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The Nazi Analogy in Japanese American Civil Rights Discourse

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THE NAZI ANALOGY IN JAPANESE AMERICAN CIVIL RIGHTS DISCOURSE*

ERIC L. MULLER**

TABLE OF CONTENTS

| | |
|--|-----|
| I. THE PERSISTENT “CONCENTRATION CAMP” DEBATE | 97 |
| II. THE NAZI ANALOGY IN WARTIME DISCOURSE ON JAPANESE AMERICAN RIGHTS | 106 |
| III. THE HOLOCAUST, CIVIL RIGHTS, AND AMERICAN EXCEPTIONALISM .. | 114 |

INTRODUCTION

On Saturday, April 25, 1942, 852 people from the German city of Würzburg and its environs boarded trains heading east under armed guard. The passengers had been forced from their homes because they were Jewish. They had already lost much of their property to rapacious neighbors. They had been allowed to take with them to the train station only what they could carry. At their destination they faced confinement.¹

The next day, Sunday, April 26, 1942, almost 6,000 miles away, a group of 800 people from the American city of Santa Monica boarded buses heading east under armed guard.² They had been forced from their homes because they were of Japanese ancestry. They too had already lost much of their

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¹ This deportation is described and photographically depicted in STAATLICHE ARCHIVE BAYERN, *WEGE IN DIE VERNICHTUNG. DIE DEPORTATION DER JUDEN AUS MAINFRANKEN 1941-1943* (2003). It is also described in Eric L. Muller, *Of Nazis, Americans, and Educating Against Catastrophe*, 60 *BUFF. L. REV.* 323, 330–32 (2012).

² *Japanese Exodus from Los Angeles Goes Forward*, *L.A. TIMES*, April 28, 1942.

THE NAZI ANALOGY

property to rapacious neighbors. They too had been allowed to take with them only what they could carry. At their destination they too faced confinement.

I am anxious as I draw this analogy between the World War II deportations of German Jews and Japanese Americans.³ The enormity and mechanization of the Nazi genocide dwarf anything placed alongside it. The abjectness of Nazi evil and the scope of Jewish suffering eclipse everything in their shadows. To compare anything to the Holocaust invites the prompt and derisive accusation of *reductio ad Hitlerum* that is so effective at ending discussion.⁴

This anxiety has stalked academic and popular discussion of the wartime removal and imprisonment of Japanese Americans for decades. While community activists and scholars have succeeded in establishing this program as one of America's biggest civil rights violations rather than the justified military measure most Americans deemed it during and after the war,⁵ one strategy has repeatedly encountered resistance. It is a linguistic strategy. During the war, many people in the United States referred to the government's ten confinement sites for Japanese Americans as "concentration camps." Today, for most Americans, the term "concentration camp" calls up images of Auschwitz.⁶ Seeking to strip the Japanese American camps of any veneer of pleasantness, advocates and scholars have increasingly come to call them "concentration camps" rather than the euphemistic "assembly centers" and "relocation centers" of government

³ In this Essay I will refer to the affected group as "Japanese Americans," even though that is technically an incorrect (or at least incomplete) description. Roughly one third of those affected were not American nationals; they were Japanese resident aliens. *See* WAR RELOCATION AUTHORITY, *THE EVACUATED PEOPLE: A QUANTITATIVE DESCRIPTION* 96 (1946).

⁴ LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 42 (1953).

⁵ *Gallup Vault: WWII-Era Support for Japanese Internment*, GALLUP (Aug. 31, 2016), <https://news.gallup.com/vault/195257/gallup-vault-wwii-era-support-japanese-internment.aspx>.

⁶ Auschwitz, in what is now southern Poland, operated between 1940 and 1945 as the largest of the German concentration camps and extermination centers. *See* *Auschwitz*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/auschwitz>.

parlance.⁷ And this effort to restore the common colloquial usage has triggered periodic waves of conflict with people who see it as an attempt to establish a false and insulting equivalence.

Today the conflict stands largely, even if still a bit uncomfortably, resolved. Those who call the Manzanar Relocation Center⁸ or the Heart Mountain Relocation Center⁹ a “concentration camp” typically make clear that they are not trying to invoke Nazism. They emphasize that the problem is one of semantic change over time, with the connotation of “death camp” replacing the original meaning of the term “concentration camp” as the world came to understand the horrors of Auschwitz.

These arguments about changed meaning have successfully resolved the conflict over the term “concentration camp.” But they have had an unfortunate side-effect. They have masked the important fact that in the early 1940s there actually was a civil rights discourse that dared to compare American policies towards Japanese Americans with Germany’s contemporaneous policies towards Jews. In judicial filings and in newspapers between 1942 and 1945, critics and observers of the mass removal and imprisonment of Japanese Americans invoked the tactics of the Nazis and the deprivations visited on German Jews. Not surprisingly, this rhetorical strategy ruffled official feathers, and did so even though the horrors of Auschwitz were not yet widely known.

This essay unearths the analogies to Nazi policies that advocates for Japanese American civil rights deployed even while the Nazi depredations were ongoing. It shows that what we now call the Holocaust was the stuff of civil rights conversation in the United States, not just years after the Holocaust ended but while it was happening. It also shows that Nazi policies

⁷ The “assembly centers” were the temporary camps in which Japanese Americans were placed for the summer of 1942; the “relocation centers” were the permanent camps to which they were removed in the late summer of 1942.

⁸ Manzanar, located in California’s Owens Valley, housed some 10,000 Japanese Americans between 1942 and 1945. See *Manzanar*, DENSHO ENCYCLOPEDIA, <https://encyclopedia.densho.org/Manzanar/>.

⁹ Heart Mountain, located in northwest Wyoming, housed some 10,000 Japanese Americans between 1942 and 1945. See *Heart Mountain*, DENSHO ENCYCLOPEDIA, <https://encyclopedia.densho.org/Heart%20Mountain>.

THE NAZI ANALOGY

and practices served as a touchstone for public discussion of the civil rights of Asian Americans, and not just African Americans. And in doing these things, it sheds new light on an enduring exceptionalism in America's understanding of its own civil rights history, one that insists the nation is immune from the repressive ills that afflict other countries.

I. THE PERSISTENT "CONCENTRATION CAMP" DEBATE

On February 19, 1942, President Franklin Roosevelt set aside Justice Department objections and signed an executive order giving the military the power to uproot any person from zones it might create in the United States.¹⁰ The military designated the entire West Coast as such a zone and removed every person of Japanese ancestry, citizens and noncitizens alike.¹¹ A premise of racial disloyalty underlay the decision.¹² It is no longer seriously contended that this move was a military necessity. Rather, racism and war hysteria were the grounding for the whole program of mass curfew, removal, and detention.¹³

Without charges, proof, or hearings, some 120,000 people lost most of their worldly goods to forced sale or abandonment and spent upwards of three years in barbed wire enclosures the government euphemistically called "assembly" and "relocation" centers.¹⁴ While none of the camps saw the cruelty and disregard for prisoners' wellbeing that marked even the most benign Nazi camp, they were uncomfortable, repressive confinement sites in

¹⁰ Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 25, 1942), 3 C.F.R. § 1092 (Cum. Supp. 1943). On the Justice Department's objections, see PETER IRONS, *JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES* 51–62 (1983).

