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# NAZI GERMANY'S RACE LAWS, THE UNITED STATES, AND AMERICAN INDIANS

ROBERT J. MILLER<sup>†</sup>

## I. INTRODUCTION

Most Americans would be shocked to learn that in the 1920s and 1930s Adolf Hitler and Nazi scholars, lawyers, and officials were studying United States law while developing Germany's policies and laws concerning Jews and the conquest of Eastern Europe. Most Americans would also be surprised that, as the leaders of the Third Reich were turning racist ideas into official German policies, Nazis were carefully studying United States federal Indian law and state laws that discriminated against Indian nations and American Indians.

In a 2017 book, a Yale law professor lays out a convincing argument that the Nazis carefully studied American federal and state laws which discriminated against Black Americans, Chinese, Japanese, Filipinos, Puerto Ricans, and other racial groups.<sup>1</sup> He only mentions American Indians, however, on eleven pages of his book.<sup>2</sup>

In this Article, I discuss how, and to what extent, United States federal and state laws and policies regarding Indians and Indian nations influenced Hitler and Nazi officials in formulating and enacting Nazi race laws. Adolf Hitler, many Nazis, and even ordinary Germans had a significant level of knowledge about Indians, American "Manifest Destiny," the United States coloni-

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<sup>1</sup> JAMES Q. WHITMAN, *HITLER'S AMERICAN MODEL: THE UNITED STATES AND THE MAKING OF NAZI RACE LAW* 59, 69, 71 (2017).

<sup>2</sup> *Id.* at 205–06.

zation of the American West, and federal Indian law and policies. This article examines how the Nazis utilized this knowledge and familiarity to develop and plan their actions in the German "East."

This Article will further explore how both the United States and Adolf Hitler's Nazis applied the pseudoscience of eugenics to formulate national policies, programs, and laws regarding draft immigration, naturalization, and anti-miscegenation laws. Specifically, this Article will explain that the principles of eugenics led both countries to enact forced sterilization programs, which in Nazi Germany morphed into euthanasia and mass murder.<sup>3</sup> This Article will detail how Hitler and the Nazis studied American laws, were unquestionably influenced by American precedents, and relied on these American examples as justifications for Germany's enactment of similar measures.<sup>4</sup> Interestingly, this Article will note at least three instances in which American law was too harsh even for Nazis to adopt.

Part II of this Article analyzes the extent of German and Nazi knowledge of the United States' interactions with the Indigenous peoples and nations of North America. It will discuss how the American example influenced Adolf Hitler and the Nazis in their aspirations of a German empire in the East, and their approach to dealing with Jewish and Slavic racial groups. Part III examines what Nazi scholars, jurists, lawyers, and party officials learned about racial laws, and especially about Indian race law, from the United States and the American states, and how such policies were applied by Nazis in the 1935 Nuremberg Laws. This Article concludes with a discussion on the value of this historical and legal investigation as a means of better understanding United States and German history. Hopefully, studying and learning from these historical and legal events will help nations and peoples avoid similar mistakes and tragedies in the future.

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<sup>3</sup> RICHARD WEIKART, FROM DARWIN TO HITLER: EVOLUTIONARY ETHICS, EUGENICS, AND RACISM IN GERMANY 1-4 (2004).

<sup>4</sup> See, e.g., STEFAN KÜHL, THE NAZI CONNECTION: EUGENICS, AMERICAN RACISM, AND GERMAN NATIONAL SOCIALISM 101 (1994) (explaining that Nazi doctors at the Nuremberg Doctors Trial in 1946 defended their euthanasia program by pointing to international approval of its scientific basis and that killing the mentally handicapped was based on the laws and ideas of the United States).

## II. ADOLF HITLER, NAZI GERMANY, AND AMERICAN INDIAN AFFAIRS

Adolf Hitler, and Germans in general, were very interested in American Indians and their history. Analogies to German political, racial, and geographical conditions were drawn even before the Third Reich came into existence.<sup>5</sup> Hitler and many Nazis were influenced by an intimate knowledge of the history surrounding United States and Indian affairs. In the following Sections, I will address Germans' and Hitler's interest in, and knowledge of, Indians and the United States, as well as the similarities between the American ideology of Manifest Destiny in the Frontier West and Germany's policy of *Lebensraum* in Eastern Europe.

### A. Germans' Knowledge of American Indians

Generally, the German people have long been interested in American Indians and the United States' relationship with Indian nations. One scholar alleges that, as early as the end of the 1800s, "thinking about American Indians had become integral to German cultures."<sup>6</sup> Some scholars believe this interest stemmed from some perceived connection or romanticized similarity between American tribal peoples and the Germanic tribes of ancient times.<sup>7</sup> Thus, some Germans may see themselves as Indians, or at least as being descended from tribal peoples.<sup>8</sup>

German interest in American Indians was likely first piqued in the 1830s by the writings of German noblemen who traveled throughout America.<sup>9</sup> By the mid-nineteenth century, and continuing throughout the Third Reich era, American Indians were popular subjects for books, artists, child-play, and toys in

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<sup>5</sup> ADOLF HITLER, MEIN KAMPF 439–40 (Ralph Manheim trans., 1969) (observing that the United States was the "one state" progressing towards a racist society); WEIKART, *supra* note 3, at 2, 44–47 (detailing how Hitler discussed United States laws and policies and noting that the United States was a racial model for Europe).

<sup>6</sup> H. GLENN PENNY, KINDRED BY CHOICE: GERMANS AND AMERICAN INDIANS SINCE 1800, at 3 (2013).

<sup>7</sup> FRANK USBECK, FELLOW TRIBESMEN: THE IMAGE OF NATIVE AMERICANS, NATIONAL IDENTITY, AND NAZI IDEOLOGY IN GERMANY 2, 10 (2015); PENNY, *supra* note 6, at 27, 152–53, 168.

<sup>8</sup> See A. Dirk Moses, *Empire, Colony, Genocide: Keywords and the Philosophy of History*, in EMPIRE, COLONY, GENOCIDE: CONQUEST, OCCUPATION, AND SUBALTERN RESISTANCE IN WORLD HISTORY 3, 36–37 (A. Dirk Moses ed., 2008).

<sup>9</sup> USBECK, *supra* note 7, at 22; DAVID BLACKBOURN, THE CONQUEST OF NATURE: WATER, LANDSCAPE, AND THE MAKING OF MODERN GERMANY 304 (2006).

Germany.<sup>10</sup> American author James Fenimore Cooper's 1820s book series about Indians, which includes *The Last of the Mohicans*,<sup>11</sup> was immensely popular in Germany, as well as with Hitler.<sup>12</sup> In 1893, after the German tours of the Buffalo Bill Wild West Show and other similar shows were highly successful, German author Karl May began publishing his wildly popular series of fictional books featuring Indians.<sup>13</sup> May sold around 100 million books, making him "possibly the most-read German author of all time."<sup>14</sup> May was, and still is, so beloved that a museum devoted to him was opened in 1928 and is still in operation today.<sup>15</sup> His success led other authors in Germany to write up to almost eighty more books on American Indians between 1927 and 1945.<sup>16</sup>

German publications from the 1830s through the Third Reich era also highlighted historical American Indian leaders. Specifically, Germans learned about the Shawnee chief Tecumseh who was famous for resisting United States expansion.<sup>17</sup> One author called Tecumseh the "Arminius of the Red Race," a comparison with significance to Germans who knew Arminius as arguably the most famous of the Germanic tribal leaders, known for his victory over the Roman Empire in 9 A.D.<sup>18</sup> Some German authors even invoked Tecumseh to promote fascist principles.<sup>19</sup> Tecumseh and other chiefs such as Pontiac, King Philip, and

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<sup>10</sup> PENNY, *supra* note 6, at 25–26, 149, 151; USBECK, *supra* note 7, at 1, 25.

<sup>11</sup> JAMES FENIMORE COOPER, *THE LAST OF THE MOHICANS* (London, John Miller ed. 1826); Mark Niemeyer, *From Savage to Sublime (And Partway Back): Indians and Antiquity in Early Nineteenth-Century American Literature*, 2 *TRANSATLANTICA* 1, 13 (2015).

<sup>12</sup> PENNY, *supra* note 6, at 25–26, 159.

<sup>13</sup> USBECK *supra* note 7, at 24–25; PENNY, *supra* note 6, at 66; Marlies Bugmann, *Translator's Notes to KARL MAY, 1 WINNETOU*, at xi (Marlies Bugmann trans., Verlag Reinhard Marheinecke 2019) (1893).

<sup>14</sup> *Ich bin ein Cowboy: Modern Germany's Favourite Author Will Come as a Surprise*, *ECONOMIST*, May 24, 2001, at 8; BLACKBOURN, *supra* note 9 (explaining that Hitler "read and reread" Karl May "throughout his life").

<sup>15</sup> KARL MAY MUSEUM, <https://www.karl-may-museum.de/en/> [https://perma.cc/JLU9-2AX8] (last visited Aug. 23, 2021).

<sup>16</sup> PENNY, *supra* note 6, at 167 (citing BARBARA HAIBLE, *INDIANER IM DIENSTE DER NS-IDEOLOGIE: UNTERSUCHUNGEN ZUR FUNKTION VON JUGENDBÜCHERN ÜBER NORDAMERIKANISCHE INDIANER IM NATIONALSOZIALISMUS* (1998)).

<sup>17</sup> PENNY, *supra* note 6, at 168; USBECK, *supra* note 7, at 99–100, 107, 169.

<sup>18</sup> FRIEDRICH VON GAGERN, *DAS GRENZERBUCH: VON PFADFINDERN, HÄUPTLINGEN UND LEDERSTRUMPFEN* 171 (Verlag von Paul Parey 1940) (1927); Herbert W. Benario, *Arminius into Hermann: History into Legend*, 51 *GREECE & ROME* 83, 85, 93 (2004).

<sup>19</sup> PENNY, *supra* note 6, at 168; VON GAGERN, *supra* note 18.

Sitting Bull were featured in German publications throughout the late nineteenth and early twentieth centuries.<sup>20</sup> German people were exposed to reams of information about American Indians for more than a century before the Third Reich came into existence. As the newspapers and media already informed the public about American race and Indian laws, the Nazis would employ similar tactics for propaganda purposes.<sup>21</sup>

Like most of the German public, Hitler was also interested in Indians. He was heavily influenced by the books of James Fenimore Cooper, and especially by Karl May. Hitler read and reread May's books throughout his life, credited them with impacting his thinking, recommended them to his generals, and distributed copies of May's books to frontline troops.<sup>22</sup> Undoubtedly due to Hitler's and the German public's interest, the Nazi Party adopted May for propaganda, and encouraged German youth, particularly the Hitler Youth, to read his books and visit the May museum.<sup>23</sup> In the late 1930s, Nazis even attempted to enlist American Indian support, mostly from Sioux and Lakota peoples, for the Third Reich.<sup>24</sup>

As will be discussed later in this Article, Hitler was familiar with the United States' subjugation of Indian nations. Hitler, like most Germans, was fascinated not only with the American frontier and Indians, but also with the United States in general.<sup>25</sup> He was well aware of how the United States treated Indians, and he praised both the United States' actions in America and England's actions in India as examples of the superiority of the White race.<sup>26</sup> In his unpublished book from 1928, Hitler painted the United States in a favorable light and paid tribute to it as a

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<sup>20</sup> PENNY, *supra* note 6, at 168–69; USBECK, *supra* note 7, at 3–4.

<sup>21</sup> KÜHL, *supra* note 4, at 98–99.

<sup>22</sup> CARROLL P. KAKEL, III, THE AMERICAN WEST AND THE NAZI EAST: A COMPARATIVE AND INTERPRETIVE PERSPECTIVE 35 (2011); PENNY, *supra* note 6, at 9, 150–52; Anthony Grafton, *Mein Buch*, NEW REPUBLIC, Dec. 24, 2008, at 32, 34 (reviewing TIMOTHY W. RYBACK, HITLER'S PRIVATE LIBRARY: THE BOOKS THAT SHAPED HIS LIFE (2008)).

<sup>23</sup> PENNY, *supra* note 6, at 164, 166; USBECK, *supra* note 7, at 32, 34, 104 (explaining that Dr. Joseph Goebbels realized German enthusiasm for Indians could be used for propaganda); KARL MAY MUSEUM, *supra* note 15.

<sup>24</sup> PENNY, *supra* note 6, at 153; USBECK, *supra* note 7, at 4–5, 7, 11, 17.

<sup>25</sup> KAKEL, *supra* note 22; SHELLEY BARANOWSKI, NAZI EMPIRE: GERMAN COLONIALISM AND IMPERIALISM FROM BISMARCK TO HITLER 141 (2011).

<sup>26</sup> KAKEL, *supra* note 22, at 35–36.

country that “felt itself to be a Nordic-German state and in no way an international mishmash of peoples.”<sup>27</sup>

Moreover, Hitler was familiar with the official United States Indian policies used to acquire much of its territorial empire, including the Removal, Reservation, and Assimilation Eras of Indian polices.<sup>28</sup> These policies were all designed to acquire Indian lands for the United States, and to remove, concentrate, and, certainly, exterminate Indians. Hitler envisioned the “German East” of Poland, Ukraine, and Russia as an analogy to the American frontier of the “West,” and he expected to expand the German empire eastwards in the same fashion as the United States had westward. Hitler and other Nazi leaders often referred to Jews, Poles, and Ukrainians as “Indians.”<sup>29</sup>

These brief highlights demonstrate that many Germans, and most importantly Adolf Hitler himself, were avidly interested in and generally knowledgeable about America’s interactions with and conquests of native nations and peoples.<sup>30</sup> With this understanding, it is not surprising Hitler and Nazi scholars carefully studied American Indian history and United States Indian laws, with intentions of applying similar policies to Jewish and Slavic peoples.

### B. *American Manifest Destiny and German Lebensraum*

In North America, the English colonists engaged in settler colonialism.<sup>31</sup> This colonialist conquest strategy employed political and military tactics in an attempt to replace an entire Indig-

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<sup>27</sup> Telford Taylor, *Introduction to ADOLF HITLER, HITLER’S SECRET BOOK*, at xxiii–xxiv (Salvator Attanasio trans., 1961).

<sup>28</sup> See USBECK, *supra* note 7, at 4–5, 7, 11, 17–18 (discussing how during the Nazi era, many major German newspapers, periodicals, and educational magazines published a multitude of articles about Indians, America’s Indian policies, and race relations); KÜHL, *supra* note 4, at 98–99 (noting that newspapers contributed to Germans becoming knowledgeable about American race law and Indian law). For descriptions of the official eras of federal Indian policies, see Robert J. Miller, *Tribal, Federal, and State Laws Impacting the Eastern Shawnee Tribe, 1812 to 1945*, in *THE EASTERN SHAWNEE TRIBE OF OKLAHOMA: RESILIENCE THROUGH ADVERSITY* 149, 155–58 (Stephen Warren ed., 2017).

<sup>29</sup> See, e.g., BLACKBOURN, *supra* note 9, at 303, 305 (noting that Frederick the Great called the Poles Iroquois Indians in the 1770s and Hans Frank called Jews “flat-foot Indians”).

<sup>30</sup> USBECK, *supra* note 7, at 1, 170 (explaining that Adolf Hitler adopted the notion of German tribalism, compared Germans to Indians, and constantly reminded Germans of their tribal ancestry).

<sup>31</sup> See LAURELYN WHITT & ALAN W. CLARKE, *NORTH AMERICAN GENOCIDES: INDIGENOUS NATIONS, SETTLER COLONIALISM, AND INTERNATIONAL LAW* 45–46 (2019).

enous population with new settlers.<sup>32</sup> The strategy can be achieved directly by domination from a colonial government and its settlers by violent depopulation—such as ethnic cleansing or mass murder—or more subtly through methods of assimilation and modest recognition of certain Indigenous rights within a colonial framework.<sup>33</sup> The objectives and actions of settler colonialists can manifest themselves as genocide, though some scholars maintain that is not invariably the case.<sup>34</sup>

The English were experienced settler colonialists. They had previously conquered Indigenous peoples in Ireland, and had partially displaced numerous groups of Indigenous peoples after many decades of conflict and domination.<sup>35</sup> In North America, the sponsors and investors of the earliest English colonial efforts—and the later colonial, state, and United States governments which replaced them—brought those same tactics, methods, and objectives to bear on American Indian nations.<sup>36</sup> In the early United States, the mantra of “free land” for the taking encouraged mass immigration from Europe and westward migrations from the eastern states.<sup>37</sup> As is well documented, this expansion resulted in greed and violence-driven conflicts between Indian nations and Euro-Americans.

The purpose of this Article is not to dwell on this sordid history. Rather, the following Section will explore the actual meanings, objectives, and justifications put forward for American Manifest Destiny and empire, and the almost total disregard of the human, cultural, property, and political rights of Indian nations and peoples which followed. Then, a comparison will be drawn to Nazi objectives and justifications for empire in the East as conducted under the rubric of *Lebensraum*, or “living space.”

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<sup>32</sup> Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387, 388 (2006). This same method of German colonization in the East was advocated at the turn of the twentieth century by the German political geographer Friedrich Ratzel, who had a large influence on Adolf Hitler. KAKEL, *supra* note 22, at 20–21.

<sup>33</sup> Wolfe, *supra* note 32, at 388–93.

<sup>34</sup> *Id.* at 401–03.

<sup>35</sup> KAKEL, *supra* note 22, at 84–86; ROBERT J. MILLER ET AL., *DISCOVERING INDIGENOUS LANDS: THE DOCTRINE OF DISCOVERY IN THE ENGLISH COLONIES* 15–17 (2010).

<sup>36</sup> KAKEL, *supra* note 22, at 84–86; ROBERT J. MILLER, *NATIVE AMERICA, DISCOVERED AND CONQUERED: THOMAS JEFFERSON, LEWIS & CLARK, AND MANIFEST DESTINY* 17–21, 25–33, 39–41, 48, 138–39 (2006).

<sup>37</sup> *E.g.*, Oregon Donation Land Act, 9 Stat. 496 (1850). Congress enacted a variety of homesteading acts from 1860 to 1938. *See, e.g.*, Homestead Act of 1862, 12 Stat. 392.



## 1. Manifest Destiny

The United States adopted English settler colonial strategies when it gained independence from England. Some of the nation's earliest leaders, including George Washington and Benjamin Franklin, were fully committed to the United States expanding its borders and taking lands and assets from the native nations.<sup>38</sup> Franklin, for example, had been speaking about the United States as a "rising empire" since the 1740s; Washington used the same language in 1783.<sup>39</sup> Even years before, Washington foresaw Indian nations vanishing, their land destined to fall to the United States. In 1767, he wrote that the international treaties European countries were signing with Indian nations, guaranteeing tribes their lands, assets, and rights, were just "a temporary expedien[t] to quiet the Minds of the Indians."<sup>40</sup> Thomas Paine, an influential pamphleteer from the Revolutionary War period, and other early Americans shared these same expansive ideas.<sup>41</sup>

Washington made his Manifest Destiny ideas clear to a congressional committee that had solicited his advice on how to conduct Indian affairs. On September 7, 1783, he provided Congress with suggestions on how to deal with Indians and Indian nations. In his letter, Washington argued that Indian relations were crucial to the United States because "the Settlemt. [sic] of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the other."<sup>42</sup> He went on to explain

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<sup>38</sup> *E.g.*, DAVID S. HEIDLER & JEANNE T. HEIDLER, *MANIFEST DESTINY*, at xv (2003).

<sup>39</sup> R. W. VAN ALSTYNE, *THE RISING AMERICAN EMPIRE* 1 (W.W. Norton & Co. 1974) (1960); REGINALD HORSMAN, *RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM* 85 (1981) ("Franklin envisioned American pioneers spreading across the Mississippi Valley . . .").

<sup>40</sup> Letter from George Washington to William Crawford (Sept. 17, 1767), in 8 *THE PAPERS OF GEORGE WASHINGTON: COLONIAL SERIES* 26, 26–32 (W.W. Abbot & Dorothy Twohig eds., 1993) (alteration in original).

<sup>41</sup> HORSMAN, *supra* note 39, at 85–86 (highlighting that Paine wrote in *Common Sense* that the American Revolution was about "a continent"); Charles L. Sanford, *Introduction to MANIFEST DESTINY AND THE IMPERIALISM QUESTION*, at 1, 8 (Charles L. Sanford ed., 1974) (noting that John Adams predicted in 1787 that the American states were "destined to spread over the northern part of that whole quarter of the globe"); Letter from Matthew Lyon to Andrew Jackson (June 2, 1814), in 3 *THE PAPERS OF ANDREW JACKSON, 1814–1815*, at 78, 78 (Harold D. Moser et al. eds., 1991) (referencing a congressman's 1814 writing: "This Nation are destined to civilize & Govern this Continent").

<sup>42</sup> Letter from George Washington to James Duane (Sept. 7, 1783), in *DOCUMENTS OF UNITED STATES INDIAN POLICY* 1, 1–2 (Francis Paul Prucha ed., 3d

that keeping the peace with tribes and purchasing Indian lands instead of engaging in warfare was by far the best approach:

policy and oeconomy [sic] point very strongly to the expediency of being upon good terms with the Indians, and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return as soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the *Savage as the Wolf* to retire; *both being beasts of prey tho' they differ in shape*. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expence [sic].<sup>43</sup>

Certainly, Washington envisioned a future in which the United States would spread across the continent, while Indian nations and peoples would retreat and disappear, their lands and assets falling naturally to the growing nation. His “Savage as [the] Wolf” theory grew from the Doctrine of Discovery, an international law principle which Euro-Americans used in North America and around the globe, eventually morphing into what we know today as Manifest Destiny.<sup>44</sup>

The United States adopted Washington’s advice and pursued westward expansion at whatever cost. Presidents, politicians, and American citizens expressly foresaw extermination as the destiny of Indian nations, peoples, and cultures. Federal Indian laws, policies, and treaty-making with Indian nations were designed to accomplish these goals.<sup>45</sup>

Thomas Jefferson compared American Indians to the “beasts of the forests” and was an eager advocate for the expansion of the

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ed. 2000). Prucha claims Washington’s 1783 recommendations “were to form the basis for the Indian policy of the Continental Congress.” *Id.* at 1.

<sup>43</sup> *Id.* at 2 (emphasis added).

<sup>44</sup> MILLER, *supra* note 36, at 39–40, 118, 168. The Supreme Court stated in *Johnson v. M’Intosh*, 21 U. S. (8 Wheat.) 543, 572–73 (1823):

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy.

