



## The Challenge of U.S. Racism and the Nazi Race Law in 21<sup>st</sup> Century America

### Contemporary Hate Rooted in the American Experience

*Judgement at Nuremberg* (1961), although fictionalized, challenged Americans to confront, without offering any easy answers, some of the complex questions of human behavior raised by the 1960 capture of Adolf Eichmann. In one scene the prosecutor is describing Nazi war crimes by describing the hanging of children while the camera focuses on a Black U.S. Army soldier in the courtroom. As the Civil Rights Movement gained momentum questions were being raised about narrowly defined national and/or communal identities and the justifications that allow crimes against humanity to occur. Viewers are encouraged to ask how ordinary and extraordinary people follow sadist leaders and what ideals are sacrificed to the expediency of the moment. Even though the film illustrates the erosion of institutions and the danger in turning cynical about human agency, it also offers up the head of the Tribunal as a decent, honest, and unworldly jurist tasked with making a judgement in a growing context of a world wishing to forget and move on. The film is still relevant.

It is important to clearly state problems and issues our country is facing. This is not to reduce conversation into tribal camps, but to open up conversation based upon the knowledge of the past while recognizing warning signs. Racism and antiracism continue to shape behaviors, decisions, and discussions in the United States. President Trump has courted and embodied racist thinking that goes back centuries. While demagogues and authoritarians do not impose ideology from above, they can shift society in a sadistic and cynical direction. They are successful not because power allows them to dictate, but because they effectively articulate and justify for their own power, what already exists. By creating false realities, attacking truth, the press, constitutional checks on power, equating neo-Nazis and the KKK with antiracist demonstrators, President Trump has reenergized a hatred that has deep roots.

As Professor James Young observes, “Memory is never shaped in a vacuum, the motives of memory are never pure.”<sup>1</sup> Denial and distortion breeds ignorance, but the acceptance and growth of racism stems more from self-interest. Steve Bannon, once a close advisor to President Trump has continued to promote his racist agenda. At the 2018 National Front Congress of France’s right-wing, Bannon preached, “Let them call you racists. Let them call you xenophobes. Let them call you nativists. Wear it as a badge of honor. Because every day, we get stronger and they get weaker.”<sup>2</sup>

Many decide to follow racist liars because they appeal to perhaps the oldest interest group in U.S. politics, the racist vote. That is not to argue that all those who use their democratic right to vote are racist nor is it productive to reduce voters or politics to reductionist labels or motives. However, racism is a viable political position that works politically while also carrying significant societal costs for the majority. It is important to point out not just what racist lies are, but how racist thought works and finds supporters even though it is not grounded by evidence.

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<sup>1</sup> James E. Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven Yale University Press, 1993), 2.

<sup>2</sup> [https://www.washingtonpost.com/world/the-tide-of-history-is-with-us-steve-bannon-delivers-rhetoric-filled-speech-to-frances-national-front/2018/03/10/4f21e016-2480-11e8-946c-9420060cb7bd\\_story.html?noredirect=on](https://www.washingtonpost.com/world/the-tide-of-history-is-with-us-steve-bannon-delivers-rhetoric-filled-speech-to-frances-national-front/2018/03/10/4f21e016-2480-11e8-946c-9420060cb7bd_story.html?noredirect=on)

U.S. racist legislation and initiatives, such as racist-based immigration laws and disenfranchisement of minorities, were used as precedent as the Nazis developed their race laws. Indeed, utilizing American ideas not only helped the Nazis craft the Nuremberg Laws of 1935 it also helped them cement their power. It will be stunning to discover that the system of Jim Crow racism was seen as too radical by Nazi lawmakers. Instead, the Nazis explored ways to legitimize their racial state by exploring what worked and what did not work within U.S. race-based laws and practices. *Judgement at Nuremberg* references Virginia sterilization law and legal thinking of imminent American jurists that justified race-based laws. While we will explore the U.S. precedent for Nazi thinking it will also be important to consider that the Nuremberg Trials themselves were rooted in American Tribunals following the Civil War. However flawed, the tribunals attempted to create jurisprudence on human rights. Preceding the 1865 tribunal on the Andersonville Prison atrocities (that would sentence Henry Wirz to death for war crimes) the Confederate military routinely court-martialed and punished individual guards at Andersonville who committed violations against prisoners.

President Trump represents a pattern in American racism that always follows as a backlash to racial progress. Not knowing what racist ideas really are, and how deeply they are rooted, many are easily manipulated by confusion and fear. Racism does not usually gain traction from ignorance or hate (although that reinforces it), but from leaders who opportunistically manipulate economic, political, and cultural self-interests<sup>3</sup> that are constantly in flux.<sup>4</sup> Racism is a tool to redirect the blame for perceived or real social ills, while negatively impacted and undermining the very voters who rally to their cause. This essay will attempt to frame racist ideas and practices while emphasizing that the targets of racism are never passive, but merely overwhelmed. Identifying racism and its expression will help to undermine its destructive impact while holding those who manipulate it, accountable.

## Framework

Racism in U.S. political life can be traced back to the Puritan settlers who brought European racist ideas and framed and legitimized them with theological arguments. Ibram Kendi classifies the American encounter with racism into three basic camps that act in a continuing dynamic that is never static. Segregationists, motivated by racism, blame Black people for racial disparities. Assimilationists, motivated by the idea of racial progress through integration, also accepts Black inferiority, but hopes that adopting White cultural traits and ideals will help to uplift Blacks and allow Whites to accept them. Antiracists point out that race disparity is rooted in racial discrimination, not Black pathology or race traits. Antiracist ideas are therefore always pitted against two kinds of racist ideas, which makes racial arguments complex, confusing, and easy to manipulate. Segregationists and assimilationist articulate attractive arguments while framing opposing antiracist ideas as evil. At the same time, they are effective in making people believe that racist ideas are not racist. Racist and hate-filled ideas are always justified as “good” which allows the perpetrators or accommodators of such beliefs to rest well with their choices. The history of the United States is one of simultaneous racist and racial progress. It is not a simple narrative of unfolding racial progress over time.

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<sup>3</sup> Ibram X. Kendi, *Stamped From the Beginning: The Definitive History of Racist Ideas in America* (New York: Nation Books, 2016), 9.

<sup>4</sup> *Ibid*, 9-10.

Racism hurts all, except those who pedal such nonsense and achieve power. The vast majority do not benefit from racism. Slavery kept the vast majority of southern whites in poverty while benefitting a select, educated few. More whites thrived during antiracist movements from the 1930s to 1970s and suffered during the inevitable racist backlashes that followed. Racist movements parallel the stagnation or reduction of middle and low-income salaries and skyrocketing costs of livings for whites brought on by racist policies.<sup>5</sup> One way to move ahead is help people see that it is not in their self-interest to consume racist ideas and policies. We can only do this by pointing out what racist ideas are and stop arguing the issue as a “winner takes all” either/or scenario. When everyone’s human rights are dignified and respected, everyone is better off and society thrives.

## U.S. Civil War

Racism is rooted in self-interest more than ignorance. Racism polarizes people because it is not driven by fact. The ideological roots of racism that caused the Civil War date back to the country’s founding and well before. Thomas Jefferson illustrates how self-interest trumps personal values. Jefferson, as privileged slave-owner, could speak both against slavery and in favor of it. He often spoke as an antiracist in favor of freedom while also supporting white prejudice and enslavers. In the initial draft of the Declaration of Independence (rejected by northern and southern slaveholders) Jefferson identified the slave trade, perpetuated by King George III, as “a cruel war against human nature.” At the same time, Jefferson reflected the fears of his fellow colonists by also identifying the evil actions of Britain who were offering freedom to slaves and arming them to keep Americans enslaved with the passage, “He has excited domestic insurrections among us...”<sup>6</sup> Citing only this comparative framework, Jefferson is falsely equating slavery with the wealthy landholders’ experience, while fearing armed and aggressive Blacks who “needed” to be controlled. His perceived self-interest was to argue for freedom from British rule while keeping Blacks servile and passive in order to maintain his freedom and standard of living. It is noteworthy that slaves were clearly not being docile or passive in the reality of their abuse.

Slavery was the root cause of the Civil War (1861-1865). The Missouri Compromise of 1820 admitted Missouri as a slave state and Maine as a free state while making all western territories north of Missouri’s southern border free territory. When the Missouri constitutional convention attempted to exclude free blacks and mulattoes from state citizenship, there was enough opposition from northern congressmen that Missouri agreed that this racist clause would never be interpreted in ways that would take away rights of U.S. citizens. This crisis brought forward sectarian and ideological conflicts between political self-interest groups and those holding moral positions in favor of and against slavery. All were gearing up for a long fight.

The Kansas-Nebraska Act (1854) overturned the Missouri Compromise by letting settlers determine if their states would be slave or free. *Dred Scott vs. Sandford* (1857) declared that the former slave Dred Scott, although residing in a free state, was not free nor could Blacks be U.S. citizens. The decision also ruled the Missouri Compromise unconstitutional. The Supreme Court decision (five southern and two northern judges) stripped Congress of its power to regulate slavery in the territories and stated that Black people could not be citizens because, as Chief Justice Roger B. Taney argued, the founders had seen Blacks as inferior and had excluded



Dred Scott

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<sup>5</sup>Kendi, 504.

<sup>6</sup> <http://www.pbs.org/wgbh/aia/part2/2h33.html>

them from the original political community. Taney, as a Jacksonian Democrat, had been correct about the former, but wrong about the latter. Blacks had voting rights in at least five of the original states. For racists, facts get in the way of purpose.

Tensions came to a crescendo with the election of President Lincoln. In an attempt to preserve the Union, Lincoln and the Republican platform on which he was elected, specifically pledged not to challenge southern slavery while agreeing that they opposed expanding slavery in the territories. Not only were the Republicans trying not to provoke war, many northerner businessmen had invested heavily in slavery. It did not matter.

Slavery was the central motivation for secession and war. 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. When the war broke out, however, northern troops adamantly enforced the Act. Again, the need to do so showed that Blacks were not passive in their enslavement and many were trying to flee the plantation. Union troops returned them to slavery in the beginning of the war.

Racism was shaped by slavery. Before the war (as far back as Jefferson) whites had stressed Black male physical superiority and their docile nature which made them good at following orders, and justified the system. In Florida's Declaration of Causes of its secession, it stated that Blacks must be enslaved because their "natural tendency" was toward "idleness, vagrancy, and crime."<sup>7</sup> Alexander Stephens, Vice President of the Confederacy, declared that the Confederacy rested "upon the great truth that the Negro is not equal to the white man; that slavery subordination to the superior race is his natural and normal condition."<sup>8</sup> Ironically, northern assimilationists argued that Blacks made excellent soldiers precisely because they were strong, docile, and thus suited to white commanders. As the war began Southern whites, realizing that their privileged slave society rested on very shaky pillars, began to stress their own physical superiority and the suddenly uncontrollable nature of the Black male brute.

The antebellum South was a violent, class-driven culture rooted in massive human rights crimes. *The Impending*



National Memorial for Peace and Justice, Montgomery, Alabama.

*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.<sup>9</sup> 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 that would then potentially lower the poor whites' status even more. The use of the racist imagery of the "Black brute" proved useful. It was a convincing

argument and utilized fear and the threat of losing social position to unify the Confederacy. Even so, many resisted the pressures from the elite enslavers.

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<sup>7</sup> Kendi, 214.

