interesting that in confronting these mythical reconstructions the German memorial landscape is now, after struggle, dominated by the narratives of the victims while the South still is focused on the glorious sacrifice of the perpetrators. Confederate statues illustrate the problem between history and memory. History and memory are never neutral. Monuments lie. Although some will argue that the statues represent “heritage,” in fact, they represent racist propaganda whose agenda is not to remember the Civil War, but to enshrine and justify Jim Crow. Women often led the campaign to fund and built monuments, not to the Civil War necessarily, but to the new narrative victory of the “Lost Cause.” Within a decade 30,000 women, mostly children of the antebellum South, join monument-building organizations and textbook review committees in order to enshrine the heritage and privilege they felt robbed of. The vast majority of statues to the Confederacy emerge between the 1890s and 1950 (the biggest spike was between 1900 and the 1920s) and were monuments to oppression and white supremacy. While shaping collective memory, the statues admire the losers, whitewash history, and deny the culture, crime, and terror of chattel slavery. In 1919, The United Daughters of the Confederacy erected a 24-foot monument to Captain Henry Wirz “to rescue his name from the stigma attached to it by embittered prejudice.”⁵ The statue went up even though Wirz had been executed on thirteen counts of war crimes committed at the Andersonville prisoner of war camp in Georgia. As of 2018, this monument still stands despite public pressure to have it removed.



Nathan Bedford Forrest Monument. Memphis, TN. Erected 1905.

Civics lessons garnered from these statues distort history, invent context, and serve a nefarious purpose. Kentucky, for example, did not secede. Despite having 90,000 soldiers fight for the U.S. and 35,000 for the Confederacy, there are currently seventy-two monuments erected to the Confederacy and only two for the Union. In Memphis, Tennessee a statue was erected in 1905 for Nathan Bedford Forrest. Bedford was the original Grand Wizard of the KKK, and a slave trader who sold thousands of slaves at his "Negro Mart" in Memphis. He also murdered three hundred mostly Black Union soldiers who surrendered to him in 1864.



D.W. Griffith’s 1915 epic *The Birth of a Nation* would eclipse the minstrel show as a major conveyer of racism. The movie fed the myth of White victimization at the hands of violent Blacks. The climactic scene, of a black-faced White actor taking a White woman into the woods, was met with chants of “Lynch him! Lynch him!” by Houston moviegoers when the White woman jumps to her death.⁶ As an early big screen epic it had the power to be seen as “real history” in much the same way that today’s generation accepts anything online as “fact.” This film was the highest grossing film at box offices in the North and South. Americans had their justification for lynching and segregation. President Wilson (1913-1921), born in Staunton, Virginia, to a slaveholding family spent his early years in Augusta, Georgia, and Columbia, South Carolina. He was an entrenched racist who had been the first president to combine progressivism with racism and staffed his White House with Southern Democrats who enforced segregation.⁷ *The Birth of a Nation* (originally, the “Clansman”) was the first movie shown at the White House. Its star, Henry Walthall, was the son

⁵ SPLC, June 9, 2018, Weekend Read, Issue 83.

⁶ Ibid, 306.

⁷ President Wilson was a white supremacist who brought Southern ideas about segregation into institutions in Washington, DC. For more, see: Blackmon, *Slavery*, 357-360.

of a southern sheriff and the chief deputy at the Shelby County jail in Alabama at a time when sheriffs were making substantial funds by arrested Black men and hiring them out as forced labor.

In 1912, two years after Black heavyweight boxer Jack Johnson disturbed racist sentiments by defeating White boxer Jim Jeffries (“the Great White Hope”) on July 4, Americans gravitated to the new stories of Tarzan of the Apes. “Tarzan” literally means “white skin” in the language of the apes who raised him. In addition to the great adventure stories, Tarzan soothed racist egos (bruised by the wealthy, successful Black boxer who had married a White woman) as the hero becomes the king of the jungle who eventually protects Jane, a white woman, from the ravages of Black Africa.⁸ In 1924 the Democrats came within one vote of endorsing the KKK platform while the racist 1924 Immigration Act received bipartisan endorsement.

In 1931, Earnest A. Hooper, a physical anthropologist at Harvard, authored *Up From the Ape* which discussed physical characteristics “which determine race are associated, in the main, with specific intangible and non-measurable but nevertheless real and important temperamental and mental variations.”⁹ Hooper’s work entered the American psyche through Hollywood’s *King Kong* (1933). It was another *The Birth of a Nation*, but with a more *Tarzan*-like feel. Racists always compared target groups (Irish, Blacks...) to apes and anthropologists were working hard with eugenicists. What seemed like a nice adventure film was veiled racism rooted in implicit bias.



1933 Movie promotional poster.

The ape, physically powerful, terrorized white people and comes, uncontrollably and menacingly, after an innocent white woman. In the end, the forces of “good” kill the Negro-ape in white is clearly a self-justifying lynching. Racist ideas were now solid entertainment and did not even have to mention Black people.