¹¹ See JOHN DEWITT, *FINAL REPORT: JAPANESE EVACUATION FROM THE WEST COAST, 1942* 15, 36 (1943), <https://archive.org/details/japaneseevacuati00dewi/>

¹² In justifying the decision, Lieutenant General John DeWitt, the commander who ordered it, asserted that "[t]he Japanese race is an enemy race." *Id.* at 34.

¹³ This was the conclusion of a blue-ribbon panel appointed by the United States Congress to investigate the episode and make recommendations about possible redress. See COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS* 18 (1997).

¹⁴ A comprehensive account is available in *id.* at 47–184.

barren and desolate places.¹⁵ Japanese Americans lived lives of idleness and often despair under the eyes of armed sentries in guard towers. Tens of thousands of people shouldered the unjust stigma of guilt by ethnicity.

This enduring shame was among the factors that led most of those whom the government had unjustly imprisoned to say little in the years after their release about the places where they had been confined.¹⁶ When the former prisoners referred to the sites at all, they simply called them “camp.”¹⁷ Their community understood what “camp” was. No modifier—“concentration” or any other—was needed.

In the ferment of the late 1960s, some in the Japanese American community wanted to step out from under the shadow of stigma and shake off the prevalent belief that their imprisonment had been a justified military necessity rather than a racist injustice.¹⁸ One of their strategies was to reclaim the historically authentic term “concentration camp” in speaking and writing about their sites of confinement.¹⁹ This opened a controversy about terminology that would flare up repeatedly for decades.

The first of these conflicts arose early in 1972. Two Japanese American groups applied to the California State Parks and Recreation Department to designate the site of the Manzanar Relocation Center as a state historic landmark.²⁰ They asked for the installation of a bronze plaque at the site

¹⁵ An outstanding visual depiction of one of the camps is the collection of photographs by prisoner Bill Manbo in *COLORS OF CONFINEMENT: RARE KODACHROME PHOTOGRAPHS OF JAPANESE AMERICAN INCARCERATION IN WORLD WAR II* (Eric L. Muller ed., 2012).

¹⁶ See Donna K. Nagata, Jackie H.J. Kim and Teresa U. Nguyen, *Processing Cultural Trauma: Intergenerational Effects of the Japanese American Incarceration*, 71 *J. SOC. ISSUES* 356, 360, 363, 365 (2015).

¹⁷ Sue Konitomo Embrey, *From Manzanar to the Present: A Personal Journey*, in *LAST WITNESS: REFLECTIONS ON THE WARTIME INTERNMENT OF JAPANESE AMERICANS* 177 (Erica Harth ed., 2001).

¹⁸ See *id.* at 176.

¹⁹ See Aiko Herzig-Yoshinaga, *Words Can Lie or Clarify: Terminology of the World War II Incarceration of Japanese Americans*, NAT'L PARK SERV. HISTORY ELECTRONIC LIBRARY 2–4 (2009), <http://npshistory.com/publications/incarceration/words-can-lie-or-clarify.pdf>.

²⁰ ALICE YANG MURRAY, *HISTORICAL MEMORIES OF THE JAPANESE AMERICAN INTERNMENT AND THE STRUGGLE FOR REDRESS* 268 (2008) (describing the conflict to designate Manzanar as a state historic landmark).

THE NAZI ANALOGY

reciting that “[f]rom war hysteria, racism, and economic greed one hundred ten thousand persons of Japanese ancestry were directed by Presidential Order on February 19, 1942 to leave their homes and to relocate to America’s concentration camps.”²¹ The State Advisory Committee to the Department of Parks and Recreation approved the landmark designation but objected to the language of the plaque—in particular, to the words “concentration camps.”²² According to Sue Konitomo Embrey, a leader of one of the Japanese American groups seeking the designation, the advisory committee maintained that the term “conjures up the horrible memories of Hitler and his countrymen” and should “refer only to the camps in Europe.”²³ The committee counter-proposed language for the plaque that, among other things, removed “racism” and “economic greed” entirely and replaced “concentration camps” with “relocation centers,” the euphemism used by the agency that ran the camps, the War Relocation Authority (WRA).²⁴ This was unacceptable to the Japanese American groups. Only in response to intervention from state legislators did the Parks and Recreation Department relent and agree to a compromise on the language.²⁵ In 1973, the department installed a plaque using both terms—“relocation centers” and “concentration camps”—at Manzanar.²⁶

Manzanar became the site of another skirmish in the “concentration camp” battle in 1996, when the National Park Service began planning for

²¹ *Id.* at 268.

²² *Id.*

²³ Sue Kunitomi Embrey, *From Manzanar to the Present*, in *LAST WITNESSES: REFLECTIONS ON THE WARTIME INTERNMENT OF JAPANESE AMERICANS* 167, 178 (Erica Harth ed., 2003).

²⁴ MURRAY, *supra* note 20, at 269.

²⁵ *Id.* at 270, 273.

²⁶ *Id.* at 275. The final language read as follows: “In the early part of World War II, 110,000 persons of Japanese ancestry were interned in relocation centers by Executive Order 9066, issued on February 19, 1942. Manzanar, the first of ten such concentration camps, was bounded by barbed wire and guard towers, confining 10,000 persons, the majority being American citizens. May the injustices and humiliation suffered here as a result of hysteria, racism, and economic exploitation never emerge again.” *Id.* at 274–75. Precisely the same conflict arose a few years later at the site of the Tule Lake camp in far northern California, with essentially the same resolution. See Charles Hillinger, *What Makes a Concentration Camp?*, L.A. TIMES, July 23, 1979.

interpretive facilities there.²⁷ Local residents flooded newspapers with letters accusing the government of “America-bashing,”—so many letters on both sides of the question that the local newspaper stopped printing them.²⁸ Much of the energy centered on the historical plaque placed in 1973 and its use of the term “concentration camp.” Vandals hacked and stained the plaque and ground off the first “c” in the term.²⁹ A World War II veteran phoned the site superintendent to inform him “that he had driven 200 miles to urinate on the historical marker.”³⁰

Perhaps the saddest of the disputes over the term “concentration camp” arose two years later. National Park Service officials decided to bring to Ellis Island an exhibit on Japanese American removal and imprisonment that the Japanese American National Museum (JANM) in Los Angeles had created and displayed for a year in the mid-1990s.³¹ The exhibit, entitled “America’s Concentration Camps: Remembering the Japanese-American Experience,” triggered no controversy in Los Angeles, but the reaction in New York in 1998 was more turbulent.³² Anticipating controversy, the superintendent of the Ellis Island site wrote to the exhibit’s curators at JANM that “because ‘concentration camps’ today connotes death camps, the ‘very large Jewish community’ in New York City ‘could be offended by or misunderstand’ the title.”³³ She followed that letter with another two weeks later in which she explained that Ellis Island would not host the exhibit unless the words “concentration camp” were removed from its title.³⁴

The exhibit’s curators objected to this demand. “We need to call [the camps] what they were,” the senior curator, Karen Ishizuka, was quoted as

²⁷ See Martin Forstenzer, *Bitter Feelings Still Run Deep at Camp*, L. A. TIMES, Apr. 4, 1996 at A3, <https://www.latimes.com/archives/la-xpm-1996-04-04-mn-54883-story.html>.