<sup>8</sup> Ibid, 215.

<sup>9</sup> Andy Hall, "Small Truth Papering Over a Big Lie," *The Atlantic*, August 9, 2010.

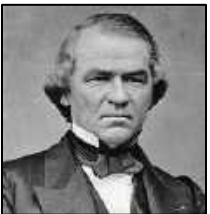
Blacks and whites were not passive. Blacks fled plantations and tried to set up their own communities and some whites deserted the southern armies, fought against secession, and became disillusioned for fighting a war for the enslavers. In some cases, escaped slaves and southern deserters rebelled against 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.”<sup>10</sup> A war that began to preserve slavery did become a war against slavery. President Lincoln and the Republican Party’s decisions were rooted in political self-interest as well as moral outrage.<sup>11</sup> As the war ended, self-interest shifted.

## Post Civil War

Most of the freed slaves were not seeking assimilation after the war. They wanted their own land on which to build their own communities and reclaim their humanity on their own terms. They were not looking to take anything away from whites nor were they asking for others to uplift them. They rejected the idea of integration as a viable race relations strategy. Immediately there was a white racist backlash. While white settlers on government land were seen as the beneficiaries of federal hope and freedom, Blacks were perceived as asking for government handouts. More than 90% of the confiscated or abandoned land in the south went to northern whites.<sup>12</sup> Discussions about land redistribution during the war favored whites, rejected Blacks, and then favored enemy Confederates. Frederick Douglas and Horace Greely actually rejected General Sherman’s Special Field Order No. 15 that opened up confiscated lands to Black families. Illustrating the difficulty in fighting racism, both were assimilationists who believed that Blacks had been fundamentally damaged by slavery. Docile Blacks could never succeed, in their view, without assimilating into White society and raising themselves from their Black limitations. This fed into racist beliefs that Blacks would be ruined by receiving government handouts without working for them. Racists believed that Blacks could only be productive under white control and leadership and would become idle burdens on society. As always, antiracist ideas had to go up against both assimilationist and racist frameworks. Black antiracists stated the obvious by pointing out that it was the white enslavers who “lived in idleness all their lives on stolen labor.”<sup>13</sup> One emancipated slave put it succinctly: “We used to support ourselves and our masters too when we were slaves.”<sup>14</sup>

## The Failure of Assimilation

The moral rationalization of slavery, often justified with Christianity, became as fundamental to Whites’ perception of America as the concept of liberty itself. After President Lincoln’s assassination in 1865 “Black Codes” were established that created a new caste system that echoed slavery, segregated former Black slaves, and made them indentured servants. Within six months of the end of the Civil War, white supremacy had been reestablished in states such as Mississippi, Florida, and South Carolina where cruel punishments were meted out to freed Blacks. The foundations of this new universe were buttressed by President Johnson’s embrace of the former leaders of



<sup>10</sup> Kendi, 217.

<sup>11</sup> See Kendi, Chapter 17, “History’s Emancipator” for an analysis of the politics and self-interests involved.

<sup>12</sup> Ibid, 231.

<sup>13</sup> Ibid, 235.

<sup>14</sup> Ibid, 236.

the Confederacy and their racism. Johnson began the process of undermining Reconstruction that sought to grant equality for Black Americans. He ended war crimes tribunals in times of peace. In vetoing the 1866 Civil Rights Act, Johnson explained away his inability (unwillingness) to protect Blacks from massacres and intimidation by invoking the concept of States' Rights to argue that the federal government had no jurisdiction. Giving Blacks voting rights, Johnson argued, would result in "nigger domination."<sup>15</sup> This is the crafting of the racist fable that if there is equal opportunity, whites suffer. A Republican Congress overturned Johnson's veto.

With Reconstruction, former slaves now counted as full citizens and swelled congressional delegations. Blacks, who made up 36% of the Southern population, were elected to almost 20% of state political offices at the height of Reconstruction.<sup>16</sup> They got to work with zeal and discipline and embraced the educational initiatives of the Freedman's Bureau. Many gravitated to cities and began to build churches, schools, and social institutions. It is significant to note that Blacks chose to uplift their situation through assimilation. This worked only if these new freedoms and rights were protected by the federal government. Southern states had no intention of letting Blacks achieve equal status. The KKK, established in 1866, attempted to fight Reconstruction by embracing a new mythology, invoking the dead martyrs of the Confederacy (thus, the white ghostly hoods), and targeted and slaughtered blacks and Reconstructionist Republicans, in order to continue the war for slavery.

Unfortunately, the Civil Rights Act did not criminalize private or local discriminatory laws. Racial language, not racial initiatives, was the threshold proof of racism. Racists quickly learned that if they avoided racist language, they could hide intent. Racists, fearing that Blacks would descend into idleness and violence, responded to assimilation initiatives with violence. It was the beginning of a long pattern of the failure of assimilation as a civil rights tactic. The more Blacks worked to uplift themselves, the more violence they faced. Starting with the Johnson presidency, Blacks were intimidated, murdered, threatened, and harassed until they were disenfranchised through poll taxes, literacy tests, and other tactics that included murder and rape.

In May 1866, at least forty-eight Black Americans were killed and at least five raped in Memphis, Tennessee.<sup>17</sup> Federal authorities, siding with White Southerners, blamed the small contingent of Black troops stationed there for provoking white rage. Democratic newspapers published stories about alleged Black violence and crime waves that they argued, without evidence, were the result of the lack of a masters' control. Ironically, using these lies, the Black troops were redeployed to the West where they became the "Buffalo soldiers" used by white settlers to displace indigenous Americans from their land.

## **States' Rights**

Congress made the 2nd Amendment applicable to all the states after the Civil War and some Black communities were able to defend themselves. This made gun control a political issue for the first time. For many white southerners, gun control became an instant priority. Southern states now argued for "states' rights" to justify taking guns from Black communities in order to "protect" white supremacists from the Americans they terrorized. The Paris Anti-Slavery Conference of 1867 found that freedmen in some southern states "were

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<sup>15</sup> Kendi, 239.

<sup>16</sup> Chernow, 686.

<sup>17</sup> Kendi, 240.

forbidden to own or bear firearms, and thus were rendered defenseless against assault.”<sup>18</sup> Millions of Blacks voted in 1868 to elect President Grant. This was especially true in well-armed southern counties that the KKK dared not enter.

It was in the self-interest of the Republican Party to enfranchise Black voters. In 1870 Virginia, Mississippi, and Texas were readmitted to the Union with a pledge to protect Black rights. President Grant created the Department of Justice that would battle the KKK and other quasi-military groups. The DOJ received constant calls from southern governors to send reinforcements against the Klan and its reign of terror. Is it merely ironic that President Trump supports the KKK and neo-Nazis while attempting to undermine the DOJ? The mid-term elections that year brought six blacks (four were former slaves) into Congress. However, such progress brought intense backlash. When Congress formed a select committee to consider anti-Klan legislation, southern



representatives undermined it by arguing that Grant’s obsession to protect Blacks against the Klan was a violation of states’ rights and an overreach by the federal government. Many even denied Klan activities and claimed they had been “made up” by Republicans.

Despite this, Grant was able to pass the third Enforcement Act commonly known as the Ku Klux Klan Act in 1871. Grant issued a general order allowing federal troops to arrest violators of the act. Despite push back from members of his administration and southern outcries, Grant crushed the KKK. It was the highpoint of Reconstruction.

Despite Grant’s intervention, or perhaps because of it, Northerners began to drift away from the ideals of the Civil War and Reconstruction. A general moral fatigue began to overcome the North<sup>19</sup> where racism also existed as a powerful force. Southern arguments that Grant was acting like a military dictator began to take hold. Soon the Republican Party of Lincoln would begin its gradual shift from the party of abolition to a more business-orientated one that began to lose its way in the Gilded Age. The thirst for riches and power replaced Abolitionist values. President Grant warned about the ideological differences undermining the two-party system as the gains of the Civil War were being overturned. Henceforth any federal action on civil rights would inflame white Southern opposition. Blacks were no longer to be protected.

By 1873, Republicans had to defend its own politicians in the South. In many areas, the Black vote had been suppressed. This was due to emerging white militias and facilitated by a major economic depression. Many Blacks were forced to return to sharecropping and were quickly maneuvered into debt by white landowners who also passed laws that preventing them from leaving. Some took to the roads seeking fair employers, but were branded as “shiftless” and dangerous. Northern and Southern politicians began to blame the failures of Reconstruction on these sharecroppers as well as “corrupt” Black politicians.

The powder keg exploded in Louisiana. William Ward, a Black Republican, summoned his Black supporters to Colfax warning them of an attempt by Democrats to seize the county seat. They entrenched themselves around the courthouse and on Easter Sunday, April 14, 1873, they were attacked by a White mob armed with artillery.

<sup>18</sup> <http://thehill.com/blogs/pundits-blog/civil-rights/347324-the-racist-origin-of-gun-control-laws>

<sup>19</sup> Ron Chernow, *Grant*, (New York: Penguin, 2017), 710.

Those who survived and surrendered under a white flag were massacred on the public square. Federal troops arrested some of the perpetrators. Unable to prosecute the murderers under local laws, the federal government handed down seventy-two indictments.



The disturbing marker touting the Colfax massacre as a victory.

There was a Northern backlash. Tiring of Reconstruction, fearful of military interventions, and deeply rooted in its own racism that allowed them a sympathetic ear to the growing White southern narrative of victimization at the hands of northern aggression, the mid-term elections of 1874 handed control of Congress over the Democratic Party. Newly achieved federal power allowed the Southern narrative to gain greater traction as Congressional committees sought to destroy Reconstruction by opening numerous investigations into the corruptions within President Grant's administration, some of which were merited.

In 1876, Confederate flags were omnipresent and Southern Democrats claimed that the confederate soldiers "fought honestly as American citizens for an honest purpose and in as good a spirit as the Northern soldiers..."<sup>20</sup> In the same year the Supreme Court ruled on the Colfax massacre by utilizing the 14<sup>th</sup> Amendment to overturn the convictions. The 14<sup>th</sup> had given citizenship to all persons born or naturalized in the United States. It stated that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." In *United States v. Cruikshank* the Supreme Court argued that the Colfax perpetrators could not be tried under the 14th Amendment because it governed only state actions, not individual ones. By arguing that murder prosecutions rested with the states, the Court created a separation between the status of national and state citizenship. Additionally, the ruling voided the Enforcement Acts and was the green light for whites to slaughter Blacks with impunity just in time for the 1876 elections. The Supreme Court still uses this case as precedent to shield private and race-based discriminators who are careful not to use racist language.<sup>21</sup> Racist groups, often associated with the Klan, armed themselves claiming they were county militias. They expressly stated that their purpose was to evict the Republican Party from power.

### The "Lost Cause" Fable of the "New South"

The slaveholders regained control of Southern politics relatively quickly. It became important to forget, deny, and distort the disastrous war and the evils of antebellum slavery in order to resurrect an idealized Southern national identity rooted in white supremacy. Out of defeat, humiliation, and what can be described as crimes against humanity, a new mythology emerged. Defeat was transformed into a sacrificial triumph by claiming that the Confederacy "nobly" fought for the lost cause of the defense of states' rights against "northern aggression." This was more about resisting Reconstruction (which would disempower white aristocrats) than about the actual causes for the Civil War. The myth that endured was that Southern warriors fought a romanticized war against overwhelming and overwhelmed by northern forces. General Lee was immortalized as a commander who, in the end, was simply outnumbered by a heartless foe. General Grant was portrayed as a drunkard,

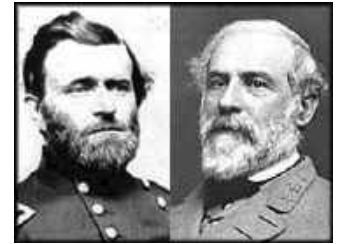
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<sup>20</sup> Chernow, 839.