The emergence of racial violence inflicted by the white majority at times when Blacks achieved political or social gains is a consistent pattern in American life. Backlashes have occurred during Post Reconstruction, 1877-1901; Post WW I, 1919 (Black units were the first to distinguish themselves); FDR and the New Deal, 1933; and after the first Black president was elected. At least 25 cities saw massive violence against Blacks in the “Red Summer” that followed the end of World War I in 1919. Whites invaded Black neighborhoods and papers tended to blame the wave of killings on Black criminals. President Wilson conflated the violence with Communism. All this because Black Americans had distinguished themselves during the war and needed to be put back in their place.

Did American racial belief and practice influence more than the twisted imaginations of a would-be authoritarian? How did systemic racism in the United States influence Nazi Germany? Connecting Nazi antisemitism with Black racism was not a difficult imaginary leap for Hitler and the Nazis. In fact, Nazism had its roots in the post-World War I “Rhineland Bastard” controversy. Reflecting the social Darwinist racism that permeated the German military during the war,¹⁰ Hitler referred to the presence of Black troops in the French Army in *Mein Kampf* as a “pollution” and negrification of their once “pure race.” Hitler wrote, “Jews were responsible for bringing Negroes into the Rhineland, with the ultimate idea of bastardizing the white race which

⁸ Kendi, 299-300.

⁹ Ibid, 333.

¹⁰ Field Marshal Hindenburg referenced his displeasure of the French using Black colonial troops in his wartime diary. To Hindenburg, Europeans would not be able to determine which White race was superior if the French messed things up with Blacks.

they hate and thus lowering its cultural and political level so that the Jew might dominate.”¹¹ As Black units made up a small proportion of post-war occupation troops, the Nazis learned how to use racism to intensify fear and gain political power by spreading fear about an attack on the German culture and race.

For racist Germans, the Rhineland bastards were seen as a threat to German racial purity and a problem that needed to be solved. In 1927, sterilization of the offspring was discussed by Bavaria government officials. In February 1935, the Nazis held a meeting on “Ways of solving the bastard question.” At the time, 385 “bastards” were located (370 were children of French soldiers – learned from 1933 Compulsory registration of “half-breeds”).¹² The Nazis had to act within the constraints of German civil law, which would not permit involuntary sterilization. At the meeting, the racial “experts” discussed creating a new law to allow for sterilizations. Reflecting similar fears that would shape the discussions about creating the Nuremberg Laws, the lawyers feared a public backlash and rejected a new law so as to avoid public debate. When it was suggested that doctors could be instructed to accidentally sterilize patients using fake justifications and invented symptoms it was rejected because the Nazis feared that doctors could not yet be trusted. Deportation was also discussed, but seen as impractical as other countries would not be willing to accept them.

Concerned with public opinion the Nazis felt constrained to work within the legal system. Sensitivity to public and especially foreign opinion led to a secret campaign. The fate of Blacks in Nazi Germany from 1933 to 1945 ranged from isolation to persecution, sterilization, medical experimentation, incarceration, brutality, and murder. Jews were mentioned as possible extensions of whatever worked (including deportation) from the beginning. What the Nazis learned when working on the self-imposed “Rhineland Bastard” problem was that racism worked and it was easy to manipulate and escalate fear of a small, powerless group. As Nazi ideology linked Blacks as tools of the Jewish conspiracy, it is not surprising that Julius Streicher’s personal history of the First World War contained an image of a Black, ape-like creature invading an innocent German girl’s bedroom in “The Black Attack.”¹³

Eugenics, Sterilization, and the American Connection

Creating immutable categories is what science has done since the Enlightenment. The eugenics movement sprang from this and found a life in the perceived battle over scarce resources following World War I. The United States was a leader and held in high esteem by Germans. During world War I the German Society for Racial Hygiene praised American research and the eugenics practices that were emerging. Concerned with the French acceptance and comradery with Black American troops, U.S. military leaders sternly instructed the French to disassociate. In 1923, the first attempts in Germany to implement sterilization laws took place in Saxony. From 1907-1929 an average of 200-600 sterilizations took place per year in the U.S. and by the 1930s it had increased to 2000-4000 a year.¹⁴ Many German research institutes received major funding from U.S. donors. By the late 1920s, applied eugenics was infiltrating European law. In 1928, the Swiss canton of Vaud passing a law allowing sterilization of mentally handicapped if health officials judged them a danger to reproduce. In 1929, Denmark passed a similar law. In 1932, when a Prussian committee proposed to limit medical care for handicapped and

¹¹ https://www.huffingtonpost.com/chika-oduah/the-afrogerman-experience_b_9234700.html

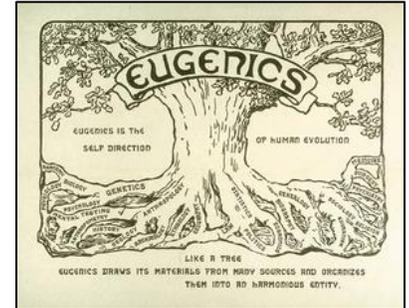
¹² Doris Bergen, *War and Genocide: A Concise History of the Holocaust* (New York: Rowman and Littlefield, 2003), 75.