²⁸ See *id.*

²⁹ See *id.*

³⁰ *Id.*

³¹ See Somini Sengupta, *What Is a Concentration Camp? Ellis Island Exhibit Prompts a Debate*, N.Y. TIMES (Mar. 8, 1998), <https://www.nytimes.com/1998/03/08/nyregion/what-is-a-concentration-camp-ellis-island-exhibit-prompts-a-debate.html>.

³² See *id.*

³³ *Id.*

³⁴ See *id.*

THE NAZI ANALOGY

saying.³⁵ While the exhibit betrayed “no intent to compare or mitigate the absolute horror of the Holocaust,” the term “concentration camp” was historically accurate and authentic.³⁶ “This happens to be our experience,” Ishizuka said, “and it is our responsibility to tell it the way we experienced it.”³⁷ Jewish voices then joined the debate. While not demanding the removal of the term outright, the executive director of the American Jewish Committee in New York opined that the title “dilutes what we have come to understand as the meaning of concentration camps.”³⁸ “Since the Second World War,” he maintained, the term had “taken on a specificity and a new level of meaning that deserves protection.”³⁹

The issue was resolved only after a meeting between Jewish and Japanese American groups produced a compromise.⁴⁰ The term “concentration camp” would remain in the exhibit’s title, but an explanatory footnote would appear in the lobby of the exhibit and in its brochure that disclaimed any analogy to the Nazi experience. A commentator in the *New York Times* noted the sadness and complexity of the dispute, taking it as evidence that “[o]ne by one, emotion-laden words that Jews have thought of as special to them are slipping from their grasp.”⁴¹

And that was not the last battle. The controversy reared its head again in 2011, this time within the Japanese American community itself. The disagreement was triggered by an effort by Japanese American scholars and activists to persuade the leading Japanese American civil rights group, the Japanese American Citizens League (JACL), to adopt a resolution endorsing a number of replacements for World-War-II-era euphemisms as preferred terms.⁴² Among the euphemisms to be replaced was “relocation center,” and

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* (internal quotations omitted).

³⁹ *Id.*

⁴⁰ See Somini Sengupta, *Accord on Term “Concentration Camp,”* N.Y. TIMES, Mar. 10, 1998, at B4.

⁴¹ Clyde Haberman, *Defending Jews’ Lexicon of Anguish,* N.Y. TIMES, Mar. 13, 1998, at B1.

⁴² See THE POWER OF WORDS HANDBOOK, JAPANESE AMERICAN CITIZENS LEAGUE (2011), <https://jaclpowerofwords.files.wordpress.com/2011/05/draft-power-of-words-hanbook.pdf>.

one of its endorsed replacements was to be “American concentration camp.”⁴³ At a 2010 meeting, the JACL’s National Council approved the resolution by an 80-2 vote,⁴⁴ but that did not resolve the matter. The community continued to debate the matter for two years, with some expressing concern about possible insult to the Jewish community.⁴⁵ It was not until the JACL’s 2012 National Convention that the organization managed a unanimous vote in support of the use of “concentration camp.”⁴⁶

This historical sketch of the “concentration camp” controversy makes clear that the contested term has touched deep feelings since the early 1970s.⁴⁷ What might explain the persistence of this controversy about language across some forty years?

For Japanese Americans, the renewed use of the term “concentration camp” in the early 1970s was one rhetorical piece of a larger effort to educate an ignorant public about the true injustices in the US government’s wartime program. A common narrative at that time, much as it had been since the war, was that the government relocated the ethnic Japanese population to inland accommodations as a justified military necessity after the Japanese attack at

⁴³ This proposal derived from the influential 2009 paper by Aiko Herzig-Yoshinaga, *supra* note 19, at 12–13.

⁴⁴ See POWER OF WORDS, *supra* note 42.

⁴⁵ See, e.g., George Yoshinaga, *Horse’s Mouth: The Richest Countries in the World*, RAFU SHIMPO (Sept. 16, 2010), <https://web.archive.org/web/20160808024238/http://www.rafu.com/2010/09/horse-5/>. Also very helpful in characterizing the controversy is Edward Schumacher-Matos and Lori Grisham, Opinion, *Euphemisms, Concentration Camps and the Japanese Internment*, NPR PUB. EDITOR (updated Feb. 14, 2012, 1:35 PM), <http://www.npr.org/sections/ombudsman/2012/02/10/146691773/euphemisms-concentration-camps-and-the-japanese-internment>.

⁴⁶ See Andy Noguchi, *JACL Ratifies Power of Words Handbook: What Are the Next Steps?* (July 15, 2012), <http://blog.manzanarcommittee.org/2012/07/15/jacl-ratifies-power-of-words-handbook-what-are-the-next-steps/>.

⁴⁷ See, e.g., Jan Cleveland, *Area Man Remembers Manzanar*, SAN BERNARDINO SUN-TELEGRAM, Feb. 13, 1977, at A1; Dexter Waugh, *Semantic Debate on War Camps*, SAN FRANCISCO EXAMINER, May 7, 1976, at 6; Ann Reed, *History Board Rejects “Concentration Camp,”* SACRAMENTO BEE, May 7, 1976, at 28.

THE NAZI ANALOGY

Pearl Harbor.⁴⁸ Particularly to a generation that had come of age during the ferment of the 1960s civil rights movement and the inception of the field of ethnic studies, this standard story was painfully ignorant of the truth of what they and their parents and grandparents had endured. It was also a story told by white rather than Japanese Americans. To restore the historically authentic term “concentration camp” to the discourse was to assert Japanese American agency in the telling of their story.

Restoring the term to the discourse also worked to undermine the argument that the camps were justified and pleasant.⁴⁹ Linguist Deborah Schiffrin writes perceptively about this aspect of the rhetorical strategy. She notes that decades after the war, the term “concentration camp” had become embedded in a well-known story—the Holocaust—whose horror and injustice nobody could contest.⁵⁰ The firm entrenchment of the term in “another’s story had some perceived or unperceived advantages” for those working to establish the injustice of Japanese American removal and imprisonment.⁵¹ “Using language that already had a place in a general American national schema about a well-known historical tragedy,” Schiffrin argues, supplied a point of reference, “compensat[ing] for Americans’ misinformation (or ignorance) of [the Japanese American] ... tragedy by lexically embedding” the Japanese American story “in a larger, more familiar, symbolic domain.”⁵² John Modell, who in 1973 edited and published the camp diary of Charles Kikuchi, an important resistance figure,

⁴⁸ A 1967 public opinion poll revealed that almost one in two Californians continued to approve of the wartime removal of Japanese Americans. See WILLIAM HOSOKAWA, *NISEI: THE QUIET AMERICANS* 497 (1973).