<sup>21</sup> Kendi, 253.



insensitive to casualties who reveled in wanton destruction. This myth, of course, ignores the facts that Grant kept his demons mostly at bay during the war and was a superior strategic thinker to Lee. Grant was the first commander to coordinate his forces and resources. The heavy casualty and desertion rates under Lee were ignored or explained away. Lee became a “noble victim” in defeat. This myth is still deeply rooted and wide spread and often focuses on public ritual and reconstructed memory.



Generals Grant and Lee.

The reality of post-Civil War Southern paralysis that included physical and financial destruction, death and grieving, was the result of the failed rebellion by self-interested white enslavers. A sense of terrible vulnerability overcame whites who now desperately relied on Blacks to rebuild and survive. Instead of facing the impact of their actions they created a new moral universe shaped as parable. Traumatized Southerners re-envisioned themselves through a racist view that celebrated white superiority and a self-reliance that excluded Blacks. Blacks were depicted as having happily served their white masters who had “nobly” looked after them during a mythical time of Southern unity and honor. As part of this construct, the antebellum plantation South was now remembered as an idyllic myth that benefitted the enslaved who had loved their “paternalistic” white enslavers. A cursory reading of *The Narrative of the Life of Frederick Douglass* published in 1845 reveals the chilling psychology of this perpetrator framework rooted in slavery. Having successfully played the “victim card” white racists were now able to victimize (again) large swaths of their population. We cannot be fooled by this false narrative. Confederate hero General James Longstreet, in response to this myth-making, responded, “I never heard of any other cause of the quarrel than slavery.”<sup>22</sup>

In 1876, another white mob, armed from their rifle clubs, slaughtered a Black militia in Hamburg, South Carolina. It should be noted that even though some of the Blacks in the South were armed and many were experienced combat veterans, having guns did not save them. They faced an overwhelming enemy motivated by a mythical ideology and supported by the national government.



“The Hamburg Riot, July, 1896”  
Harper’s Weekly

On July 4, 1877, another massacre took place in Hamburg, S.C. where Black militiamen were massacred by former Confederate general Mathew Butler, the area’s most powerful Democrat. An appalled President Grant reacted to the Southern claim they were fighting for a sacred “lost cause” by stating that they wanted “to kill negroes and Republicans without fear of punishment and without loss of caste or reputation.”<sup>23</sup> Butler, newly elected to the Senate blamed the massacres on the Black victims by claiming they had “little regard for human life.”<sup>24</sup> Blacks were not passive while they were being killed and repressed. However, the country began to accept the racist construct that Blacks were the ones behind the violence being perpetrated against them by whites. Things just seemed nicer in the mythological white memory and many religious leaders argued for segregation.

<sup>22</sup> Chernow, 857.

<sup>23</sup> Ibid, 257.

<sup>24</sup> Ibid, 257.

On May 6, 1882, President Chester A. Arthur signed The Chinese Exclusion Act. This was the first law implemented to prevent a specific ethnic group from immigrating to the United States. It reflected the growing power and influence of an ideology of white supremacy that wished to preserve the United States as a white Christian nation.<sup>25</sup>

### **Slavery By Another Name**

The “Lost Cause” mythology had effectively undermined Reconstruction and written a new narrative for future consumption. The new war of re-enslavement found allies in both North and South. The mythological imagery of Blacks bringing rampant destruction on a “noble,” White South was internalized.<sup>26</sup> Racism was fundamental to White peoples’ perception of America, White privilege, and liberty. Freed Blacks were not a symbol of American liberty, but a violation of it. Southern demagogues quickly pandered to anxieties that these gains for Blacks engendered. Much of the post-Civil War violence in the South had been White against White violence (against the many deserters from the Confederate Army, those loyal to the Union, those opposed to the KKK...). From 1882-1901, 1,132 of those who were lynched (murdered) were White.<sup>27</sup>

In the immediate post-war period a propaganda campaign, reinforced later by Hollywood movies, legally and morally shifted the blame of anarchy onto Blacks and away from whites while simultaneously legitimizing white identity.

There was an appeal to blame someone for the violence as the United States began to progress during the Gilded Age. After all, it was argued, were not Black slaves better off here than if they had stayed in Africa? (Note the racist contempt.) In this mindset, racists argued that Reconstruction had “raised” the Black and created equal opportunity that Blacks apparently wanted to throw away. This was the formation of the racist myth of “separate, but equal” that was being backed up by the Supreme Court. It allowed racists to argue that racism was never their fault, but the fault of ‘undisciplined, selfish, and lazy’ Blacks. Civil War veterans wanted to heal wounds and reunite the country especially during the country’s centennial. The Southern myth allowed them to embrace the memories of Civil War horror as a noble contest and allowed them to justify the prohibition of Black veterans at reunions. As aging Civil War veterans found nostalgic connections as white brothers, a cult of reconciliation developed that dovetailed nicely with the growing perceived guilt of “victor’s justice” and the inconvenience of slavery. As the moral implications of the war faded and a new narrative was mutually embraced, a new reverence emerged for the myth of white southern “nobility.” Shame of having fought and lost a war about slavery was replaced with the more acceptable myth of a war for states’ rights. Any social shift to challenge that narrative was met with violent indignation.<sup>28</sup>

The judicial system and the institutions that would emerge as “Jim Crow” were structured around the 13th Amendment’s “Neither slavery nor involuntary servitude, *except as a punishment for crime....*” The system was

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<sup>25</sup> See <https://www.pbs.org/video/the-chinese-exclusion-act-eixnlw>.

<sup>26</sup> See Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time*, (New York: W.W. Norton, 2014), Chapter 5.

<sup>27</sup> [archive.tuskegee.edu](http://archive.tuskegee.edu)

<sup>28</sup> This phenomenon still has power amongst white nationalists who see themselves as “victims.” The neo-Nazi rally in Charlottesville, VA in 2017 is another example of white nationalists rallying around a mythologized version of history (Lee, the bloodiest general in U.S. history with no ties to the city, other than the Jim Crow era statue) galvanized by a sense of victimization to the historical narrative.

reconfigured to coerce Black Americans to comply with social customs and demands of whites by criminalizing Blacks. In the 1890s Southern legislatures wrote their new post-war constitutions and effectively disenfranchised Blacks. Voter suppression tactics, like all racist policies, effected poor whites as well. The post-Civil War practice of leasing and selling inmates to corporations and farmers quickly shifted to arresting and “leasing” Black men (mostly) by state and county government officials. The arrests of thousands of Blacks on inconsequential charges (or no charges at all) or laws written to specifically intimidate Blacks was deeply rooted in the institutions and culture of the antebellum South.

In 1871, the Virginia Supreme Court ruled in *Ruffin v. Commonwealth* that prisoners were “slaves of the state,”



Convicts leased to harvest timber. Archives of Florida.

were denied the rights of human beings, and stripped of constitutional protections. With this new system local law enforcement officials discovered new power and profits. County sheriffs and deputies received no salary. Justices of the Peace and certain court officials and witnesses testifying against defendants were paid from specific fees charged to those accused of criminal behavior. Each official act (serving warrants, making arrests, court fees, and even the fees to ship them to convict labor sites) had a cost that was assigned to the accused. This was in addition to whatever settlement a judge levied in a particular case. The original point of this system was to ensure outcomes between neighbors in rural settings where jails were expensive

and impractical. Disputes were often solved when one party agreed to pay off a debt with a contract of labor. Thus, criminal courts were often used in civil disputes where labor was treated as currency to pay off debts. In 1929, Missouri sheriffs reported making between \$20,000 and \$30,000 each in extra compensation for securing black laborers and selling them to local planters.<sup>29</sup>

Alabama combined these old legal patterns, new economic mechanisms, and the antebellum traditions of the emerging industrial pre-war South into a money-making venture that reinforced the mythology encapsulated in Jim Crow. An organized market for prison labor evolved (with labor agents) as states began to turn over large numbers of African-Americans to private companies. Control over this labor market was lucrative for the state (tens of millions of dollars went into Southern state treasuries),<sup>30</sup> the sheriffs who supplied the labor, and the companies who contracted the cheap labor. Sheriffs, who received fees from defendants and any amount left over from the daily fees paid by the state to feed the prisoners were motivated to arrest and convict as many as possible and feed them as little as they could get away with. This had nothing to do with law enforcement. Blacks, disenfranchised, poor and unable to pay court fees, became prime targets for criminal warrants for any white looking to make money within the court system. The average span from arrest to conviction to delivery at a slave mine was seventy-two hours.<sup>31</sup> In July 2018, nearly one hundred bodies were discovered in what is believed to have been a forced labor mass grave between 1878 and 1910 in Sugar Land, Texas.<sup>32</sup>

By 1877, every former Confederate state, except Virginia, had adopted the practice of leasing Black prisoners to commercial enterprises. Nearly all the penal functions (feeding, clothing...) were handed over to companies who

<sup>29</sup> Blackmon, *Slavery By Another Name*, 375.

<sup>30</sup> Blackmon, 8.

<sup>31</sup> *Ibid*, 66.

<sup>32</sup> <https://www.cnn.com/2018/07/18/us/bodies-found-construction-site-slavery-trnd/index.html>

purchased the convicts and that had little incentive to waste profits on prisoners. In Alabama, companies were fined for allowing prisoners to escape. Many were killed or died in captivity.<sup>33</sup>

The county convict system soon seeped into the practice of White farmers who had advanced money to Black laborers at the beginning of the crop season. The debt incurred did not lead to evictions, but to the swearing out of criminal warrants accusing Black laborers of fraud at the end of the season. Aware of the fate of many sent to labor mines (such as the horrific Pratt mines in Alabama eventually controlled by U.S. Steel) and facing certain conviction, many Blacks agreed to a kind of plea bargain where they would confess and sign a contract to work out compensation through labor. In this way, Blacks could stay close to home, but were then returned to their previous tenant or sharecropping farms as uncompensated convict labor. These sentences were often accompanied by brutal mistreatment including chaining and beatings. When their labor debt was paid new charges were simply trumped up (violating racial etiquette being a favorite) and the same railroading through the legal system would imprison African Americans indefinitely.

Although some Southerners condemned these new practices, the majority embraced the moral universe of the perpetrators as honorable, paternalistic southerners who by embracing *Plessy v. Ferguson's* nauseating cynical myth of "separate but equal," were doing Blacks a favor. The same Social Darwinism that was shaping racist views in Europe played a significant role in reinforcing Jim Crow. As popular culture embraced western expansion and conflicts against indigenous peoples as proof of White supremacy, a whole new genre of fiction idealizing life and slavery in the antebellum South emerged to fill the psychological needs of many.



Halifax, North Carolina. April 1938.