¹³ Streicher was a Nazi Party elite and ideologue who established the virulently antisemitic newspaper, *Der Stürmer* (The Stormtrooper) that would combine racist imagery of Blacks with Jews.

¹⁴ <http://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/>

create laws for “voluntary” sterilization, discussion turned towards the American model. A doctor who was a Socialist member of parliament drew on existing sterilization law in Switzerland and also from twenty-four U.S. states where sterilization was legal. California became a focus for Nazi thinkers. California had been developing sterilization law since 1922 and accounted for nearly half of all sterilizations in the U.S.¹⁵

The Human Betterment Foundation of California, a branch of the American Eugenics Society, was an important source of research for the Nazis. Not only did the society help the Nazis learn how to maneuver politically, medically, and scientifically, the Nazis also learned from their extensive public education initiatives. In 1936, the Foundation commissioned a survey which revealed that 90% of Californians with some knowledge of the program approved. The ones who disapproved, according to the survey, were those with little knowledge of sterilization.¹⁶ For the Nazis and their propaganda machine (always fearful about German public acceptance of their initiatives) this would be important information.



Part of an award certificate at the Second International Congress of Eugenics, American Museum of Natural History in N.Y., 1921.

While Hitler’s imagination was being shaped by murdering “inferior” peoples as part of war and expansion, he had also been very interested in U.S. models on sterilization. Otto Wagner, head of the Nazi Party’s Economic Policy Office (1931-33) claimed that Hitler “studied with great interest the laws of several American states concerning prevention of reproduction by people...”¹⁷ German researchers began to focus on the American use of sterilization as punishment. For the Nazis, this was interesting, but too arbitrary and uncoordinated in practice. Even though the U.S. appeared to be the most liberal nation in the world, German economist Paul Besselmann noted the willingness of American politicians to implement “racial” laws.

U.S. Legal Precedent and the Nuremberg Laws

It should come as no surprise that American racism, and the legal structures that emerged to support and justify it, were of great interest to other racists. Madison Grant and Lothrop Stoddard (both Ivy-league educated) were two Americans writing about “threats” to Nordic racial purity. Grant, a New York lawyer, wrote *The Passing of the Great Race* in 1916. Grant’s focus on the Aryan race would soon be used to rationalize U.S. immigration restrictions in the 1920s. He argued that segregation was not enough for inferior races and that “inferior stocks” should be sterilized and quarantined. His focus on interracial marriage restrictions and the dangers of reproduction would also be of great interest to Hitler. Grant’s book would be one of Hitler’s sources for *Mein Kampf*, it held a special place in his library, and Hitler said, “The book is my Bible”.¹⁸ In *Mein Kampf*, he wrote, “The racially pure and still unmixed German has risen to become master of the American continent, and he will remain the master, as long as he does not fall victim to racial pollution.”¹⁹ In 1922, Stoddard, a New-Englander, wrote *The Menace of the Under-man* which would later become a standard text in Nazi classrooms as the Nazis claimed the term *Untermensch* (subhuman).

¹⁵ Stefan Kühl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (New York: Oxford University Press, 1994), 42.

¹⁶ Kühl, 44.

¹⁷ Ibid, 37.

¹⁸ Isabel Wilkerson, *Caste: The Origins of Our Discontents*, (New York: Random House, 2020), 81.

¹⁹ <https://billmoyers.com/story/hitler-america-nazi-race-law/>

In 1933, the United States was the world leader in White supremacist legislation. As the Nazis crafted their race laws they found California law especially useful. The July 14, 1933, "Law on Preventing Hereditary Ill Progeny" used California precedents. Hitler's early eugenics initiatives received praise from the American Eugenics Society who stated that Hitler's sterilization policy demonstrated his great courage and statesmanship. Nazi laws were seen as positive advancements against criminal activity as the Germans centralized eugenic laws and removed loopholes. Concerned with racial degeneration of the American population eugenicists pushed to influence U.S. law. In 1934 the New York association of Elementary School Principals called for the sterilization of "criminals and low mentality classes." A 1937 Fortune magazine survey revealed that 67% of Americans supported compulsory sterilization of habitual criminals.

In February 1934, German race anthropologist Hans F.K. Günther noted to a University of Munich audience that "American immigration laws were accepted by the overwhelming majority." Whether this was true or not, is not as important that the laws had been passed and they specifically favored Nordic "Aryans." Günther became a leading expert influencing and shaping Nazi race policy and the educational propaganda that followed. It is interesting to note that U.S. eugenicists were the strongest foreign supporters of Nazi race policies. Many frequently traveled to Nazi Germany to do their own research and saw themselves as scientific and social activists.