⁴⁹ The most prolific advocate of the position that the camps were justified and pleasant was author Lillian Baker. See, e.g., LILLIAN BAKER, *CONCENTRATION CAMP CONSPIRACY: A SECOND PEARL HARBOR* (1981). For a perspective on Baker’s claims, see David Ibata, *History Her Way*, CHI. TRIBUNE (Dec. 23, 1993), <https://www.chicagotribune.com/news/ct-xpm-1993-12-23-9312230141-story.html>; Robert Ito, *Concentration Camp or Summer Camp?*, MOTHER JONES (Sept. 15, 1998), <https://www.motherjones.com/politics/1998/09/concentration-camp-or-summer-camp/>.

⁵⁰ Deborah Schiffrin, *Language and Public Memorial: ‘America’s Concentration Camps’*, 12 *DISCOURSE AND SOC.* 505, 525 (2001).

⁵¹ *Id.*

⁵² *Id.*

makes a similar point, but more bluntly. He admits that his subtitle for the edited diary, “Chronicle from an American Concentration Camp,” was “meant to shock.”⁵³ This “shock” surely came, at least in part, from the term’s Nazi connotation in the public mind.

The effort by and on behalf of Japanese Americans to reclaim the term “concentration camp” touched a mounting anxiety among Jews. By 1998—the time of the Ellis Island controversy—the Holocaust was already more than fifty years in the past. The number of people able to speak of the episode from personal memory was beginning to dwindle.⁵⁴ Distress about the disappearance of the Holocaust into the fog of history was palpable. President Bill Clinton, speaking at a 50th anniversary commemoration of the Holocaust in New York in 1995, noted that soon “the living memory of the Holocaust w[ould] pass.”⁵⁵ A newspaper article on that event reported that “[a]s they face their own mortality, the biggest fear for many survivors is that their memories will be buried with them.”⁵⁶ In a similar vein, a letter to the editor of the New York Times in 1997 emphasized the importance of filling an endowed chair in Holocaust history at Harvard because “the window of memory is closing rapidly[;] [t]he eyewitnesses are dying, and all attempts to chronicle the survivors’ experiences will not remove the march of time.”⁵⁷ Pervasive news coverage of the genocides in Bosnia⁵⁸ and Rwanda⁵⁹ in the mid-1990s surely did not ease Jewish fears. Not only were current events proving that the Holocaust was failing as a lesson, but that it increasingly risked becoming “just another genocide” rather than a singular event in human history. Seen in this context, the hesitations of some Jews about

⁵³ John Modell, *Preface* in *THE KIKUCHI DIARY: CHRONICLE FROM AN AMERICAN CONCENTRATION CAMP* xi (John Modell ed., 1993).

⁵⁴ Assuming many people might be able to remember things that happened when they were five years old, the youngest survivor with articulable memories in 1998 would have been about 60 years old.

⁵⁵ Doreen Carvajal, *Lighting Candles to Keep the Flame of the Holocaust Alive*, N.Y. TIMES, May 1, 1995 (internal quotation omitted).

⁵⁶ *Id.*

⁵⁷ Steven A. Ludsin, *Letter to the Editor*, N.Y. TIMES, July 25, 1997.

⁵⁸ See Mike O’Connor, *One by One, Bosnia Tallies the Missing*, N.Y. TIMES, Jan. 27, 1996, at 5.

⁵⁹ See Milton Leitenberg, *Anatomy of a Massacre*, N.Y. TIMES, July 31, 1994, at 15.

THE NAZI ANALOGY

Japanese Americans' use of the term "concentration camp" should not be surprising.

Neither should be the objections to the use of the term from non-Jewish Americans more generally. Even in 1943, while World War II was still raging, Arthur Koestler was able to perceive the stubborn refusal of Americans to compare Allied and Axis racial policies. He saw Americans as "liv[ing] in a climate of half-truths ... fight[ing] against racialism" while "racial discrimination is far from abolished in the Anglo-Saxon countries."⁶⁰ "[E]ven to mention these facts," Koestler observed, "undeniable though they are, has the effect of a provocation."⁶¹ This resistance to analogy is surely part of what explains the outrage when a scientist likens some American practice of human research or genetic experimentation to Nazi eugenics or experimentation,⁶² or when an historian compares American plantation slavery to Nazi concentration camps.⁶³ It helps explain why for some, the term "concentration camp" should be off limits in narrating the wartime experience of Japanese Americans.

As of 2021, the "concentration camp" debate stands largely settled in the Japanese American, Jewish American, and scholarly communities. It is now common to see and hear the term in discussions of the Japanese American camps, and rare to see or hear an objection.⁶⁴ But two terms of the settlement are important. One is about clarity: Those who use the term "concentration

⁶⁰ Arthur Koestler, *We Need a Fraternity of Pessimists*, N.Y. TIMES, Nov. 7, 1943.

⁶¹ *Id.*

⁶² See, e.g., William H. Warren, *Is a Psychologist Always a Psychologist, Ethically? Some Observations Through a Wide Lens*, in ETHICAL PRACTICE IN PSYCHOLOGY: REFLECTIONS FROM THE CREATORS OF THE APS CODE OF ETHICS 57 (Alfred Allan & Anthony Love eds., 2010).

⁶³ See KIRSTEN FERMAGLICH, AMERICAN DREAMS AND NAZI NIGHTMARES: EARLY HOLOCAUST CONSCIOUSNESS AND LIBERAL AMERICA, 1957-1965 at 56 (2006).

⁶⁴ It bears mentioning that controversy over the use of the term "concentration camp" in an American context reared its head again—though not between Japanese and Jewish Americans—in the context of the controversy over the Trump Administration's detention of migrants. See Sheryl Gay Stolberg, *Ocasio-Cortez Calls Migrant Detention Centers 'Concentration Camps,' Eliciting Backlash*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/2019/06/18/us/politics/ocasio-cortez-cheney-detention-centers.html>.

camp” typically either insert the modifier “American” before it or otherwise signal that they do not mean to compare a camp like Manzanar to a camp like Auschwitz.⁶⁵ The other is about the impact of changed meanings over time. Those who use the term emphasize how the post-war public’s growing understanding of the horrors of Auschwitz after the war changed the ordinary meaning of “concentration camp” from its usage before and during the war, making it synonymous with “death camp.”⁶⁶ The implication here is that the term would not have been troubling or controversial before the shift in its public meaning.

II. THE NAZI ANALOGY IN WARTIME DISCOURSE ON JAPANESE AMERICAN RIGHTS

Backing away from an analogy to Nazi Germany has proved a successful way to relieve tension over use of the term “concentration camp.” It has done a disservice, though, to the history of American civil rights discourse. Whatever trepidations we may feel today about comparing the American treatment of Japanese Americans with the National Socialist government’s treatment of German Jews, advocates for the rights of Japanese Americans felt no such qualms in the 1940s. The truth is that the concurrent example of Nazi Germany hung like a shadow over discussions of what the United States government was doing to people of Japanese ancestry. It is important to excavate this forgotten discourse from the historical record and document both its pervasiveness and its capacity to unnerve those who defended the government’s actions.