Lynching (mob killing often by hanging) became the new weapon of suppression and fear in the 1880s. Someone was lynched on average, every four days from 1889-1929.<sup>34</sup> The perpetrators justified their murders, without evidence, by claiming it was a response to the spike in Black crime. In 1883, the Supreme Court ruled that the Civil Rights Act of 1875 was unconstitutional and the decision was hailed in both the North and the South. Its provisions would not reemerge until the 1957 Civil Rights Act. These rulings ensured that the 13th, 14th, and 15th Amendments were not enforced. In the 1890s, race-veiled voting restrictions emerged (poll taxes, literacy tests...) to disenfranchise Black voters without ever saying a racial word. Thus, white Southerners had received disproportionate power at the state and national level due to the failure to address Article 1, Section 2 of the U.S. Constitution after the Civil War. Every three in five Black slaves counted as part of the Southern electorate in computing the size of Congressional delegations. White suppression of the Black vote that they claimed to represent is one of the great failures of Reconstruction.

By 1896 this power was even more disproportionate. The Supreme Court was packed with corporate lawyers who happily applied the 14th Amendment in defense of liberty and civil rights for corporations, not minorities. These decisions empowered rich, White elites to cut wages, living conditions for their workers, and suppress Black membership in unions. Jim Crow laws were ruled not to be in violation of the 14th Amendment by rigged

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<sup>33</sup> Blackmon, 56-57.

<sup>34</sup> Kendi, 259.

courts that wanted to end social strife brought on by the industrial revolution, urbanization, and immigration. Whites continued to play up their “victimization” and suffering at the hands of “lawless” or violent Blacks. Even Black civil rights leaders fell into the trap. Booker T. Washington, an assimilationist, looked to White saviors to lift up Black life while WEB Dubois, an elite educated man, tended to blame uneducated Black men for their plight.

### Heritage or Racist Myth?



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

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.”<sup>35</sup> 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.

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.

*Judgement at Nuremberg* illustrates the desire of the perpetrators to simply forget and the consequences of following sadists who target others while telling people to not listen to or hear the cries of the victims. It is a clarion call to aspire to principles that protects human life. Collective memory projects can help us either encounter complexity or reduce it to manipulative fable. Confederate monuments are not about the past, but about the present and future. The lost cause myth transformed and justified national trauma, defeat, and humiliation into a fable of romantic White sacrifice and victimization. The myth ignored and silenced the voices of targeted groups (White and Black) and gained further hold of the imagination when the United States became an imperial power dominating people of color. There was a strong impulse to bury the past, and literally the

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<sup>35</sup> SPLC, June 9, 2018, Weekend Read, Issue 83.

present, in the name of national healing and reconciliation. The Lost Cause myth and Jim Crow are products of early 20th century and continue to drive a wedge between memory, truth, and understanding.

As we witness the re-empowerment of racism under the Trump administration, another murder in Charlottesville's "Unite the Right" rally in April 2017, we must confront this with the truth that this Neo-



Robert E. Lee.  
New Orleans.  
Erected 1884.  
Removed 2018.

Confederate faith is not history or heritage, it is a political program rooted in racist misinformation. The monument controversy is something we must confront as lie. This is historical distortion. Garrett Epps rightly concluded that the "deliberate lack of context is one of the worst features of Southern civic imagery."<sup>36</sup> In 2018, New Orleans mayor Mitch Landrieu correctly asserted that, "They are not innocent remembrances of a benign history. These monuments purposefully

celebrate a fictional, sanitized Confederacy; ignoring the death, ignoring the enslavement, and the terror that it actually stood for."<sup>37</sup> It is wholly appropriate to remove these provocations. However, it is also crucial that such encounters with the mythologized past focuses on the detrimental effects on all people of racist constructs of memory and power.

In 1907, John Singleton Mosby (leader of the Confederate Mosby's Rangers) rejected the myth of the New South. "The South went to war on account of Slavery. South Carolina went to war – as she said in her Secession proclamation – because slavery wd. not be secure under Lincoln. South Carolina ought to know what was the cause for her seceding."<sup>38</sup> It is in everyone's self-interest (except politicians appealing to the racist vote) to honestly confront this history and put it into context.

Accepting Jim Crow as the "natural" legacy of antebellum slavery ignores the Black experiences and reinforces racist presumptions. Post-war Southern life mixed gross racism with tentative, inter-racial cooperation and political coalition-building. However, without federal support, attempts to assimilate have been met with lethal White backlashes. With Jim Crow taking hold Blacks were being disenfranchised and marginalized. The last of the first generation of Black lawmakers left Congress in 1901. This would have a detrimental effect on everyone.



"Unite the Right" rally.  
Charlottesville, VA. August 2017.

President Trump gained prominence by enflaming the racist birther conspiracy as a backlash against a Black president. The racism that has become mainstream during the Trump administration fits a consistent pattern of racist targeting and mystifying a neo-Confederate memory. Although it is easy to conclude that President Trump by his instinctual refusal to unequivocally condemn the racists in Charlottesville, it would be more significant to recognize political self-interest at play. Racism works if we allow it to.

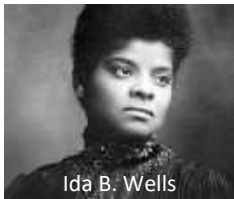
<sup>36</sup> Epps, Garrett, "The True History of the South Is Not Being Erased. Taking down Confederate monuments helps confront the past, not obscure it."

<sup>37</sup> <https://www.cnn.com/2017/05/24/politics/mitch-landrieu-speech-race/index.html>

<sup>38</sup> See Ta-Nehisi Coates, "What This Cruel War Was Over: The meaning of the Confederate flag is best discerned in the words of those who bore it," *The Atlantic*, June 22, 2015, for state-by-state reasons for secession.

## The Impact of the “Lost Cause” on National Politics

The “Lost Cause” had become mainstream and had direct impacts on national politics. Southern power took hold of national discussion and effectively re-wrote the historical narrative of the Civil War. The great revolution of Reconstruction and its potential to heal America was effectively destroyed. When President Teddy Roosevelt invited Booker T. Washington to the presidential residence in 1901, he had gone too far. South Carolina Senator Ben Tillman reacted: “The action of President Roosevelt in entertaining that nigger will necessitate our killing a thousand niggers in the South before they will learn their place again.”<sup>39</sup> Note how Whites justified lynching murder as the fault of Black provocation. In an attempt to placate the segregationists, Roosevelt renamed the residence the “White House.”<sup>40</sup> He then ordered the dishonorable discharges of Black soldiers in the 25<sup>th</sup> Infantry Regiment, a unit of great pride for Black Americans. In his annual address to Congress on December 3, 1906, Roosevelt acted on political self-interest when he stated, “The greatest existing cause of lynching is the perpetration, especially of Black men, of the hideous crime of rape.”<sup>41</sup> Lynchings are a distinctly American phenomenon and

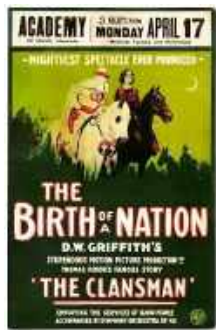


Ida B. Wells

was the choice of terror and murder by mainstream southerners from clergy to teachers to farmers.

And still, courageous Black men and women fought for decency and justice. Ida B. Wells kept the dissenting voice alive through her work as a journalist and activist. She focused on lynching and then worked with Frederick Douglass to bring attention to racial injustice in America at the 1893 World’s Fair in Chicago. Given only one day to speak (“Negro Day”) Douglass stated that there is no “Black problem,” but only a political one. He argued that Black Americans, who fought for the United States, should be treated as equally as those who fought against it.

## New Mediums of Hate



1915 poster.

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.<sup>42</sup> 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.<sup>43</sup> *The Birth of a Nation* (originally, the “Clansman”) was the first movie shown at the White House. Its star, Henry

<sup>39</sup> Kendi, 291.

<sup>40</sup> Ibid, 291.

<sup>41</sup> Kendi, 296.

<sup>42</sup> Ibid, 306.

<sup>43</sup> President Wilson was a White supremacist who brought Southern ideas about segregation into institutions in Washington, DC. For more, see: Blackmon, *Slavery*, 357-360.

Walthall, was the son of a southern sheriff and the chief deputy at the Shelby County jail in Alabama, Wilson was enamored with the movie and exclaimed, "Like Writing History with Lightning."<sup>44</sup>

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.

In 1912, two years after Black heavyweight boxer Jack Johnson disturbed racist sentiments by defeating White boxer Jim Jeffries ("the Great White Hope"), 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.<sup>45</sup> In 1924 the Democrats came within one vote of endorsing the KKK platform while the racist 1924 Immigration Act received bipartisan endorsement.

### **Crisis of Liberal Democracy**

By 1933, liberal democracy was crumbling. Across Europe, democracies were being replaced by right-wing dictatorships all of which embraced antisemitism and the destruction of civil liberties (Italy, Poland, Latvia, Estonia, Lithuania, Hungary, Romania, Bulgaria, Portugal, Yugoslavia, Austria, and Spain). The disintegration of democratic politics was a primary concern and a fear that permeated American society. Could the Republic survive? Did the democratic model based on capitalism have a future? Was a new model required? Some leading American intellectuals even argued for a temporary presidential dictatorship as alternative path to Fascism and Communism. The Constitution could be "stretched" in this time of crisis and allow FDR to serve as a temporary dictator based on the precedent of the Lincoln presidency during the crisis of the Civil War.

During this wrestling, totalitarian regimes in Europe seemed to hold a special appeal to Americans. The attraction of Mussolini's militant fascisms could be seen in the wildly enthusiastic nationwide welcome of General Italo Balbo, Italian Minister of Aviation and founder of the paramilitary Blackshirts and first head of the Fascist militia in July 1933. Fascist sympathizers such as TIME magazine publisher Henry Luce praised Balbo while ignoring the violent actions of the fascists (soon to include the horrors committed in Ethiopia) and drew no attention to the parallels with Nazi persecution of Jews. Only southern Black newspapers like the *Birmingham*

*Birmingham World*, "Which of these did you say was the enemy?" September 14, 1943.

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<sup>44</sup> Rachel Janik, "'Writing History With Lightning': The Birth of a Nation at 100," *Time*, February 8, 2015.

<sup>45</sup> Kendi, 299-300.





World were making the obvious connections. In 1936, Southern Baptists publically supported the Nazis as a bulwark against Communism.

On the opposite end of the spectrum, business leaders who felt threatened argued that the “New Deal” would inhibit recovery and FDR would become a “socialist dictator.” The very concept of democratic capitalism seemed to hang in the balance. This became more urgent as European democracies violently collapsed. One-fourth of Americans were out of work and the bank crisis had destroyed middle class savings. White Southerners feared the intervention of the federal government and a powerful president. They

entrenched themselves once again under the cloak of states’ rights.

### **The Southern Democratic Bloc**

The Southern Bloc of Democrats, the backbone of the Democratic Party, embraced the progressive ideas needed to shape the New Deal and would be politically indispensable in passing the emergency legislation that would begin to revive the American economy. However, they did so by limiting federal oversight power. At that time, Southern Democrats dominated key Congressional Committees and were the gatekeepers of all legislation. Every law had to pass Southern scrutiny. Through the system of seniority, Southern Democrats controlled 29 of 47 House committees (i.e.: Judiciary, Banking and Currency, Agriculture, Military Affairs, Ways and Means). Without them, no New Deal. With the overwhelming majority of their Black constituents unable to vote, White Southerners enjoyed an unfair advantage and influence in Congress and in the Electoral College.