As the Nazis began to coordinate and crystalize their racist program they looked for legal precedence that could help shape their own work within the German legal system. Immediately they began to study other legal systems that might guide them. The only models available came from the former British Empire. Although Australia and South Africa offered samples, the United States had fully developed a strong legal tradition of racism. German lawyers visited the Jim Crow South and consulted with American scholars. Even before the Nazis, fact-finding missions of German lawyers sent to the U.S. had occurred to justify German racial policies in colonial SW Africa (where the Germans perpetrated genocide against the Herero and Namaqua) at the turn of the 20th century. It is unclear how much this research influenced the thinkers of 1933-35, but it does illustrate the ongoing interest of Europeans in American race law.

A September 1933 memorandum from Prussia Ministry of the Interior directed German political and legal minds to wrestle with the self-imposed "Jewish Question." The memo demanded criminalization of racially mixed marriages and sought to do away with the Weimar Republic's criminal law codes. In the memo Nazi radicals specifically cited the American experience, but argued that Jim Crow might be too radical for their initial objectives. It is chilling to hear Nazi radicals from the Prussian Ministry of the Interior rejecting Jim Crow as too radical. The memo created a dynamic of argument and scholarship between radicals, eugenicists, and the more conservative lawyers that would culminate in the 1935 Nuremberg Laws.

On June 5, 1934, Nazi officials met to debate a legal framework for creating its race state. Franz Gürtner, Reich Minister of Justice, chaired the meeting which began with the question, How did the Americans do it? In the debate that followed, the moderates around the table held the upper hand arguably because Hitler had not yet gained total control. Genocide is a process. Herbert Kier, who had been asked to compile a list of U.S. race

law, was surprised by the lengths the U.S. went to segregate their population and argued they had gone too far.



1936 Nazi map showing 48 States' with 'Statutory Restrictions on Negro Rights.'

Hans F.K. Günther, another “moderate” argued that educating the German nation would be enough. Radicals such as Roland Freisler, President and “executioner” of the People's Court from 1942 to 1945, was perplexed as to why the American laws did not also equally target Jews. Everyone was generally impressed by the unique American habit of lynching.²⁰

Conservative German lawyers were rooted in process, precedent, and jurisprudence. They pushed back against the radicals – not about racism, but about its practical enforcement. They did not want to rewrite criminal law, but work within it. German research had uncovered a rich heritage in American racism (from a race law in the 1691 Virginia statute, to the Fugitive Slave Act, to the 1924 Immigration Act) that helped frame their thoughts.

Studying the isolation and degradation of indigenous Americans, race laws that excluded the Chinese and Japanese, as well as legislation such as *Plessy v. Ferguson*, the Nazis found the legal precedence they were looking for to create second-class citizens within sovereign states. Immigration and naturalization law drew intense scrutiny. The Naturalization Act of 1790 specified citizenship to “any alien, being a free white person” stood out as unusual in the 18th century.²¹ German researchers discovered that literacy tests to disenfranchise targeted groups did not originate in the Jim Crow South, but in Connecticut and Massachusetts in the 1850s that targeted Irish immigrants. The U.S., however, was still a refuge and haven for immigrants. The Nazis saw this as a great American failing that made the U.S. incapable of moving forward. Nazi lawyers were intrigued, however, by the numerous deportation initiatives to send blacks to Africa.

Nazi Focus on U.S. Immigration and Naturalization Law

In the 1870s immigration and naturalization law became more intense with the arrival of Asian immigrants. Chinese exclusion legislation began in California and became part of national legislation in 1882. In 1896, U.S. lawmakers passed a bill that tried to restrict immigration through the use of literacy tests. The bill was vetoed by President Cleveland.

Before World War I, unlike the British or French, the United States denied rights of naturalization to citizens of any country the U.S. was at war with. In 1917, the U.S. passed the Asiatic Barred Zone Act that declared vast sections of Asia as the home of undesirables, to be barred alongside of homosexuals, idiots, and more.²² Of particular interest was the 1921 and 1924 Immigration Acts (written after Hitler penned *Mein Kampf*) that focused on excluding immigrants from “undesirable races” of eastern and southern Europe in favor of Nordic peoples of north and western Europe. In 1921, anticipating further immigration after the First World War, the United States Congress had passed an immigration bill that severely restricted European and denied Asian immigration. The law was discriminatory and sought to exclude emigration from “undesirable” countries. 3% of any European nationality would be eligible for the 358,000 available visas. In 1924, this law was considered too

²⁰ Wilkerson, 81.

²¹ Kühl, 34.

²² James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton: Princeton University Press, 2017), 35.