<sup>45</sup> *See, e.g.*, MILLER, *supra* note 36, at 78, 92–94, 115–61.

United States.<sup>46</sup> He has been called “perhaps the greatest expansionist” of the Founding Fathers, and “a fervent advocate of American expansion.”<sup>47</sup> He plainly worked to create a continent-wide American empire, an “empire of liberty.”<sup>48</sup> He sought an “expanding continental empire,” and “[t]here were, in fact, almost no limits to his dreams of expansion.”<sup>49</sup> In letters from 1786 and 1801, Jefferson wrote that the American “confederacy must be viewed as the nest, from which all America, North and South, is to be peopled” and “our rapid multiplication will expand it beyond those limits, & cover the whole northern if not the southern continent.”<sup>50</sup> Historians agree that Jefferson’s conduct foreshadowed Manifest Destiny, though that specific term was not widely used until 1845.<sup>51</sup>

Although Washington predicted the ultimate retreat of American Indians in 1783, Jefferson was the first president to make ethnic cleansing an official policy. Under his administration, work began to remove all American Indian nations west of the Mississippi River.<sup>52</sup> By 1803, Jefferson was expressly advocating for the removal of American Indian peoples so as to allow for greater American expansion.<sup>53</sup> Following Jefferson, every United States president, from James Madison to Andrew Jackson, supported removing American Indians as the final solu-

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<sup>46</sup> ROBERT V. REMINI, 1 *ANDREW JACKSON: THE COURSE OF AMERICAN EMPIRE, 1767–1821*, at 332 (1977).

<sup>47</sup> MILLER, *supra* note 36, at 79.

<sup>48</sup> *Id.* at 77–80, 83–84, 79 n.1.

<sup>49</sup> MERRILL D. PETERSON, *THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY* 284, 745 (1970).

<sup>50</sup> VAN ALSTYNE, *supra* note 39, at 81, 87 (quoting Jefferson letters to Archibald Stewart in 1786 and to James Madison in 1801).

<sup>51</sup> JAMES P. RONDA, *FINDING THE WEST: EXPLORATIONS WITH LEWIS AND CLARK* 62 (2001); REGINALD HORSMAN, *EXPANSION AND AMERICAN INDIAN POLICY, 1783–1812*, at 108 (1967) (“The sense of ‘Manifest Destiny,’ of moralistic expansion, is plainly evident in Jefferson’s American Indian policy.”).

<sup>52</sup> Miller, *supra* note 28, at 156 (noting that President Thomas Jefferson wrote in 1803 that the tribes would have to move west of the Mississippi); Letter from Thomas Jefferson to Governor William Henry Harrison (Feb. 27, 1803), *in THE WRITINGS OF THOMAS JEFFERSON* 368, 370 (Andrew A. Lipscomb & Albert Ellery Bergh eds., 1903); Letter from Thomas Jefferson to Governor W.C.C. Claiborne (May 24, 1803), *in THE WRITINGS OF THOMAS JEFFERSON, supra*, at 390, 393–94; Letter from Thomas Jefferson to General Horatio Gates (July 11, 1803), *in THE WRITINGS OF THOMAS JEFFERSON, supra*, at 402, 402.

<sup>53</sup> Thomas Jefferson, Second Annual Message (Dec. 15, 1802), *in 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS* 342, 343–44 (James D. Richardson ed., 1896).

tion to the "Indian problem."<sup>54</sup> In 1830, the enactment of Indian Removal Act made removal the official policy of the United States.<sup>55</sup>

Unquestionably, the legal and political theories espoused by Europeans for centuries carried significant weight with America's Founding Fathers.<sup>56</sup> In the earliest days of the United States, most agreed that Indian nations and Indian peoples had to disappear so Euro-Americans could possess the continent.<sup>57</sup> In 1845, a New York newspaper editor writing about the acquisition of Texas and the Oregon Country used the term Manifest Destiny; quickly, those words became an American mantra.<sup>58</sup> The phrase had one simple meaning: remove all Indians and native nations so as to acquire the lands and assets for Americans.

The United States justified its Manifest Destiny policies and actions on the presumed inferiority of Indian peoples and governments.<sup>59</sup> American politicians and citizens also claimed that God intended Christians to possess and benefit from the lands and assets in America.<sup>60</sup> They believed Indian peoples were uncivilized, and falsely claimed Indians did not farm and

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<sup>54</sup> G. EDWARD WHITE, *THE MARSHALL COURT AND CULTURAL CHANGE, 1815–1835*, at 704 (1991); *see also* FRANCIS PAUL PRUCHA, *AMERICAN INDIAN POLICY IN THE FORMATIVE YEARS: THE INDIAN TRADE & INTERCOURSE ACTS, 1790–1834*, at 232 (1962).

<sup>55</sup> Indian Removal Act, ch. 148, 4 Stat. 411 (1830).

<sup>56</sup> PRUCHA, *supra* note 54, at 232–33.

<sup>57</sup> MILLER, *supra* note 36, at 119–21; MARK S. JOY, *AMERICAN EXPANSIONISM: 1783–1860*, at 84 (2003) (Manifest Destiny "provided a catchphrase for a concept that was as old as the nation itself."); HEIDLER & HEIDLER, *supra* note 38 ("The events of the 1840s, then, were more a continuation of a trend that stemmed from the earliest days of American settlement and existed as a constant force over the entire span of the Early Republic. ").

<sup>58</sup> *E.g.*, SAM W. HAYNES, *JAMES K. POLK AND THE EXPANSIONIST IMPULSE* 98 (1997); RAY ALLEN BILLINGTON, *THE FAR WESTERN FRONTIER, 1830–1860*, at 144–45, 149 (1956); JOY, *supra* note 57.

<sup>59</sup> *E.g.*, HORSMAN, *supra* note 39, at 1, 89–92 (noting that, by 1850, American expansion was considered a victory for the superiority of the Anglo-Saxon Caucasian race); JOSEPH STORY, *A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES* 13–14 (1883) (Story, a United States Supreme Court Justice from 1812 to 1845, stated: "the European nations paid no[t] the slightest regard to the rights of the native tribes. They treated them as mere barbarians and heathens, whom, if they were not at liberty to extirpate, they were entitled to deem mere temporary occupants of the soil. ").

<sup>60</sup> HORSMAN, *supra* note 39, at 86.

thus did not put land to its best and highest use.<sup>61</sup> Of course, the real justifications were territorial expansion and greed.

Historians explain that America's pursuit of Manifest Destiny, its objectives, and its justifications can be linked to three key ideals: Americans and their institutions have special virtues; the United States has a mission to redeem and remake the world in its image; and America has a divine destiny under God's direction to accomplish this task.<sup>62</sup> Nazi Germany and Adolf Hitler used very similar rhetoric around and arguments in support of *Lebensraum*.

## 2. *Lebensraum*

*Lebensraum* translates to "living space" or "living room."<sup>63</sup> To Hitler and like-minded others, *Lebensraum* was a demand for the new territory Germany allegedly needed to accommodate its expanding population, enlarge its borders, and establish colonies in Eastern Europe.<sup>64</sup> Hitler rejected the idea that Germany could make itself a world power by possessing foreign colonies or as a major trading player in the world economy. Rather, he looked eastward for more land to live on and foods to cultivate.<sup>65</sup> Hitler claimed the East was Germany's "destiny."<sup>66</sup> The word *Lebensraum*, and the future it represented, became a Nazi

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<sup>61</sup> See, e.g., HORSMAN, *supra* note 39, at 3, 82–83, 85–86, 88–89, 93 (in 1820, Secretary of State Henry Clay said Providence had decreed all of the continent should be peopled by Americans); see also ROBERT J. MILLER, RESERVATION "CAPITALISM:" ECONOMIC DEVELOPMENT IN INDIAN COUNTRY 9–13 (2012) (explaining that Indians primarily supported themselves for centuries by farming); Thomas R. Wessel, *Agriculture, Indians and American History*, 50 AGRIC. HIST. 9, 9–10, 14 (1976) (same).

<sup>62</sup> E.g., WILLIAM EARL WEEKS, BUILDING THE CONTINENTAL EMPIRE: AMERICAN EXPANSION FROM THE REVOLUTION TO THE CIVIL WAR 60–61, 110 (1996). See also MILLER, *supra* note 36, at 195 n.8 (citing authorities).

<sup>63</sup> VOLKER ULLRICH, HITLER: ASCENT, 1889–1939, at 204 (Jefferson Chase trans., 2016).

<sup>64</sup> E.g., JOACHIM C. FEST, HITLER 214 (Richard Winston & Clara Winston trans., 1974).

<sup>65</sup> See ULLRICH, *supra* note 63, at 178–79 (citing HITLER, *supra* note 5, at 739, 742); FEST, *supra* note 64; PENNY, *supra* note 6, at 154; ADOLF HITLER, HITLER'S SECOND BOOK: THE UNPUBLISHED SEQUEL TO *MEIN KAMPF* 79–80 (Gerhard L. Weinberg ed., Krista Smith trans., 2003) [hereinafter HITLER, HITLER'S SECOND BOOK] ("The point of a healthy territorial policy lies in the expansion of a people's *Lebensraum* . . ."); IAN KERSHAW, HITLER: A BIOGRAPHY 387–88 (2008) (noting that in a 1937 speech to his General Staff Hitler said Germany needed "living space").

<sup>66</sup> HITLER, HITLER'S SECOND BOOK, *supra* note 65, at 18–19 (quoting Hitler as stating that living space in the East was "destiny's grant to those people who [possess] the courage in their hearts to [conquer] it"); PENNY, *supra* note 6, at 154.

rallying cry. For many, *Lebensraum*, was evocative of American Manifest Destiny.<sup>67</sup>

Historians appear to agree that Hitler's policy of *Lebensraum* originated with Professor Friedrich Ratzel.<sup>68</sup> Ratzel originated the term and popularized the concept around the turn of the twentieth century.<sup>69</sup> After World War I, the term became widely used in German imperialist literature.<sup>70</sup> Ratzel was well-known in Germany for several reasons. One of his textbooks went through at least seven editions and was widely used in German schools.<sup>71</sup> His 1901 book, entitled *Lebensraum*, helped foster the ideas of Social Darwinist racism in German academic circles.<sup>72</sup> One author claims that while Ratzel was subtle in his treatment of the issue of racial wars, his theories served many as justifications for imperialist conquest.<sup>73</sup> Regardless, the same author agrees that the concept of racial wars inherently resonates within Ratzel's conception of *Lebensraum* and became a powerful argument for the extermination of "primitive peoples."<sup>74</sup> Ratzel even offered a concrete example of a struggle between humans over land: the extermination of the American Indians by Europeans.<sup>75</sup>

Ratzel wrote another very influential book in 1897, later re-released in 1901 and 1923, entitled *Politische Geographie [Political Geography]*, on the subject of countries' territorial expansion.<sup>76</sup> In this analysis, Ratzel applied the Darwinian struggle for existence among animals to human beings and nations.<sup>77</sup> Again, he specifically noted the extermination of American Indians and other "less civilized" people by Euro-American

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<sup>67</sup> MILLER, *supra* note 36, at 115–61; TIMOTHY SNYDER, *BLACK EARTH: THE HOLOCAUST AS HISTORY AND WARNING* 12 (2015) ("For generations of German imperialists, and for Hitler himself, the exemplary land empire was the United States of America.").

<sup>68</sup> KAKEL, *supra* note 22, at 20–21, 24; WENDY LOWER, *NAZI EMPIRE-BUILDING AND THE HOLOCAUST IN UKRAINE* 20 (2005).

<sup>69</sup> WOODRUFF D. SMITH, *THE IDEOLOGICAL ORIGINS OF NAZI IMPERIALISM* 83, 146 (1986).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 204.

<sup>72</sup> KAKEL, *supra* note 22, at 20; WEIKART, *supra* note 3, at 192.

<sup>73</sup> WEIKART, *supra* note 3, at 192.

<sup>74</sup> *Id.* at 192–93.

<sup>75</sup> *Id.* at 194 (quoting FRIEDRICH RATZEL, *DER LEBENSRAUM* 51–60 (1901)).

<sup>76</sup> KAKEL, *supra* note 22, at 20–21; Alan E. Steinweis, *Eastern Europe and the Notion of the "Frontier" in Germany to 1945*, 13 *Y.B. OF EUR. STUD.* 56, 60 (1999) (noting that because of Friedrich Ratzel, *Lebensraum* became the "central assumption of German geopolitical thinking in the 1920s and 1930s").

<sup>77</sup> LOWER, *supra* note 68; KAKEL, *supra* note 22, at 20–21.

conquerors as examples of this struggle.<sup>78</sup> Because of his work, Ratzel is credited with shaping the subject of political geography “into a philosophy of imperialistic expansion.”<sup>79</sup> While incarcerated in Landsberg prison in 1924, Hitler carefully studied Ratzel’s *Politische Geographie*, along with other theories on *Lebensraum*, scientific racism, and eugenics.<sup>80</sup>

During Hitler’s time, Ratzel became even more well known through the efforts of another German professor, Karl Haushofer.<sup>81</sup> Ratzel and Haushofer were both highly influential geopolitical theorists and were the foremost advocates of *Lebensraum*.<sup>82</sup> Ratzel, Haushofer, and Haushofer’s father—also a professor—often took long walks together discussing *Lebensraum* theories.<sup>83</sup> Hitler’s private secretary, fellow inmate, and later Deputy-Führer Rudolf Hess likely discussed Haushofer with

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<sup>78</sup> WEIKART, *supra* note 3, at 194 (noting that Ratzel stated these wars would “quickly and completely displace the inhabitants, for which North America, southern Brazil, Tasmania, and New Zealand provide the best examples”) (quoting FRIEDRICH RATZEL, *POLITISCHE GEOGRAPHIE* 44, 129–53, 371–74 (2d ed. 1903)). *See also* Jens-Uwe Guettel, *The U.S. Frontier as Rationale for the Nazi East? Settler Colonialism and Genocide in Nazi-Occupied Eastern Europe and the American West*, 15 J. GENOCIDE RSCH. 401, 415 (2013) (explaining how Ratzel admired America’s conquest of the West).

<sup>79</sup> FEST, *supra* note 64, at 217; SMITH, *supra* note 69, at 219.

<sup>80</sup> Holger H. Herwig, *Geopolitik: Haushofer, Hitler and Lebensraum*, 22 J. STRATEGIC STUD. 218, 218, 226 (1999) (citing FRIEDRICH RATZEL, *ERDENMACHT UND VÖLKERSCHICKSAL: EINE AUSWAHL AUS SEINEN WERKEN*, at xxvi (Karl Haushofer ed., 1940)); ULLRICH, *supra* note 63, at 179, 806 n.99; FEST, *supra* note 64, at 200–01; *see also* WEIKART, *supra* note 3, at 225 (“We know that Hitler began using Ratzel’s concept of *Lebensraum* in the early 1920s to justify expansionism and racial struggle . . .”).

<sup>81</sup> Steinweis, *supra* note 76, at 61 (explaining that Karl Haushofer was the leading proponent of Ratzel and his *Lebensraum* ideas); WEIKART, *supra* note 3, at 225 (“In 1940 the famous geography professor in Munich, Karl Haushofer, claimed that Hitler thoroughly studied Ratzel’s *Political Geography* while he was in Landsberg prison in 1923–24, during the same time he was composing *Mein Kampf*.” (citing RATZEL, *supra* note 80)).

<sup>82</sup> EDWARD B. WESTERMANN, *HITLER’S OSTKRIEG AND THE INDIAN WARS: COMPARING GENOCIDE AND CONQUEST* 50 (2016) (noting how Hitler borrowed his *Lebensraum* ideas primarily from the theories of geopolitics and especially from Karl Haushofer); Herwig, *supra* note 80, at 221, 230–32 (explaining how Haushofer’s ideas “were in wide circulation throughout the 1920s” and influenced many Germans including Hitler); KAKEL, *supra* note 22, at 31 (explaining how Friedrich Ratzel influenced “Karl Haushofer, a geography professor at Munich Polytechnic University” and Haushofer subsequently built on Ratzel’s work); KERSHAW, *supra* note 65, at 153.

<sup>83</sup> Herwig, *supra* note 80, at 220.

Hitler before, during, and after their time in Landsberg prison.<sup>84</sup> One historian claims Hess introduced Hitler to Professor Haushofer by 1919 or “by 1922 at the latest.”<sup>85</sup> That would not be surprising as Hess was an ex-student, ex-assistant, and very close friend of Haushofer.<sup>86</sup> In fact, both “Haushofer and Hitler served as best men” at Hess’s wedding.<sup>87</sup>

Haushofer visited with and mentored Hitler and Hess in Landsberg prison on sixteen separate occasions.<sup>88</sup> All the while, Hitler was drafting, and perhaps even dictating, parts of *Mein Kampf* to Hess.<sup>89</sup> Hitler’s argument “that Germany needed ‘living space’ can be traced back to the geopolitical ideas of Professor Karl Haushofer . . . [who] had considerable influence on the foreign policy of Hitler.”<sup>90</sup>

During this time, Hitler further developed his own ideas about what *Lebensraum* would mean for the Third Reich.<sup>91</sup> Hitler felt strongly that Germany needed to look eastward in order to grow and to expand its agricultural capabilities to feed its increasing population.<sup>92</sup> By late 1922, and certainly by 1924 as set out in *Mein Kampf*, Hitler had adopted the idea that Germany must go to war with Russia to gain more living space and offered several reasons as to why this plan for *Lebensraum* was necessary and justified.<sup>93</sup>

First, Hitler and the Nazi party promoted the innate superiority of German and Aryan peoples over the other races of the

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<sup>84</sup> *Id.* at 225, 231 (“[V]ia [Rudolph] Hess, [Haushofer] fed Hitler his . . . view[s] . . . on space, race, and ‘just wars.’ ”); KERSHAW, *supra* note 65, at 154, 173; WERNER MASER, *HITLER’S MEIN KAMPF: AN ANALYSIS* 19, 59 (R.H. Barry trans., 2d ed. 1970).

<sup>85</sup> KERSHAW, *supra* note 65, at 154; *see also* FEST, *supra* note 64, at 217.

<sup>86</sup> KERSHAW, *supra* note 65, at 98, 617; MASER, *supra* note 84; Herwig, *supra* note 80, at 224.

<sup>87</sup> Herwig, *supra* note 80, at 224.

<sup>88</sup> *Id.* at 225; MASER, *supra* note 84, at 12, 19, 59, 122.

<sup>89</sup> Herwig, *supra* note 80, at 225, 229, 233 (explaining that some of Haushofer’s and Ratzel’s ideas made it into *Mein Kampf* through Hitler and his secretary Rudolf Hess); MASER, *supra* note 84, at 12, 19, 59, 122.

<sup>90</sup> ULLRICH, *supra* note 63, at 179; *accord* KERSHAW, *supra* note 65, at 154–55; LOWER, *supra* note 68, at 20; SMITH, *supra* note 69, at 218–23 (highlighting that Haushofer had considerable influence on Hitler and a strong influence on Rudolf Hess, the Deputy-Führer).

<sup>91</sup> WESTERMANN, *supra* note 82, at 37; SMITH, *supra* note 69, at 242–45.

<sup>92</sup> ULLRICH, *supra* note 63, at 178–79.

<sup>93</sup> *Id.* at 179; KERSHAW, *supra* note 65, at 146, 152, 154; FEST, *supra* note 64, at 214, 216.



world.<sup>94</sup> Expansion to the east, Hitler explained, would create a convenient location to deport German Jews, help destroy “Jewish Bolshevism,” and create colonies for German colonists.<sup>95</sup> He also believed, as spelled out in the second volume of *Mein Kampf*, that it was Germany’s destiny to expand and acquire an empire in Eastern Europe.<sup>96</sup> Nazis claimed they had to “settle the empty spaces of the east.”<sup>97</sup> They projected onto Indigenous Slavs in Poland and Russia the qualities of “wild people” who lived in the “wilderness,” and who were savages, nomads, passive, and child-like with an undying hatred for the superior German race.<sup>98</sup> National Socialists took on the mantle of noble colonizers who were fighting against ignoble savages.<sup>99</sup> Scholars recognize that these Nazi ideas on *Lebensraum* were largely modeled on late-nineteenth and early-twentieth century understandings of American expansion.<sup>100</sup> Consequently, one scholar stated that Nazis cast the Slavs, “in short, as Indians.”<sup>101</sup>

It is worth noting, though, that in Hitler’s mind, no justifications for his *Lebensraum* policy were truly necessary. In his unpublished second book, he said all nations have the right to take the lands of other countries.<sup>102</sup> He claimed the Earth had not been given to anyone, but was “given as destiny’s grant to those people who [possess] the courage to [conquer] it.”<sup>103</sup>

It appears without question that the American dogma of Manifest Destiny and Nazi *Lebensraum* were intimately related. The Nazi justifications and objectives for empire in the East under *Lebensraum* were very similar to Manifest Destiny and were analogized to, and maybe even borrowed from, this American

<sup>94</sup> KAKEL, *supra* note 22, at 36 (noting Hitler’s writing that said, just as England in India and the United States in North America, German expansion was a matter of the superiority of the white race).

<sup>95</sup> KERSHAW, *supra* note 65, at 80; ULLRICH, *supra* note 63, at 179–80.

<sup>96</sup> ULLRICH, *supra* note 63, at 179.

<sup>97</sup> KAKEL, *supra* note 22, at 26; David Blackbourn, *The Conquest of Nature and the Mystique of the Eastern Frontier in Nazi Germany*, in *GERMANS, POLAND, AND COLONIAL EXPANSION TO THE EAST: 1850 THROUGH THE PRESENT* 141, 159, 161 (Robert L. Nelson ed., 2009).

<sup>98</sup> KAKEL, *supra* note 22, at 72–74; PENNY, *supra* note 6, at 237–38; BLACKBOURN, *supra* note 9, at 252, 303.

<sup>99</sup> BLACKBOURN, *supra* note 9, at 305–07; PENNY, *supra* note 6, at 238–40.

<sup>100</sup> *E.g.*, PENNY, *supra* note 6, at 237.

<sup>101</sup> BLACKBOURN, *supra* note 9, at 303, 305–06; *see also* PENNY, *supra* note 6, at 237–41 (pointing to citations for multiple references by various Nazis to Jews, Poles, Ukrainians, and Russians as Indians).

<sup>102</sup> HITLER, *supra* note 27, at 16–18.