⁶⁵ As an example, the Korematsu Institute’s policy on terminology instructs that “the complete term American Concentration Camp should be used to distinguish the [Japanese American] concentration camps from those in Europe.” *Power of Words* Terminology, FRED T. KOREMATSU INSTITUTE, <https://www.korematsuinstitute.org/terminology-1>.

⁶⁶ See, e.g., Roger Daniels, *Words Do Matter: A Note on Inappropriate Terminology and the Incarceration of Japanese Americans*, in *NIKKEI IN THE PACIFIC NORTHWEST: JAPANESE AMERICANS AND JAPANESE CANADIANS IN THE TWENTIETH CENTURY* 201 (Louis Fiset & Gail Nomura eds., 2005); MURRAY, *supra* note 20, at 6–7; Lane Hirabayashi, *A Note on Transcription and Terminology*, in *INSIDE AN AMERICAN CONCENTRATION CAMP: JAPANESE AMERICAN RESISTANCE AT POSTON, ARIZONA* xxi (Lane Hirabayashi ed. 1995); EILEEN H. TAMURA, *IN DEFENSE OF JUSTICE: JOSEPH KURIHARA AND THE JAPANESE AMERICAN STRUGGLE FOR EQUALITY* 6–7 (2013).

THE NAZI ANALOGY

On April 30, 1942, as the government was accelerating the mass removal of Japanese Americans from their West Coast homes, a group called the “Post War World Council” sent a letter on the subject to President Roosevelt.⁶⁷ The letter had some two hundred signatories, many of them quite prominent.⁶⁸ The letter expressed the “deep desire” that the president rescind his executive order “which is so at variance with democracy and the American tradition.”⁶⁹ To this distinguished group the German example was plain. Enforcing the executive order “on the Japanese alone,” the signatories asserted, “approximates the totalitarian theory of justice practiced by the Nazis in their treatment of the Jews.”⁷⁰

Over a year later, in a very different setting, a WRA lawyer stationed at the Heart Mountain Relocation Center in Wyoming wrote a letter to his boss in Washington, DC.⁷¹ He had been trying to help a Heart Mountain inmate hold on to some real property left in the hands of a real estate agency.⁷² The lawyer could not even get the agency to respond to his letters. He was indignant over what he saw as a shameless attempt to fleece the Japanese American owner. “The methods being employed are so high-handed as to indicate that the Jews in Germany had due process of law as compared to this affair,” he wrote, comparing the situation to the so-called “aryanization” of Jewish property in Nazi Germany.⁷³

These two vignettes are revealing. They show that the depredations visited on the Jews of Germany were anything but off-limits in discussions and debates about the treatment of Japanese Americans in the United States.

⁶⁷ Letter from Mary W. Hillyer, Exec. Dir., Post War World Council, to Franklin D. Roosevelt, U.S. President, Apr. 30, 1942, digitalassets.lib.berkeley.edu/jarda/ucb/text/reduced/cubanc6714_b013a16_0214.pdf.

⁶⁸ *See id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Letter from John McGowen, Project Att’y, to Philip M. Glick, Solic., War Relocation Auth. (Oct. 29, 1943) (on file with Univ. of Ark. Special Collections in Robert Leflar Papers).

⁷² *See id.*

⁷³ *Id.*

Rather, they were a point of analogy that struck many as obvious and that many tried to use to rhetorical advantage.

Certainly, the most obvious point of comparison was between the Nazi and American confinement sites. Writing to the *Los Angeles Times* in May of 1942, one A.E. Bruce scored the government for sending American citizens of Japanese ancestry into camps while leaving citizens of German and Italian ancestry at large. “[T]o have them herded into concentration camps and surrounded by barbed wire savors all too much of the Gestapo,” he argued, compromising “the very thing for which we claim to fight.”⁷⁴ At a New York meeting of the Post War World Council in June of 1942, C. Read Cary of the American Friends Service Committee made a similar point. After describing the conditions in the so-called “assembly centers” to which Japanese Americans were being initially sent, Cary “said they differ only slightly from the concentration camps abroad.”⁷⁵ “We are doing exactly the same thing as in Germany,” argued the Quaker leader.⁷⁶ To much the same effect was the assertion by Mitsuye Endo’s lawyers in a U.S. Supreme Court brief, that the only modern parallels to the military’s power under Executive Order 9066 are “the concentration camps of Germany and Russia, into which are herded all those who are *persona non grata* to Hitler or Stalin.”⁷⁷

It was not only the fact of the camps that drew analogies to Nazism, but also their rationales. One of the justifications that the U.S. government offered for the mass incarceration of Japanese Americans was the supposed need to protect them from vigilante violence.⁷⁸ This was obviously pretextual, as it would have been possible to beef up police protection for Japanese Americans in their home communities rather than imprisoning them. Some, however, pointed out a darker context for this so-called “protective custody.” In a 1944 brief to the United States Supreme Court in a case challenging the lawfulness of a Japanese American’s detention at the Topaz Relocation Center in Utah, the American Civil Liberties Union argued that the

⁷⁴ A.E. Bruce, *Letter to the Editor*, L.A. TIMES, May 21, 1942, at A4.

⁷⁵ *Japanese Decries Mass Evacuation*, N.Y. TIMES, June 19, 1942, at 8.

⁷⁶ *Id.*

⁷⁷ Brief for Appellant at 35–36, *Endo v. Eisenhower*, 323 U.S. 283 (1944) (No. 70).

⁷⁸ See IRONS, *supra* note 10, at 126.

THE NAZI ANALOGY

government's theory was "the outrageous doctrine of 'protective custody' invented by the Nazis in their persecution of the Jews."⁷⁹ "It has no place in American life," the brief maintained.⁸⁰

Advocates for Japanese Americans also often pointed out that both the American and the German systems of oppression were grounded in similarly mistaken and offensive understandings of race. In an *amicus curiae* brief in the United States Supreme Court, the Northern California branch of the ACLU argued that the government's program "scatters, disinherits, and deprives" its victims "of the privileges of national and of state citizenship simply because their crime is that they are not of pure-blood white stock."⁸¹ Was this not "akin," the brief asked rhetorically, "to the legend of a Nordic master-race utilized by Messrs. Hitler, Goering and Goebbels of Nazi ill-fame...?"⁸² Critics took the government to task for refusing to accept the Japanese American community's assertions of their loyalty to the United States,⁸³ an act they cast as "a vivid demonstration to the world that America ... could think of nothing better to do than to fall back upon the Nazi method of dealing with people, on the basis of ancestry."⁸⁴ One *amicus curiae* brief in the Supreme Court charged that by rejecting the idea of Japanese American loyalty, the government was "imply[ing] the Nazi doctrine that race and physical type determine loyalty and 'ethnic affiliations.'"⁸⁵

⁷⁹ Brief of the American Civil Liberties Union as Amicus Curiae in Support of Appellant at 6, *Endo v. Eisenhower*, 323 U.S. 283 (1944) (No. 70).

⁸⁰ *Id.*

⁸¹ Brief of the Northern California Branch of the American Civil Liberties Union as Amicus Curiae in Support of Appellant at 35–36, *Hirabayashi v. United States*, 320 U.S. 81 (1943) (No. 870).

