thought, do we unintentionally diminish the terror administered in the name of "race"? How do the indeterminate nature of race and the flimsiness of biology as bases for action change how we judge the crimes people committed *in the name of* volkish health? Does the incomplete nature of Nazi ideology bring us closer to understanding not only a passive acceptance of Nazi racism, but also the motivation of those who beat up shopkeepers, pilfered property, or murdered Jews face to face? In short, how do we explain the balance between ideology and opportunism, or explain the behavior of the millions who made the Third Reich tick not only out of belief in a biological reordering but also out of pragmatism and nationalism?

Such concerns notwithstanding, one must not underestimate the great achievement of *Beyond the Racial State*, which provokes us to think anew about the relationship between ideology, segregation, and murder in the Third Reich. Ultimately, the contributors' work is too sophisticated and powerful to be reduced to mere fighting over labels. Moreover, it is about more than just Nazi Germany. It's about broader historical categories like modernity, rationality, and progress, and the continued debate over whether the "spirit of science" can lead to genocide. As Detlev Peukert, George Fredrickson, and others have argued, the classificatory nature of enlightened rationality enabled states to register, isolate, and decimate their citizens. But these essays expose the limits of this claim. In studying the nature of racial discrimination, it is more fruitful to locate continuities between pre-1933 and Nazi-era ethnic violence, and to trace how ideas about whiteness, legal segregation, and colonial exploitation can transcend national boundaries. The longue durée approach adopted by many essays in this volume allows us to see how ill-formed ideas about race can be layered upon older (or newer) forms of discrimination based on color or class or national origin.

Ultimately, *Beyond the Racial State* compels us to think about the promiscuousness of racist ideas and their omnipresence in dictatorships and democracies. You don't need a coherent ideology to mobilize people longing for the return of an imagined golden age. To create a mass movement it is not necessary to promote a consistent vision of biological regeneration—whether wrapped in the language of whiteness, Aryan purity, or simply "the people." Rather, it is the often-clumsy "dog whistles" and the exploitation of people's resentments—economic, social, or cultural—that attract followers. Whether we observe the Third Reich or contemporary illiberal movements, we can see inconsistent, self-contradictory, and even buffoonish ideas being overlooked, embraced, or even laughed at if something else—a pugnacious and punitive sense of national belonging—is offered in tandem.

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***Hitler's American Model: The United States and the Making of Nazi Race Law*. James Q. Whitman (Princeton, NJ: Princeton University Press, 2017), 208 pp., cloth $24.95.**

Jim Whitman's book-length essay makes a bold argument in modest language. Repeatedly questioning the fairness of asking whether American legislative models influenced the Nuremberg Citizenship and Blood Laws of September 1935, Whitman methodically frames an inescapable truth: Nazi lawyers who drafted legislation to exclude Jews from German society consistently turned to American law for guidance. And the more radical the Nazi lawyers, the stronger the appeal of American models. In the end, Whitman argues, it is not only fair to examine the parallels between American and Nazi race law, but it is necessary for Americans to hold up the mirror of

that epitome of lawless regimes, National Socialism, to view our own unresolved, *unbewältigt*, racial past and present—whatever the role that America played in defeating the Nazis and extirpating their lingering influence in the postwar Federal Republic, and despite the overturning of race legislation at home.

While other scholars have concluded that Jim Crow public accommodation laws did not interest Nazi theorists (because the Nazi goal was not segregation but exclusion and expulsion), Whitman scrutinizes documents compiled by lawyers in the Prussian, and later Reich, Ministry of Justice to determine which models those officials did admire. He identifies their great fascination with three categories: race-based immigration law, especially the Immigration Act of 1924; race-based second-class-citizenship laws that deprived African-Americans, Native Americans, Filipinos, and Puerto Ricans of the vote and other civil rights; and race-based anti-miscegenation laws, rendering civilly invalid and criminal interracial marriages in thirty of the forty-eight states. These laws, far more than segregation, addressed the main Nazi concerns of limiting citizenship to "racial comrades" and criminalizing reproduction outside of the "racial community," which ultimately resulted in the Citizenship and Blood Laws Hermann Goering proclaimed at the Nuremberg Party Rally in September 1935.