<sup>103</sup> *Id.* at 17.

principle. As will be discussed later in this Article, Hitler and the Nazis had knowledge of the history of the American Frontier West, American claims to exceptionalism, and the objectives and justifications given for American expansion. Consequently, it does not appear at all radical to claim that Manifest Destiny and *Lebensraum* are two sides of the same coin.

C. *The American “Frontier West” and the “German East”*

America “gunned down the millions of Redskins to a few hundred thousand, and now keep the modest remnant under observation in a cage.”<sup>104</sup>

— *Adolf Hitler*

Adolf Hitler and the Nazi party analogized the German East to the American West.<sup>105</sup> They frequently pointed to the history of the United States to justify and excuse Nazi expansion eastwards.<sup>106</sup> As Hitler prepared for war in the East, he drew direct parallels between the Nazi quest for *Lebensraum* and Manifest Destiny and the treatment of American Indians.<sup>107</sup> In October 1941, Hitler explained his vision of the German East to be populated by ex-soldiers who would settle on millions of acres of homesteads.<sup>108</sup> He remarked, “The Volga [a river in central Russia] must be our Mississippi.”<sup>109</sup>

Many historians have noted that the American West was an obvious analog to the German East and have carefully analyzed how the Frontier West served as a model for the Nazis.<sup>110</sup> Well

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<sup>104</sup> WHITMAN, *supra* note 1, 9 & n.30 (2017) (quoting Adolf Hitler, Speech at Oldenburg, Germany (Oct. 18, 1928), in 3 ADOLF HITLER, REDEN, SCHRIFTEN, ANORDNUNGEN 153, 161 (1994)).

<sup>105</sup> See, e.g., WESTERMANN, *supra* note 82, at 3, 14 (explaining that in Hitler’s imagination the conquest of the American West was a precedent for Nazi activities in the East); SNYDER, *supra* note 67.

<sup>106</sup> E.g., KAKEL, *supra* note 22, at 34.

<sup>107</sup> WESTERMANN, *supra* note 82, at 3, 12–13, 17–18 (finding several similarities between Manifest Destiny and *Lebensraum* and stating that both encompassed the concepts of conquest and expansion).

<sup>108</sup> *Id.* at 3; BLACKBOURN, *supra* note 9, at 293.

<sup>109</sup> BLACKBOURN, *supra* note 9, at 293 (quoting 2 HERMANN KELLENBENZ, DEUTSCHE WIRTSCHAFTSGESCHICHTE 114 (1981)).

<sup>110</sup> *Id.* at 294–95, 303–05 (noting that the Nazis simultaneously used American treatment of American Indians as propaganda against the United States); PENNY, *supra* note 6, at 238; Steinweis, *supra* note 76, at 61. *But see* WESTERMANN, *supra* note 82, at 5, 12–13, 51–54 (noting that, although there are a number of important similarities between *Lebensraum* and Manifest Destiny, most scholars refrain from making direct comparisons); Guettel, *supra* note 78, at 403–06.

before Hitler's time, the American frontier experience had a powerful impact on German thinking. German and Prussian expansionists had long analogized American Indians and the Frontier West to Poland and the East.<sup>111</sup> In the 1770s, Frederick the Great compared Poles to the Iroquois Indians from North America.<sup>112</sup> In 1893—the same year that American Professor Frederick Jackson Turner was presenting his ideas on the impact of the frontier on the United States—a German economist published a book on German colonization of the East, and used American settlers as models for Germany in its eastern frontier.<sup>113</sup> Other German authors in the 1890s also explicitly compared Germany's East with the American West.<sup>114</sup> In 1913, during Reichstag debates about German colonies in Africa, politicians examined United States policies on how to control Indigenous populations.<sup>115</sup> Some of these German politicians even argued in favor of creating American-style Indian reservations to control and assimilate colonized peoples.<sup>116</sup> In 1909, German colonial newspapers drew parallels between genocidal actions in German Southwest Africa and measures the United States had undertaken against Indians on its frontier.<sup>117</sup>

Hitler had been fascinated with the American frontier since his youth; over time, it became one of his most fervent obsessions.<sup>118</sup> In his writings, speeches, and private conversations he saw America's westward expansion and United States Indian policies as prototypes for ideas about *Lebensraum* and policies in the East.<sup>119</sup> Hitler and other Nazis perceived the American settlers to be examples for German settlers in the East.<sup>120</sup> Hitler presumed that Germany's conquest in the East would proceed "as in the conquest of America."<sup>121</sup> In 1940 and

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<sup>111</sup> BLACKBOURN, *supra* note 9, at 303 (stating one expansionist said Poles were like the "American redskins" and were doomed to ruin and extinction just like the "New World Indians were being pushed back into the 'everlasting wilderness'").

<sup>112</sup> *Id.* at 303–04.

<sup>113</sup> *Id.* at 294, 377 n.182; Steinweis, *supra* note 76, at 61.

<sup>114</sup> Steinweis, *supra* note 76, at 61; BLACKBOURN, *supra* note 9, at 294–95 & 377 n.182.

<sup>115</sup> PENNY, *supra* note 6, at 236.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> BLACKBOURN, *supra* note 9, at 293, 421 n.173; KAKEL, *supra* note 22.

<sup>119</sup> KAKEL, *supra* note 22, at 215–16.

<sup>120</sup> *Id.* at 111; BLACKBOURN, *supra* note 9, at 296, 303–05.

<sup>121</sup> BLACKBOURN, *supra* note 9, at 296, 423 n.192 (quoting ADOLF HITLER, MONOLOGE IM FÜHRERHAUPTQUARTIER, 1941–1944 68 (Werner Jochmann ed., 1980)); accord KAKEL, *supra* note 22, at 111.

1941, Hitler equated the German invasion of Russia with “the Indian wars in North America” and called it a “real Indian War.”<sup>122</sup>

Borrowing further from the American West, Nazis used the same racial and “civilization” justifications to claim the East as Americans had for the West. In October 1941, Hitler ranted about creating “gardens, fields, and orchards in the desolate east.”<sup>123</sup> When Heinrich Himmler, Commander of the Schutzstaffel (“SS”), and Alfred Rosenberg, head of the Reich Ministry for the Occupation of the Eastern Territories, discussed how Germany would create a paradise in the East, they referenced the American West, the British in India, and the European exploitation of Africa.<sup>124</sup> Himmler even believed Eastern Europe “could be a paradise, a California of Europe.”<sup>125</sup> Nazis explicitly called Slavs, Jews, Ukrainians, and Russians “Indians” and claimed they were nomads, savages, and childlike.<sup>126</sup> Hitler also declared that “‘the East’s’ Slavic inhabitants were to be regarded and treated ‘as American Redskins.’”<sup>127</sup> Hans Frank, the Nazi General-Governor of Poland, called the Jews in Poland “flat-footed Indians.”<sup>128</sup>

Evidently, there is little doubt that Hitler and Nazi leaders had a basic understanding of the conquest of the American West and the Indian nations.<sup>129</sup> The following Sections will highlight specific United States frontier tactics and examine how they were understood and applied by Hitler and the Nazis in the East.

## 1. Removal

The United States’ plan to colonize North America involved claiming as much land as possible while removing American Indian peoples and nations as rapidly as possible.<sup>130</sup> The Founding

<sup>122</sup> KAKEL, *supra* note 22, at 111 (quoting BLACKBOURN, *supra* note 9, at 296, 305).

<sup>123</sup> BLACKBOURN, *supra* note 9, at 303–04 (quoting HITLER, *supra* note 121, at 91).

<sup>124</sup> LOWER, *supra* note 68, at 3, 26.

<sup>125</sup> *Id.* at 19 (quoting Office of Chief of Counsel for War Crimes, Translation of Document No. NO-1805, in IHOR KAMENETSKY, SECRET NAZI PLANS FOR EASTERN EUROPE: A STUDY OF LEBENSRAUM POLICIES 189, 191 (1961)).

<sup>126</sup> *Id.* at 26; PENNY, *supra* note 6, at 238; BLACKBOURN, *supra* note 9, at 303–06.

<sup>127</sup> KAKEL, *supra* note 22, at 73 (citing BLACKBOURN, *supra* note 9, at 303, 305).

<sup>128</sup> *Id.*; BLACKBOURN, *supra* note 9, at 305.

<sup>129</sup> PENNY, *supra* note 6, at 153–54, 239 (arguing many of Hitler’s plans in Eastern Europe stemmed from his studies of the United States and on German nationalists’ understanding of American expansion); KAKEL, *supra* note 22, at 1–3, 27, 35; LOWER, *supra* note 68, at 20; Steinweis, *supra* note 76, at 61–62.

<sup>130</sup> See MILLER, *supra* note 36, at 91, 149.

Fathers, most early politicians, and frontiersmen were eager to rid American Indian nations and peoples of their lands to free the way for American settlement.<sup>131</sup> The 1830 Indian Removal Act established as official United States policy the removal of all American Indian nations west of the Mississippi River.<sup>132</sup> Indian nations quickly learned that no matter how far west they moved, and despite solemn treaty promises that the tribes would own their new lands forever, American interests would clamor for them to move again. With this came conflicts, violence, warfare, and ethnic cleansing.<sup>133</sup> The prevailing attitude of American settlers towards American Indians was exemplified by an 1870 editorial in a Wyoming Territory newspaper.<sup>134</sup> Wyoming was “destined for the occupancy and sustenance of the Anglo-Saxon race. . . . The Indians must stand aside or be overwhelmed. . . . The destiny of the aborigines is written. . . . [T]he doom of extinction [is] upon the red men of America.”<sup>135</sup>

Hitler and the Nazis utilized identical tactics to remove undesired peoples in the East and to acquire new areas for *Lebensraum*.<sup>136</sup> Long before the 1941 Wannsee conference decision to exterminate all European Jewish peoples, there were discussions to remove German Jews, including numerous proposals over decades to remove all European Jews to Madagascar.<sup>137</sup> Eventually, Nazi plans called for the removal of tens of millions of German Jews and Poles to Eastern “reservations.”<sup>138</sup> Hans Frank identified the land to “be a reservation for the Poles.”<sup>139</sup> They also intended to remove Ukrainians, Poles, Slavs, and Russians further east to make room for German settlers to occupy and utilize newly conquered lands.<sup>140</sup>

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<sup>131</sup> KAKEL, *supra* note 22, at 82.

<sup>132</sup> Indian Removal Act, ch. 148, 4 Stat. 411 (1830).

<sup>133</sup> See, e.g., KAKEL, *supra* note 22, at 106 (explaining how the United States legitimized and encouraged attacks upon non-combatants, the destruction of villages and crops, and shockingly violent campaigns).

<sup>134</sup> DEE BROWN, *BURY MY HEART AT WOUNDED KNEE: AN INDIAN HISTORY OF THE AMERICAN WEST* 189 (1970).

<sup>135</sup> *Id.* (quoting CHEYENNE DAILY LEADER, Mar. 3, 1870, at A1).

<sup>136</sup> PENNY, *supra* note 6, at 238; BLACKBOURN, *supra* note 9, at 303–05; KAKEL, *supra* note 22, at 157.

<sup>137</sup> KERSHAW, *supra* note 65, at 453; KAKEL, *supra* note 22, at 163.

<sup>138</sup> WESTERMANN, *supra* note 82, at 82, 84, 89; KERSHAW, *supra* note 65, at 453; ULLRICH, *supra* note 63, at 178.

<sup>139</sup> WESTERMANN, *supra* note 82, at 84.

<sup>140</sup> LOWER, *supra* note 68, at 21–23, 27.

Like the Americans, the Nazis considered themselves to be messengers of civilization and superior to the “racially inferior” Indigenous peoples who needed to be removed.<sup>141</sup> The Nazis frequently referred to “the bloody conquest of the American West [as] the historical warrant [they] needed to justify the clearance of the Slav population.”<sup>142</sup> Necessary German settlement of the East was used as a rationale to displace and remove Indigenous peoples just as it had been for American settlement in the West.

## 2. Colonization

From the moment European colonists landed in North America, they sought to acquire the lands and assets of Indigenous peoples.<sup>143</sup> The United States pursued those same goals. Thomas Jefferson envisioned America as an extensive “Empire of Liberty” that would be filled by White yeoman farmers, the “chosen people” of God, who were to “nest” all of North and South America.<sup>144</sup> Throughout its early decades, the United States acquired lands and assets from American Indian nations via wars and treaties while simultaneously encouraging massive immigration with the promise of free land to settlers. Consequently, it is well accepted that what Americans did to claim the lands of and replace Indigenous peoples was colonization.

Hitler and the Nazis applied a similar colonization strategy in the German East.<sup>145</sup> They expressly planned to settle German colonies and colonists there.<sup>146</sup> In 1941, Hitler stated plainly, “There is only one task: To set about the Germanization of the land by bringing in Germans and to regard the indigenous

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<sup>141</sup> Jürgen Zimmerer, *The Birth of the Ostland out of the Spirit of Colonialism: A Postcolonial Perspective on the Nazi Policy of Conquest and Extermination*, 39 PATTERNS OF PREJUDICE 197, 217–18 (2005); LOWER, *supra* note 68, at 20, 214 n. 8–9, 27 (stating Germany ruled out a civilizing mission and instead would remove the “racially inferior” Ukrainians).

<sup>142</sup> ADAM TOOZE, *THE WAGES OF DESTRUCTION: THE MAKING AND BREAKING OF THE NAZI ECONOMY* 469 (2008).

<sup>143</sup> See *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 572–73 (1823).

<sup>144</sup> Letter from Thomas Jefferson to Archibald Stewart (Jan. 25, 1786), in 9 THE PAPERS OF THOMAS JEFFERSON 217, 218 (Julian P. Boyd ed., 1954); MILLER, *supra* note 36, at 79–80, 121 (citing authorities); HORSMAN, *supra* note 39, at 1, 3, 5, 82–85; WESTERMANN, *supra* note 82, at 12.

<sup>145</sup> PENNY, *supra* note 6, at 238; KAKEL, *supra* note 22, at 7, 43, 112, 173 (On October 17, 1941, Hitler remarked the Indigenous peoples of the Soviet Union “should be treated like the ‘Red Indians’ in the ‘American West.’ ”); LOWER, *supra* note 68, at 19; Steinweis, *supra* note 76, at 59, 64 (1999) (German colonization of the East was essentially similar to the colonization of North America.).

<sup>146</sup> KERSHAW, *supra* note 65, at 80; ULLRICH, *supra* note 63, at 178–79.

inhabitants as Indians.”<sup>147</sup> Like the United States, Nazi Germany practiced aggressive policies of conquest, expansion, and racial ideologies designed to take the lands of Indigenous peoples to create living space for its own settler-colonists.<sup>148</sup> German theorists advocated settler colonialism in the East from the outset of developing their ideas on *Lebensraum*. In his 1901 book, Ratzel favored wars of conquest and colonialism as the most effective way to find living space for Germany, referencing North America, Southern Brazil, Tasmania, and New Zealand as examples of successful European conquests. Ratzel stated that conquests were unimportant unless they included colonization.<sup>149</sup> Other authors looked as far back as Frederick the Great's efforts to encourage German colonization in the East.<sup>150</sup>

Akin to American political leaders and citizens, Nazi leaders were equally motivated to acquire new lands for their “allegedly ‘superior’” Aryan people, to develop agricultural settlements, and to cleanse the areas of Jews, Russians, and Slavs.<sup>151</sup> The Third Reich undertook several affirmative steps to import German settlers and create colonial settlements once it began acquiring territory in the East. The official government plan for Poland and the East, completed in the summer of 1941, called for the elimination of tens of millions of Indigenous inhabitants and the transfer of millions of German agrarian settlers into the conquered areas.<sup>152</sup> Beginning in the mid-1930s, the Third Reich started advertising and hosting tourist trips to encourage emigration.<sup>153</sup> The government exported ethnic Germans, Lithuanians, Estonians, and Latvians to the East, and encouraged Germans to emigrate by offering tax breaks in the 1940s.<sup>154</sup> Over 290,000 German settlers relocated to Poland in the first two

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<sup>147</sup> BLACKBOURN, *supra* note 9, at 303. Hitler also stated that if Indigenous inhabitants resisted, the Nazis would have to engage in a “real Indian war” in the East. *Id.* at 305.

<sup>148</sup> See *supra* note 78 and accompanying text.

<sup>149</sup> SMITH, *supra* note 69, at 148–49.

<sup>150</sup> BLACKBOURN, *supra* note 9, at 296.

<sup>151</sup> KAKEL, *supra* note 22, at 15–16, 24–25; LOWER, *supra* note 68 (claiming Nazi colonialism was about race and the “superior” German pioneers).

<sup>152</sup> WESTERMANN, *supra* note 82, at 89; see also Blackbourn, *supra* note 97, at 152; Herwig, *supra* note 80, at 234 (stating German organizations and bureaucracies developed concrete plans to settle the East).

<sup>153</sup> BLACKBOURN, *supra* note 9, at 265; LOWER, *supra* note 68, at 19; KAKEL, *supra* note 22, at 124.

<sup>154</sup> BLACKBOURN, *supra* note 9, at 265; LOWER, *supra* note 68, at 19; KAKEL, *supra* note 22, at 124.

years of the German occupation; this number eventually reached over 536,000.<sup>155</sup> In October 1941, Hitler stated in several conversations that he wanted to settle the East with five million, and later ten million Germans, removing vast numbers of Indigenous peoples along the way.<sup>156</sup> Some 3,000 German war veterans received land grants in the western part of Poland, and as late as 1944, Hitler was still giving land in the East to soldiers and veterans.<sup>157</sup> The Nazis hoped to fully “Germaniz[e]” the East, and drafted various plans to build increasing colonial settlements and massive infrastructure projects for Germans.<sup>158</sup> With the American West in mind, significant portions of the Nazi’s colonization plans were modeled on those of the United States.<sup>159</sup>

### 3. Concentration

In this Section, “concentration” does not refer to “concentration camps.” Here, concentration is a purposeful effort to so limit the living space of a specific people or group that it encourages their voluntary emigration, simultaneously leading towards their extermination. Early American politicians enforced policies of concentration against American Indians, much like those enforced by Nazi politicians against Jewish and Slavic peoples.<sup>160</sup> Americans utilized on reservations and Nazis created ghettos.<sup>161</sup>

Between 1830 and 1850 the United States achieved its goal of removing most American Indian nations to lands west of the Mississippi, and established its control and jurisdiction across most of what is now the United States. The government realized it was impractical to continue to attempt to remove all American Indian nations to remote locations further west. It was also difficult to centralize all tribes in the American Indian Territory, now a part of Oklahoma. Thus, beginning in 1849, the United States enacted a new official American Indian policy known as the Reservation Era.

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<sup>155</sup> WESTERMANN, *supra* note 82, at 82.

<sup>156</sup> *Id.* at 90.

<sup>157</sup> *Id.*

<sup>158</sup> Steinweis, *supra* note 76, at 56, 59; KAKEL, *supra* note 22, at 132.

<sup>159</sup> KAKEL, *supra* note 22, at 142; BLACKBOURN, *supra* note 9, at 262, 305.

<sup>160</sup> KAKEL, *supra* note 22, at 172.

<sup>161</sup> Zimmerer, *supra* note 141, at 218; KAKEL, *supra* note 22, at 157, 164. One historian stated there is a striking similarity between the concentration of American Indians on reservations and Jews in ghettos. WESTERMANN, *supra* note 82, at 13, 81–82, 98 (Heinrich Himmler advocated for concentrating Jews in ghettos.).



During this Era, reservation plans were designed to force American Indian nations onto smaller areas of land. American Indian peoples became increasingly concentrated, often on poor areas of land. They could no longer support their families through farming, hunting, or fishing. It was the specific and purposeful, albeit unexpressed, policy of the United States to starve American Indian peoples into submission.

Hitler knew that the United States “gunned down millions” of American Indians<sup>162</sup> and, in turn, directed Nazi Germany to pursue an analogous policy towards Jewish and Slavic peoples. Similar to American Indian reservations, and as previously contemplated by Germany in German Southwest Africa, the Nazis systematically planned to resettle millions of people to Eastern Europe and to place Jews on reserves.<sup>163</sup> In 1939, Germans discussed creating a Jewish reservation to “cause a considerable decimation of the Jews.”<sup>164</sup> In October 1940, Hitler stated that the eastern part of Poland “is a Polish Reservation, a great Polish labour camp.”<sup>165</sup> For the Nazis, the concentration of inferior peoples onto smaller areas of poor land or into city ghettos was yet another play taken from the American playbook, and ultimately forced Jews further eastwards.<sup>166</sup>

#### 4. Extermination

Today, stating that Nazi Germany carried out the systematic extermination and genocide of Jewish and Slavic peoples should require no citation or evidence.<sup>167</sup> It is, however, somewhat controversial to assert that Euro-Americans and the United States government engaged in extermination tactics against American Indians. It does not appear that anyone can deny, at the very least, that large-scale ethnic cleansing throughout North America led to the suffering and near extinction of Indigenous peoples. Historians and commentators, however, disagree on whether or not this was the express intention of the United States. While

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<sup>162</sup> See *supra* note 104 and accompanying text.

<sup>163</sup> Zimmerer, *supra* note 141, at 207; WESTERMANN, *supra* note 82, at 13, 82, 98.

<sup>164</sup> WESTERMANN, *supra* note 82, at 83–84; KAKEL, *supra* note 22, at 162.

<sup>165</sup> WESTERMANN, *supra* note 82, at 85 (quoting Adolf Hitler).

<sup>166</sup> *Id.* at 82, 84, 98; Zimmerer, *supra* note 141, at 207.

<sup>167</sup> See, e.g., Zimmerer, *supra* note 141, at 198 (noting that after “four years of German occupation of Belorussia . . . , a quarter of the population died and [thirty] per cent lost their homes”); WESTERMANN, *supra* note 82, at 82 (stating that “mass murder[s]” took place in Western Poland “of the mentally ill, Sinti and Roma (‘Gypsies’), and especially the Jews”).

some deny the United States ever had the express objective of exterminating American Indians,<sup>168</sup> others assert the United States purposefully pursued extermination policies against them.<sup>169</sup>

This Article need not resolve this question nor attempt to do so. It is sufficient to show that American officials, politicians, and western settlers aggressively pursued expansion at whatever cost to the American Indians that stood in their way.<sup>170</sup> As discussed above, George Washington promoted his “Savage as the Wolf” policy to remove American Indian nations.<sup>171</sup> The federal government pursued this approach through various tactics for nearly 170 years.<sup>172</sup> By 1821, Thomas Jefferson was calling for the extermination of any American Indians who stood in the way of American expansion.<sup>173</sup> In 1825, United States Secretary of State Henry Clay stated it was “impossible to civilize Indians. . . . They were destined to extinction.”<sup>174</sup> In 1844, United States Senator Thomas Hart Benton, well known for his advocacy of the Oregon Trail and the acquisition of the Pacific Northwest, told the Senate: “I cannot murmur at what seems to be the effect of divine law. . . . The moral and intellectual superiority of the White race will do the rest . . . .”<sup>175</sup>

In the 1860s, General Phil Sheridan and General William Tecumseh Sherman, both famous for their service in the Civil War and the American Indian wars, made comments advocating for American Indian extermination. Sheridan patented the well-known statement “only good Indians I ever saw were dead,” and Sherman stated, “We must act with vindictive earnestness against the Sioux, even to their extermination, men, women, and children.”<sup>176</sup> Even average Americans had similar thoughts, and

<sup>168</sup> WESTERMANN, *supra* note 82, at 97, 120, 156–57.