Backing FDR’s initiatives, the South showed how these policies could be turned in a democratic not totalitarian direction and gave hope to a democratic future. Ironically, as the Democratic Party won elections in the coming years the Southern bloc began to lose some of its influence as non-Southerners were elected. Although unable to retain the majority of Democratic seats in Congress, at no time during the FDR administration did their seats in the Senate fall below 49% or 41% in the House.

As intent they were on supporting progressive legislation the Southern bloc was equally, if not more intent, on enforcing and enhancing Jim Crow. Barbarism was advancing at home and abroad. As Anne Frank’s family



(among others) faced Nazi violence in Germany and made their way to the Netherlands, the U.S. witnessed an upsurge in lynching in 1933. Blacks were again targeted and villainized as fears grew that the Roosevelt administration might undermine Jim Crow with New Deal initiatives. While the New Deal would help

channel resources to improve Southern infrastructure and overturn higher tariffs, help farmers and reduce high freight rates in the predominately agricultural South, the system of Jim Crow was reinforced by ensuring that its administration and oversight was in the hands of state and local officials. These administrators, for example, excluded all maids and farm workers from the New Deal which accounted for two-thirds of all black workers in the South. Money was also cut off to black colleges and farms. Thus, to speed the process of recovery, FDR’s administration (where many key posts were given to racist Democratic leaders) had to ignore or accommodate the racial injustice and violence of Jim Crow. In so doing, FDR was able to push through a legislative process

through persuasion and unlike the Nazis kept the separation of powers between the legislative and executive branches intact.

## The Nazi Warning

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. One of Hitler's sources for *Mein Kampf* was the 1916 *The Passing of the Great Race* written by New York lawyer Madison Grant. Grant fed racist fears in America and helped form Hitler's thinking by arguing about the dangers of interracial reproduction. 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."<sup>46</sup> 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."<sup>47</sup> Did American racial belief and practice influence more than the twisted imaginations of a would-be authoritarian?

It is important to reiterate that American racists always justified their hate by claiming victimhood status and blaming the evil that they embrace on the target of their wrath. This is an excellent description of the appeal of Nazism. In a 2017 article for the right-wing racist news outlet Breitbart News, Dinesh D'Souza used Hitler's speech mentioned in the previous paragraph to argue that Democratic progressives and Hitler are the same.<sup>48</sup> It is effective propaganda for the racist and the ignorant who are unaware that the Southern Bloc of FDR's Democratic Party effectively shifted to become Republicans. This was part of a process of revolt against Democratic civil rights initiatives from 1936 to 1964. The process of transformation for advocates of segregation, states' rights, and the lost cause myth, culminated when the Deep South bolted to the Republican Party as a result of the 1964 Civil Rights Act. There was enough racism and antisemitism to be faced within both the Democratic and Republican parties. We must continue to take responsibility for this history. What is interesting is the ongoing consistency of the racist arguments. Racists successfully justify their behaviors, through twisted logic, by shifting blaming on the target of their hatred and making the target have to defend or justify themselves.

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,<sup>49</sup> 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 they hate and thus lowering its cultural and political level so that the Jew might dominate."<sup>50</sup> 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



A German newspaper's racist fears.

<sup>46</sup> <https://billmoyers.com/story/hitler-america-nazi-race-law/>

<sup>47</sup> Ibid.

<sup>48</sup> <https://www.breitbart.com/big-government/2017/07/31/dinesh-dsouza-hitler-learned-democrats/>

<sup>49</sup> 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.

<sup>50</sup> [https://www.huffingtonpost.com/chika-oduah/the-afrogerman-experience\\_b\\_9234700.html](https://www.huffingtonpost.com/chika-oduah/the-afrogerman-experience_b_9234700.html)

political power by spreading fear about an attack on the German culture and race. The German popular press referred to French deployment as “Die Schwatze Schande” (The Black Shame). Even the *Daily Herald*, a British publication, had the headlines: “Colored scourge in Europe, horror of France let loose on the Rhine, disappearance of young German girls.” The journalist’s claim that this was a “carefully considered policy” of the French led to questions in the German parliament.<sup>51</sup> Even the Weimar Republic’s first President Ebert (SPD) (moderate socialist) got caught up in racist sentiment and took offense. Others used racist accusations (that reflected American prejudices) to vilify the Black troops.

In fact, French colonial troops in the Rhineland were courteous and often even popular – especially amongst German women. Approximately 102 mixed-race children were born by 1920. Of all these mothers, only one claimed to have been raped by a soldier. France eventually stopped deployment of Black troops in the Rhineland, due in part to pressure from the United States and Britain. Racism was a potent force. Even during WW 2, the Vatican requested that Allied Forces ban Black soldiers from occupying liberated Rome, for fear of mass rape.

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”).<sup>52</sup> 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.”<sup>53</sup>

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<sup>51</sup> Edward Morel, “Black Scourge in Europe, Sexual Horror Let Loose by France on the Rhine, Disappearance of Young German Girls,” *Daily Herald*, April 9, 1920.

<sup>52</sup> Doris Bergen, *War and Genocide: A Concise History of the Holocaust* (New York: Rowman and Littlefield, 2003), 75.

<sup>53</sup> 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.

## Eugenics, Sterilization, and the American Connection

Creating immutable categories is what science has done since the Enlightened. The eugenics movement sprang from this. The United States was a leader and held in high esteem by Germans. In 1923, the first attempts in Germany to implement sterilization laws took place in Saxony. The Reich Health Office sent a delegation to the U.S. 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.<sup>54</sup> 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 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.<sup>55</sup>

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.<sup>56</sup> For the Nazis and their propaganda machine who were always fearful about German public acceptance of their initiatives, this was important information.

Hitler had apparently 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...”<sup>57</sup> 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.



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

German eugenicists noted that American immigration law had been influenced by the eugenics movement and were meant to keep people out due to hereditary disease. 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

<sup>54</sup> <http://www.pbs.org/independentlens/blog/unwanted-sterilization-and-eugenics-programs-in-the-united-states/>

<sup>55</sup> Stefan Kühl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (New York: Oxford University Press, 1994), 42.

<sup>56</sup> Kühl, 44.

<sup>57</sup> *Ibid*, 37.

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.”<sup>58</sup> 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 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.

### **U.S. Legal Precedent and the Nuremberg Laws**

In 1933, the United States was the world leader in White supremacist legislation. 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. 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.

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. 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

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<sup>58</sup> Ibid, 38.

States had fully developed a strong legal tradition of racism. German lawyers visited the Jim Crow South and consulted with American scholars. Initial fact-finding missions of lawyers 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.



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

German research uncovered a rich heritage in American racism (from a race law in the 1691 Virginia statute 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 18<sup>th</sup> century.<sup>59</sup> 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.



“The only way to handle it.”  
“The Literary Digest”, 1924.

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.<sup>60</sup> 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 liberal and the US

<sup>59</sup>Kühl, 34.

<sup>60</sup> James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton: Princeton University Press, 2017), 35.

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.<sup>61</sup>

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.<sup>62</sup>

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.

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.”<sup>63</sup> 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. The ape, physically powerful, terrorized White people and comes, uncontrollably, after an innocent white woman. In the end, the forces of “good” kill the Negro-ape. Racist ideas were now solid entertainment and did not even have to mention Black people.



1933 Movie promotional poster. Note similar “threat” in German propaganda on The “Rhineland Bastards” on p. 17.

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. It is no coincidence that Hitler referred to his *Lebensraum*<sup>64</sup> 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

<sup>61</sup> “Jewish Refugees from the German Reich, 1933-1939,” USHMM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10005468>.

<sup>62</sup> Whitman, 46-47.

<sup>63</sup> Kendi, 333.

<sup>64</sup> The Nazi concept of “living space” that Doris Bergen labeled the ideology of “race and space.” See, Bergen, *War and Genocide*.

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 14<sup>th</sup> 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” who were subjects without full political rights.<sup>65</sup> 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 14<sup>th</sup> and 15<sup>th</sup> 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.<sup>66</sup>

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. This was the main problem, for example, of Paragraph 175 of the 1871 German Criminal Code that attempted to criminalize homosexuality (which was often linked in the minds of American and European racists as another example of racial degeneracy.) In 1935, German lawyers tweaked Paragraph 175 by removing the qualifying “unnatural” adjective to indecency. The law shifted to active or perceived practicing homosexuals rather than the undefinable “unnatural.”

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*

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<sup>65</sup> Whitman, 40.

<sup>66</sup> <https://www.jewishvirtuallibrary.org/harvard-s-jewish-problem>



*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*)<sup>67</sup> 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.

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.

### **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.<sup>68</sup> 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.

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<sup>67</sup> Volker Ullrich, *Hitler: Ascent 1889-1939*, (New York: Knopf, 2016), 176.

<sup>68</sup> Whitman, 78.

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.<sup>69</sup>

In June 1934, the Nazis met for final discussion about the Prussian memo. As they worked to formulate what would become the Nuremberg Laws it is chilling to consider that they started these meetings by asking how the Americans did it.<sup>70</sup> These discussions were guided by Hitler’s directives.

Initial conversations focused on the two flags that represented Germany, one for the Nazis and one for the German state. Hitler had been named chancellor as part of a power-sharing agreement with German conservatives and that arrangement still limited his power. As the heated discussions continued, German lawyers, often tied to the bureaucratic ways of the state that was being subsumed, tried to limit the agenda of the radicals. In their minds they were too much like politicians in the Jim Crow South. They were concerned about foreign relations and objections of many countries to the targeting of “colored races.”<sup>71</sup> The more cautious lawyers argued that laws and subsequent education that would follow could be used to gradually educate the populace rather than provoke a backlash at home and abroad. In 1934, for example, a book was published to help teachers present Nazi race policies. The book pointed out how seriously the Americans took the race-mixing problem, but was critical (while also sending a subtle message about the sad state of affairs in the U.S.) of the extremely harsh measures taken towards mongrels.

Outside pressures shaped the meetings. The SA was once again on a murderous rampage that reminded many of American lynchings that were occurring at the same time. These actions were being taken outside the law and created potential backlashes at home and abroad. The Nazis wanted state-sponsored and centralized coordination of race policies, not street-level lynchings.

As the meetings continued, the June 30, 1934, “Night of the Long Knives” set a new tone to the discussions. This bloodbath of the SA<sup>72</sup> was a clear signal as to the radical direction of the regime and the growing power of Hitler. Even President Hindenburg was impressed by Chancellor Hitler’s decisiveness. It was clear that no opposition to Hitler would be tolerated. On July 3, the Reich Cabinet issued a law, legalizing the murders after the fact, as an emergency action taken to save the nation from “undisciplined and disobedient characters and asocial or diseased elements.”<sup>73</sup> Hitler addressed the Reichstag on July 13, 1934, explaining that, as the supreme ruler of Germany, he had exercised his power against individuals who threatened the existence of the German nation. Some judges accepted the purge as a “legitimate” response to the danger of an “imminent revolt” by the SA. Justice Schlegelberger, having already approved the Enabling Act of 1933 as constitutional, ruled that the idea of



David Low satire, *The Evening Standard* (3 July 1934)

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<sup>69</sup> *Ibid.*, 90.

<sup>70</sup> *Ibid.*, 113.

<sup>71</sup> *Ibid.*, 96.