Nazi racial radicalism did encounter resistance from more traditional legal thinkers inside the Ministry of Justice. Particularly with respect to the Blood Law, Whitman stresses the power of conservative nationalist jurists and Nazi moderates, such as Justice Minister Franz Gürtner and Head of the Ministry's "Jewish Division" Bernhard Lösener, to thwart the most radical suggestions, notably by limiting the definition of who was a Jew and by defending traditional German conceptual jurisprudence and legal categories. Whitman repeatedly shows that even for the radicals, the American "one-drop rule" (of blood) went too far.

Whitman establishes beyond cavil that German jurists, both radical Nazis and conservative nationalists, drew upon a long history of interest in American racial legislation to implement Nazi race theories. This would be an important book for that contribution alone. But Whitman contributes more still by demonstrating that in the early twentieth century, the United States was the world's leading laboratory for racist legislation. And he then guides us to ask, "why would that be so?"

To answer this question, he first returns to themes from his earlier work, *Harsh Justice: Criminal Justice and the Widening Divide between America and Europe* (Oxford University Press, 2005). Whitman argued there that populist egalitarianism in America led to a postwar leveling downward to harsh modes of criminal punishment and criminalization that the *ancien regime* applied to low-status criminals, while in Europe the leveling was upward to gentler modes previously applied to high-status criminals. But in the case of race, American republicanism's rejection of the status inequalities of the aristocratic past, in favor of the equality of every member of the favored race, came at the expense of some excluded racial Other (p. 141).

Second, Whitman stresses Nazi admiration for the open-ended flexible American common-law approach (p. 146), a legal culture that Heinrich Krieger, the leading Nazi student of American race law, called a law of *Umwege*: devious legal pathways that permitted American legislators and judges to circumvent apparently clear strictures contained in the Fourteenth Amendment. To Nazi radicals such as Roland Freisler, the ponderous methods of German legal science as advanced by Gürtner and Lösener were also obstacles. American common-law flexibility—what Max Weber called substantive irrationality—provided relief from the formal rationality of legal science, and opened the door to

a *Zweckmäßigkeit*, a purposiveness that could get a job done. As for legislation, what attracted Nazis to American legal culture was its politics relatively unencumbered by law (p. 152). Whereas the lawfulness of German legal science constrained the lawlessness sought by Freisler and other radicals, these ardent Nazis envied how the American common-law system applied racial legislation purposively in adjudication; they wished to emulate those methods as a way to "work toward" the ultimate goal of Nazi race theory, a purified and Aryanized Germany.

In the end, this positioning of politics above the law is what attracted Nazi radicals. Even American Legal Realism's embrace of life over formal categories of law led it to yield to political decision-making in the realm of race legislation (p. 157). This strand of American legal thought extends to the deference of courts before the politicized harshening of criminal law since the 1970s. Whitman's conclusion, then, is that not only did the specific legislative frameworks of American race law inspire and provide raw material for the drafters of Nazi race law, but that American legal and political culture provided Nazi radicals with a model to liberate politics from the strictures of legal science.

Whitman hesitates before two final steps in the logic of his argument. First, he quotes favorably Gunnar Myrdal's conclusion in his 1944 *The American Dilemma* that the South was not Fascist (p. 143). The reasons Myrdal gave were that, despite its de-facto one-party rule and the precarious state of civil liberties, the South's politics were decentralized, often chaotic. This made sense in the same year that Franz Neumann's *Behemoth* appeared and painted a picture of Nazi Germany as a centralized totalitarian state marching to a single tune toward a single goal. But studies of Nazi rule over the past thirty-five years, which Whitman references in just a few pages (e.g., p. 149), highlight the ratcheting radicalism that grew from polycratic rule as competing power centers sought favor by "working towards the Führer." The South had no Führer, but its very decentralization and chaos made ambitious politicians work toward the vague and contradictory wishes of its racist White constituency, and maintain and deepen the legislative structures that preserved its notion of egalitarian privilege based on racial exclusion.