<sup>169</sup> KAKEL *supra* note 22, at 164, 172–73; see WARD CHURCHILL, *A LITTLE MATTER OF GENOCIDE: HOLOCAUST AND DENIAL IN THE AMERICAS 1492 TO THE PRESENT* 150 (1997).

<sup>170</sup> WESTERMANN, *supra* note 82, at 16.

<sup>171</sup> See *supra* notes 43–44 and accompanying text.

<sup>172</sup> MILLER, *supra* note 36, at 92–94.

<sup>173</sup> Letter from Thomas Jefferson to Baron de Humboldt (Dec. 6, 1813) in 14 *THE WRITINGS OF THOMAS JEFFERSON*, *supra* note 52, at 20, 23–24; see also MILLER, *supra* note 36, at 78, 92–94.

<sup>174</sup> HARRY L. WATSON, *LIBERTY AND POWER: THE POLITICS OF JACKSONIAN AMERICA* 53 (1st rev. ed. 2006).

<sup>175</sup> CONG. GLOBE, 29th Cong., 1st Sess. 918 (1846) (speech of Sen. Thomas Hart Benton).

<sup>176</sup> WESTERMANN, *supra* note 82, at 67, 120 (citing authorities). General Ulysses S. Grant and other generals also used the word “extermination” in regards to Indians. *Id.* at 119–21.

many frontiersmen and westerners expressly advocated for American Indian extermination.<sup>177</sup>

Though it may be controversial to allege the United States actively attempted to exterminate the Indigenous peoples of North America, the purposeful or incidental results of decades of American policies, military ventures, and removal campaigns could meet the definition of genocide and active attempts to exterminate American Indian peoples.<sup>178</sup> It is less controversial, even necessary, to draw the clear parallels between the treatment of American Indians in the American West and the treatment of Jewish and Slavic people in the German East.<sup>179</sup> During their reign, the Nazis themselves regularly cited examples of what they viewed as the United States' extermination and genocide of American Indians.<sup>180</sup> When speaking of what had been done to the American Indians, as they frequently did, the Nazis understood they were speaking about extermination.<sup>181</sup>

##### 5. Frederick Jackson Turner and the American Frontier

Professor Frederick Jackson Turner was an influential American historian in the late 1800s and early 1900s.<sup>182</sup> His work still provokes discussion among today's leading scholars, historians, and thinkers. He is known primarily for his theories on the American frontier. His "Frontier Thesis" claimed that, beginning in 1893, the frontier had played an important role in shaping American democracy, the character of Americans, and the trajectory of the United States.<sup>183</sup> Later, in 1933, he won the

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<sup>177</sup> KAKEL, *supra* note 22, at 47, 60.

<sup>178</sup> See, e.g., Lenore A. Stiffarm & Phil Lane, Jr., *The Demography of Native North America: A Question of American Indian Survival*, in *THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE* 23, 35-36 (M. Annette Jaimes ed., 1992).

<sup>179</sup> *Id.* at 45; LOWER, *supra* note 68, at 27 (stating Germany worked to exterminate the "racially inferior" Ukrainians).

<sup>180</sup> PENNY, *supra* note 6, at 241.

<sup>181</sup> BLACKBOURN, *supra* note 9, at 305.

<sup>182</sup> E.g., Allan G. Bogue, *Frederick Jackson Turner Reconsidered*, 27 *HIST. TCHR.* 195, 195 (1994); HEIDLER & HEIDLER, *supra* note 38, at 23 (Turner said Manifest Destiny was a natural offshoot of America taming the wilderness and populating the frontiers.).

<sup>183</sup> HEIDLER & HEIDLER, *supra* note 38, at 23; WESTERMANN, *supra* note 82, at 12-13. See *FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY* 30, 37 (1921).

Pulitzer Prize in history for his book on sectionalism, an examination of the regional development of the United States.<sup>184</sup>

Turner is worth discussing in this Article both because of his views on the American frontier and because of his intriguing connections to Professor Friedrich Ratzel and his theories on *Lebensraum*. The two influenced each other's thinking on the American Frontier West and the German East.<sup>185</sup>

In the 1890s, Turner and Ratzel were part of an international conversation about politics and geography.<sup>186</sup> Turner specifically was obsessed with finding links between geography and national character.<sup>187</sup> The men communicated through their writings, influenced each other's theoretical development, and openly admired each other's work.<sup>188</sup>

Turner also collaborated closely with an ex-student and colleague of Ratzel, American Ellen Churchill Semple.<sup>189</sup> Semple had studied under Ratzel and would later go on to publish several articles in American and European journals.<sup>190</sup> Through a series of books and papers, Semple expanded upon the work of Ratzel in the field of anthropogeography and communicated his ideas to an American audience.<sup>191</sup>

Ratzel was impressed by Turner's Frontier Thesis, and especially commended the way he contrasted the effects of America's westward expansion with the static European borders.<sup>192</sup> Turner's thesis resonated with Ratzel and other German intellectuals who, explicitly and implicitly, compared the German

<sup>184</sup> See generally FREDERICK JACKSON TURNER, THE SIGNIFICANCE OF SECTIONS IN AMERICAN HISTORY (1932); *The 1933 Pulitzer Prize Winner in History*, PULITZER PRIZES, <https://www.pulitzer.org/winners/frederick-j-turner> [<https://perma.cc/Z6UT-LBQ2>] (last visited Aug. 23, 2021).

<sup>185</sup> KAKEL, *supra* note 22, at 21 (explaining that Turner was indebted to the writings of the Leipzig geographer Friedrich Ratzel on the influence of geography on history); PENNY, *supra* note 6, at 237; Steinweis, *supra* note 76, at 60–61. Turner's work has also drawn comparisons to Haushofer's. Werner J. Cahnman, *Concepts of Geopolitics*, 8 AM. SOCIO. REV. 55, 55 (1943).

<sup>186</sup> PENNY, *supra* note 6, at 237; KAKEL, *supra* note 22, at 21.

<sup>187</sup> KAKEL, *supra* note 22, at 21.

<sup>188</sup> *Id.*; Steinweis, *supra* note 76, at 60–61; accord BLACKBOURN, *supra* note 9, at 294–95; Blackbourn, *supra* note 97, at 151, 167 n.39 (noting that Ratzel said he also learned from Turner).

<sup>189</sup> PENNY, *supra* note 6, at 237.

<sup>190</sup> Charles C. Colby, *Ellen Churchill Semple*, 23 ANNALS ASS'N AM. GEOGRAPHERS 229, 232 (1933); see also Everett E. Edwards, *Ellen Churchill Semple*, 7 AGRIC. HIST. 150, 150 (1933).

<sup>191</sup> Colby, *supra* note 190; see also Edwards, *supra* note 190.

<sup>192</sup> KAKEL, *supra* note 22, at 21; Steinweis, *supra* note 76, at 61; PENNY, *supra* note 6, at 237.

East to the American West.<sup>193</sup> Turner's influence on Ratzel inevitably spread to Professor Karl Haushofer, Rudolph Hess, and Adolf Hitler. "Without doubt, Hitler, if not Nazi bureaucrats, believed that the [United States] conquest of western North America and the displacement and killing of the indigenous population provided a historical precedent for his own plans in eastern Europe."<sup>194</sup>

In conclusion of this Section, the information set forth above demonstrates that Germans in general, as well as Hitler and other Nazi leaders, were knowledgeable about American Indians, United States Indian Affairs, Manifest Destiny, and the United States conquest of the Frontier West. Though the extent to which this information was used is up for debate, historians and commentators generally contend that this knowledge played a role in Nazi thinking and actions in the German East. Notwithstanding how much the Nazis learned exactly, or whether they expressly used the same tactics, they were clearly influenced and emboldened by the history of the Frontier West and United States' treatment of American Indians.

### III. NAZI GERMANY'S RELIANCE ON AMERICAN LAW AND POLICIES

In addition to a general knowledge of and interest in the United States' Indian policies, the Third Reich also paid special attention to other areas of the United States' jurisprudence and policies on race and racial discrimination. Nazi scholars, lawyers, jurists, and officials intensely studied these matters and wrote numerous topical books and articles, specifically focusing on the United States as a source for German consideration and justification for their own racially motivated policies.

#### A. *Eugenics, Sterilization, Immigration, Naturalization, and Miscegenation*

Eugenics was a "scientific" movement primarily popular beginning in the 1890s and through the 1930s.<sup>195</sup> The movement grew out of Charles Darwin's theories on evolution and survival of the fittest.<sup>196</sup> "Social Darwinists" applied his theories to hu-

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<sup>193</sup> KAKEL, *supra* note 22, at 21; Blackbourn, *supra* note 97, at 153.

<sup>194</sup> WESTERMANN, *supra* note 82, at 14.

<sup>195</sup> See THE OXFORD HANDBOOK OF THE HISTORY OF EUGENICS 43 (Alison Bashford & Philippa Levine eds., 2010).

<sup>196</sup> See *id.* at 28; *Introduction to Eugenics*, GENETICS GENERATION, <https://knowgenetics.org/history-of-eugenics/> [<https://perma.cc/5WJ9-D6VA>] (last visited

man biology and heredity.<sup>197</sup> In its simplest understanding, eugenics spurred from a nurture-versus-nature debate on how best to improve the biological health of the human race.<sup>198</sup>

Academics, scholars, and activists in the United States and Germany were prominent leaders in the growing international movement.<sup>199</sup> Hitler instructed German academics to carefully study American practices, and he readily acknowledged America's influence and leadership in the movement.<sup>200</sup> Ultimately, both countries enacted laws and policies that were based on eugenics.<sup>201</sup> Under the Third Reich, these policies quickly led to euthanasia and mass murder.<sup>202</sup>

In the United States and elsewhere, eugenics heavily influenced immigration and naturalization. For example, beginning in 1875, the United States enacted laws that singled out Chinese immigrants in the immigration and naturalization arena, later expanding these racial exclusions to other immigrant populations.<sup>203</sup> "Scientific" eugenics was used to justify "old-

Aug. 23, 2021); ALEXANDRA MINNA STERN, *EUGENIC NATION: FAULTS AND FRONTIERS OF BETTER BREEDING IN MODERN AMERICA* 11 (2016) (noting the Englishman Sir Francis Galton coined the word "eugenics" in 1883); Jeremy Noakes, *Nazism and Eugenics: The Background to the Nazi Sterilization Law of 14 July 1933*, in *IDEAS INTO POLITICS: ASPECTS OF EUROPEAN HISTORY, 1880–1950*, at 75, 76 (R.J. Bullen et al. eds., 1984).

<sup>197</sup> Noakes, *supra* note 196, at 76–77; STERN, *supra* note 196, at 85; WEIKART, *supra* note 3, at 99.

<sup>198</sup> See PHILIP R. REILLY, *THE SURGICAL SOLUTION: A HISTORY OF INVOLUNTARY STERILIZATION IN THE UNITED STATES* 111 (1991) ("The central dogma of the eugenics movement was that virtually all human defects could be ultimately explained by the presence of one or more genetically determined characteristics."); Noakes, *supra* note 196, at 75; STEPHEN TROMBLEY, *THE RIGHT TO REPRODUCE: A HISTORY OF COERCIVE STERILIZATION* 30, 115 (1988).

<sup>199</sup> *E.g.*, KÜHL, *supra* note 4, at 13–25, 53–63, 78–95; See generally TROMBLEY, *supra* note 198.

<sup>200</sup> See, *e.g.*, REILLY, *supra* note 198, at 106 (In 1924 Hitler wrote in *Mein Kampf*: "To prevent defective persons from reproducing equally defective offspring, is an act dictated by the clearest light of reason. Its carrying out is the most humane act of mankind. It would . . . result in a steady increase in human welfare.").

<sup>201</sup> *E.g.*, STERN, *supra* note 196, at 2–3 (noting that thirty-two American states "had sterilization laws on the books at some point in the twentieth century").

<sup>202</sup> *Id.* at 2 (stating that it is "difficult to extract eugenics from the shadow of Nazism"); KÜHL, *supra* note 4, at 105; KAKEL, *supra* note 22, at 62 (emphasizing how Third Reich professionals constructed a hierarchy of racial types to bolster Nazi ideology and provided a theoretical foundation for euthanasia, racial hygiene, and the annihilation of Jews).

<sup>203</sup> See Jennifer M. Chacón, *Overcriminalizing Immigration*, 102 J. CRIM. L. & CRIMINOLOGY 613, 618 (2012). American Indians were also discriminated against in regards to naturalization by the United States until 1924. See William Bradford,

fashioned” racism and discrimination in the United States—notably in regard to interracial marriage, or miscegenation.<sup>204</sup>

A detailed analysis of eugenics, involuntary sterilizations, immigration and citizenship, and anti-miscegenation policies are beyond the scope of this Article. Nevertheless, the following Section will briefly raise these issues to investigate five areas of American law and policy that impressed and influenced Hitler and the Nazi regime.

### 1. Eugenics Movement

Germany and the United States were major participants in the international eugenics movement.<sup>205</sup> By the 1930s, the two nations had surpassed Great Britain as the leaders in the field.<sup>206</sup> During this time, German and Nazi scholars and academics carefully studied and cited the United States as they developed racial policies and legal regimes. Hitler said,

Now that we know the laws of heredity, it is possible to a large extent to prevent unhealthy and severely handicapped beings from coming into the world. I have studied with great interest the laws of several American states concerning prevention of reproduction by people whose progeny would, in all probability, be of no value or be injurious to the racial stock.<sup>207</sup>

Beginning in the early twentieth century, large eugenics organizations—including the Race Betterment Foundation, the Eugenics Record Office, and the Human Betterment Foundation—began forming in the United States.<sup>208</sup> A year earlier, physician Alfred Ploetz, one of the earliest proponents of eugenics, founded the first German journal devoted to the study of race hygiene.<sup>209</sup> In 1922, he founded a eugenics society, German

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*Beyond Reparations: An American Indian Theory of Justice*, 66 OHIO ST. L.J. 1, 25 n.128 (2005).

<sup>204</sup> Harvey M. Applebaum, *Miscegenation Statutes: A Constitutional and Social Problem*, 53 GEO. L.J. 49, 71–74 (1964). Forty-one states in the United States enacted anti-miscegenation laws. *Id.* at 50 n.9.

<sup>205</sup> KÜHL, *supra* note 4, at 27.

<sup>206</sup> *Id.* at 21; Noakes, *supra* note 196, at 75; TROMBLEY, *supra* note 198, at 24.

<sup>207</sup> OTTO WAGENER, HITLER AUS NÄCHSTER NÄHE: AUFZEICHNUNGEN EINES VERTRAUTEN, 1929–1932, at 264 (Henry A. Turner ed., 1987) (quoting Hitler); *accord* KÜHL, *supra* note 4, at 37; TROMBLEY, *supra* note 198, at 115–16.

<sup>208</sup> STERN, *supra* note 196, at 5; REILLY, *supra* note 198, at 76–77; TROMBLEY, *supra* note 198, at 59; DAVID SCOTT FITZGERALD & DAVID COOK-MARTIN, CULLING THE MASSES: THE DEMOCRATIC ORIGINS OF RACIST IMMIGRATION POLICY IN THE AMERICAS 58 (2014).

<sup>209</sup> *See* Noakes, *supra* note 196; USBECK, *supra* note 7, at 79.

Law for Racial Hygiene. Under the Weimar Republic of the 1930s, the society contributed to a marked increase in the influence of eugenics.<sup>210</sup>

As eugenics began gaining prominence, there was a great deal of cross-pollination between German and American eugenicists at international conferences, through scholarship and letters, and during national visits.<sup>211</sup> A 1913 German book informed Germans about American developments in eugenics and provoked the Reich Health Office to begin an inquiry into eugenics in the United States in 1923.<sup>212</sup> In 1929, a notable American eugenicist, Harry Laughlin, published an article about American eugenics legislative developments in a German magazine after speaking in Munich.<sup>213</sup> In the article, he provided detailed information about sterilization laws in twenty-three states of the United States, claiming that Americans no longer considered eugenic sterilization “radical.”<sup>214</sup> After receiving an honorary degree from Heidelberg University, Laughlin opined that there was “evidence of a common understanding of German and American scientists in the nature of eugenics.”<sup>215</sup> In the United States, private individuals and institutions also led and funded eugenics research at home and abroad. The Rockefeller Foundation, for example, funded German eugenics research institutions in Munich and Berlin.<sup>216</sup>

These interactions influenced German and Nazi scholars as they undertook detailed analyses of the sterilization measures

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<sup>210</sup> Noakes, *supra* note 196, at 82–84 (explaining that in the late 1920s, the Prussian Ministry of Welfare organized eugenics courses; the Reichstag considered bills in 1925 and 1927 on eugenics and by the early 1930s appointed a committee on population questions and eugenics).

<sup>211</sup> KÜHL, *supra* note 4, at 42–43 (describing how American eugenicists regularly informed German racial hygienists about eugenics developments); STERN, *supra* note 196, at 3; TROMBLEY, *supra* note 198, at 116 (explaining how a German eugenicist took an exhibition of the Reich’s eugenics program to a conference in Pasadena in 1934 and held talks with American eugenicists in New York, Chicago, and Baltimore); ANTHONY M. PLATT & CECILIA E. O’LEARY, BLOODLINES: RECOVERING HITLER’S NUREMBERG LAWS, FROM PATTON’S TROPHY TO PUBLIC MEMORIAL 61–62 (Routledge 2016) (2006) (revealing that members of the California foundation were in regular contact with the advocates of racial science in Germany).

<sup>212</sup> Noakes, *supra* note 196, at 80–81; KÜHL, *supra* note 4, at 23–24.

<sup>213</sup> KÜHL, *supra* note 4, at 24.

<sup>214</sup> *Id.*

<sup>215</sup> TROMBLEY, *supra* note 198, at 116.

<sup>216</sup> *Id.*; KÜHL, *supra* note 4, at 20.



adopted in the United States, especially in California.<sup>217</sup> Numerous Nazis stated “they owed a great debt to the work” of several Californian eugenicists.<sup>218</sup> Americans took note of the impact the California sterilization experiments had on German law. For example, in 1935, an American woman representing a maternal health organization visited Germany.<sup>219</sup> She spent several months studying the operation of the German hereditary health courts and sterilization efforts.<sup>220</sup> There, she learned that a book by two prominent California eugenicists had been extremely important in the drafting of a 1933 Nazi sterilization law.<sup>221</sup> She wrote that “[t]he leaders in the German sterilization movement state repeatedly that their legislation was formulated only after careful study of the California experiment . . . .”<sup>222</sup> After enactment of the 1933 sterilization law, the Third Reich’s legal journal included flattering references to the California Human Betterment Foundation and its assertion that sterilization “is a practical and essential step to prevent racial degeneration.”<sup>223</sup>

The United States was also equally influenced by German eugenics progress. In 1934, “a leading member of the . . . eugenics and sterilization movement” in Virginia said his “state needed to extend [its] sterilization law to more closely resemble the . . . German law.”<sup>224</sup> Other American “eugenicists hailed the German program and characterized it as a sensible plan that was working well.”<sup>225</sup> The media also highlighted the success of Germany’s eugenics programs. American “eugenic and lay periodicals applauded the passage in the 1930s of Nazi marriage and sterilization laws.”<sup>226</sup> In 1935, a Los Angeles Times eugenics columnist applauded “the movement in Germany and other Nordic countries of Europe for the elimination of the reproduction of the

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<sup>217</sup> REILLY, *supra* note 198, at 106–07 (stating that German eugenicists were impressed with the American Laughlin’s work on sterilizations); KÜHL, *supra* note 4, at 38–39, 42.

<sup>218</sup> TROMBLEY, *supra* note 198, at 116.

<sup>219</sup> REILLY, *supra* note 198, at 106.

<sup>220</sup> *Id.*

<sup>221</sup> See KÜHL, *supra* note 4, at 42–43; see also REILLY, *supra* note 198, at 106; Kühl also points out that a California eugenicist viewed the 1933 German sterilization law “as the fulfillment of [the eugenics] principles developed by the California movement.” KÜHL, *supra* note 4, at 45.

<sup>222</sup> KÜHL, *supra* note 4, at 42–43.

<sup>223</sup> PLATT & O’LEARY, *supra* note 211, at 59–60.

<sup>224</sup> KÜHL, *supra* note 4, at 45.

<sup>225</sup> REILLY, *supra* note 198, at 108.

<sup>226</sup> STERN, *supra* note 196, at 3.

unfit.”<sup>227</sup> Also in 1935, an American eugenicist wrote in support of Hitler’s actions and claimed “many far-sighted [people] in both England and America [had] been working earnestly towards something very like what Hitler has now made compulsory.”<sup>228</sup> In a 1937 book, an American author defended Hitler’s views and Nazi practices on sterilization by explaining that the programs had developed naturally from “standard work of genuine scientific character.”<sup>229</sup> Incredibly, some American eugenicists played Nazi propaganda films, designed to sway the German public to the idea of euthanasia, in the United States.<sup>230</sup>

It is possible some of the Nazi interactions with Americans and United States eugenics laws might have been covert propaganda efforts. Hitler and the Third Reich wanted to justify their actions in this field to Germans, and to the world, by proving they had the active support of the United States.<sup>231</sup> Consequently, Nazi Germany went out of its way to flatter and cater to American academics. The Nazi government instructed German universities to invite American eugenicists to conferences, and even awarded some of them honorary degrees.<sup>232</sup> In 1934, Hitler himself might have been participating in this effort when he wrote some American eugenicists, praised them, and requested copies of their books.<sup>233</sup> “Hitler’s personal correspondence with American eugenicists reveals both the influence that American eugenicists had on the highest figures of the Nazi regime and the crucial importance that National Socialists placed on garnering support for their policies among foreign scientists.”<sup>234</sup> There is also a strong probability “eugenics[ ] offered the Nazis ample opportunity to compare their racial policies to those of the United States.”<sup>235</sup>

## 2. Involuntary Sterilizations

In the United States, the eugenics agenda turned almost immediately to involuntary sterilizations. It seems self-evident that the practical application of the theories of eugenics and

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<sup>227</sup> *Id.* at 82.