"The only way to handle it."
"The Literary Digest", 1924.

liberal and the US Immigration and Nationality Act (INA) reduced the quota to 2% of a given nationality (based on 1890 U.S. census numbers) up to a newly reduced 164,000 eligible visas. A visa document was required from a U.S. consul in the country of origin and in 1930, the State Department rejected those considered "likely to become public charges." The new law cut the quota for northern and western European countries by 29% and southern and eastern Europe by 87%. In 1936, facing an influx of German (Jewish) refugees, the State Department added a requirement, in addition to all the other forms, that German applicants provide a certificate of good conduct from the German police. The net effect on Jewish (German) refugees was to drastically reduce immigration from Germany to 10% of the allocated quota during the early and middle 1930s.²³

Germans had great respect for growing American power and influence. In 1928, Hitler's second volume (unpublished) of *Mein Kampf* (the royalties from the original allowed him to live comfortably) incorporated the U.S. Immigration Acts of 1921 and 1924 and helped Hitler to build upon the 1920 Nazi Party Platform. Hitler praised the U.S. racial model and warned that as Americans accepted only Nordic types that Germany could not compete unless it did the same.²⁴

Ironically, the 1924 Immigration Act and the Great Depression of 1929 undermined the influence of American eugenicists. White Americans were less afraid of losing their culture to immigrants (as mostly Nordic types were being admitted) and the Depression made it harder to argue that hereditary factors were behind individual economic plight. Although eugenicists began a gradual descent, racism continued to create new constructs based upon previous frameworks.

As the Nazis studied "what made America powerful" they discovered race law, but also its limitations. In many ways, the Nazis saw themselves completing a project that the Americans could not. In a 1928 speech, Hitler admired how Americans "gunned down the millions of Redskins to a few hundred thousand, and now keep the modest remnant under observation in a cage."²⁵ It is no coincidence that Hitler referred to his *Lebensraum*²⁶ plans for colonization of Eastern Europe as conquering the "Wild East" and of putting people into "reservations." In *Mein Kampf* Hitler noted that U.S. states divided inhabitants into three categories, citizens, nationals, and aliens while noting that Americans had learned through immigration acts to keep "undesirables" out.

Creating second-class citizens was of particular interest to Nazi thinkers. Germans noted that Native Americans were viewed as nationals, but not citizens, and Puerto Ricans and Filipinos were defined as "foreigners." The 1898 Spanish-American War fascinated the Nazis as did the legal maneuvering around the 14th Amendment. As the Nazis envisioned conquest and empire, how did Americans deal with conquered peoples who were supposed to become U.S. citizens? In what became known as the Insular Cases, the Supreme Court consented to the creation of second-class citizenship for newly acquired conquered populations as "non-citizen nationals"

²³ "Jewish Refugees from the German Reich, 1933-1939," USHMM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005468>.

²⁴ Whitman, 46-47.

²⁵ <https://billmoyers.com/story/hitler-america-nazi-race-law/>

²⁶ The Nazi concept of "living space" that Doris Bergen labeled the ideology of "race and space." See, Bergen, *War and Genocide*.

who were subjects without full political rights.²⁷ The U.S. distinction between “political rights” and “civil rights” was crucial for Nazi thinkers.

Antisemitism and Racism as Legal Construct

The more the Nazis studied the U.S. the more they discovered how they could shape their laws and their objectives, albeit without the Constitutional constraints Americans had to deal with. They studied the *Dred Scott v. Sandford* decision that rejected citizenship to Blacks and how those seeking “racial purity” worked to undermine and obscure the 14th and 15th Amendments. They discovered how Jews, though U.S. citizens, had also been marginalized, attacked, and made second-class citizens. American Jews also faced the wrath of the KKK and segregation. In the 1920s several Ivy League universities restricted Jewish enrollment and made life very difficult for those who were accepted. Harvard President A. Lawrence Lowell used the same racist justification for targeting Jews by arguing that cutting the number of Jews at Harvard to a maximum of 15% would be good for the Jews, because limits would prevent further antisemitism.²⁸

The Nazis borrowed from American legal precedents to shape the Nuremberg Laws and Nazi racial policy. However, there were limits. German criminal law required clear and unambiguous concepts. Unlike American common law where judges had discretion in interpreting vague laws, German judges could not convict based upon vague concepts. German lawyers rejected Jim Crow, grandfather clauses, poll taxes, literacy tests, as subterfuge that would never hold up. As an additional twist, they argued that these laws only worked because the target groups in America were already oppressed and impoverished (something American racists never accepted in their imaginations). German racism against Jews was different in that they believed all Jews were wealthy and powerful and had to be dealt with in a different way. For them, American laws dealing with immigrants, naturalization, and marginalization helped them frame their thoughts on how to create second-class citizens within an existing legal structure, but they could not be directly transferred to Germany.