<sup>72</sup> The purge occurred after much vacillation by Hitler. In the end, Hitler decided to move in favor of the German Army and its conservative officer corps who were growing increasingly concerned with SA leader Ernst Röhm’s (a friend of Hitler) talk of radicalizing the army. Röhm and many SA leaders died as well as others whom Hitler wanted to settle old scores with.

<sup>73</sup> Thomas Childers, *The Third Reich: A History of Nazi Germany* (New York: Simon and Schuster, 2017), 285.

retroactive sanctioning of the killings was justifiable during the state of emergency the Enabling Act had sanctioned. Murder could now be seen as an acceptable act of state if done to protect the nation. Conservative lawyers, although accepting the powers given to Hitler with the Enabling Act, were concerned that the laws they were about to create would be sound.

The Nazis focused on defining “Jew” in much the same way that American law concerned itself with defining “Negro” as they sought to criminalize mixed marriage. The Nazis were deeply worried about American Black attempts to assimilate or “hide” by straightening their hair and lightening their skin tone. They could not help but think of the problem that Jewish assimilation created both in terms of their paranoid imaginations as well as the potential backlash by the German public if they acted in ways that were perceived as unlawful and unjust. In the 1934 guide to teachers, the author criticized the “...hardness, as when a mongrel of predominantly white appearance is nevertheless reckoned among the niggers.”<sup>74</sup>

For the Nazis trying to untangle the race mixing “problem” American racists were too extreme. In the 1938 U.S. Congressional debate on anti-lynching laws, Senator Bilbo (D-MS) had argued that “one drop of Negro blood placed in the veins of the purest Caucasian destroys the inventive genius of his mind and palsies his creative faculty.”<sup>75</sup> The Nazis rejected the ‘one drop’ idea as too harsh and identified their race problem as something a little different. As they worked to create their own classification race system the Nazis discovered that some U.S. states looked on “outward characteristics” (that included social associations and previous marriages) to determine race membership. The radical Roland Freisler (who later ruthlessly presided over the People's Court) noted that the Americans showed how it was possible to have racist legislation even without a clear definition of race.<sup>76</sup> This was still too vague and nuanced for German lawyers. However, the idea that Jews could be classified through marital history and not just descent was crucial in the formation of the Nazi definition of “Jew.”

As we continue to wrestle with American and Nazi racism, Stefan Kühl, professor of sociology at Bielefeld University in Germany writes, “It can be argued...that any attempt to designate a group as inferior, combined with a political agenda of race improvement through discrimination, constitutes racism.”<sup>77</sup>

It was the Nuremberg Blood Laws that had the most direct connection to American legal models.

### **The Nuremberg Laws**

On September 15, 1935, Hitler announced the Nuremberg Laws. The “Law for the Protection of German Blood and German Honor” which 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.

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<sup>74</sup> Ibid, 127.

<sup>75</sup> Childers, 77.

<sup>76</sup> Whitman, 106-107.

<sup>77</sup> Childers, 70.

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 judiciary) who had denounced the Nazis and declared that American values could not tolerate Nazism.<sup>78</sup> 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.

### Attitudes Within American Society

From 1882-1968 nearly 5,000 people (70% of them African-Americans) were lynched in the United States. With FDR’s new direction and human rights language, lynching decreased in his first term from 65 to 20.<sup>79</sup> As Blacks made up 10% of the population, FDR insisted that an equal portion of Civilian Conservation Corps jobs be reserved for African-American youths. During the war years, FDR insisted that Black Americans be paid an equal wage in defense plants even though Black troops were segregated, led by white officers, and often brutally treated.



The Washington State weekly, *New Dealer*, November 12, 1942.

In 1934, anti-lynching legislation was introduced to Congress by Senators Costigan (D-CO) and Wagner (D-NY). Public pressure was beginning to build and the Southern bloc in Congress reacted to protect their region from intrusion. Southern Senators kept the bill bottled up in committee arguing that such legislation violated states’ rights and the Constitution. Senator Bilbo (D-MS) reacted to the anti-lynching movement to the *NY World*:

“It is practically impossible, without great loss of [White] life, especially at the present time, to prevent lynchings of Negro rapists when the crime is committed against the white women of the South,” adding that the U.S. is “strictly a white man’s country with a white man’s civilization.”<sup>80</sup>

Meanwhile, Americans 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 Southerner, acting paternally

<sup>78</sup> Whitman, 20-25.

<sup>79</sup> For more details on the history of lynching in the U.S. see: <http://www.naacp.org/history-of-lynchings/>.

<sup>80</sup> Katznelson, *Fear Itself*, 86.



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. 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 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!”<sup>81</sup>

The only thing uniting racists and assimilationist was sexism. There was a common belief that Black women had loose morals and were unwed mothers. Mammy was beloved because she showed that black women could aspire to a child-like demeanor of contented Black womanhood dependent on the thoughtfulness of whites. Black femininity was masculinized and the image was reinforced by the ever-present bandana. The film smashed box-office records, acted as a panacea for a conflicted American conscience, and replaced *The Birth of a Nation* as the standard-bearer of racism and southern mythology.

In 1936, FDR won a landslide reelection victory due in large part to southern support. The Democratic Party had majorities in both houses of Congress for the first time in over 100 years. Reaping the benefits of the New Deal and also reinforcing Jim Crow gave him the support of an unbelievable 97% of the vote in Mississippi and 99% in South Carolina.<sup>82</sup> Ironically, the election results brought many non-southern Democrats into Congress. As the Mason-Dixon dividing line began to blur, FDR believed that he no longer was beholden to his Southern democratic support and moved more aggressively on civil rights with the support of new, small, white liberal, Southern democratic elite. However, frightened by their potential loss of power, most white Southern politicians counter-attacked in 1937 and opposed both civil rights and the whole New Deal program. They successfully resisted FDR’s attempt to purge three racist Senators (Walter George of Georgia, "Cotton Ed" Smith of South Carolina, Millard Tydings of Maryland.) All three won their elections despite FDR’s public attacks on them.

### **Southern Anxiety**

Southern anxiety and paranoia grew with the growth of the labor movement that by-and-large worked to integrate Blacks. As labor began to supplant farmers (many Blacks also moved north) unions worked for social reform through effective organization. Unions backed the anti-lynching movement and called for the ending of the poll tax that had helped to disenfranchise the Black vote. FDR seemed less reliable to Southerners and Eleanor Roosevelt was downright menacing with her outreach to the Black community. Black voters, in their sheer desperation, began to vote Democrat. The Supreme Court began to rule in favor of more equal rights and on June 25, 1941, FDR signed Executive Order 8802 that established the Fair Employment Practice Committee (FEPC). This was FDR’s practical response to a feared Black union march on Washington, D.C. It would begin to undermine Jim Crow institutions. The South responded militantly. Within three months six lynchings took place and a rally was held at the Confederate shrine of Stone Mountain.<sup>83</sup> As southern rhetoric attacked unions and

<sup>81</sup> <https://www.imdb.com/title/tt0031381/quotes>

<sup>82</sup> Katznelson, 169.

<sup>83</sup> Again, another site of white racist rallies in 2016 where the mythologized Confederacy (Lee, Jackson, Davis) is literally carved 42 feet deep into stone. Its construction reflects Confederate mythology anxiety and justification of Jim Crow. It was the location of the second founding of the KKK in 1915 which coincided with the lynching of Leo Frank in Georgia. The bas-relief carvings began in 1916,

took on apocalyptic tones, the Southern bloc began to act independently and shift towards making deals with Republicans.

1937 proved to be a difficult year for the Roosevelt administration. It would be a mistake to assert that it was possible to criminalize lynching during the Roosevelt administration. Facing a revolt in his own Party, FDR did not support the anti-lynching legislation of 1937 that he privately supported fearing that it would weaken him politically, divide Congress, and stop the more sweeping changes needed for all. FDR wrote to Walter White, Secretary of NAACP:

I've got to get legislation passed by Congress to save America...If I come out for the anti-lynching bill, [the Southerners] will block every bill I ask Congress to pass to keep America from collapsing. I just can't take the risk.<sup>84</sup>

Roosevelt, ever the practical politician, came to base his decisions, both domestically and overseas, on caution, patience, and proper timing.

U.S. public opinion towards Hitler and Nazi Germany varied in intensity. Some thought Hitler was bringing stability even though the press constantly reported that Hitler did so by eliminating opponents. Secretary of State Cordell Hull did not want to intervene in internal German affairs believing that that would make things worse.<sup>85</sup> U.S. journalists continued to defy German censors and report on increasing Nazi brutality. American Jews, facing intense antisemitism at home, were split between publicly protesting the Nazis and calling for boycotts and those who preferred private diplomacy fearing American public reaction/retaliation. Book burning by college students were seen as foolish "pranks" by some and something much more sinister by others.

Interestingly, it was the Black American community that became an important early pressure group opposing fascism. In 1935, Mussolini invaded Ethiopia (Abyssinia). Ethiopia was one of the few independent states in a European-dominated Africa and a symbol of Black achievement for Black Americans. Haile Selassie appealed to the League of Nations who voted for sanctions on Italy, but got no support from the major powers. While America remained isolationist and ignored the fascist threat, Black Americans such as John C. Robinson and Cornelius R. Coffey took up the cause. The two men had tried to enroll in the Curtiss-Wright Aeronautical University, but their applications were denied. Robinson became a janitor at the school and soaked up what he could. Eventually, he and Coffey were allowed to attend special night classes after having impressed school administrators by building and flying their own aircraft. Robinson volunteered for the Ethiopian army in 1935, and was put in charge of the overmatched Ethiopian air force. He was shot in battle and targeted by Italian spies on his return to America a year later.<sup>86</sup> Robinson later became one of the later founders of the decorated Tuskegee Airmen. Known as the brave "Brown Condor of Ethiopia" he was a symbol to an entire generation of African Americans. He later returned to Ethiopia and died in a plane crash in 1954.



Colonel John Robinson.

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but were stopped in 1928. In 1958, the Georgia legislature purchased the property and resumed the project in 1963. It was completed in 1972. Like many monuments to the Confederacy, Stone Mountain seeks to memorialize post war attitudes and myths.

<sup>84</sup> Roger Daniels, *Franklin D. Roosevelt: Road to the New Deal, 1882-1939*, (Chicago: University of Illinois, 2015), 337.

<sup>85</sup> Richard Breitman and Allan Lichtman, *FDR and the Jews*, (Cambridge: Belknap Press, 2013), 59.

<sup>86</sup> McCall, Matt, "Robbins gave African-Americans access to the skies." *Chicago Tribune* [Chicago] February 10, 2017.

The U.S. public had plentiful and accurate reporting on Nazi Germany<sup>87</sup> and a public debate raged about sending a U.S. team to the 1936 Berlin Olympics (awarded to Germany before Hitler was given power). Two-thirds of American newspapers supported a boycott, but Avery Brundage, the president of the American Olympic Committee (AOC), argued that sports were separate from politics, decided to send the team and wrote in the AOC's pamphlet "Fair Play for American Athletes" that American athletes should not become involved in the present "Jew-Nazi altercation." During the Olympics controversy Brundage alleged the existence of a "Jewish-Communist conspiracy"<sup>88</sup> to keep the United States out of the Games. Roosevelt continued a 40-year tradition in which the American Olympic Committee operated independently of outside influence and did not intervene or express an opinion.