<sup>228</sup> TROMBLEY, *supra* note 198, at 116.

<sup>229</sup> *Id.* at 47.

<sup>230</sup> *See* WEIKART, *supra* note 3, at 226.

<sup>231</sup> *See* KÜHL, *supra* note 4, at 88.

<sup>232</sup> *Id.* at 86; STERN, *supra* note 196, at 3.

<sup>233</sup> *See* KÜHL, *supra* note 4, at 85–86.

<sup>234</sup> *Id.* at 86.

<sup>235</sup> USBECK, *supra* note 7, at 79.

improving the human race through heredity and biology would lead to the practice of population control via sterilization. Beginning in the early twentieth century, thirty-two American states enacted involuntary sterilization laws.<sup>236</sup> California and Virginia became the national leaders in the performance of involuntary sterilizations.<sup>237</sup> When challenged on constitutional grounds in 1927, the United States Supreme Court upheld the Virginia law, and Justice Oliver Wendell Holmes justified the law with some unfortunate language.<sup>238</sup>

Nazi Germany also turned to involuntary sterilizations in its attempt to improve racial purity and the Aryan stock. For example, the Weimar Republic government had considered various sterilization laws.<sup>239</sup> And once Hitler became chancellor of Germany on January 30, 1933, eugenics programs were almost immediately instituted and emphasized.<sup>240</sup> The second major law enacted under the Third Reich was The Law for the Prevention of Hereditarily Diseased Offspring on July 14, 1933.<sup>241</sup> This was the first in a series of laws that put into practice Nazi theories of eugenics and applied biology. The laws progressed from sterilizations, to euthanasia of handicapped children and adults, and eventually to state-sanctioned mass murder.<sup>242</sup>

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<sup>236</sup> See TROMBLEY, *supra* note 198, at 51. Indiana was the first in 1907, followed quickly by Washington, Connecticut, and California in 1909; other states followed in 1911, 1912, and 1913 including Nevada, Iowa, New Jersey, New York, Kansas, Michigan, North Dakota, and Oregon. *See id.*; *see also* REILLY, *supra* note 198, at 84, 87–88; KÜHL, *supra* note 4, at 17.

<sup>237</sup> STERN, *supra* note 196, at 84–85 (explaining that California performed about 20,000 sterilizations from 1909 to the 1960s—one-third of the United States' total); TROMBLEY, *supra* note 198, at 53 (further noting that by 1944 California had sterilized 17,012 people and Virginia had sterilized 4,675 out of a national total of 42,616).

<sup>238</sup> *Buck v. Bell*, 274 U.S. 200, 205, 207 (1927) The Court allowed the sterilization of a “feeble-minded” woman because the state statute did not violate the Fourteenth Amendment; Justice Holmes commented “[t]hree generations of imbeciles are enough.” *Id.* German eugenicists noted this case, and a Nazi doctor on trial in 1946 cited it in his defense. KÜHL, *supra* note 4, at 25, 101.

<sup>239</sup> Noakes, *supra* note 196, at 84, 86.

<sup>240</sup> TROMBLEY, *supra* note 198, at 110; Noakes, *supra* note 196, at 85–87.

<sup>241</sup> Noakes, *supra* note 196, at 87; TROMBLEY, *supra* note 198, at 110.

<sup>242</sup> TROMBLEY, *supra* note 198, at 110; PLATT & O'LEARY, *supra* note 211, at 71.

In 1939 Hitler authorized nurses and doctors in pediatric wards to murder 5,000 children with physical deformities; “[i]n 1940 to 1941, gas chambers were first used to kill seventy thousand mentally and physically disabled adults,” and “[a]n estimated two hundred thousand adults were eventually killed in the Nazi euthanasia program.” *Id.*

The Nazis based their 1933 law on the model sterilization bill drafted in 1922 by American eugenicist Harry Laughlin.<sup>243</sup> Laughlin was not only an internationally influential eugenicist, but also an esteemed advisor to a House of Representatives committee on immigration issues.<sup>244</sup> The Nazis were further influenced by the California sterilization law and movement, which they considered to be a model for German policies and laws.<sup>245</sup> With American precedent<sup>246</sup> and a mainstream understanding of eugenics due to decades of discourse within Germany on their side, the Nazis had little trouble convincing the public to accept the new law.<sup>247</sup>

The Nazi Sterilization Law of 1933 legalized wholesale compulsory sterilizations of a wide range of those individuals deemed “unfit” either on social or medical grounds.<sup>248</sup> As one author aptly described, “Nazi ideology combined both the racist and the eugenic components of the German Social Darwinist tradition and, although the main emphasis was on the former with anti-Semitism the dominant theme, eugenic ideas formed an integral part of the Nazi *Weltanschauung* [view of life].”<sup>249</sup> Approximately 350,000 people were forcibly sterilized due to the Nazi sterilization law in Germany.<sup>250</sup> Comparatively, a “conservative estimate” for the number of sterilizations performed in the United States between 1907 and 1932 is 12,145.<sup>251</sup>

As early as the late 1870s, and again before World War I, quite a few social Darwinists were discussing racial extermination in their writings, including two leading German experts who expressly recognized the Darwinian influence on euthanasia discussions.<sup>252</sup> Once the Nazis came to power, their zeal to rid Germany of “inferior people” led some eugenicists to propose expediting natural selection by killing those deemed inferior,

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<sup>243</sup> KÜHL, *supra* note 4, at 39 (noting that the magazine *Eugenic News* reported the German 1933 sterilization law was very similar to the 1922 model law drafted by Laughlin); TROMBLEY, *supra* note 198, at 116.

<sup>244</sup> REILLY, *supra* note 198, at 63–65; TROMBLEY, *supra* note 198, at 55–56.

<sup>245</sup> STERN, *supra* note 196, at 3; TROMBLEY, *supra* note 198, at 116–17; KÜHL, *supra* note 4, at 25, 39.

<sup>246</sup> KÜHL, *supra* note 4, at 23, 25, 39.

<sup>247</sup> Noakes, *supra* note 196, at 88.

<sup>248</sup> TROMBLEY, *supra* note 198, at 47.

<sup>249</sup> Noakes, *supra* note 196, at 85 (citing HITLER, *supra* note 5, at 232, 365–70).

<sup>250</sup> WEIKART, *supra* note 3, at 225.

<sup>251</sup> Noakes, *supra* note 196, at 87; *see also* PLATT & O’LEARY, *supra* note 211, at 60.

<sup>252</sup> WEIKART, *supra* note 3, at 146, 192, 195–96.

unfit, or worthless.<sup>253</sup> Thus, the 1933 Nazi sterilization law is alleged to have marked the beginning of the "final solution" policy.<sup>254</sup>

Starting in 1939, the Nazis pursued a euthanasia program for the handicapped.<sup>255</sup> Germany killed perhaps 200,000 mentally and physically handicapped adults and thousands of children with physical deformities.<sup>256</sup> In 1935, even after the Nazi party moved to euthanasia, a California eugenicist visited Germany to report on the program.<sup>257</sup> His report demonstrated the links between American and German eugenicists and the scientific respectability of the movements.<sup>258</sup>

It is impossible to state unequivocally that Germany, Hitler, and the Nazis were influenced by the eugenics and sterilization laws of the United States, or whether they just used the United States as a justification for actions they had long planned. Certainly, the ideology of race improvement was by no means limited to German advocates. Regardless, it is clear that Germans coordinated with and were empowered by the American eugenics movement, carefully analyzed and cited the thirty-two American state sterilization statutes, and noted that sterilizations were widely used in the United States. Undoubtedly, "Adolf Hitler's racial image of the world was not simply the product of his own delusion but the result of the findings of 'respectable' science in Germany and in other parts of the world, including the United States."<sup>259</sup>

### 3. Immigration and Naturalization Laws

There is today one state in which at least weak beginnings toward a better conception [of citizenship] are noticeable. Of course, it is not our model German Republic, but the American Union . . . .<sup>260</sup>

— *Adolf Hitler*

As Adolf Hitler correctly understood, the United States had long used race and eugenics principles to control immigration

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<sup>253</sup> *Id.* at 45.

<sup>254</sup> TROMBLEY, *supra* note 198, at 47.

<sup>255</sup> Noakes, *supra* note 196, at 75.

<sup>256</sup> REILLY, *supra* note 198, at 110; PLATT & O'LEARY, *supra* note 211, at 71.

<sup>257</sup> PLATT & O'LEARY, *supra* note 211, at 68.

<sup>258</sup> TROMBLEY, *supra* note 198, at 117.

<sup>259</sup> WEIKART, *supra* note 3, at 232 (quoting KLAUS P. FISCHER, *THE HISTORY OF AN OBSESSION: GERMAN JUDEOPHOBIA AND THE HOLOCAUST* 118 (1998)).

<sup>260</sup> HITLER, *supra* note 5.

and naturalization. In 1790, the United States' first naturalization statute limited the grant of citizenship to "free white person[s]."<sup>261</sup> The first immigration law, from 1803, legislated that no Black persons could be imported into the United States.<sup>262</sup>

The United States continued to consider race in its immigration and naturalization laws for nearly one hundred and fifty years. In 1870, after the Civil War Amendments, Congress amended the 1790 statute to continue to allow "free white persons" and persons of African descent to become citizens.<sup>263</sup> In 1875, Congress explicitly banned the subjects of "China, Japan, or any other [o]riental country" from coming to the United States for "lewd" or "immoral purposes."<sup>264</sup> Some commentators avow the stated purpose was a subterfuge used to mask the intended purpose: to prevent the immigration of Asian females to prevent Asian births on American soil and thus automatic citizenship under the Constitution.<sup>265</sup>

In 1882, Congress imposed additional immigration restrictions on Chinese people.<sup>266</sup> Congress followed the 1875 act with the Chinese Exclusion Acts.<sup>267</sup> These laws were lobbied for primarily by west-coast states, citizens, labor groups, and politicians upset by competition from Chinese, and no doubt harboring significant racism.<sup>268</sup>

In 1907 and 1908, Congress and Japan quietly agreed to what is called the "Gentlemen's Agreement," designed to restrict Japanese immigration to the United States.<sup>269</sup> In 1917, Congress

<sup>261</sup> An Act to Establish an Uniform Rule of Naturalization, ch. 3, 1 Stat. 103, § 1 (1790). See generally IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (2006).

<sup>262</sup> Act of Feb. 28, 1803, ch. 10, 2 Stat. 205.

<sup>263</sup> Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256.

<sup>264</sup> Page Act of 1875, ch. 141, § 1, 18 Stat. 477, 477.

<sup>265</sup> *Id.* § 3; BETH LEW-WILLIAMS, *THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA* 8, 45, 264 n.18 (2018). See also *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898) (affirming that under the Fourteenth Amendment, the children of aliens born in the United States are birthright United States citizens regardless of their race).

<sup>266</sup> Act of May 6, 1882, ch. 126, 22 Stat. 58. See also Act of Feb. 19, 1862, ch. 27, 12 Stat. 340.

<sup>267</sup> Scott Act, ch. 1064, 25 Stat. 504 (1888). The Supreme Court held the 1888 Act was within Congress's constitutional power. *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889); LEW-WILLIAMS, *supra* note 265, at 8, 212, 264 n.18.

<sup>268</sup> REILLY, *supra* note 198, at 23; KUNAL M. PARKER, *MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600–2000*, at 122, 155 (2015); FITZGERALD & COOK-MARTIN, *supra* note 208, at 91.

<sup>269</sup> LEW-WILLIAMS, *supra* note 265, at 231; PARKER, *supra* note 268, at 154.

created the "Asiatic Barred Zone," which openly banned immigration from Japan and imposed literacy tests on potential immigrants.<sup>270</sup>

In the golden age of eugenics, Congress also moved to ban immigration by peoples that were considered to be from "unfit" countries and races, and to deport the "[s]cum from the [m]elting-[p]lot."<sup>271</sup> After working to ban Chinese and Asian immigrants for decades, in 1921, Congress imposed a national quota system on all immigrants that was blatantly designed to favor northwestern Europeans.<sup>272</sup> Three years later, Congress imposed a stricter national quota system that more drastically favored immigration from northwestern European countries.<sup>273</sup>

American Indians were also treated differently in regards to naturalization. As citizens of their own nations, they signed treaties and engaged in diplomatic and political relations with the English, French, Spanish, and, later, the United States. Therefore, it is perhaps understandable why federal and state governments would not have automatically considered American Indians to be United States citizens. The Constitution and the Fourteenth Amendment state that Indians were only to be counted in the decadal census if they paid taxes.<sup>274</sup> Slowly, as tribal nations became more controlled by the United States and more subsumed within the states, questions about Indian citizenship arose.

The language of the Fourteenth Amendment would seem to have made citizens of all Indians that were born within the United States.<sup>275</sup> In 1866, however, Congress debated whether the proposed Fourteenth Amendment or the Civil Rights Act of

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<sup>270</sup> Act of Feb. 5, 1917, ch. 29, 39 Stat. 874; FITZGERALD & COOK-MARTIN, *supra* note 208, at 137 ("Scientific racism played a dominant role in forming the literacy test and national-origins quotas.").

<sup>271</sup> TROMBLEY, *supra* note 198, at 57 (stating that a Harvard professor wrote in 1916 in the *Eugenics Review* that a policy of eugenics for the United States "means the prevention of the breeding of the unfit native"); Edwin E. Grant, *Scum from the Melting-Pot*, 30 AM. J. SOCIO. 641, 641 (1925) (The author called for "deportation" that "eugenically cleanses America.").

<sup>272</sup> Emergency Quota Act of 1921, ch. 8, 42 Stat. 5 (repealed 1943); FITZGERALD & COOK-MARTIN, *supra* note 208, at 101; PARKER, *supra* note 268, at 156.

<sup>273</sup> Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952); PARKER, *supra* note 268, at 155-56; FITZGERALD & COOK-MARTIN, *supra* note 208, at 101; REILLY, *supra* note 198, at 65 (stating that the 1924 law cut back United States immigration from Italy, Poland, and Greece, for example, by eighty percent).

<sup>274</sup> U.S. CONST. art. I, § 2; *id.* amend. XIV, § 2.

<sup>275</sup> U.S. CONST. amend. XIV, § 1.

1866 would make Indians citizens.<sup>276</sup> For several reasons Congress decided that the answer was no. According to Congress, Indians did not recognize the United States as their government and were subject to very few federal laws; the United States made treaties with Indian nations and the tribes had their own laws; thus, individual Indians were not considered to be “subject to the jurisdiction” of the United States as the Amendment requires for citizenship.<sup>277</sup> In 1884, the United States Supreme Court agreed.<sup>278</sup>

In 1887, the United States began granting statutory citizenship to some Indians.<sup>279</sup> In 1888, Congress granted citizenship to Indian women who married white Americans.<sup>280</sup> In 1901, all American Indians in the American Indian Territory, now part of Oklahoma, were given citizenship.<sup>281</sup> In 1919, American Indian veterans of World War I were also awarded citizenship.<sup>282</sup> Finally, in 1924, after over a century of racially motivated discrimination, Congress conferred citizenship on all native American Indians.<sup>283</sup>

Unsurprisingly, race, eugenics, and the desire to maintain a “racially healthy population” affected United States immigration

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<sup>276</sup> CONG. GLOBE, 39th Cong., 1st Sess. 527 (1866); PARKER, *supra* note 268, at 131.

<sup>277</sup> U.S. CONST. amend. XIV, § 1; *see also* CONG. GLOBE, 39th Cong., 1st Sess. 527; PARKER, *supra* note 268, at 131.

<sup>278</sup> *Elk v. Wilkins*, 112 U. S. 94, 98–99 (1884).

<sup>279</sup> The General Allotment (Dawes) Act, ch. 119, 24 Stat. 388 (1887) (codified as amended in scattered sections of 25 U.S.C.).

<sup>280</sup> Act of Aug. 9, 1888, ch. 818, § 2, 25 Stat. 392 (codified at 25 U.S.C. § 182 (2018)). *Cf. Mackenzie v. Hare*, 239 U. S. 299, 311 (1915) (upholding a 1907 federal law that denaturalized American citizens who married foreigners). Thousands of American women lost their citizenship under this Act. PARKER, *supra* note 268, at 177.

<sup>281</sup> Act of Mar. 3, 1901, ch. 868, 31 Stat. 1447 (amending Act of Feb. 8, 1887, ch. 119, § 6, 24 Stat. 388, 390).

<sup>282</sup> Citizenship Act of 1919, ch. 95, 41 Stat. 350 (codified at 8 U.S.C. § 3 and since repealed).

<sup>283</sup> Indian Citizenship Act, ch. 233, 43 Stat. 253 (1924) (codified at 8 U.S.C. § 1401(b) (2018)). Under the rule of *Plessy v. Ferguson*, however, once American Indians became United States citizens they could still be segregated and treated differently from other citizens. *See Piper v. Big Pine Sch. Dist.*, 226 P. 926, 929 (Cal. 1924) (holding that it was not a federal or state law violation to require American Indian children, or others in whom racial differences existed, to attend separate schools provided they were equal); *see also Plessy v. Ferguson*, 163 U.S. 537, 543 (1896) (holding that State-mandated racial segregation does not violate the Fourteenth Amendment), *overruled by Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).



and naturalization laws.<sup>284</sup> Arguably, the influence of eugenics was most heavily felt in the domain of immigration, as eugenics scholars emphasized that immigration policies were the “single most internationally significant and consistent policy and legal application of eugenic ideas.”<sup>285</sup> As early as 1790, before eugenics was known at all, the United States favored “white” naturalization and immigrants from northern Europe.

In the early twentieth century, however, the eugenics debate took on a scientific cast and racial prejudices infiltrated the debate on immigration.<sup>286</sup> Eugenics expert Harry Laughlin was appointed by the House Committee on Immigration and Naturalization as the committee’s “Expert Eugenical Agent.”<sup>287</sup> He testified as an expert and wrote influential reports on the threats posed by immigration to the committee that worked on the 1924 Immigration Act.<sup>288</sup> Consequently, the federal government wove the new “science” of race and eugenics into its immigration and naturalization laws.<sup>289</sup>

In turn, Nazi Germany considered eugenics and racial hatred when drafting its naturalization laws and policies. Hitler and Nazi scholars studied and applauded American laws and policies in this field.<sup>290</sup> In 1933, one of the preeminent Nazi lawyers published a book that featured a long discussion on American immigration and naturalization laws.<sup>291</sup> He congratulated the United States for applying “the eugenic point of view against inferior elements trying to immigrate.”<sup>292</sup> He expressly analyzed the American ban on Chinese immigration and the use of quotas.<sup>293</sup> He applauded America for protecting itself with “an entirely new path” after World War I.<sup>294</sup> Other German scholars

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<sup>284</sup> KÜHL *supra* note 4, at 38–39; *accord* WHITMAN, *supra* note 1, at 8, 33 (explaining that Britain, Australia, Canada and New Zealand all also began to screen immigrants for hereditary fitness).

<sup>285</sup> THE OXFORD HANDBOOK OF THE HISTORY OF EUGENICS, *supra* note 195, at 158; *accord* FITZGERALD & COOK-MARTIN, *supra* note 208, at 58.

<sup>286</sup> *See* FITZGERALD & COOK-MARTIN, *supra* note 208, at 99 (noting that scientific racism gave a new justification for “the old argument that certain races should be barred”).

<sup>287</sup> *Id.* at 100.

<sup>288</sup> *Id.*; REILLY, *supra* note 198, at 63–65.

<sup>289</sup> PARKER, *supra* note 268, at 148–49.

<sup>290</sup> WHITMAN, *supra* note 1, at 51–52.

<sup>291</sup> *Id.* at 51.

<sup>292</sup> *Id.* at 51–52 (translating OTTO KOELLREUTTER, GRUNDRISß DER ALLGEMEINEN STAATSLAHRE 51–52 (1933)).

<sup>293</sup> *Id.*

<sup>294</sup> *Id.* at 51 (translating KOELLREUTTER, *supra* note 292, at 51–52).

lauded American immigration restrictions, especially the act of 1924, which was greatly appreciated by German racial hygienists.<sup>295</sup>

When discussing Americans laws and their intent, specifically the 1924 act designed to drastically favor northern European immigration, Hitler stated, “That the American Union itself feels itself to be a Nordic-German state and in no way an international mishmash of peoples further emerges from the manner in which it allots immigration quotas to European nations.”<sup>296</sup> Furthermore, Hitler felt the United States was the most inventive nation in the world at imposing immigration quotas “dependent on definite racial prerequisites.”<sup>297</sup> He also praised the United States for only allowing immigration of the fittest people, who, naturally, Hitler said were Nordic.<sup>298</sup> This vast appreciation for American immigration policies led the Nazis to pay homage to the United States in the creation of their own policies.<sup>299</sup>

#### 4. Anti-Miscegenation Laws

Nazis also studied and relied heavily on American anti-miscegenation statutes to justify racial prejudice against Jewish peoples. As was the case with many other areas of law, eugenics was used to justify anti-miscegenation policies and statutes.

Anti-miscegenation laws ban the marriage of people of different races.<sup>300</sup> “The idea of a prohibition of interracial marriage originated in [the United States] . . . .”<sup>301</sup> Such laws existed in the United States since as early as 1661.<sup>302</sup> Up to forty-one states enacted miscegenation laws at some point and classified interracial marriages as civilly invalid or criminally punishable.<sup>303</sup> As late as 1964, nineteen states still had anti-miscegenation laws in effect.<sup>304</sup>

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<sup>295</sup> KÜHL, *supra* note 4, at 25–26, 38.

<sup>296</sup> HITLER, *supra* note 27, at 108 (stating that Hitler praised the American immigration act of 1924); accord Taylor, *supra* note 27, at xxiii–iv.

<sup>297</sup> HITLER, *supra* note 27, at 100–01.

<sup>298</sup> *Id.* at 107–08 (noting that the United States had been unable to assimilate Chinese and Japanese immigrants).

<sup>299</sup> *See id.* at 100–01, 106.

<sup>300</sup> Applebaum, *supra* note 204, at 49.