⁸² *Id.*

⁸³ The community's position was well captured by Mike Masaoka, the National Secretary of the Japanese American Citizens League, when he testified to a congressional committee in 1942 that Japanese "think, feel, and act like Americans." *National Defense Migration: Hearing on H.R. 113 Before the Select Comm. Investigating Nat'l Def. Migration*, 77th Cong. 11138 (1942) (statement of Mike Masaoka, National Security and Field Executive, Japanese Am. Citizens League).

⁸⁴ Brief of Japanese American Citizens League (JACL) as Amicus Curiae in Support of Appellant at 54, *Korematsu v. United States*, 323 U.S. 214 (1944) (No. 22).

⁸⁵ *Id.* at 178.

Moreover, advocates noted that these mistaken views about race sprang from the same kinds of illogical thinking in the United States and Germany. “We talk a great deal about the irrationality and anti-intellectualism of the Nazis and Fascists, or their appeal to violent prejudice and emotion instead of to knowledge,” observed the Japanese American Citizens League in their *amicus curiae* brief in *Korematsu v. United States*.⁸⁶ But this was not just a foreign phenomenon, according to the brief. “The Nazi pattern was never better exemplified” than in the case of Japanese Americans, where “decisions were made on misinformation, assumptions, prejudices, half-truths, when excellent, scientifically accurate material was available.”⁸⁷ It was this sort of irrationality that led to the most absurd of the rationales the military offered for deeming Japanese Americans a military threat: their *law-abidingness*. In depicting the danger Japanese Americans posed to the West Coast, John DeWitt, the general who ordered their removal, asserted in 1942 that the fact that Japanese Americans had until then committed no acts of sabotage was “a disturbing and confirming indication that such action will be taken.”⁸⁸ Fred Korematsu’s lawyers lampooned this position in their Supreme Court brief: “We do not hesitate to state that never did a Nazi official in Germany draw more unjust conclusions than General DeWitt who would punish these people not for harboring dangerous thoughts but for thoughts he would impute to them or project into their minds.”⁸⁹

Critics of Japanese American removal and imprisonment also picked up on certain similarities in the German political landscape that led to the persecution of the Jews. One Supreme Court brief noted that, whereas “no modern civilized country [would] dare[] to transport millions of its inhabitants into exile” because of the “political repercussions” of doing so, “[a]n unorganized minority is always the object of oppression.”⁹⁰ “In Germany it was Jews,” said the brief; “Here it is Americans whose ancestors were Japanese subjects.”⁹¹ This observation led to another point of political

⁸⁶ *Id.* at 176.

⁸⁷ *Id.* (internal quotations omitted).

⁸⁸ DeWitt, *supra* note 11, at 34.

⁸⁹ Brief for Appellant at 64, *Korematsu v. United States*, 323 U.S. 214 (1944) (No. 22).

⁹⁰ *Id.*

⁹¹ *Id.*

THE NAZI ANALOGY

comparison between the United States and Nazi Germany: both nations' discriminatory programs effaced the distinction between aliens and citizens. "In her hours of greatest travail and direst peril England interned alien enemies but did not stoop to interning her own citizens who were of alien enemy ancestry," noted the Northern California branch of the American Civil Liberties Union in its *amicus curiae* brief supporting Gordon Hirabayashi's challenge to the government's program.⁹² "It was reserved for Nazi Germany and her satellites to penalize their citizens whose ancestors were Jews."⁹³ The brief added that it was "unbelievable" that the United States would wish to imitate the vicious example of her enemies.⁹⁴

Even high-ranking officials in the federal government saw and spoke of parallels between the plight of Japanese Americans and the Jews of Germany. In 1945, as Japanese Americans released from the camps began making their way back to the West Coast communities from which they had been removed, they encountered a wave of vigilante violence. In one representative incident, a Japanese American who returned to his Newcastle, California farm was greeted by a gang of armed men in cars who fired several shots and tried to blow up a farm building with dynamite.⁹⁵ The perpetrators were acquitted by an all-white jury that summer after their lawyer argued to the jurors that "this is a white man's country; let's keep it so."⁹⁶ By June of 1945, twenty shooting attacks and three arsons had been confirmed, as well as many ominous and threatening visits.⁹⁷ The violence led to condemnatory editorials in national newspapers; the *Washington Post* opined in May of 1945 that Japanese Americans were being persecuted "in the same way and for just the same reasons that prompted the Nazi persecution of racial minorities."⁹⁸ The *Post* gave its readership a bit of a lecture, suggesting that

⁹² Brief of the Northern California Branch of the American Civil Liberties Union in Support of Appellant at 93-94, *Hirabayashi v. United States*, 320 U.S. 81 (1943) (No. 870).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Gunmen Menace Jap-Americans on Return Home*, CHI. DAILY TRIB., Jan. 21, 1945, at 8.

⁹⁶ *Nisei Rights*, WASH. POST, Aug. 31, 1945.

⁹⁷ *The Plight of Japanese-Americans*, CHI. DEF., June 9, 1945.

⁹⁸ *West Coast Terror*, WASH. POST, May 7, 1945.

“[w]hen we gape at German atrocities, we might cast a backward glance at these atrocities of our own.”⁹⁹

But this message was coming not just in newspaper editorials and citizen letters. It was also coming from a member of the Cabinet—Secretary of the Interior Harold L. Ickes. In a statement on May 13, 1945, Ickes denounced what he called “planned terrorism” against Japanese Americans returning to their homes.¹⁰⁰ He made clear that this wave of vigilantism was not just isolated assaults by private attackers, but a pattern enabled by “the absence of vigorous local law enforcement.”¹⁰¹ Remarkably, Ickes invoked the example of Germany, labelling the hooliganism as the work of a “lawless minority” that “seems determined to employ ... Nazi-storm-trooper tactics against loyal Japanese-Americans and law-abiding Japanese aliens.”¹⁰² This was stern and even stunning rhetoric from a Cabinet-level official.

Justices on the United States Supreme Court did not shy away from the analogy to Nazi Germany either. In *Hirabayashi v. United States*,¹⁰³ the Court unanimously concluded that the dusk-to-dawn curfew that the military imposed in the spring of 1942 on Americans of Japanese (but not German or Italian) ancestry did not violate the due process rights of Japanese Americans.¹⁰⁴ Justice Frank Murphy filed a concurring opinion to make clear that he believed the curfew went “to the very brink of constitutional power.”¹⁰⁵ He noted that “[u]nder the curfew order ... no less than 70,000 American citizens have been placed under a special ban and deprived of their liberty because of their particular racial inheritance.”¹⁰⁶ “In this sense,” Murphy continued, “it bears a melancholy resemblance to the treatment

⁹⁹ *Id.*

¹⁰⁰ *Ickes Assails Anti-Niseism*, BALT. SUN, May 14, 1945.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ 320 U.S. 81 (1943).

¹⁰⁴ *Id.* at 100–05.

¹⁰⁵ *Id.* at 111 (Murphy, J., concurring).