German American Bund

FDR's initial reaction was to ask his cabinet of the possibility of passing a law to increase the quotas, but was told that Congress (especially Democrats in the Jim Crow South) would not approve it. After the record 1936 election, Republicans had made gains in the 1938 mid-term Congressional elections and FDR's political capital was at its lowest point. The German American Bund had begun to grow in influence and were publicly organizing and demonstrating in favor of Nazi ideology and Hitler. The Bund tapped into American racism, nativism, isolationism, xenophobia, the desire for authoritarian leadership, and antisemitism. The Bund cooperated closely with Fr. Charles Coughlin.

A glimpse into American antisemitism was revealed by a series of polls. In April 1938, 60% of Americans agreed that persecution of European Jews was either entirely or partly the fault of the Jews. The poll revealed an even higher disdain for immigrants as 67% wanted to keep all refugees out of the U.S.<sup>89</sup> In 1941 and 1944 another poll asked who the nation's greatest threat was. Americans responded in the weeks after Pearl Harbor (1941): 25% Japanese, 18% Germans, and 15% Jews and in 1944, in response to the same question and with obvious knowledge of the camps in Europe: 24% Jews, 9% Japanese, and 6% Germans.<sup>90</sup>

The Nazi regime unleashed its coordinated attack on its Jewish community on November 9-10, 1938. The



Kristallnacht, Siegen, Germany during Kristallnacht.

November pogrom was euphemistically called *Reichkristallnacht* or the "Night of Broken Glass." U.S. media reported on the "Jew-baiting" and American churches spoke out against the brutality. Despite outrage and condemnation by FDR, a Roper poll revealed that while 94% disapproved of Nazi actions, 83% of Americans rejected the idea of allowing larger numbers of German Jewish refugees into the country.<sup>91</sup> Disapproval and action were not linked in the American mindset. The Nazis concluded that Americans would be outraged, but nothing concrete would come of their anger.

<sup>87</sup> See "History Unfolded: U.S. Newspapers and the Holocaust," <https://newspapers.ushmm.org/>.

<sup>88</sup> "THE MOVEMENT TO BOYCOTT THE BERLIN OLYMPICS OF 1936," USHMM, <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007087>

<sup>89</sup> "Here's Fortune's Survey on How Americans Viewed Jewish Refugees in 1938," *Fortune Magazine* (November 18, 2015), <http://fortune.com/2015/11/18/fortune-survey-jewish-refugees/>

<sup>90</sup> Uriel Heilman, "What Americans Had To Say About Jewish Refugees Fleeing the Nazis," *Forward* (December 3, 2015), Read more: <https://forward.com/news/national/325895/what-americans-had-to-say-about-jewish-war-refugees/>

<sup>91</sup> Breitman, 116.

Outside of the U.S., Europe finally woke up to the threat of Hitler. *Kindertransports* (child transports) were established to allow for Jewish children (not parents) to escape. With the publicity generated by these rescue operations, American activists proposed to amend the Quota laws to allow for Jewish children to be given safe haven. On February 9, 1939 the bipartisan Wagner (D-NY) – Rogers (R-MA) Bill was introduced. Under the Resolution’s provisions,

10,000 immigration visas may be issued during each of the calendar years 1939 and 1940, in addition to visas which may be granted under existing law, to children who are not over 14 years of age and who now resides, or at any time since January 1, 1933, have resided in territory which is now incorporated in Germany.<sup>92</sup>

Senator Robert Reynolds, Democratic from Georgia, led the response. He proposed five counter bills, one of which (Bill 407) stated,

...any nationality for which a quota has been determined and proclaimed under the Immigration Act of 1924, as amended, shall be 10 per centum of such quota...<sup>93</sup>

In essence, Reynolds was proposing to gut the Quota system. Bill 407 would have, for example, reduced the current German-Austria combined quota of 27,370 to 2,737. Representative Pace from Georgia suggested that “every alien in the U.S. shall be forthwith deported.”<sup>94</sup> Other self-proclaimed



“patriotic” organizations lined up to oppose the *kindertransports* including the Daughters and Sons of the American Revolution and the soon to be organized America First Committee (AFC). The AFC would be formed by Yale students in response to the call for a

draft to prepare the U.S. military for defense. Within days of the Wagner-Rogers

Bill going to committee a pro-Nazi rally organized by the German American Bund to “stop Jewish domination of Christian America”<sup>95</sup> was held in Madison Square Garden in NYC. President Roosevelt chose not to support the Wagner-Rogers Bill fearing the political ramifications as he prepared the nation for war.



KKK coin circa 1922. Note the “America First” motto.

### Double V Campaign



African American Southerners fought for a double victory for democracy both at home and abroad. While Southern newspapers were generally not outspoken about Nazism, *The Birmingham World*, the largest Black newspaper, was. While White papers left lessons and connections to Nazism unsaid, *The Birmingham World* was explicit. They linked Nazi policy with Jim Crow and explicitly compared lynchings to Nazism. The strange connection with the Jim Crow South and Nazi Germany was easily illustrated when German prisoners of war, some of whom were SS, were welcomed in restaurants while Black Americans troops were not. They put the



*Birmingham World*, August 7, 1945.

<sup>92</sup> See Congressional Records: <https://www.gpo.gov/fdsys/pkg/GPO-CRECB-1939-pt2-v84/pdf/GPO-CRECB-1939-pt2-v84-7.pdf>.

<sup>93</sup> Eli Lederhendler, *American Jewry*, (Cambridge: Cambridge University, 2017), 230.

<sup>94</sup> Robert L. Beir, *Roosevelt and the Holocaust: How FDR Saved the Jews and Brought Hope to a Nation* (New York: Skyhorse, 2006), 149.

<sup>95</sup> Leonard Dinnerstein, *Antisemitism in America* (Oxford: Oxford University, 1995), 122,



civil rights campaign into high gear, especially in the North. As the war ended, Black newspapers and veterans raised fundamental questions about American democracy.

Racism undermines all of our freedoms. Although the following is a miniscule and only military list, we cannot forget the contributions of Black American patriots in the Harlem Hellfighters of World War I, the Tuskegee Airmen or the Navajo code-breakers who helped us win World War II.

### **Post War Shift**

The United States emerged from World War II as the leader of the free world. The postwar world was focused on creating a legal framework for human rights and the prevention of war. As the U.S. transitioned into global leadership a painful battle for human rights would ensue at home and abroad. After the war antisemitism increased as Jews and Blacks had found much in common both during the war and afterward. Northern Jews were linked with Black civil rights activists and were vilified.

Pressures built on U.S. leadership as returning Black soldiers were welcomed home with lynching. NAACP charged before the United Nations that these were human rights violations. President Truman established a Commission on Civil Rights although only 6% of white Americans thought that these rights should be secured immediately.<sup>96</sup> The Dixiecrats (Southern Democrats) seceded from the party in 1948 in opposition to the policy of extending civil rights. In classic racist projection, one Texas representative kicked off his winning Senate campaign by arguing that civil rights were “an effort to set up a police state in the guise of liberty.”<sup>97</sup> When the United Nations ratified the Genocide Convention in 1948 the American Civil Rights Congress delivered a petition to the U.N. entitled, *We Charge Genocide: The Historic Petition to the United Nations for Relief From a Crime of The United States Government Against the Negro People*. The United States refused to sign the Genocide Convention in 1948 as the Southern Bloc still controlled the government and feared that their crimes in the Jim Crow South would indeed make them criminals.

Post-war assimilation and societal uplift once again created a formidable racist backlash. In 1956, nineteen U.S. Senators and seventy-seven House Republicans signed a southern manifesto opposing the 1954 *Brown v. Board of Education* decision that struck down segregation in public schools and gave momentum to the civil rights movement. They argued that the decision planted “hatred and suspicion where there has been heretofore friendship and understanding.”<sup>98</sup> The Southern fable was alive and well.

As the U.S. made racial progress, racism and racist ideas moved forward as well. If civil rights could not be stopped, perhaps they could be undermined by claiming racism was over. Barry Goldwater inspired millions of Democrats to join the Republican Party by arguing that now that racism was over it was only the fault of the Blacks if their lives did not improve. He spoke to the privileged who had outgrown or did not need government assistance to vilify those who needed it to level the playing field. Not only did Blacks not have the same opportunities and faced powerful discrimination, the fact the middle-class whites that supported Goldwater had

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<sup>96</sup> Kendi, 355.

<sup>97</sup> Ibid, 356.

<sup>98</sup> Ibid, 365.

been by-and-large lifted by the New Deal and the GI Bill was ignored.

The most significant civil rights bill passed to date was the Voting rights Act of 1965. It banned all poll taxes, literacy tests, and all forms of subterfuge to disenfranchise American voters and required all changes to southern voting laws to be approved by a federal official. Whereas the Civil rights Act had focused on intent (and thus could be manipulated) the Voting rights Act focused on outcome and proved to be more effective and was designed to enforce the 15<sup>th</sup> Amendment's (1870) bar on racial voter suppression.

Still, Black communities faced police brutality, slumlords, school boards and exploitative businesses who could maneuver around the Civil Rights Act. The Act had stipulated "If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited."<sup>99</sup> All employers had to do was to promotion and hiring practices were related to job performance or business necessity. Elsewhere, IQ tests measured the unmeasurable and SAT, GPA, or achievement tests (written to put less educated Blacks at a disadvantage) were used to justify discrimination.

The Rev. Martin Luther King came to realize that assimilation and desegregation had only benefitted black elites. The majority still suffered in extreme poverty that led to rebellion and violence. He shifted his focus to an economic bill of rights for the Black poor. President Johnson's Kerner Commission studying the problem shocked American sensibilities by concluding that urban rebellions were due to racism, not race, and that white society was implicated in inner cities ghettos. By 1968, Democrats and Republicans found a new way forward to cultivate the racist vote.

### **Law and Order as Racist Agenda**

Richard Nixon was the first to frame the "southern strategy" that could appeal to the racism vote without mentioning race. Nixon united north and south, the anti-black, anti-Latina/o, war hawks, and fiscal and social conservatives by "defending" the nation from the lawlessness of minorities. His campaign, "Law and order has broken down in the courts" slammed the Supreme Court for "having gone too far in strengthening criminal forces."<sup>100</sup>

In 1972, fewer than 350,000 people were in prisons or jails in the U.S.<sup>101</sup> That changed dramatically as both Republicans and Democrats tried to outdo each other as the party of law and order. President Reagan won the southern vote by promising to "restore to states and local governments the power that properly belongs to them."<sup>102</sup> President Reagan cut taxes on the rich and cut social programs for middle and low-income families. Median income of Black families declined 5.2% in Reagan's first year and the number of poor Americans increased by 2.2 million.<sup>103</sup> Reagan's war on crime began a process that would quadruple the prison population between 1980 and 2000.<sup>104</sup>

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<sup>99</sup> Ibid, 416.

<sup>100</sup> Kendi, 411.

<sup>101</sup> Ibid, 435.

<sup>102</sup> Ibid, 431.

<sup>103</sup> Ibid, 431.

<sup>104</sup> Ibid, 435.