<sup>301</sup> *Id.* at 49–50.

<sup>302</sup> *Id.* at 50; see also STERN, *supra* note 196, at 21.

<sup>303</sup> Applebaum, *supra* note 204, at 50 n.9.

<sup>304</sup> *Id.* at 51. The United States Supreme Court only struck down state prohibitions on interracial marriages in 1967. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

The first American anti-miscegenation statute that appears to have been based on eugenics principles was enacted by Connecticut in 1895, when the state prohibited the marriage of “defective” peoples.<sup>305</sup> By 1913, similar statutes were enacted by twenty-four additional states, the District of Columbia, and Puerto Rico.<sup>306</sup> One commentator states that miscegenation statutes and policies “were emboldened by the eugenic racism of the 1920s.”<sup>307</sup> Racism was linked to eugenics, and the anti-miscegenation laws in particular were seen as measures to maintain a “racially healthy population.”<sup>308</sup> Some commentators point out that interest in eugenics and miscegenation increased in the northern states after Black migration to the north increased.<sup>309</sup>

As will be discussed later in this Article, Hitler and “[t]he Nazis saw miscegenation as the major threat to racial integrity,”<sup>310</sup> and wholeheartedly adopted the anti-miscegenation ideas from the United States.

This discussion manifestly demonstrates that the United States, Adolf Hitler, and Nazi Germany embraced the principles of eugenics and applied them to involuntary sterilizations, immigration and naturalization, and miscegenation. The Nazi regime studied and emulated American laws and policies on these issues, avidly and openly interacted with American academics, and applied aspects of American strategies.

#### B. Heinrich Krieger

German attorney and scholar Heinrich Krieger was a crucial actor in the Nazis’ study and adoption of American racial laws and practices, particularly with regard to American Indian law and policies. Arguably, “Heinrich Krieger . . . was the single most important figure in the Nazi assimilation of American race law.”<sup>311</sup> “Krieger himself defended the importance of studying the race laws in the United States [because it] was the only country

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<sup>305</sup> REILLY, *supra* note 198, at 26.

<sup>306</sup> *Id.*

<sup>307</sup> STERN, *supra* note 196, at 21.

<sup>308</sup> WHITMAN, *supra* note 1, at 33.

<sup>309</sup> Black migration to the north concerned Whites and apparently caused an increase in anti-miscegenation laws in the last quarter of the nineteenth century. REILLY, *supra* note 198, at 24–25; *see id.* at 72 (explaining that medics, geneticists, and eugenicists presented papers on the “Negro problem” and interracial marriages at the second International Congress of Eugenics in New York City in 1921).

<sup>310</sup> USBECK, *supra* note 7, at 142.

<sup>311</sup> WHITMAN, *supra* note 1, at 57.

besides the German Reich and South Africa that had 'real race legislation.'<sup>312</sup> Consequently, Krieger researched and published important materials that Nazi officials used to debate and formalize legislative proposals in the run-up to the enactment of the infamous 1935 Nuremberg Laws.<sup>313</sup>

Krieger's materials were likely distributed to, or at least well-known by, the attendees at the crucial meeting on June 5, 1934, where many of the Nuremberg Laws were developed.<sup>314</sup> At this meeting, seventeen German jurists, lawyers, scholars, and party officials debated at great length how Nazi Germany could legally discriminate against Jews; they discussed in depth American federal and state laws as viable working models.<sup>315</sup> A brief review of Krieger's work adds significant strength to the thesis that Nazi scholars and officials were heavily influenced by United States race and federal American Indian laws.

In 1933, Krieger was an exchange student studying American "legal and sociological" issues at the University of Arkansas Law School while on a fellowship from the prestigious Notgemeinschaft der Deutschen Wissenschaft ["Emergency Association of German Science"].<sup>316</sup> He was simultaneously "conducting research in the Library of Congress preparatory to publication of a dissertation on 'American Racial Law.'<sup>317</sup> His dissertation, published in 1935, became well-known to Nazi scholars and some of the German public.<sup>318</sup> He also published his research on American race laws in an article released contemporaneously with the June 5, 1934, Nuremberg Laws meeting.<sup>319</sup> In the 1934 article *Race Law in the United States*, and the 1936 publication of his dissertation under the same title, Krieger presented his findings and cited the statutes of thirty American states that criminalized, or at least civilly nullified, interracial marriages.

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<sup>312</sup> KÜHL, *supra* note 4, at 99 (quoting HEINRICH KRIEGER, DAS RASSENRECHT IN DEN VEREINIGTEN STAATEN (RACE LAW IN THE UNITED STATES) 10 (1936)).

<sup>313</sup> WHITMAN, *supra* note 1, at 113–14, 117–20.

<sup>314</sup> *Id.* at 118, 120.

<sup>315</sup> *Id.* at 117–20.

<sup>316</sup> Heinrich Krieger, *Principles of the Indian Law and the Act of June 18, 1934*, 3 GEO. WASH. L. REV. 279, 279 n.\* (1935). A very important Nazi professor of administrative law, Otto Koellreutter, was Krieger's mentor, and after publishing his book, Krieger became a fellow at an academic institute under the control of the Reich Ministry of the Interior. WHITMAN, *supra* note 1, at 114. Krieger thanked Koellreutter in the foreword of his 1936 book. KRIEGER, *supra* note 312, at 11.

<sup>317</sup> Krieger, *supra* note 316.

<sup>318</sup> WHITMAN, *supra* note 1, at 115.

<sup>319</sup> *Id.* at 117–18.

During the course of his studies, Krieger became intimately familiar with American Indian Law. In March 1935, he published a twenty-nine-page law review article on Indian law entitled *Principles of the Indian Law and the Act of June 18, 1934*.<sup>320</sup> The information he provided on federal Indian law was invaluable to Nazi officials. One author, citing Krieger and other Nazi scholars, noted that Indian law was discussed by many Nazis

within the context of more general descriptions of American racial legislation . . . [and they] deliberately compared American legislation to the so-called Nuremberg Race Laws . . . [and it is] obvious that the discussion of Indians as segregated racial entities on reservations . . . suited the Nazi ideology of racial purity and cultural determination.<sup>321</sup>

This author concluded that "prohibiting mixed marriages[, as American anti-miscegenation statutes and the Nuremberg Laws did,] and the Indian New Deal[, the specific Indian law that Krieger analyzed,] served as a model and justification for Nazi racial legislation, and eventually for racial discrimination."<sup>322</sup>

#### 1. *George Washington Law Review*

In his law review article, Krieger discussed a wide array of issues involving American Indians, their citizenship and rights, the discriminatory treatment of American Indians and American Indian nations by the United States, and a myriad of other federal Indian laws, cases, and policies.<sup>323</sup> Though this Article cannot detail all of his discussion, it is worth noting here that Krieger concluded United States Indian law was "a species of race law, founded in the unacknowledged conviction that Indians were racially different and therefore necessarily subject to a distinct legal regime."<sup>324</sup> His conclusions about Indian law are worth acknowledging: "[T]he Indian law is exactly what its name indicates: a *racial* law; and there is no way out of the *extra-constitutional* situation . . . ."<sup>325</sup>

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<sup>320</sup> See generally Krieger, *supra* note 316.

<sup>321</sup> USBECK, *supra* note 7, at 146, 196 n.89.

<sup>322</sup> *Id.* at 146.

<sup>323</sup> See generally Krieger, *supra* note 316.

<sup>324</sup> WHITMAN, *supra* note 1, at 115.

<sup>325</sup> Krieger, *supra* note 316, at 304. Krieger further stated, "[t]he proper nature of the tribal Indians' status is that of a racial group placed under a special police power of the United States." *Id.* at 307.

Krieger observed that until statutory provisions emerged in 1887, and later encompassed all American Indians in 1924, American Indians were not citizens, but United States “national[s].”<sup>326</sup> Significantly, this wording is identical to the new status applied by Nazi Germany to Jews in the 1935 Nuremberg Laws. The “*extra-constitutional . . . police power*”<sup>327</sup> of the United States to discriminate racially against American Indian non-citizens was the model for the system created to regulate Jews.

Krieger’s findings served as crucial justifications for Nazi plans to legally discriminate against Jews based on race and alleged racial differences. His conclusion was simple: Nazi Germany would be well justified, and even excused in the eyes of the world, or at least by the United States, for doing to German Jews what had been done to American Indians.

## 2. “Race Law in the United States” (1934)

In 1934, Krieger published his article, *Race Law in the United States*, in a German administrative law journal.<sup>328</sup> He opened his article with disturbing words spoken from Thomas Jefferson in 1821: “It is certain that the two races, equally free, cannot live in the same government.”<sup>329</sup> In sixteen pages, Krieger provided an enlightening, yet troubling, summary of American race laws as of 1934. His investigation and subsequent scholarship was surely instigated by Hitler’s interest in the American legal regime and the impact it could have on his own.

As explained by the title, the article covered the state of race law in the United States. Primarily, Krieger addressed legal limits various states placed on the rights of Black Americans.<sup>330</sup> He noted the limits Delaware placed on Black voting rights in 1852, as well as states that restricted the vote of Chinese people.<sup>331</sup> He cited Missouri’s 1847 restrictions on Black church services, which required the presence of a White person.<sup>332</sup> He noted South Caro-

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<sup>326</sup> *Id.* at 282.

<sup>327</sup> *Id.* at 307.

<sup>328</sup> Heinrich Krieger, *Das Rassenrecht in den Vereinigten Staaten (Race Law in the United States)*, 39 VERWALTUNGSARCHIV 316 (1934). Krieger occasionally used English when discussing the Thirteenth, Fourteenth, and Fifteenth Amendments and when citing American state laws and court cases. *See, e.g., id.* at 317 & nn.4–5, 318 & nn.6–7.

<sup>329</sup> *Id.* at 316 (quoting Thomas Jefferson).

<sup>330</sup> *Id.* at 317–21.

<sup>331</sup> *Id.* at 317 & n.5, 326–28, 327 n.41.

<sup>332</sup> *Id.* at 317 & n.5.

lina's 1865 discriminatory work and education laws, as well as provisions of Oklahoma and Wyoming law that required racially segregated schools.<sup>333</sup> He discussed "Jim Crow Laws" and the "Black Laws," also known as the American "Black Code," using those exact English words.<sup>334</sup>

He identified thirteen state and Supreme Court cases that challenged racial laws as unconstitutional discrimination against Blacks. The cases Krieger highlighted included, of course, *Plessy v. Ferguson*.<sup>335</sup> Krieger also highlighted two Alabama cases. The first, from 1877, upheld the criminalization of interracial marriage and the imposition of two-year prison sentences on a white woman and Black man.<sup>336</sup> The second, from 1883, upheld a criminal statute that provided longer prison sentences for an interracial couple who lived in a state of adultery than for a couple of the same race.<sup>337</sup>

Krieger was also interested in several other cases: a Maryland case which affirmed the state's right to keep Black citizens from practicing law in Maryland; a 1908 Supreme Court's affirmance of a 1904 Kentucky conviction for teaching white and Black students in the same institution; and a Kansas court's approval of an 1879 law allowing separate schools for "white and colored children."<sup>338</sup> In contrast, Krieger presented several cases in which minority rights triumphed over state limitations.<sup>339</sup>

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<sup>333</sup> *Id.* at 317, 324–26, 325 nn.32–33 (citing OKLA. CONST. art. XIII, § 3 (1907); WYO. REV. STAT., ch. 135, § 1954 (1910)).

<sup>334</sup> *Id.* at 318–19, 321–23. For a definition of the Black Laws and Black Codes, see William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1, 27 (1999).

<sup>335</sup> 163 U.S. 537, 551–52 (1896); Krieger, *supra* note 328, at 330 n.46.

<sup>336</sup> Krieger, *supra* note 328, at 321 n.19 (citing *Green v. State*, 58 Ala. 190, 197 (Ala. 1877)).

<sup>337</sup> Krieger, *supra* note 328, at 330 n.47 (citing *Pace v. Alabama*, 106 U.S. 583, 585 (1883)).

<sup>338</sup> *In re Taylor*, 48 Md. 28, 32–34 (1877); *Berea Coll. v. Kentucky*, 211 U.S. 45, 58 (1908); *Reynolds v. Bd. of Educ.*, 72 P. 274, 281 (Kan. 1903). Krieger quoted *Reynolds* in English: "for the accommodation of a numerous white population a much larger and more imposing [school] building is provided than that set apart for the few colored children . . . is but an incidental matter . . . . [Schoolhouses] cannot be identical in every respect . . ." Krieger, *supra* note 328, at 325 n.35 (quoting *Reynolds*, 72 P. at 281).

<sup>339</sup> See, e.g., *Monroe v. Collins*, 17 Ohio St. 665, 691–92 (1867) (protecting a minority person's voting right); *Guinn v. United States*, 238 U.S. 347, 354–55, 364–68 (1915) (holding an Oklahoma literacy test for some voters violated the Fifteenth Amendment).

So, too, was Krieger familiar with lynching in the United States. The Nazis were quite interested in lynching and often pointed to it as a means of highlighting the hypocrisy of the United States when it criticized Germany's treatment of Jews.<sup>340</sup> Krieger used the German word *Lynchjustitz* or "lynch justice"—also "mob law" or "vigilante justice"—to describe the practice.<sup>341</sup> He also cited the "Dyer bill," an anti-lynching bill introduced by Missouri Congressman Leonidas Dyer in 1918.<sup>342</sup> Krieger explained that, though the bill passed in the House, it failed in the Senate.<sup>343</sup>

In his summary, Krieger asserted that race laws in the United States were a compromise built around the two pillars of ideology and racial awareness.<sup>344</sup> He also concluded American race laws had two goals: separation of the races and minimization of minority influence.<sup>345</sup> All of his conclusions were welcomed by the Nazi party.

From the foregoing discussion, it is obvious Krieger had an ample supply of American race laws to analyze. We can see plainly the relevance of his article and research to Nazi scholars and party officials. Professor Whitman claims that "it is clear" Krieger's research was relied on by Nazi scholars at the crucial June 1934 meeting which was part of the drafting process for the Nuremberg Laws.<sup>346</sup> Whitman also alleges—and citations by other authors and periodicals prove—that Krieger's 1934 article was widely used by the Nazis in debating and drafting racial policies and restrictions on Jews and others.<sup>347</sup> Krieger and his research were invaluable to Nazi officials and lawyers.

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<sup>340</sup> KÜHL, *supra* note 4, at 98–99.

<sup>341</sup> Krieger, *supra* note 328, at 331. Krieger also discussed lynching and lynch justice in his 1936 book. *See generally* KRIEGER, *supra* note 312.

<sup>342</sup> Krieger, *supra* note 328, at 331 & n.50; *NAACP History: Dyer Anti-Lynching Bill*, NAACP, <https://www.naacp.org/naacp-history-dyer-anti-lynching-bill/> [<https://perma.cc/CMH2-SFUD>] (last visited Aug. 25, 2021).

<sup>343</sup> Krieger, *supra* note 328, at 331 & n.50.

<sup>344</sup> *Id.* at 327 & n.41, 329.

<sup>345</sup> *Id.*

<sup>346</sup> WHITMAN, *supra* note 1, at 113, 117–20.

<sup>347</sup> *See, e.g., id.* at 65 (noting that a leading Nazi party publication on legal affairs, *Deutsche Justice*, summarized Krieger's 1934 article for a wider German audience).



### 3. *Race Law in the United States* (1936)

In 1936, Krieger published his dissertation under the same title as his 1934 article, *Race Law in the United States*.<sup>348</sup> The book is exactly what it said it was: three hundred and fifty pages on federal and state race laws and policies in the United States. This Article will not cite every page of Krieger's analysis, but will highlight some of the aspects of American race law he addressed.

Krieger highlighted four major aspects of American race law and legalized racial discrimination. He (1) presented detailed information about federal immigration and racial issues; (2) addressed citizenship rights and naturalization under federal law and the state Jim Crow laws; (3) analyzed the state anti-miscegenation statutes; and (4) showed how these governments infringed on citizen's voting rights.<sup>349</sup> He also compiled his information into several compelling charts and graphs.<sup>350</sup>

First, Krieger addressed many of the immigration laws mentioned above. Professor James Q. Whitman stated that Krieger's 1936 book devoted "thirty-five well-informed and thoughtful pages to American immigration and naturalization law."<sup>351</sup> Krieger highlighted, for example, federal laws from 1917, 1921, and 1924 that imposed limits on immigration from China, Japan, other Asian nations, Eastern and Southern European nations, Persia, Turkey, and India.<sup>352</sup> These laws, Krieger pointed out, accomplished their concealed objectives, as they successfully limited immigration from "new" disfavored countries and increased it from "old" favored countries, such as England, Ireland, Germany, France, and Scandinavia.<sup>353</sup> Krieger also examined several United States Supreme Court cases concerning immigration.<sup>354</sup>

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<sup>348</sup> KRIEGER, *supra* note 312, at 74–109.

<sup>349</sup> He included chapters on how American laws determined race, on race and inheritance, and on racially based education laws. *See generally id.*

<sup>350</sup> *See generally id.* Krieger's charts and graphs calculated the actual number of immigrants in the United States and their countries of origin from 1925 to 1929 and detailed immigration laws, state racial marriage laws, and racial voting laws by region. *Id.* at 85–86, 91, 95, 97–99.

<sup>351</sup> WHITMAN, *supra* note 1, at 57, 82. Whitman also praises Krieger's book as a "detailed study of American statutory and decisional law," and rich in intelligent observations. *Id.* at 117. According to Whitman, Krieger correctly perceived that "the 'ruling race' in America had to work to prevent black 'influence,'" to make most minority groups second-class citizens, and had accurately described the racist side of American law. *Id.* at 65, 67, 157.

<sup>352</sup> KRIEGER, *supra* note 312, at 81, 84, 86–90.

<sup>353</sup> *Id.* at 93.

<sup>354</sup> *Id.* at 100.

Second, Krieger demonstrated that the United States strictly controlled naturalization. He noted the Jim Crow laws and how state laws effectively classified minorities as second-class citizens.<sup>355</sup> Third, he surveyed the numerous state anti-miscegenation statutes.<sup>356</sup> Krieger quoted many of these statutes, which explicitly prohibited the marriage of white people to American Indians, blacks, Japanese, Chinese, and other minorities.<sup>357</sup> Krieger exposed the harshness of anti-miscegenation laws, specifically those from Nevada, Oklahoma, and North Carolina that criminally penalized interracial marriages.<sup>358</sup>

Finally, Krieger identified numerous state laws limiting voting rights based on race.<sup>359</sup> He noted that despite the fact that the United States Constitution claims to grant equal voting rights, states had bypassed that promise.<sup>360</sup> He pointed to southern states with laws that imposed voting requirements on racial minorities, such as residency tests, tax tests, property ownership tests, education or literacy tests, and what Krieger called the integrity test.<sup>361</sup> Krieger even acknowledged Abraham Lincoln and Thomas Jefferson as his American heroes due to their opposition to race mixing.<sup>362</sup>

Heinrich Krieger's three important works demonstrate that he engaged in a sustained, serious, and comprehensive analysis of American race law and federal Indian law. His scholarship was well known throughout Germany and available to the public through book reviews, articles in German newspapers, and Nazi propaganda.<sup>363</sup> Nazi officials relied on the conclusions drawn by

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<sup>355</sup> *Id.* at 198, 205, 207, 213, 223, 232, 240, 327–28.

<sup>356</sup> *Id.* at 168–84.

<sup>357</sup> *Id.* at 151–53, 151 nn.8–11, 152 nn.12–14, 153 n.15 (citing statutes enacted in Oregon, North Carolina, Nebraska, Texas, Arkansas, Montana, Georgia, and Virginia).

<sup>358</sup> *Id.* at 178 n.12.

<sup>359</sup> *Id.* at 259–307.

<sup>360</sup> *Id.* at 277.

<sup>361</sup> *Id.* at 277–80, 277 n.27, 279 n.34 (discussing the Mississippi 1890 constitution and the Alabama 1901 Constitution).

<sup>362</sup> WHITMAN, *supra* note 1, at 116.

<sup>363</sup> KÜHL, *supra* note 4, at 99 (citing a German newspaper's praise for Krieger's book, noting that for "Germans it is especially important to know . . . how one of the biggest states in the world with Nordic stock already has race legislation which is quite comparable to that of the German Reich." *Das Rassenrecht in den Vereinigten Staaten*, GROSSDEUTSCHER PRESSEDIENST, June 28, 1936). Richard Klinger, *Rassenrecht in USA [Race Law in USA]*, GERMANIA, Aug. 10, 1938 (stating that Krieger's book demonstrated the principle of equality in the United States was only theoretical; analyzed anti-miscegenation laws and criminal punishments imposed in

Krieger's intensive understanding of American race relations. The impact of Krieger's work on Nazi racial ideas, policies, and actions surely cannot be understated.

C. *Other German Scholars and American Race Law*

Several other German and Nazi academics, scholars, and lawyers also researched the racial laws and policies of the United States. In addition to Krieger, two very influential scholars were Herbert Kier and Johann von Leers. These authors undertook meticulous investigations of American race laws. Kier and Leers provided Nazi officials with precise information on how the United States had legally discriminated against minorities and American Indians for decades. They too focused on state anti-miscegenation laws, various state segregation policies, and federal racially discriminatory immigration statutes.

In 1934, Herbert Kier published a chapter entitled "People, Race and State" in the *National Socialist Handbook on Law and Legislation*.<sup>364</sup> At the time, Kier was a junior academic at the University of Berlin, but later became an associate of Heinrich Himmler.<sup>365</sup> In the chapter, Kier presented research on American racial laws that covered immigration, miscegenation, voting rights, second-class citizenship, and segregated public facilities.<sup>366</sup> He also created an important two-page list of the thirty American states with anti-miscegenation statutes as of 1934, and he recorded the amount of minority blood that many of the statutes required before marriage bans applied to couples.<sup>367</sup> In light of the facts and laws he uncovered, Kier was unmoved by American

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many states; and showed the United States treated American Indians as wards and notwithstanding legal promises of equality to American Indians, in reality, that was not the case); WHITMAN, *supra* note 1, at 130 (citing Dr. L., *Das Rassenrechtsproblem in den Vereinigten Staaten*, DEUTSCHE JUSTIZ, Sept. 21, 1934, a newspaper article that summarized Krieger's article for a Nazi audience).

<sup>364</sup> Herbert Kier, *Volk, Rasse und Staat* [People, Race and State], in NATIONAL-SOZIALISTISCHES HANDBUCH FÜR RECHT UND GESETZGEBUNG [NATIONAL SOCIALIST HANDBOOK ON LAW AND LEGISLATION] 33 (Hans Frank ed., 1934).