As in other parts of the world, antisemitism was another powerful force shaping American life. Antisemitism, broadly defined, are feelings, attitudes and acts of prejudice against Jews. Its deep roots in Christianity – one can argue that antisemitism is a creation of Christian tradition – found easy expression and acceptance. Although it was mostly social (segregated beaches, hotels, and discrimination at universities and in professions) it could also turn violent. For example, Jewish businessman Leo Frank was unjustly lynched by a Georgia mob in 1915 having been falsely accused of murdering the teenaged Mary Phagan. By the 1930s, a new virulent strain of racial antisemitism shaped the imagination. Often rooted in the invented Russian *Protocols of the Elders of Zion* (1902-03) racial antisemitism imagined secret Jewish power and conspiracies everywhere. Despite its exposure as a poorly forged, plagiarized, inauthentic hate-filled nonsense, the *Protocols* continue to grow in popularity even today. In the 1930s, it was men like Henry Ford and his *The International Jew* (1920) (one of the sources Hitler utilized to write *Mein Kampf*)²⁹ and Catholic priest and popular radio host Father Charles Coughlin who propagated this hatred. In 1921, Woodrow Wilson ironically led criticism of Ford which culminated in a threatened boycott. In 1927, Ford’s apology and retraction, although self-serving, was well received. There is no mention of this incident in the Ford museum in Michigan.

²⁷ Whitman, 40.

²⁸ <https://www.jewishvirtuallibrary.org/harvard-s-jewish-problem>

²⁹ Volker Ullrich, Hitler: Ascent 1889-1939, (New York: Knopf, 2016), 176.

Marriage Laws

The Nazis were paranoid about blood and “race mixing.” U.S. anti-miscegenation laws, intended to prevent the interbreeding of people considered to be of different racial types, stood out for the Nazis as something that could be directly transferred. They were utilized to frame significant parts of the Nuremberg Laws of 1935.

Nazi lawyers specifically cited U.S. legislation such as the 1922 Cable Act that until 1930 took away citizenship from women who married an Asian man who was not a U.S. citizen. In citing this as precedence, leading into the final discussions that would shape Nazi legislation, Nazi elites apparently did not know that the act had been overturned. The Nazis had a difficult time finding non-American examples preventing and punishing miscegenation. Thirty U.S. states declared mixed marriages invalid and many of those states threatened those who did with harsh punishments.³⁰ This was unusual and criminalization of marriage is rare in legal history. There were some examples sprinkled through the former British Empire, but none had the harsh punishments that the Americans meted out. (Anti-miscegenation laws were eliminated at the state level in 1967 with the *Loving v. Virginia* decision.)

American anti-miscegenation laws also had a separate classification for “mongrels.” These laws had developed due to slave masters and female slaves. Enslavers needed to distinguish between who belonged to which race and who did not. Although radical Nazis championed these laws as models, the conservative lawyers thought them too explicit in their racist aims and intent. There was deep concern amongst conservative lawyers that criminalizing mixed marriages would be counter-productive due to the history of assimilation and inter-marriage of German Jews. What also made these punitive laws unworkable was the inability to legally define “Jew.” Nazi lawyers could learn from these American laws, but had to be careful in toning down the explicit racist intent.

On the other hand, the lawyers realized that in the U.S. marriage was part of criminal law. Bigamy was judged to be fraud and this provided an opening. The Prussian memo utilized this by mentioning “race treason” and “malicious deception” as legal precedent.³¹

The Nuremberg Laws

Just before the convening of the Nazi party rally in Nuremberg on September 15, 1935, Nazi researchers discovered that both North Carolina and Texas had an “association clause” in their anti-miscegenation marriage laws to help distinguish people of questionable race.³² This was a final piece that allowed Hitler to announce the Nuremberg Laws. The “Law for the Protection of German Blood and German Honor” forbade marriages and extramarital intercourse between Jews and Germans and the employment of German females under 45 in Jewish households. This law was directly linked to American legal precedents. The “Reich Citizenship Law” declared that only those of German or related blood were eligible to be Reich citizens; the remainder were classed as state subjects, without citizenship rights.

Interestingly, when the Nuremberg Laws were issued *The New York Times* focused on the resolution of the German flag debate with the headline, “Reich Adopts Swastika.” The Nazis claimed that the laws were in protest of New York Jewish lower court judge Louis Brodsky (it was very difficult for Jews to have upper level jobs in the

³⁰ Whitman, 78.

³¹ Ibid, 90.

³² Wilkerson, 87.

judiciary) who had denounced the Nazis and declared that American values could not tolerate Nazism.³³ The Nazis presented the law as a response to Jews, not the United States. Secretary of State Cordell Hull actually issued a formal apology to Nazi Germany for Brodsky's actions. For the Nazis, they had jumped a huge hurdle by taking over singular leadership in Germany by undermining their conservative opposition and gaining the de facto endorsement of the United States. Eight days after Hitler declared the Nuremberg Laws a delegation of forty-five Nazi lawyers (including seven women) arrived in New York city on a study tour. Things did not go smoothly as New York was a hotbed of anti-Nazi activity.