President Reagan fought the law and order battle by declaring a war on drugs. This occurred at a time when drug use was declining and only 2% of Americans viewed drugs as a pressing national problem.<sup>105</sup> Black Americans would be disproportionately arrested in this campaign at the same time the Reagan administration backed the Contra rebels in Nicaragua who started smuggling cocaine in 1985. The 1986 Anti-Drug Abuse Act (promoted as a failure of self-control with the mantra “Just say no”) proscribed a minimum five-year sentence for a dealer or user caught with five grams of crack. White and rich users and dealers of powder cocaine, operating in neighborhoods with fewer police, had to be caught with 500 grams.<sup>106</sup> These sentencing guidelines and not a sudden outbreak of more crime, accounted for the sharp increase in the size of the prison population. From 1985-2000 drug offenses accounted for two-thirds of the spike in inmate populations. In 1996, even though two-thirds of crack users were white or Latina/o, blacks comprised 84.5% of defendants convicted of crack possession. In 2000, blacks comprised 62.7% and whites 36.7% of all drug offenses. In 2012, the National Survey on Drug Use and Health found that white youths (6.6%) were 32% more likely than black youths (5%) to sell drugs, but Blacks were far more likely to be arrested.<sup>107</sup> This reflected racist beliefs and historical structural approaches. Wherever there are more police, there will be more arrests. Blacks were seen as racially more violent, even though the evidence does not support this. With more arrests there is a perception that there is more crime so more police are sent in which results in more arrests.

A more effective approach would be a war on unemployment. When comparing violent crime from 1976-1989 the key to the violence was unemployment, not race. Rather than perceiving the dangers of inner-city Black neighborhoods, we should see the dangers of unemployed neighborhoods. Although anecdotal, the story of Harris Rosen is intriguing. Rosen decided to use his wealth to help a struggling Black community in Tangelo Park, Florida. It was a community with high drop-out rates and many shuttered homes. However, there were leaders there who were already fighting the drug trade. Now, after two decades of investment in education and job training, Tangelo Park is a success story with a focus on education. The crime rate has plummeted.<sup>108</sup>

However, self-interested politicians pandering to the racist vote prefer to arrest non-white, nonviolent drug users to promote themselves as tough on crime. It is stunning to realize that drunk drivers routinely kill more than violent urban Blacks. 78% of those arrested for drunk driving in 1990 were white.<sup>109</sup> It took a grassroots movement, MADD, to make drunk driving a concern of the public. Even so, the penalties never came close to matching those of drug offenders. One additional benefit in focusing on drug abusers is that when paroled, these offenders no longer have voting rights.

In 1988 George H.W. Bush was losing in the polls to Michael Dukakis until he pandered to the racist vote through the law and order playbook. Bush’s Willie Horton add, a true story about a Black man who murdered and raped whites, proved to be the turning point in his campaign. Bush went one step further by endorsing capital punishment at a time when Blacks were being sentenced to death at a rate four times that of whites in

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<sup>105</sup> Ibid, 433.

<sup>106</sup> Ibid, 435.

<sup>107</sup> Ibid, 435-436

<sup>108</sup> Alvarez, Lizette. “One Man’s Millions Turn A Community in Florida Around.” *New York Times*, May 25, 2015.

<sup>109</sup> Kendi, 437.

Georgia.<sup>110</sup> In 1987 the Supreme Court ruled in *McClesky v. Kemp* that Georgia was within its rights to racially profile.

Bill Clinton successfully won the label of tougher on crime by advocating the execution of a mentally impaired Black man while campaigning for president in Arkansas. When elected, President Clinton passed the Violent Crime Control and Law enforcement Act of 1994 that expanded police and prisons and created the largest increase of the prison population in U.S. history. These were mostly nonviolent Black drug offenders. Although whites generally suffer more violence at the hands of whites, President Clinton claimed that “violence for...white people too often has a black face.”<sup>111</sup> In 1995, Americans were asked to envision a drug user and 95% of the respondents described a Black face despite the fact that blacks were only 15% of the drug users that year.<sup>112</sup>

The Republic Revolution of the 1980s led by Newt Gingrich and Richard Armey reclaimed the mantle of the law and order party with the “Contract With America.” The contract focused on the “Taking Back Our Streets Act” and the “Personal Responsibility Act” which targeted not just Black welfare recipients but also the poor and demanded that everyone stop blaming racial discrimination for their plight. A new generation of Americans were convinced that racial inequalities were caused by irresponsible Blacks and not racial discrimination. As they attacked welfare programs they argued that welfare had made Blacks dependent of the government just as slaves had been dependent on their masters’ welfare. Thus, Republicans could claim they were not being racist when they targeted programs that had begun to level the playing field. In 1991, one study found that most blacks eligible for welfare did not use it, but 78% of White Americans thought that Blacks preferred to live on welfare.<sup>113</sup>

In 2018, there are about 2.3 million people behind bars in the U.S.<sup>114</sup> It is stunning to realize the impact of criminalizing behavior that disproportionately targets communities of color. There are more U.S. citizens with a criminal record than the combined populations of the world’s largest city, Tokyo and the most populated state, California.<sup>115</sup> The growth in the U.S. prison population can be more closely attributed to ideological policy choices than actual crime rates. The U.S. incarcerates 693 people for every 100,000 residents, more than any other country.<sup>116</sup> The U.S. in 2018 makes up about 5% of the world’s population and has 21% of the world’s prisoners. 1 in every 37 adults, or 2.7% of the adult population, is under some form of correctional supervision. Black and white Americans use drugs at similar rates, but the Black imprisonment rate is almost six times that of whites. Black and Hispanic Americans make up approximately 32% of the population, yet comprise 56% of the people incarcerated in 2015. If they were incarcerated at the same rates as whites the prison population would decline by 40%.<sup>117</sup>



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<sup>110</sup> Ibid, 442.

<sup>111</sup> Ibid, 464.

<sup>112</sup> Ibid, 461.

<sup>113</sup> Kendi, 445.

<sup>114</sup> <https://www.prisonpolicy.org/graphs/pie2018.html>

<sup>115</sup> <http://www.newsweek.com/mass-incarceration-america-unjust-suffering-inside-us-prisons-must-be-exposed-621833>.

<sup>116</sup> [https://www.prisonpolicy.org/global/2016.html?gclid=Cj0KCQjwm6HaBRCbARIsAFDnK-gq2G\\_SygDPxftWCnJe-KuZNYJ2oXKIhm7y2fA3GJwrpWltNfFWX9AaAjgnEALw\\_wcB](https://www.prisonpolicy.org/global/2016.html?gclid=Cj0KCQjwm6HaBRCbARIsAFDnK-gq2G_SygDPxftWCnJe-KuZNYJ2oXKIhm7y2fA3GJwrpWltNfFWX9AaAjgnEALw_wcB)

<sup>117</sup> <https://www.naacp.org/criminal-justice-fact-sheet>.

Incarcerated people find themselves in a cycle of poverty, debt, and hopelessness. As was the case in the Jim Crow South, the criminal justice system is still a lucrative venture. Private jails (and incentives to arrest and detain) is a money-maker as is the bail bond business that brings in more than \$2 billion in profit each year.<sup>118</sup> Nearly half of all inmates in federal prisons are held on drug charges, but drug offenders make up a smaller proportion of the population in state prisons and jails. Although Black Americans make up only about 12% of the total U.S. population, they represent 33% of the federal and state prison population. Whites, by contrast, who make up 64% of American adults, account for 30% of those behind bars.<sup>119</sup> The gap between white and Black inmates is narrowing as the opioid and heroin epidemic is hitting white communities the hardest. In the first decade of the 21<sup>st</sup> century imprisonment rates for Black Americans has fallen one third for men (height 2001) and 57% for women (height 1999) since 2001. Overall, all incarcerations down 10% over the past decade. There has been progress, including undermining the myth that Blacks are intractable criminals, but Black incarceration still high and disproportionate.<sup>120</sup>

Segregationists do not believe in facts and try to convince us that racism is over. Denial allows racism to flourish and mutate. Public discussion is condemned and anyone who raises the issue of discrimination is accused of being a racist trying to divide Americans. A new racist stratagem is to claim “color blindness” while cutting welfare and jobs programs. When Hurricane Katrina hit New Orleans in 2005, it was clear that the color blindness mantra was absurd. News reported that desperate Bks were violently looting the city, including gun stores. This gave federal officials the justification to delay going in to help arguing that their safety was at risk. As racists galvanized their thoughts, no one bothered to ask the question, “Do you really think that Black people shoot at people coming to help save them?” Instead, prime real estate could be cleared away for disaster capitalist companies.

The Voting Rights Act is currently under assault by racists. In 2013 *Shelby County v. Holder* declared that Section 4(b) (containing the coverage formula that determines which states and local governments are subject to preclearance under Section 5 after passing federal review of past voter suppression) was unconstitutional.<sup>121</sup> Chief Justice John G. Roberts, Jr. argued that the provisions are no longer necessary, as things have changed since the 1960s and 1970s. In his concurring opinion, Justice Clarence Thomas agreed that *blatant* (my italics) discrimination against certain voters was no longer evident. In June 2018 the Supreme Court in *Abbott v. Perez*, still bitterly divided in another 5-4 decision, upheld all but one of Texas’ gerrymandered districts despite the vast evidence of diluting the Hispanic vote. Justice Neal Gorsuch joined Justice Thomas in undermining the VRA by no longer prohibiting racial gerrymandering.<sup>122</sup> Since 2013 nearly one thousand polling places have been closed across the country, many of them in Southern Black communities. In 2018 Indiana removed 170 mostly

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<sup>118</sup> [https://www.prisonpolicy.org/global/2016.html?gclid=Cj0KCQjwm6HaBRCbARIsAFDNK-gq2G\\_SygDPxftWCnJe-KuZNYJ2oXKIhm7y2fA3GJwrpWLTnFfWX9AaAajgnEALw\\_wcB](https://www.prisonpolicy.org/global/2016.html?gclid=Cj0KCQjwm6HaBRCbARIsAFDNK-gq2G_SygDPxftWCnJe-KuZNYJ2oXKIhm7y2fA3GJwrpWLTnFfWX9AaAajgnEALw_wcB)

<sup>119</sup> *Ibid.*

<sup>120</sup> [https://www.washingtonpost.com/opinions/2019/04/30/weve-made-remarkable-progress-black-incarceration-now-we-need-know-why/?noredirect=on&utm\\_term=.f3645e9d38d6](https://www.washingtonpost.com/opinions/2019/04/30/weve-made-remarkable-progress-black-incarceration-now-we-need-know-why/?noredirect=on&utm_term=.f3645e9d38d6)

<sup>121</sup> See: <https://www.theatlantic.com/politics/archive/2018/07/how-shelby-county-broke-america/564707/>

<sup>122</sup> <https://www.google.com/search?q=neil+gorsuch+declares+war+on+the+voting+rights+act&oq=neil+gorsuch&aqs=chrome.1.69i57j35i39j0l4.4976j0j4&sourceid=chrome&ie=UTF-8>

Democratic voting, precincts in a county that has the state's largest Latino and second-largest black communities.<sup>123</sup>

## **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. 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.

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<sup>123</sup> [https://www.sentinelsource.com/mcclatchy/minority-polling-places-targeted-en-masse/article\\_f1f24017-9a79-523e-913a-d44b0403234b.html](https://www.sentinelsource.com/mcclatchy/minority-polling-places-targeted-en-masse/article_f1f24017-9a79-523e-913a-d44b0403234b.html)

In 2018, the National Memorial for Peace and Justice opened in Montgomery, Alabama. This challenging and honest confrontation with America's slave past 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.”<sup>124</sup>

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<sup>124</sup> <https://www.cnn.com/videos/politics/2018/07/24/donald-trump-what-youre-seeing-not-whats-happening-tapper-sot-vpx.cnn>