<sup>365</sup> WHITMAN, *supra* note 1, at 54.

<sup>366</sup> See generally Kier, *supra* note 364.

<sup>367</sup> *Id.* at 42–43; see WHITMAN, *supra* note 1, at 113, 121–22, 129 (asserting that Kier's list of the state laws was used at the Nuremberg meeting); see also discussion *infra* Section III.D.

criticisms of Nazi race policies, as he believed the United States was the world's leader in enacting race-based laws.<sup>368</sup>

Like Krieger's work, Kier's piece was very important to the Nazi's analysis of American race laws. In fact, Whitman says it "seems likely" that Kier's list of thirty American state anti-miscegenation laws was the very list presented and discussed at length during the infamous June 5, 1934, Nuremberg Law planning meeting.<sup>369</sup>

Johann von Leers was yet another notable Nazi scholar on the issue of American race laws. Considered "a leading so-called 'Jew expert,'" Leers was involved from the earliest days in the process of drafting the Nuremberg Laws.<sup>370</sup> His 1936 book-length pamphlet, entitled *Blood and Race in Legislation*, featured twenty-four pages of discussion on American race-based laws.<sup>371</sup>

Leers considered American racial discrimination in light of the Thirteenth, Fourteenth, and Fifteenth Amendments.<sup>372</sup> He recognized the legal limits imposed on Blacks' rights, such as their prohibition on possessing weapons or renting and owning property.<sup>373</sup> Leers discussed the Jim Crow laws and segregation and explained how some southern states maintained separate "yet equal" schools, trains, and buses.<sup>374</sup> He stated such laws were used as a means to circumvent the right of legal equality.<sup>375</sup> Leers further analyzed the same anti-miscegenation laws of thirty American states Kier had catalogued, specifically noting Alabama, Florida, Mississippi, North Carolina, South Carolina, and Tennessee.<sup>376</sup> He also commented that while Jews in America

<sup>368</sup> Kier, *supra* note 364, at 41–43; WHITMAN, *supra* note 1, at 122 (describing that Kier was astonished at the lengths America had gone to when enacting race-based segregation laws).

<sup>369</sup> WHITMAN, *supra* note 1, at 113 (Kier published his list a few months later in his article in the *National Socialist Handbook*); *see also id.* at 121–22 (discussing how Kier's table circulated for years and appeared "in a standard commentary on the Blood Law" in 1937).

<sup>370</sup> *Id.* at 57 (citing CORNELIA ESSNER, DIE »NÜRNBERGER GESETZE« ODER DIE VERWALTUNG DES RASSENWAHNS 1933–1945 [THE "NUREMBERG LAWS" OR THE ADMINISTRATION OF THE RACES 1933–1945], at 82–83 (2002)).

<sup>371</sup> JOHANN VON LEERS, BLUT UND RASSE IN DER GESETZGEBUNG: EIN GANG DURCH DIE VÖLKERGESCHICHTE [BLOOD AND RACE IN LEGISLATION: A TOUR THROUGH THE HISTORY OF PEOPLES] 80–103 (1936). *See also infra* Section III.E (noting Leers's treatment of state laws that discriminated against Native Americans).

<sup>372</sup> LEERS, *supra* note 371, at 80–82.

<sup>373</sup> *Id.* at 82.

<sup>374</sup> *Id.* at 82, 85.

<sup>375</sup> *Id.* at 84.

<sup>376</sup> *Id.* at 86, 89–100.

were considered legally “white,” the United States population itself was “further advanced” and some hotels, hostels, and other facilities would not serve Jews.<sup>377</sup> Leers expressed, however, his own impression that this American form of subtle discrimination against Jews would not be “successful” and was misguided because mere social rejection of Jews had not stopped them from becoming influential.<sup>378</sup>

Other important German and Nazi scholars include infamous author Roland Freisler, who served as Judge-President of the Nazi “People’s Court” from 1942 to 1945.<sup>379</sup> In a short chapter written in 1936, Freisler also cited and discussed the identical thirty American state anti-miscegenation laws that Kier had first researched and reported in 1934, discussed American Jim Crow laws, and cited Heinrich Krieger’s work.<sup>380</sup> So, too, is Professor Otto Koellreutter worth mentioning, as he was one of Heinrich Krieger’s mentors. He was an important professor of administrative law and was one of only two university professors who supported the Nazi party as early as 1930.<sup>381</sup> In 1933, he published a book entitled *Foundations of General State Theories*.<sup>382</sup> Koellreutter stated one of his primary purposes for writing the book was to “serve all those that are part of the process that is creating this new [Nazi] political system.”<sup>383</sup> He then explained that, even though the United States was a democracy, Black Americans did not benefit from the promise of equality.<sup>384</sup> He also discussed the development of federal immigration laws, and their racially discriminatory intent and impact.<sup>385</sup> He noted the United States 1921 immigration national quota law had had a salutary effect on the immigration of undesirables.<sup>386</sup> Koellreutter

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<sup>377</sup> *Id.* at 87–88.

<sup>378</sup> *Id.* at 88.

<sup>379</sup> See Robert D. Rachlin, *Roland Freisler and the Volksgerichtshof: The Court as an Instrument of Terror*, in *THE LAW IN NAZI GERMANY: IDEOLOGY, OPPORTUNISM, AND THE PERVERSION OF JUSTICE*, 63, 63, 69 (Alan E. Steinweis & Robert D. Rachlin eds., 2013).

<sup>380</sup> Roland Freisler, *Schutz von Rasse und Erbgut im werdenden deutschen Strafrecht* [Protection of Race and Genome in the Emerging German Criminal Law], 3 *ZEITSCHRIFT DER AKADEMIE FÜR DEUTSCHES RECHT* 142, 146 (1936).

<sup>381</sup> MICHAEL STOLLEIS, *THE LAW UNDER THE SWASTIKA: STUDIES ON LEGAL HISTORY IN NAZI GERMANY* 97 (Thomas Dunlap trans., 1998).

<sup>382</sup> KOELLREUTTER, *supra* note 292.

<sup>383</sup> *Id.* at 4.

<sup>384</sup> *Id.* at 37–38.

<sup>385</sup> *Id.* at 51–52.

<sup>386</sup> *Id.*

concluded that there were “interesting results” for Nazis to study in “the United States and the British dominions.”<sup>387</sup>

According to Whitman, another scholar of note, Detlef Sahm, published a book in 1936 entitled *The United States of America and the Problem of National Unity*.<sup>388</sup> Sahm also examined American race laws and interestingly pointed out their resemblance to the new laws of the Third Reich.<sup>389</sup> He emphasized that, while American law guaranteed certain groups political rights on paper, several racial groups were excluded from voting, including Blacks and American Indians.<sup>390</sup>

In conclusion, this Section firmly demonstrates that many German and Nazi scholars and academics had closely studied United States race laws by the mid-1930s. Without question, “Nazi lawyers put real effort into studying the law of the American states, in the search for what wisdom they had to provide.”<sup>391</sup>

#### D. Nuremberg Laws

This Article has frequently referenced the 1935 Nuremberg Laws. The following Section examines the Nuremberg Laws in depth, and draws comparisons with those American laws carefully studied by Nazi officials and influencers. The Nuremberg Laws were enacted in Nuremberg, Germany, by the Reichstag and announced by Hitler on September 15, 1935.<sup>392</sup> Hitler’s regime spent several years drafting and planning the code.<sup>393</sup> The Laws were broken down into three separate parts: (1) the Reich Citizenship Law; (2) the Law for the Protection of German Blood and German Honor; and (3) the Flag Law.<sup>394</sup>

The Citizenship and Blood laws formally established Nazi Germany’s open discrimination of and, ultimately, attempted extermination of the Jewish people. At their initial inception,

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<sup>387</sup> WHITMAN, *supra* note 1, at 145.

<sup>388</sup> DETLEF SAHM, *DIE VEREINIGTEN STAATEN VON AMERIKA UND DAS PROBLEM DER NATIONALEN EINHEIT* [THE UNITED STATES OF AMERICA AND THE PROBLEM OF NATIONAL UNITY] (1936).

<sup>389</sup> WHITMAN, *supra* note 1, at 67–68 (citing SAHM, *supra* note 388, at 98–100).

<sup>390</sup> WHITMAN, *supra* note 1, at 68 (citing SAHM, *supra* note 388, at 99–98).

<sup>391</sup> WHITMAN, *supra* note 1, at 80.

<sup>392</sup> DOCUMENTS ON THE HOLOCAUST: SELECTED SOURCES ON THE DESTRUCTION OF THE JEWS OF GERMANY AND AUSTRIA, POLAND, AND THE SOVIET UNION 77–79 (Yitzhak Arad et al. eds., 1981) [hereinafter DOCUMENTS ON THE HOLOCAUST].

<sup>393</sup> WHITMAN, *supra* note 1, at 24.

<sup>394</sup> *Id.* (noting that the Flag Law made the swastika the official symbol of the Nazi government); DOCUMENTS ON THE HOLOCAUST, *supra* note 392.

however, the new Nazi policies were intended to make conditions so unbearable for Jews in Germany that they would voluntarily emigrate.<sup>395</sup> As one commentator opined, “the Nuremberg laws did as much damage to Jewish life as the Nazi violence.”<sup>396</sup>

The Citizenship Law created a division between Reich citizens and German nationals. Jewish Germans lost their citizenship and became nationals with restricted political rights.<sup>397</sup> On November 14, 1935, the first regulation to enforce the Citizenship Law was issued, creating a “Jewish” status.<sup>398</sup> A Jew was any “person descended from at least three grandparents who are full Jews by race.”<sup>399</sup> Jews were barred from public office, the civil service, journalism, the stock exchange, and other professions.<sup>400</sup> By 1939, there were more than four hundred de-

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<sup>395</sup> See KAKEL, *supra* note 22, at 154–55; see also Nathan Stoltzfus, *Societal Influences on the Promulgation and Enforcement of the Nuremberg Laws*, 94 SOUNDINGS 375, 381 (2011) (explaining how the move towards genocide was accomplished in “stages”); PARKER, *supra* note 268, at 176 (noting that the “involuntary expatriation” of Jews became the next step).

<sup>396</sup> Richard D. Heideman, *Legalizing Hate: The Significance of the Nuremberg Laws and the Post-War Nuremberg Trials*, 39 LOY. L.A. INT'L & COMPAR. L. REV. 5, 15 (2017).

<sup>397</sup> KAKEL, *supra* note 22, at 154 (explaining that the Nuremberg Laws segregated the Jews according to a racial criteria and placed them under an alien status); DOCUMENTS ON THE HOLOCAUST, *supra* note 392, at 80 (“A Jew cannot be a Reich citizen.”). The United States did something similar in 1907 when it enacted a law punishing native-born citizens who married aliens by stripping them of citizenship. PARKER, *supra* note 268, at 151. *Cf.* Fong Yue Ting v. United States, 149 U.S. 698, 707 (1893) (upholding the federal government’s absolute and unqualified power to deport foreigners who had not been naturalized; by analogy, once Jews were no longer Germans citizens they could be subject to deportations at the Third Reich’s whim).

<sup>398</sup> DOCUMENTS ON THE HOLOCAUST, *supra* note 392, at 80.

<sup>399</sup> *Id.* at 80; RAPHAEL GROSS, CARL SCHMITT AND THE JEWS: THE “JEWISH QUESTION,” THE HOLOCAUST, AND GERMAN LEGAL THEORY 64–65 (Joel Golb trans., 2007). The United States long used, and still uses, Indian blood quantum to determine certain rights and the application of certain laws. See generally Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. REV. 1 (2006).

<sup>400</sup> STOLLEIS, *supra* note 381, at 17; PLATT & O’LEARY, *supra* note 211, at 76; Stoltzfus, *supra* note 395, at 382; Greg Bradsher, *The Nuremberg Laws*, PROLOGUE MAG. (Winter 2010), <https://www.archives.gov/publications/prologue/2010/winter/nuremberg.html> [<https://perma.cc/62A4-X9L3>]; DOCUMENTS ON THE HOLOCAUST, *supra* note 392, at 98, 115 (explaining how the Regulation for the Elimination of the Jews from the Economic Life of Germany, November 12, 1938, forbade Jews from operating retail stores, mail-order houses, or sales agencies or to carry on a trade); Moshe Zimmermann, *Foreword* to STOLLEIS, *supra* note 381, at vii, ix (noting that the first Nazi anti-Jewish law, the Law to Restore the Professional Civil Service, was enacted April 7, 1933, and introduced Jewish discrimination into the legal system).

crees, regulations, and amendments consigning Jews and other non-Aryans to the outer fringes of society.<sup>401</sup> By comparison, American states enacted, and the United States Supreme Court often approved, similar laws barring aliens from certain jobs, owning agricultural land, and from possessing other rights.<sup>402</sup>

The Nuremberg Blood Law criminalized marriages and sexual relations between Jews and Germans.<sup>403</sup> Though this concept, learned from American regulations, initially seemed too harsh, Nazis eventually embraced the idea. Except for the United States and South Africa, which criminalized premarital sex between members of different races, no other country in the world had imposed criminal sanctions on miscegenation.<sup>404</sup>

As this Article has already detailed, there is no question that American federal and state racial laws and policies were major topics of study and discussion by Nazi lawyers, scholars, and officials as they considered discriminatory legislation against Jews.<sup>405</sup> Despite the shock that statement may still invoke for some Americans, the evidence is clear and irrefutable.<sup>406</sup>

Professor Whitman convincingly established this position.<sup>407</sup> This Article will not repeat Whitman's argument verbatim. It will, however, briefly highlight a few examples to support his conclusion and this author's own that the Nazis embraced America's use of race and racial discrimination in immigration and naturalization laws, citizenship laws, and anti-miscegenation laws.

Whitman highlights the important June 5, 1934, meeting of seventeen Nazi scholars, Justice Ministry officials, and party employees.<sup>408</sup> This meeting opened with a review and discussion

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<sup>401</sup> PLATT & O'LEARY, *supra* note 211, at 80.

<sup>402</sup> *See, e.g., Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392, 396–97 (1927) (upholding a Cincinnati, Ohio, ordinance that prohibited aliens from operating pool rooms); *Terrace v. Thompson*, 263 U.S. 197, 217, 220 (1923) (upholding a Washington 1921 Alien Land Act prohibiting aliens from owning or leasing agricultural land); *Crane v. New York*, 239 U.S. 195, 198 (1915) (upholding a New York law that barred aliens from being employed on public works projects).

<sup>403</sup> Bradsher, *supra* note 400.

<sup>404</sup> WHITMAN, *supra* note 1, at 78–79.

<sup>405</sup> *Id.* at 29. *See also id.* at 5 (“It is even possible, indeed likely, that the Nuremberg Laws themselves reflect direct American influence.”).

<sup>406</sup> *See, e.g., id.* at 44–45 (citing and quoting *Mein Kampf*, demonstrating that when Hitler turned to citizenship issues he relied on the United States immigration laws of 1921 and 1924 and praised the United States as “the obvious ‘leader in developing explicitly racist policies of nationality and immigration’”).

<sup>407</sup> *See generally* WHITMAN, *supra* note 1.

<sup>408</sup> *Id.* at 1, 93–95.



of the extensive research materials on American race laws, prepared by the Justice Ministry specifically for the meeting.<sup>409</sup> American law was pivotal, and it had been brought to the attention of the Justice Ministry and Nazis by the research of Krieger and Kier.<sup>410</sup> The attendees debated the research memoranda and opined on whether American laws were relevant to Nazi policy goals or could be easily emulated.<sup>411</sup> The verbatim stenographic transcript of this meeting leaves no doubt that American laws were a major topic and discussed repeatedly by nearly all of the attendees.<sup>412</sup> Three major themes of American federal and state laws were presented in the scholarly materials prepared for the meeting and were analyzed and discussed at great length: (1) anti-miscegenation laws of thirty American states; (2) federal and state laws creating second-class citizens in the United States; and (3) American immigration and naturalization laws.<sup>413</sup>

The Nazis were especially intrigued by American anti-miscegenation laws. Such bans existed in America as early as 1691, and four American states had enacted such statutes as late as the early twentieth century.<sup>414</sup> At the June 1934 meeting, Nazi scholars read from the statutes<sup>415</sup> presented to them via an annotated list, no doubt the same two-page list created by Kier and published in the *National Socialist Handbook on Law and Legislation*.<sup>416</sup> Hardline Nazis present at the meeting wanted to adopt these policies immediately, but moderates pushed back,

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<sup>409</sup> *Id.* at 2.

<sup>410</sup> *Id.* at 96, 113. The Reich Minister of Justice, Franz Gürtner, presented the research materials his staff had prepared: "I possess here a thoroughly comprehensible synoptic presentation of North American race legislation . . ." *Id.* at 100. Whitman believes the transcript shows Krieger's influence because the "material" Gürtner quoted most likely came from Krieger's 1934 article. *Id.* at 117-18. A citation to Krieger's work was added to the redacted version of the meeting's transcript. *Id.* at 113-14. Whitman also alleges Krieger was "the German lawyer whose research did the most to shape Nazi understandings of America." *Id.* at 157.

<sup>411</sup> *Id.* at 1-2, 96.

<sup>412</sup> *Id.* at 4, 76, 94.

<sup>413</sup> *Id.* at 1-2, 12, 93-113, 142.

<sup>414</sup> *Id.* at 93-94 (showing that there is no doubt the drafters of the Nuremberg laws studied American anti-miscegenation laws, as the United States was the model).

<sup>415</sup> *Id.* at 12 (explaining that the thirty state regimes were "carefully studied, catalogued, and debated by Nazi lawyers"); *Id.* at 78 (stating that the Nazis could find no other anti-miscegenation laws in the world); *Id.* at 106, 112 (describing that Roland Freisler came to the meeting prepared to debate American law and had detailed knowledge of these laws and said the point was "race protection").

<sup>416</sup> *Id.* at 121.

believing it was too drastic of a legal change and, perhaps, too harsh for Germans in general to accept.<sup>417</sup> At the time, no country save for the United States imposed criminal sanctions on marriages beyond the usual punishments for bigamy and marriage by malicious deception.<sup>418</sup> Ultimately the Nuremberg Blood Law did enact an anti-miscegenation measure and criminalized marriage and extramarital intercourse between Jews and Germans. Whitman cites this debate around the Blood Law as the clearest example of direct Nazi engagement with American law.<sup>419</sup>

The attendees of the June 1934 meeting also discussed in depth the issue of second-class citizenship and Jim Crow laws in the United States.<sup>420</sup> An earlier document from April 1933, called the Prussian Memorandum, had already addressed what the Jim Crow laws could teach Nazi Germany and was used at the 1934 meeting.<sup>421</sup> Interestingly, Jim Crow laws and racial segregation were initially considered too harsh for the Nazis and too difficult to achieve in Germany.<sup>422</sup> But several Nazi scholars continued to advocate for second-class citizenship laws for Jews, citing the Jim Crow laws, long after the 1934 meeting.<sup>423</sup> Many wrote about these laws and noted the “devious pathways” America had used to produce second-class citizenship for Blacks, Puerto Ricans, Filipinos, Chinese, and Indians.<sup>424</sup> Other scholars also noted American restrictions on voting rights for some minority groups.<sup>425</sup> Much of the Nazi party was interested in creating a

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<sup>417</sup> *Id.* at 72, 76–77, 102, 112 (stating that Reich Minister Gürtner opposed criminalization).

<sup>418</sup> *Id.* at 78, 125–26 (explaining that Reich Minister Gürtner stated at the June 1934 meeting that the United States was the only model the Nazi lawyers had found).

<sup>419</sup> *Id.* at 76–77, 124–26. *See also id.* at 139–40 (“It was the American criminalization of racially mixed marriage that was the forerunner of the Blood Law.”).

<sup>420</sup> *Id.* at 2–3, 98.

<sup>421</sup> *Id.* at 103, 139.

<sup>422</sup> *Id.* at 86–87, 99.

<sup>423</sup> *Id.* at 11.

<sup>424</sup> *Id.* at 38–43, 57, 59–69, 158 (citing Krieger’s 1934 article and 1936 book for this point). In 1904, American Indian and Puerto Rican second-class citizenship had already been discussed in the German legal literature. BURT ESTES HOWARD, *DAS AMERIKANISCHE BÜRGERRECHT (AMERICAN CIVIL RIGHTS)* 35–38 (1904).

<sup>425</sup> MARK MAZOWER, *HITLER’S EMPIRE: HOW THE NAZIS RULED EUROPE* 584 (2008); WHITMAN, *supra* note 1, at 65, 67–68 (citing SAHM, *supra* note 388, at 98–100).

race-based form of second-class citizenship for Jews, and they found a model in the United States.<sup>426</sup>

With regard to the United States immigration and naturalization laws, Hitler himself “was full of praise for the fact that the [laws] excluded ‘undesirables’ on the basis of hereditary illness and race.”<sup>427</sup> The preeminent Nazi public lawyer of the early 1930s, Otto Koellreutter, devoted a long discussion to the American laws on immigration and naturalization in his 1933 book.<sup>428</sup> He noted many laws of the United States and the British dominions that banned Chinese immigrants and other “inferior elements” from immigrating.<sup>429</sup> He pointed out the United States’ use of national quotas, which led to the reduction of undesirable immigration and increased immigration from north-western European countries.<sup>430</sup>

Other Nazi radicals seized on the American examples on immigration and citizenship.<sup>431</sup> Immigration scholars agree this was not a surprise because “[t]he United States was the leader in developing explicitly racist policies of nationality and immigration.”<sup>432</sup> “The *National Socialist Handbook* did indeed describe America as the country that had achieved the ‘fundamental recognition’ of the historic racist mission that Nazi Germany was now called to fulfill.”<sup>433</sup>

As this Article explains, the June 1934 meeting was not the only interaction Nazi scholars and party officials had with American laws. The 1934 meeting, the reports on American law drafted for the meeting, and the authors discussed in detail above demonstrate that Germans devoted extensive time and efforts to studying and writing about the race laws of the United States.

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<sup>426</sup> WHITMAN, *supra* note 1, at 15–16, 18–19, 69 (warning it is a mistake to draw broad conclusions about the “direct influence of the American model on the [Nuremberg] Citizenship Law”).

<sup>427</sup> KÜHL, *supra* note 4, at 26 (quoting HITLER, *supra* note 5, at 439–40); WHITMAN, *supra* note 1, at 46–47 (noting that, in his second unpublished book, Hitler again depicted America as the racial model for Europe in regards the Chinese and Japanese).