As part of the Nazi educational efforts about its new race laws it is interesting to note that Johann von Leers, who was deeply involved in the early stages of drafting the Nuremberg Laws, dedicated twenty-three pages to American race law in *Blood and Race: A Tour Through the History of Peoples* (1936). He included reviews of the 14th Amendment, immigration and naturalization laws, and anti-miscegenation laws to convince the public of the progress Germans were making.

As the American press reported on growing Nazi barbarism regarding race law and sterilization American eugenicists began to split. All believed that you could distinguish between inferior and superior elements of society, but disagreed as to the cause. Racial anthropologists continued to support and study Nazi initiatives while scientific and political groups became more skeptical. Like their European colleagues before them, many prominent American eugenicists began to question the "scientific basis" for discriminating against Blacks and Jews. The more racial laws that the Nazis passed the more white American intellectuals began to shift their views on Jim Crow. In December 1938, the American Anthropologist Association unanimously denounced racism. The American encounter with the threat of Nazism began before the war and was reinforced with the liberation of the camps.

To Compare and Contrast

We make inquiries about the past aware that comparisons often fail both historically and ethically. What is our role as educators as we confront troubling echoes and incendiary political and ideological rhetoric that we know causes great harm? How do we raise issues and teach competencies for democratic citizenship in times of social polarization and the weaponizing of history? How do we make inquiries about the past that forces deeper reflection, discussion, and preventative action? Words, context, and outcomes matter. We know that we do not just compare the past to the present, we also contrast. Mass atrocity crimes are preventable if we recognize them as a process not just an event. Denial of the process fuels its outcomes. We proceed with caution.

Terms matter. Context matters. End goals and outcomes matter. Issues of individual and collective identity and an inability to explore our own implicit human biases often trumps or shapes historical knowledge. History itself gets reduced and filtered by the needs of the listener. Is the use of the term "concentration camp" a valid starting point for discussion of contemporary issues? The use of the term to describe internment camps on the southern border of the United States sparked emotional responses. Is it an appropriate term? More specifically, is it useful?

It is striking to me that Germany does not have the death penalty today. It is a recognition of distrust rooted in history. On the other hand, in a post-Civil War America where the perpetrators were/are fêted, the death

³³ Whitman, 20-25.

penalty still exists in every state that had the highest number of documented lynching.³⁴ This is not an argument “for” or “against” the death penalty (I happen to be against), but an argument to explore these issues in an historical context of responsibility. We need to get our radar up and recognize the specificity of outcome.

The term “concentration camp” predates Nazi Germany and followed it in places like Bosnia and North Korea. Specificity matters. Japanese internment camps were different from Nazi concentration camps. Nazi concentration camps (*Konzentrationslager* or KL) were designed for political, legalized, and improvised terror. Control of the camps was an internecine struggle between a variety of conservative factions including leaders of German states, the judiciary, the SA and the SS. Nazi concentration camps were more than internment or detention camps. When we compare we must also contrast in order to see distinction. It does not mean that we demean the memory of those who suffered in KL camps when we condemn the injustice of other camps. Each has its own implications.

According to historian Omer Bartov, “concentration camps” share: forced incarceration without trial; separation of families; harsh physical conditions; hidden from view and inspection; pseudo-military/police appearance; regimentation of inmates; possible use of forced labor; denial of basic human rights; exposure to arbitrary violence and cruelty; existence outside of recognized legal space in “emergency zones”. This is an historical foundation for inquiry.

When examining Nazi concentration camps we see a structure specifically designed for the escalation of brutality that taught SS guards to become “political soldiers” in the “warzone” of the camp. It was the only place in the SS where a modest education and lack of connections did not matter. With a taste for violence one could quickly rise through the ranks. The guards were brutalized while learning how to advance through brutality. Rudolf Höss, for example, started as a camp guard at Dachau and brutalized his way into being named commandant of Auschwitz. It is important to study how concentration camps radicalize individuals, institutions, and policies. The use of the term is important in order to face important questions of how concentration camps radicalize the cultures that spawn them.

And yet, is the use of the term useful? Dr. Robert Rozett wrote that “Fair, informed references to the Holocaust require more than a superficial acquaintance with it; they require knowledge”. When “Nazi concentration camp” is used people immediately think of the Holocaust. The Holocaust, however, occurred mainly outside of the KL system which maintained a separate administrative structure. Three million died in extermination camps and others were shot where they lived or starved in ghettos. Prisoners and victims of the KL system may have been Jews, which made their experience even harsher, but only two of the extermination camps had concentration/labor camps attached.