¹⁰⁶ *Id.*

THE NAZI ANALOGY

accorded to members of the Jewish race in Germany and in other parts of Europe.”¹⁰⁷

Justice Owen Roberts drew the parallel a bit more indirectly a year later when he dissented in *Korematsu v. United States*,¹⁰⁸ in which a six-Justice majority upheld the constitutionality of the mass removal of Japanese Americans from the West Coast. Roberts characterized the military’s orders governing the movements of Japanese Americans in March of 1942 as “nothing but a cleverly devised trap to accomplish the real purpose of the military authority, which was to lock him up in a concentration camp.”¹⁰⁹ As if to put a finer point on his use of that freighted term, Roberts addressed the semantic issue directly. He acknowledged that the War Relocation Authority designated its confinement sites as “relocation centers,” but in his view they were “*so-called*” relocation centers, which was nothing but “a euphemism for concentration camps.”¹¹⁰

This was more than the justices in the majority could bear. Justice Hugo Black, writing the Court’s opinion, tried to refute Justice Roberts’s use of the term “concentration camp” and the thinly veiled analogy it drew to Nazi Germany. “It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry,” wrote Justice Black.¹¹¹ He responded to Justice Roberts directly: “[W]e deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies.”¹¹² This was December of 1944, when the extent of the horrors of the death camps was only beginning to filter into the public consciousness,¹¹³ so the “ugly connotations” were plainly not the connotations of a death camp.

¹⁰⁷ *Id.*

¹⁰⁸ 323 U.S. 214 (1944).

¹⁰⁹ *Id.* at 232 (Roberts, J., dissenting).

¹¹⁰ *Id.* at 230 (emphasis added).

¹¹¹ *Id.* at 223 (majority opinion).

¹¹² *Id.*

¹¹³ The first mention of any of the Nazi death camps in the *New York Times* was on August 30, 1944. See W.H. Lawrence, *Nazi Mass Killing Laid Bare in Camp*, N.Y. TIMES, Aug. 30, 1944, at 1. The camp was Majdanek. The first mention of Auschwitz came in October of that

In fact, the American military had objected to the Nazi analogy earlier and more forcefully. On September 17, 1942, the Chief of Staff to General John DeWitt issued a policy statement about the use of military police at the WRA's ten brand-new camps.¹¹⁴ While focused on such crucial matters as suppressing possible riots, controlling traffic into and out of the camps, and inspecting all incoming and outgoing parcels and packages, the statement paused to take up the matter of language. "The War Relocation Project area . . . includes one or more 'Relocation Centers,'" which, it noted, "are not 'concentration camps *The use of this term is considered objectionable.*"¹¹⁵ Thus, even in 1942, long before news of the then-unfolding Nazi genocide had reached American shores,¹¹⁶ the analogy to Nazi Germany was on the lips of those discussing and debating the American camps—and offending those whom the analogy made uncomfortable.

III. THE HOLOCAUST, CIVIL RIGHTS, AND AMERICAN EXCEPTIONALISM

By now it should be clear that the *détente* reached over the appropriateness of the term "concentration camp" for a place like Manzanar is founded on errors. It remains unthinkable to some today to compare American and German racial policies and persecutions,¹¹⁷ but it was not

year. *See Germans Kill 346 of 350 Women in Auschwitz Concentration Camp*, N.Y. TIMES, Oct. 12, 1944, at 30.

¹¹⁴ Memorandum of Understanding as to Functions of Military Police Units at the Relocation Centers and Areas Administered by the War Relocation Authority (Sept. 17, 1942), <https://calisphere.org/item/0479bb063a62424d9219fd871645d48a/>.

¹¹⁵ *Id.* (emphasis added) (capitalization cleaned up).

¹¹⁶ The first report of the murders of millions to appear in American newspapers came in December of 1942. *See Roosevelt Told Nazis Killed 2 Million Jews*, BALTIMORE EVENING SUN, Dec. 8, 1942, at 2.

¹¹⁷ *See* Jarrett Stepman, *Comparing the US to Nazi Germany Makes Us Incapable of Recognizing Truly Evil Regimes*, DAILY SIGNAL (Aug. 26, 2020), <https://www.dailysignal.com/2020/08/26/comparing-the-us-to-nazi-germany-makes-us-incapable-of-recognizing-truly-evil-regimes/>; Daniella Greenbaum, *It's Offensive and Inaccurate to Compare the US Border Tragedy to the Holocaust*, BUS. INSIDER (June 21, 2018), <https://www.businessinsider.com/family-separation-zero-tolerance-border-policy-holocaust-comparisons-2018-6>; Abraham H. Miller, *Trafficking in False Comparisons to the Holocaust*, AM. SPECTATOR (July 5, 2018), <https://spectator.org/trafficking-in-false-comparisons-to-the-holocaust/>.

THE NAZI ANALOGY

unthinkable to those who lived while they were ongoing. Not only was it thinkable, but it was a common rhetorical strategy.¹¹⁸ Neither is it true that the horrors of the death camps are what rendered the Nazi analogy discomfiting. Designers of U.S. government policy found the analogy objectionable as early as September of 1942, long before Americans knew of the death camps that had started operating earlier that year.¹¹⁹

Documenting this link informs us about more than just the propriety of the usage of a term; it tells us several broader things about the Holocaust and American civil rights discourse. The first may be the most obvious: The analogy to Nazism played a role in the critique of American racial policies not only in retrospect but *in the moment*. Because we commonly think of the transformative civil rights advocacy in America as occurring in the 1950s and especially the 1960s, it is tempting to assume that the Holocaust entered the vocabulary of civil rights only in those decades, as in 1958 when Martin Luther King, Jr., told an American Jewish group that “[t]here are Hitlers loose in America today, both in high and low places,” who would join “history[‘s] scapegoats, the Jews,” with “new scapegoats, the Negroes.”¹²⁰

¹¹⁸ As James Q. Whitman has recently reminded us, the Nazis from their earliest days looked to American race laws as favorable examples. See JAMES Q. WHITMAN, *HITLER’S AMERICAN MODEL: THE UNITED STATES AND THE MAKING OF NAZI RACE LAW* 16 (2017).

¹¹⁹ From this it does not follow that Manzanar should be called a “concentration camp” without any qualification or explanation. Linguist Deborah Shiffrin is right that calling Manzanar a “concentration camp” without adding context and clarification “creates referential ambiguity that complicates the implicational scale.” Shiffrin, *supra* note 50, at 518. Doing so can confuse those in whose minds the term calls up images of crematoria, and who are therefore unsure of just what the speaker actually intends to communicate.

¹²⁰ Martin Luther King, Jr., *Address Delivered at the National Biennial Convention of the American Jewish Congress*, May 14, 1958, http://okra.stanford.edu/transcription/document_images/Vol04Scans/406_14-May-1958_Address%20Delivered-Nat%20Biennial%20Conv.pdf. See also Randall Kennedy, *Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott*, 98 *YALE L.J.* 999, 1012 (1989) (“By 1955, . . . the cumulative weight of Supreme Court precedent had combined with other important trends and developments, such as a general revulsion against racism in the aftermath of the Holocaust . . . to shift white public opinion, putting proponents of segregation squarely on the defensive.”). In actuality, the Nazi analogy entered the discourse of the African American civil rights struggle earlier, in the writings of Langston Hughes. See Langston Hughes, *LANGSTON HUGHES AND THE CHICAGO DEFENDER*:

Plainly, however, the Nazi analogy did not emerge in civil rights discourse only with the benefit of hindsight. Within weeks of the announcement of the government's plans for Japanese Americans, prominent and articulate critics publicly compared the mass eviction and confinement of Japanese Americans to the persecution of the Jews then ongoing in Europe. Litigators in the United States Supreme Court sought to leverage the still-unfolding Nazi policies towards the Jews as arguments against American policies towards Japanese Americans. The Holocaust thus entered American civil rights argument earlier than we might suppose.