<sup>428</sup> WHITMAN, *supra* note 1, at 51; STOLLEIS, *supra* note 381, at 78, 112.

<sup>429</sup> WHITMAN, *supra* note 1, at 51–52.

<sup>430</sup> *Id.*

<sup>431</sup> *Id.* at 71–72.

<sup>432</sup> FITZGERALD & COOK-MARTIN, *supra* note 208, at 7.

<sup>433</sup> WHITMAN, *supra* note 1, at 71. Whitman also concluded, though, that while the Nazis were influenced by American law in this field, there was no direct borrowing of United States immigration and naturalization laws in the Nuremberg Citizenship Law. *Id.*

From Adolf Hitler's 1924 *Mein Kampf* and onwards, Nazi scholars and policymakers took a great interest in American race law and engaged in detailed studies of America's immigration and naturalization laws, second-class citizenship laws, anti-miscegenation statutes, and United States Indian law. A Nazi lawyer who attended the 1934 meeting and prepared one of the reports for the Justice Ministry stated that "[w]hen one thinks of race law . . . one thinks of 'North America.'"<sup>434</sup> A German dissertation on the Nuremberg Laws, published in 1995, asserts America provided the Nazis with the "'classic example' of a country with racist legislation."<sup>435</sup>

Whitman states that, in the end, we will never know exactly how much influence the American models had on Nazis' thinking and the concrete laws they enacted. He claims, however, "what ultimately matters is that they knew that there *was* an American example, and indeed the example that they turned to first, and over and over again."<sup>436</sup> Clearly, "Nazi lawyers regarded America, not without reason, as the innovative world leader in the creation of racist law."<sup>437</sup>

#### *E. American Indian Law and Policies and the Nazis*

The Nazi scholars who most directly influenced the drafting of the Nuremberg Laws and other Nazi race policies were very familiar with American Indian law and federal policies regarding American Indian nations. Heinrich Krieger was arguably the most knowledgeable Nazi scholar in the area of federal Indian law. He became intimately familiar with the topic during his year of study at in Arkansas and his research at the Library of Congress. In addition to his 1934 article and 1936 book, discussed above, he published a 1935 article in the *George Washington Law Review* exclusively on the history and governance of American Indians in the United States. A few of his major themes and conclusions emphasize the lessons he learned from federal Indian law and the ways these insights were applied to Nazi policies affecting Jews and other minorities.

In his 1935 article, Krieger discussed the place of American Indian nations in the United States Constitution, explaining that

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<sup>434</sup> *Id.* at 96–97, 160 (quoting Fritz Grau).

<sup>435</sup> *Id.* at 3–4.

<sup>436</sup> *Id.* at 131.

<sup>437</sup> *Id.* at 5.

Congress has power over commerce "with the Indian Tribes."<sup>438</sup> He highlighted the non-citizenship status of American Indian people under the Fourteenth Amendment, and noted that American Indians were instead citizens of their own sovereign nations.<sup>439</sup> He recognized that, as neither federal nor state citizens, American Indians were only United States nationals and did not enjoy the privileges of due process of law or possess any relevant natural rights.<sup>440</sup> Krieger also noted the tribal nations' subservient position vis-à-vis the United States and their dependence on the will of the federal government.<sup>441</sup>

Significantly, Krieger focused on the fact that federal American Indian law was a system unique from the general law.<sup>442</sup> He asked, rhetorically, where the authorization for Congress to make this special body of law came from: "What [was] the legal character of that power which undertakes to regulate a part of the people in the United States in an *extra*-constitutional way?"<sup>443</sup> He answered that American Indians had been placed under special federal authority, protection, and dependency "because [the American Indian] is a person who, for racial reasons, especially in consequence of the development of Indian law, is in need of the benefits of such special power."<sup>444</sup> Consequently, the United States treated Indians as lesser persons than the average United States citizen because of their race and their blood, not because they lived in Indian territory or some specific part of the United States.<sup>445</sup> Krieger concluded that some type of race law was necessary to subject Indians to a distinct legal regime.

Krieger's research and opinions on Indian law had direct relevance to how the Nazis wanted to apply law to Jews. All of his conclusions regarding United States Indian law were of immense interest and were welcomed during the drafting of Nazi

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<sup>438</sup> Krieger, *supra* note 316, at 280 (quoting U.S. CONST. art. I, § 8, cl. 3).

<sup>439</sup> *Id.* at 283–84 (citing *Elk v. Wilkins*, 112 U.S. 94, 101–02 (1884), which held American Indians were not made United States citizens by the Fourteenth Amendment).

<sup>440</sup> *Id.* at 303.

<sup>441</sup> *Id.* at 281–82, 290 (discussing *United States v. Kagama*, 118 U.S. 375, 378 (1886); *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 583 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832)).

<sup>442</sup> *Id.* at 279.

<sup>443</sup> *Id.* at 300, 307.

<sup>444</sup> *Id.* at 304.

<sup>445</sup> *Id.* at 303.

laws and policies. They provided further justifications for treating Jewish people differently from other Germans. First, Krieger claimed that United States Indian law was racially based. The specialized law grew out of the United States' plenary power over American Indians and from some Congressional power, resembling a police power, to treat American Indians differently as was necessary for their welfare and protection.<sup>446</sup>

Second, he asked whether Congress had the power to abolish the American Indians' rights of free movement and to impose heavy penalties on them.<sup>447</sup> Third, he rejected the possibility that federal power over Indians and Indian nations arose from their political status as governments recognized in the Constitution, contrary to what the United States Supreme Court held multiple times in the 1970s.<sup>448</sup> Rather, Krieger said "the Indian law is exactly what its name indicates: a *racial* law; and there is no way out of the *extra-constitutional* situation" and, furthermore, "[t]he proper nature of the tribal Indians' status is that of a racial group placed under a special police power of the United States."<sup>449</sup>

Krieger also dedicated a portion of his 1936 book to a discussion of racially-motivated American Indian law.<sup>450</sup> In addition to repeating much of his 1935 article's conclusions,<sup>451</sup> he also made important new findings that aligned with Nazi plans for the Jewish people. He addressed how the United States government determined who was an American Indian and how American Indian status fell within a racial categorization.<sup>452</sup> He repeatedly mentioned issues of Indian and Black blood quantum and stated "whites" or "Caucasians" only included persons with zero traces of Indian blood.<sup>453</sup> This American "one-drop rule," however, was

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<sup>446</sup> *Id.* at 306.

<sup>447</sup> *Id.* at 305. Krieger's line of questioning was particularly relevant to the actions Nazis were contemplating taking towards Jews in the mid-1930s.

<sup>448</sup> *Id.* at 306–07.

<sup>449</sup> *Id.* at 304, 307.

<sup>450</sup> Chapter four is entitled "Indian Laws" and covers a wide range of federal law regarding American Indians, American Indian property rights, and federal powers over American Indians. *See* KRIEGER, *supra* note 312, at 110–45. The book's Bibliography has 140 entries, twelve of which, or seven percent, are articles and books on American Indian issues. *See id.* at 350–55.

<sup>451</sup> *See, e.g., id.* at 29, 62, 110–14, 121–22, 131–32, 321–22.

<sup>452</sup> *Id.* at 116–17, 148–50.

<sup>453</sup> *Id.* at 153.

ultimately too harsh for the Nazis to adopt in the Nuremberg Laws.<sup>454</sup>

Krieger noted that certain federal laws applied only to Indians and even, for example, restricted their rights to contract with whomever they wished.<sup>455</sup> He detected that it was solely up to Congress to decide when to end its guardianship relationship over Indians.<sup>456</sup> He set out how the United States had slowly begun to grant citizenship to some American Indians. He noted "full-blood" Indians were the last to receive relief from the federal guardianship powers.<sup>457</sup> It was noteworthy to Krieger that American Indians received citizenship only hesitantly, sixty years after blacks.<sup>458</sup>

Lastly, Krieger discussed the American state laws regarding Indians and miscegenation. He described state statutes primarily from Mississippi, Arizona, New Mexico, South Dakota, Oklahoma, Oregon, and Georgia.<sup>459</sup> He analyzed a Virginia law that defined a person as an Indian based on their amount of Indian blood, if they lived on a reservation, and if they had less than one-sixteenth Black blood.<sup>460</sup> He remarked that three states even prohibited Indians from marrying Black Americans.<sup>461</sup> He then, perhaps copying Herbert Kier, printed a table of the thirty American state laws prohibiting interracial marriages, including with American Indians.<sup>462</sup>

Krieger spent significant time and effort researching and analyzing United States Indian law, concluding, accurately, that they were built in racism. A great deal of his research and scholarship applied to Nazi objectives and policies against Jews, and he easily communicated this information to Nazi party officials and scholars. According to Whitman, Krieger was the most influential German scholar in the process of enacting the

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<sup>454</sup> See WHITMAN, *supra* note 1, at 127–28.

<sup>455</sup> KRIEGER, *supra* note 312, at 125–26, 128.

<sup>456</sup> *Id.* at 124.

<sup>457</sup> *Id.* at 119.

<sup>458</sup> *Id.* at 321–22.

<sup>459</sup> *Id.* at 121, 151, 153.

<sup>460</sup> *Id.* at 153. Krieger delved deeply into state and federal legal regimes that considered minority blood quantum and noted states looked to descent and fractions of blood to define minorities.

<sup>461</sup> *Id.* at 172–73.

<sup>462</sup> *Id.* at 173–79 (analyzing state statutes, constitutions, and cases). See also *id.* at 154–56, 163–64 (analyzing Supreme Court cases about Indians and civil rights in general).

Nuremberg Laws.<sup>463</sup> Certainly, much of that influence encouraged a concentration on American Indian law.

In addition to Krieger, other Nazi scholars researched and commented on aspects of Indian law. Herbert Kier's list of American state anti-miscegenation statutes included six states that explicitly banned Whites from marrying Indians and one which implicitly impacted Indian marriages: Arizona, Georgia, Louisiana, North Carolina, Oregon, South Carolina, and Virginia.<sup>464</sup>

In his pamphlet, Johann von Leers also addressed several American Indian law issues. Leers analyzed the thirty American state anti-miscegenation statutes banning Whites from marrying Blacks and several banning Whites from marrying Indians.<sup>465</sup> Leers specifically analyzed four states' laws that banned White and Indian marriages: Arizona, Nevada, North Carolina, and South Carolina.<sup>466</sup> In 1942, Leers published an article in a weekly journal that likely reached a broader German audience.<sup>467</sup> He explained how Euro-Americans treated Native Americans from the beginning of colonization, and he set out the miniscule percentage of Indians still remaining in each state. He then

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<sup>463</sup> See WHITMAN, *supra* note 1, at 115–17.

<sup>464</sup> ARIZ. REV. CODE § 2166 (1928) (“All marriages of white persons with negroes, mulattoes, Indians or Mongolians are declared illegal and void.”); GA. CODE § 2941 (1926), Supp. 1930, § 2177(1)–(20) (“It shall be unlawful for a white person to marry any save a white person.”); 1920 LA. ACTS 366 (“[M]arriage between persons of the Indian race and persons of the colored and black race is prohibited, and the celebration of all such marriages is forbidden and such celebration carries with it no effect, and is null and void.”); N.C. CONST. art. XIV, § 8; N.C. CONSOL. STAT. (1919), ch. 50, art. 1, § 3 (“All marriages between a white person and a[n] . . . Indian, or between a white person and a person of . . . Indian descent to the third generation . . . shall be void.”); OR. CODE § 14-840 (1930) (“[I]t shall not be lawful within this State for any white person, male or female, to intermarry with . . . any person having more than one-half Indian blood; and all such marriages or attempted marriages shall be absolutely null and void.”); S.C. CONST., art. III, § 33; S.C. CIV. CODE § 5536 (1922) (“It shall be unlawful for any white man to intermarry with any woman of . . . the Indian . . . race[ ], . . . or for any white woman to intermarry with any person other than a white man, or for any . . . Indian or mestizo to intermarry with a white woman; and any such marriage, or attempted marriage, shall be utterly null and void and of none effect.”); VA. CODE §§ 4540, 4546, 5087, 5099 (1930) prohibiting marriage between any “person having one-sixteenth or more of Indian blood” and any “white person,” defined as having “no trace whatsoever of any blood other than Caucasian”).

<sup>465</sup> Leers, *supra* note 371, at 87–90.

<sup>466</sup> *Id.* at 85 (citing COMP. L. NEV., An Act to Prohibit Marriages and Cohabitation of Whites with Indians, Chinese, Mulattoes, and Negroes §§ 4351, 4353 (1861) (repealed 1957)).

<sup>467</sup> Johann von Leers, *Rassenrecht in U.S.A. [Racial Laws in U.S.A.]*, 68 DEUTSCHE MEDIZINISCHE WOCHENSCHRIFT [GERMAN MEDICAL WEEKLY JOURNAL] 967 (1942).



analyzed several state statutes that vigorously restricted marriages between whites and individuals found to have any trace of Indian heritage.<sup>468</sup> Leers also recognized certain racial features of American Indians. He described various characteristics he assigned to Indians and then devalued those traits in comparison with physical characteristics more typical of white people.<sup>469</sup> There were, however, several statutes and cases that Krieger, Kier, and Leers either overlooked or chose not to mention.<sup>470</sup>

One final German scholar is also noteworthy. In his 1904 German-language book, *American Civil Rights*, Burt Howard informed his readers of the existence of Native American nations who were allegedly independent political actors under the United States Constitution.<sup>471</sup> He claimed these nations could self-regulate to some extent and had entered numerous treaties with the United States.<sup>472</sup> But they still received the protection of the United States as wards and could only use their lands with the approval of the United States.<sup>473</sup> He elaborated on the limited property rights of American Indians and, significantly, noted Indians could not be naturalized as American citizens.<sup>474</sup> As of 1887, he correctly perceived some Indians were being granted citizenship if they met certain requirements.<sup>475</sup> Howard concluded that the United States President could make Indians citizens even against their will.<sup>476</sup> He also addressed Indians' rights in his chapter entitled "Civil Rights of Indians" and

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<sup>468</sup> *Id.* at 267–68.

<sup>469</sup> *Id.* at 268.

<sup>470</sup> See ME. REV. STAT. tit. 5, § 2 (1871) (repealed 1883) ("No white person shall intermarry with a [N]egro, [I]ndian, or [M]ulatto; and no insane person or idiot shall be capable of contracting marriage."); MASS. REV. STAT. tit 4, ch. 75, § 5 (1836) (repealed 1843) (stating the same using nearly identical language); R.I. GEN. STAT. tit. 20, ch. 149, § 6 (1872) (repealed 1881); WASH. TERR. STAT., An Act to Regulate Marriages §§ 2–3 (1866) (repealed 1868); IDAHO TERR. LAWS, An Act to Prohibit Marriages and Cohabitation of Whites with Indians, Chinese and Persons of African Descent § 1 (1864) (repealed 1959); see also *Follansbee v. Wilbur*, 44 P. 262, 263 (Wash. 1896); *Bailey v. Fiske*, 34 Me. 77, 78 (Me. 1852); *State v. Pass*, 121 P.2d 882, 882 (Ariz. 1942); *In re Walker's Estate*, 46 P. 67, 68–69 (Ariz. Terr. 1896).

<sup>471</sup> HOWARD, *supra* note 424, at 31, 35–36, 35 nn.2–3, 36 n.1 (analyzing several United States Supreme Court cases).

<sup>472</sup> *Id.* at 35–36.

<sup>473</sup> *Id.* at 31, 35–36, 35 nn.2–3, 36 n.1.

<sup>474</sup> *Id.* at 36–38, 37 nn.1–2, 38 n.2 (discussing federal statutes and law review articles pertaining to the government's ability to make American Indians United States citizens).

<sup>475</sup> *Id.* at 37 & n.1.

<sup>476</sup> *Id.* at 38 & n.2 (comparing United States law review articles, statutes, and cases).

correctly surmised that individual Indians were under the civil and criminal jurisdiction of the United States.<sup>477</sup>

The preceding discussion sheds even more light on the potential influence federal Indian law and policies had on the Third Reich. The research of scholars like Krieger, Kier, Leers, and Burt demonstrated to Nazi officials how the United States applied racially motivated theories of eugenics, citizenship, and miscegenation to discriminate against Indians. In turn, this knowledge informed Nazis about possible strategies for handling Jews, Russians, and Slavs, peoples viewed as inferior and, thus, comparable to American Indians. As many Germans were already somewhat aware of the history of the American Frontier West and the treatment of American Indians, it is no wonder that such natural analogies were used as teaching tools and justifications for Nazi race laws and tactics in the German East.

#### IV. CONCLUSION

The interests of Adolf Hitler, Nazi scholars, jurists, lawyers, and party officials essentially compelled the careful study, comparison, and, arguably, adoption of United States Indian and race laws. As practitioners in a comparative law legal tradition, German lawyers were accustomed to analyzing foreign law with an eye to making comparisons and learning new ideas.<sup>478</sup> Though the Nazis were unlikely to simply copy American race laws, for some reason they were intensely invested in studying and learning from it. Perhaps they were interested in a pure comparative law analysis, or identifying legal, scientific, historical, and practical principles to emulate. Or they simply sought justifications for enacting race laws and policies by relying on American law. The fact that the United States was simultaneously a democratic, first-world, “civilized” nation, and a nation that engaged in colonialism, racism, and, arguably, ethnic cleansing was, understandably, very intriguing to Hitler and the Nazis.

How much real influence American-Indian law and other United States race-based policies had on actual Nazi policy development is impossible to determine. This Article has attempted to show, however, that there is no question Nazi scholars and officials paid serious attention and gave careful

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<sup>477</sup> *Id.* at 37 & nn.1–2.

<sup>478</sup> WHITMAN, *supra* note 1, at 126 (“Ever since the second half of the nineteenth century,” German governments have not enacted legislation unless it was “preceded by extensive comparative legal research.”).

consideration to the United States when they drafted and enacted the Third Reich's racially oriented agenda. Surely, "research unmistakably reveals . . . that the Nazis *did* find precedents and parallels and inspirations in the United States."<sup>479</sup>

Beyond the legal and historical issues analyzed here, and any possible conclusions about the impact of United States race laws and federal Indian law on Nazi Germany, what is the message of this Article? What can we learn today from this analysis? Is the message merely that we should study the past so, hopefully, we are not "condemned to repeat it"?<sup>480</sup>

Or is the message more ominous? Are we sure to repeat it because, as the Bible says, "man has dominated man to his harm"?<sup>481</sup> There are today worrisome signs around the world that human society has not learned important lessons from the history of Nazi and United States race policies. The chants of "blood and soil" and "Jews will not replace us" from the Neo-Nazi march in Charlottesville, Virginia, on August 11, 2017, should send chills through us all.<sup>482</sup> The apparent return of religious and national discriminatory factors in recent United States immigration policies should give us pause.<sup>483</sup> And a July 2019 statement by Wyoming's Congresswoman about a court decision concerning grizzly bears, that the American Indian plaintiffs are "radical environmentalists intent on destroying our Western way of life," was hardly encouraging.<sup>484</sup>

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<sup>479</sup> *Id.* at 10.

<sup>480</sup> GEORGE SANTAYANA, *THE LIFE OF REASON OR THE PHASES OF HUMAN PROGRESS: INTRODUCTION AND REASON IN COMMON SENSE* 284 (1906).

<sup>481</sup> *Ecclesiastes* 8:9 (New World).

<sup>482</sup> Yair Rosenberg, "*Jews Will Not Replace Us*": *Why White Supremacists Go After Jews*, WASH. POST (Aug. 14, 2017, 10:03 AM), <https://www.washingtonpost.com/news/acts-of-faith/wp/2017/08/14/jews-will-not-replace-us-why-white-supremacists-go-after-jews/> [<https://perma.cc/FTV9-Z4E3>]; Meg Wagner, "*Blood and Soil*": *Protesters Chant Nazi Slogan in Charlottesville*, CNN (Aug. 12, 2017, 7:10 PM), <https://www.cnn.com/2017/08/12/us/charlottesville-unite-the-right-rally/index.html> [<https://perma.cc/U5NS-ABQ7>].

<sup>483</sup> Zolan Kanno-Youngs, *Trump Administration Adds Six More Countries to Travel Ban*, N.Y. TIMES (Feb. 3, 2020), <https://www.nytimes.com/2020/01/31/us/politics/trump-travel-ban.html> [<https://perma.cc/HD34-2C4J>]; Adam Liptak & Michael D. Shear, *Trump's Travel Ban Is Upheld by Supreme Court*, N.Y. TIMES (June 26, 2018), <https://www.nytimes.com/2018/06/26/us/politics/supreme-court-trump-travel-ban.html> [<https://perma.cc/DW4Z-LP33>].

<sup>484</sup> *Compare* Press Release, Wyoming Congresswoman Liz Cheney, Statement on Relisting of the Yellowstone Grizzly Bear (July 30, 2019), <https://cheney.house.gov/2019/07/30/cheney-statement-on-relisting-of-the-yellowstone-grizzly-bear/> [<https://perma.cc/DW58-3UY7>], with Alex Kasprak, *Did U.S. Rep. Cheney Accuse Native Tribes of "Destroying Our Western Way of Life"?*, SNOPE (Aug. 2, 2019), <https://www.snopes.com>

What is the message then? Euro-Americans and the United States pursued ethnic cleansing and even genocidal actions against the Indigenous peoples and nations in North America. They enacted race-based laws and denied minorities basic rights. The Nazis did the same, and far worse, against Jews and other peoples. Will humans and our human governments learn from this history? One certainly hopes so, but who knows?<sup>485</sup> We might not be able to answer this question, but, surely, everyone is better off studying and acknowledging these past tragedies so that at least we stand a chance to avoid repeating them.

In closing: how intriguing, and, at the same time, how profoundly disturbing and unsettling, that American race laws and policies, played a major role, some role, or any role at all, in the Nazi formulation of its racist agenda, regime, and genocide.

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.com/fact-check/our-western-way-of-life/ [https://perma.cc/W8NV-YDMN] (finding the allegation “Mostly True” because all the plaintiffs were either Indian nations, Indian individuals, or Indian organizations).

<sup>485</sup> Marc Santora, *75 Years After Auschwitz Liberation, Worry That “Never Again” Is Not Assured*, N.Y. TIMES (Jan. 25, 2020), <https://www.nytimes.com/2020/01/25/world/europe/auschwitz-liberation-75th-anniversary.html> [https://perma.cc/HS45-VH6H].