As a symbol of Nazi atrocity the concentration camp evokes deep emotions. In some ways, the symbol itself has reduced our ability to examine the complexity of Nazi initiatives and policies. As we are facing a time of polarization that weaponizes the symbols of history, is it productive to use the term as a means to raise significant questions, face our implicit biases, resist self-justifying cruelty, and allow space for thoughtful discussion? As an appeal to empathy and accuracy the term “concentration camp” works, but does it move us forward in exploring the escalation of a process? Will its use allow us to think about how to improve humanity

³⁴ Wilkerson, 346.

and our democratic system through reasoned judgement? What is at stake if terms such as concentration camps are used to describe contemporary situations? What is at stake if we do not? Context and knowledge matters.

Confronting Racism Benefits All

FDR and the missionary generation unified a frightened nation and gave it hope. The American encounter with Nazi Germany revealed much about the dangers of our own racism, bigotry, susceptibility to demagogues, and our limitations and potential as a people. The Nazis recognized the parallels even if we did or do not. That struggle continues, but we must confront our legal and cultural traditions that inspired Nazism. We should be honest in recognizing that Europeans in the 1930s recognized that Black v. White conflict was only one aspect of American racism. There has always been a connection between racism, nationalism, and self-interest of the few. Although Nazi Germany in the early years did mirror Jim Crow, Americans did choose to go in a different direction. We must recognize that the United States has been a force for good often enough, but racism is a fundamental threat to our democracy.

Hitler promoted the Nazi revolution as an egalitarian levelling seeking racial purity. The United States also has moments in its history when these “utopian” fantasies held a certain appeal. Nazism, however, requires centralizing power in the state to fulfill an ideological goal and that is why our separation and balance of powers is crucial. John Adams was correct in arguing that Americans are not better or worse than others, but that our institutions and laws keep extreme behaviors in check. Institutions, however, are human.

Roland Freisler saw the contradictions, but also opportunities for exploitation in U.S. criminal law. To this Nazi extremist he observed how law is shaped by the political process and how inadequate the American legal tradition proved to be in limiting politicization of criminal law. The singular fact that we elect judges and prosecutors is unheard of elsewhere and should raise questions about the politicization of American law. It is very difficult for jurists to slow down political agendas. Race law has historically been the most troubling aspect of this reality. We have to consider ways to keep the judiciary strong and separate. Authoritarian structures are strengthened and checks and balances are weakened when political leaders attack institutions such as the media and the judiciary. Laws that strengthen authoritarian structures and not judicial oversight include “three strikes, you’re out” and “zero tolerance.” The U.S. has pioneered magnificent legal institutions and advanced human rights and freedom. This is to be admired and promoted. It is something the Nazis and authoritarian leaders found contemptible.

Caste and race affiliation hurt everyone. In 1721 Cotton Mather, a Puritan minister in Boston had learned from his Black slave Onesimus of inoculation as a cure for small pox. Bostonians reacted with outrage as the cure was being offered by a Black man and many would die in the epidemic.³⁵ When subordinate castes believe in the promise of freedom and struggle for justice in America, the results were birthright citizenship, voting rights, and laws against exploitation. Recognizing how caste often responds violently when someone from a subordinate caste succeeds, it self-inflicts wounds. Even professional baseball chose to suffer and also lose profits by marginalizing talented players from the “Negro” leagues. Lessons can be learned. Although marginalized, targeted, and treated with injustice, subordinated castes demonstrate what is possible and beneficial to all. In the Second World War, for example, where would our bomber crews be without the Tuskegee Airmen? How

³⁵ See Wilkerson, 231-232.

would the war in the Pacific been won without the Nisei (second generation Japanese-Americans) or indigenous American code-breakers?

In 2018, the National Memorial for Peace and Justice opened in Montgomery, Alabama. This challenging and honest confrontation with America's slave past is deeply painful, but gives hope. Pillars hanging from the ceiling remind people of the crime of lynching and are inscribed with the names of its victims. It is no coincidence that this memorial is modeled on the Memorial to the Murdered Jews of Europe that was erected in Berlin, Germany. Both stand as challenges to the destructive force of racism.



When we encounter our racist history, America grows closer to fulfilling its ongoing promise. Immigrants have taught us the importance of tolerance and human dignity. Indigenous people and minorities have added to American life economically, socially, and morally. Primarily, the fight against racism is not an “either/or” or “winner/loser” proposition. Instead, it is a fight to benefit the majority of us who learn that for us to move forward we must listen to the voices of the targeted first. A cynical and devastating mistake for those who believe in the promise of the Republic is to wish away, ignore, or whitewash uncomfortable truths of the past or put the majority or perpetrator narrative in a privileged place above that of the targeted. As Stokely Carmichael said, “If a white man wants to lynch me, that's his problem. If he's got the power to lynch me, that's my problem. Racism is not a question of attitude; it's a question of power...” It is a foundational concept of totalitarianism and fascism and a fundamental threat to democratic discussion and responsibility to argue that “what you're seeing and what you're reading is not what's happening.”³⁶

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³⁶ <https://www.cnn.com/videos/politics/2018/07/24/donald-trump-what-youre-seeing-not-whats-happening-tapper-sot-vpx.cnn>