Second, one theorist is missing from this book, Ernst Fraenkel, whose 1941 book *The Dual State: A Contribution to the Theory of Dictatorship* seems to support Whitman's analysis. Fraenkel distinguished between the normative state, an administrative and judicial bureaucracy that followed the rules of law and legal science, and the prerogative state of the Nazi Party and the Gestapo, that sought to operate free of legal constraint and had the power to supersede the normative state in cases of conflict.

Whitman closes by emphasizing that, whatever the flaws of its long history of racial legislation with respect to immigration and anti-miscegenation statutes, the United States provided refuge to many victims of Nazism. This it did, both before World War II and from the displaced persons camps afterward. But it also turned away the *St. Louis* and its Jewish refugees in 1939, fully in compliance with the Immigration Act of 1924 and fully supported by public opinion as expressed in polls published by *Fortune* magazine in 1938 and 1939.

In *Hitler's American Model*, Whitman has provided a powerful tool to break the tyranny of Godwin's Law—which holds that the longer an Internet debate continues, the more certain it is that one party will bring up the Nazi analogy—over our ability to scrutinize our American past and our present political discourse with the full scope of comparative inquiry. Godwin's Law discounts comparisons in contemporary debates to the Nazis or the Nazi era. But when even Mike Godwin—after Charlottesville—has conceded that thoughtful Nazi comparisons might be apt, Whitman's

breach of some of the taboos of comparative legal history becomes all the more persuasive, timely, and, in many ways, chilling.

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***Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century,* James Loeffler (New Haven, CT: Yale University Press, 2018), 384 pp., hardcover $32.50, electronic version available.**

Historical narrative differs from mere chronology in the links that historians impose on events and dates, mainly as causal connectives. Chronology itself is inherently a selective process, and omissions at this first level will distort any historical accounts built on it. Faults may also surface in historical narrative because of competing narratives not taken into account.

James Loeffler's thesis in *Rooted Cosmopolitans*—his title's challenge to the classic antisemitic charge of "cosmopolitan rootless*ness*"—argues that there is a serious omission in the chronicle underlying standard accounts of twentieth century human rights discourse. As evidence, he describes the sustained efforts in the first half of the twentieth century of a number of political and legal activists who (although recognized individually) have been largely ignored in their collective accomplishment, epitomized for Loeffler in the 1948 UN Declaration of Universal Human Rights. These five figures (Hersch Zvi Lauterpacht, Jacob Blaustein, Maurice Perlzweig, Jacob Robinson, and Peter Benenson), sometimes in concert, at times even in disagreement, "reshaped the legal fabric of international society." They were spurred on by "their particular engagements with . . . modern Jewish politics," in particular an intense concern with issues of Jewish identity and rights—and Zionism—as those converged on the affirmation of human rights as such. Those efforts, Loeffler furthermore claims, gained their own momentum even apart from the major twentieth-century events for Jewish history, the Holocaust and the establishment of the State of Israel.

Loeffler's account of his subjects' collective action and achievement is original and compelling, built on evidence not previously assembled in this form. He details Lauterpacht's early commitment in the 1920s to the combination of Zionism and his aspirations for international law, the synthesis of which he urged especially after moving from Vienna to Great Britain. Robinson had a parallel journey in Lithuania, where, after winning a seat in the parliament, he led the impetus for minority rights. American Jacob Blaustein, the influential head of the oil company AMOCO, although a critic of Zionism, forcefully advocated for human rights as such. The impact of these efforts came together in a series of post-World War II initiatives: the founding of the U.N. in April, 1945, the start of the Nuremberg trials later that year, the Paris Peace Conference in fall 1946, and the UN's "decisive" (for Loeffler) passage in 1948 of the Declaration of Universal Human Rights.

Loeffler's gripping description outlines his subjects' collective, if at times uncoordinated, achievement. His claim, however, that this collaborative work was exclusively or even decisively responsible for the progression of human rights legislation pushes the point; the avoidance of both practical and conceptual issues of historical causality itself becomes an issue. The resultant imbalance reflects various omissions. The most basic of these is the determinant *pre*-twentieth century history of rights *as* such, ranging from influential political theories in which talk of rights goes entirely absent (e.g., classic Greek philosophy), to a more modern derogation (as in Jeremy Bentham's