The rhetoric documented in this essay adds to our understanding of the Holocaust's place in American civil rights history in a second way. Scholars have long noted that civil rights discourse has unfolded in the United States under the influence of a black/white paradigm, "the misleading notion that the United States' racial palette historically has contained only two colors."¹²¹ This paradigm was particularly dominant in mid-twentieth century conversation about race and civil rights, a time after white ethnicities merged into a unified category and Jim Crow was at its height.¹²² It was only late in the century that "legal, demographic, and cultural changes challenged the ... legitimacy" of the paradigm.¹²³

Now we can see that even at the time when civil rights discourse was most pervasively understood as being about the rights of Black people, an important strand of Holocaust-inflected civil rights argument focused on the rights of Asian Americans rather than African Americans. This is a significant reminder that conversations about racial discrimination in the United States invoking analogies to Nazi Germany not only began before

ESSAYS ON RACE, POLITICS, AND CULTURE, 1942-1962 at 78-80 (Christopher C. DeSantis ed., 1995).

¹²¹ John W. Wertheimer, Jessica Bradshaw, Allyson Cobb & Harper Addison, *The Law Recognizes Racial Instinct: Tucker v. Blease and the Black-White Paradigm in the Jim Crow South*, 29 LAW & HIST. REV. 471, 472 (2011).

¹²² See Janine Young Kim, Note, *Are Asians Black?: The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L. J. 2385, 2387, 2400 (1999).

¹²³ Wertheimer et al., *supra* note 121, at 474.

THE NAZI ANALOGY

what we often think of as the beginning of the American civil rights movement but strayed from the black/white paradigm of the day.

The Nazi analogy in civil rights talk about Japanese American removal and imprisonment suggests one final thing to us, something about American civil rights discourse more generally. Recall that the resolution of the disagreement about proper use of the term “concentration camp” in the late twentieth and early twenty-first century depended in part on an assumption about the passage of time: it was Auschwitz that made the comparison of American to German policies objectionable. The evidence in this essay shows that this was not quite so. From the very outset of the American program, a comparison to Nazi Germany was distasteful to some in the United States even though the death camps were then unknown. The term “concentration camp” rankled the U.S. military as early as 1942, when it carried no connotation of industrialized mass murder. Justices of the United States Supreme Court took offense at the perception of a “melancholy resemblance” between the treatment of the ethnic Japanese in the United States and the treatment of Jews in Germany in 1944, before they knew of the routine extinctions carried out at Auschwitz.

What explains this resistance to the analogy? Part of the explanation undoubtedly lies in important differences between the language Americans and Germans used to present their policies and the brutality of their implementation. From the moment the Nazis took power in January of 1933, the Party and the government spoke of Jews with a menacing contempt never seen in official American discourse.¹²⁴ As well, by the time of the *Kristallnacht* pogroms in 1938, it was clear that the Nazis were implementing their policies of segregation and exclusion with a kind of cruelty that American officials never used.¹²⁵ For these reasons, loose comparisons to Nazi Germany understandably rankled, and still do.

But the comparisons documented in this essay were not especially loose. They zeroed in on specific features of American policy for analogy to comparable German policies. They saw the principle of “protective custody”

¹²⁴ See Engelbert Huber, *The Anti-Semitism of the NSDAP*, in *THE THIRD REICH SOURCEBOOK* 320 (Anson Rabinbach & Sander L. Gilman, eds., 2013).

¹²⁵ See *id.* at 338–39.

on both sides. They found similarity in the theories of biological racism. They noted the political ease of mistreating small and powerless minorities. They saw connections between the fleecing of assets of both Jews and Japanese Americans. And yes, they looked at the bleak landscapes, the rows of barracks, the barbed wire and guard towers and search lights, the patrolling sentries, and they saw concentration camps.

To refuse to acknowledge these substantial similarities, in the midst of differences, is to practice a form of self-deception—one that rejects the very idea that the United States has the capacity for the sort of injustice it readily condemns in other nations. It was an understandable tendency during World War II and the Cold War that followed it. These were eras in which it was politically and culturally imperative for the United States to distinguish itself from first its fascist and then its communist enemies. This meant crafting and polishing a narrative of exemplary American racial progress that left no room for unflattering comparisons to repressive racial policies abroad.¹²⁶ It also may be an artifact of a more enduring American exceptionalism on matters of civil and human rights, one grounded in “the notion that America’s canonical commitments to liberty, equality, individualism, populism, and laissez-faire somehow exempt it from the historical forces that have led to the corruption of other societies.”¹²⁷ On this view, any stain on the American civil rights record will seem but a blemish alongside the truly malign practices of nations that lack the distinctive commitment to justice of the shining American city on the hill.

For a brief moment, a more honest look inward seemed possible. Kerstin Fermaglich has documented how, in the late 1950s and the early 1960s, Nazi Germany became a lens through which Americans allowed themselves to look critically at their own society.¹²⁸ The concentration camp became a legitimate (if hotly contested) analogy for the slave plantation in the work of

¹²⁶ See MARY DUDZIAK, *COLD WAR CIVIL RIGHTS* 13 (2001) (noting the importance to the United States of presenting a narrative of racial progress and of the superiority of democratic solutions to dictatorially imposed solutions).

¹²⁷ Harold Hongju Koh, *Foreword: On American Exceptionalism*, 55 *STAN. L. REV.* 1479, 1481 n.4 (2003).

¹²⁸ See FERMAGLICH, *supra* note 63.

THE NAZI ANALOGY

Stanley Elkins¹²⁹ and the American home in the work of Betty Friedan,¹³⁰ Stanley Milgram's famous electroshock experiments revealed a bit of the concentration camp guard in the American Everyman.¹³¹ That window closed later in the 1960s and remained tightly shut in the decades that followed, as Nazi Germany came to be seen as a singular, analogy-defying regime in the history of human evil.¹³²

Jewish and Japanese Americans were able to settle the debate over the term "concentration camp" only by agreeing that the window should remain closed. Analysis of the wartime civil rights of Japanese Americans more generally has had to proceed under the assumption of an exceptional America. The result is an impoverished historical account that flinches from comparisons that the historical actors themselves were not afraid to draw.

¹²⁹ See STANLEY M. ELKINS, *SLAVERY: A PROBLEM IN AMERICAN INSTITUTIONAL AND INTELLECTUAL LIFE* 87 (1959).

¹³⁰ See BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 294 (1964).

¹³¹ See STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY* 1–4 (1974).

¹³² See FERMAGLICH, *supra* note 63, at 159–61.