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Chronicles

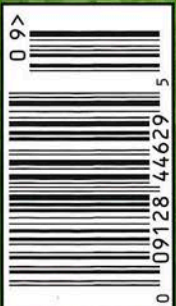
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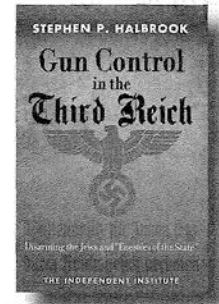
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Who Needs the CLASSICS?

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Confiscating Liberty

by Roger D. McGrath

Gun Control in the Third Reich: Disarming the Jews and "Enemies of the State"

by Stephen P. Halbrook
Oakland, CA: The Independent Institute
247 pp., \$22.95

I FIRST CAME UPON Stephen P. Halbrook in 1984 when the University of New Mexico Press published his first book, *That Every Man Be Armed: The Evolution of a Constitutional Right*. Since Halbrook had both a Ph.D. in philosophy and a law degree, my expectations were high. I was not disappointed. Moreover, by the time I had finished reading Halbrook, I was certain that he would become one of the leading authorities on the armed citizenry. Time has proved that assessment correct: Not only is Halbrook now one of the most respected of gun-rights scholars in America, but he has also successfully argued Second Amendment cases before the U.S. Supreme Court.

In *Gun Control in the Third Reich* Halbrook takes us overseas to see how the Nazis used gun-restrictive laws to oppress people they deemed "enemies of the state." Halbrook is quick to point out something I learned from my older brother when I was still in high school: It was not the Nazis, as most people think, who instituted gun control in Germany during the 1930's, but the Weimar Republic, beginning in December 1918 when it issued a decree authorizing the German states to set deadlines for surrender of arms. Anyone in illegal possession of a firearm after his state's deadline would

be subject to five years' imprisonment and a fine of 100,000 marks. Another decree, issued in January 1919, declared that not only firearms but ammunition must be surrendered immediately. Occasionally, those found with firearms were shot on the spot. Most others who violated the decrees were prosecuted in court.

In August 1920, the Law on the Disarmament of the People was enacted. Why this law was needed after the decrees is not clear, but it was aimed specifically at "military weapons," which included even single-shot, bolt-action deer rifles. Police raids and searches followed. Halbrook says the police kept many of the weapons for themselves. Ah, the evidence that magically disappears from property rooms at police stations.

Unlike Americans, Germans had no constitutionally protected right to keep and bear arms. Courts in different parts of Germany again and again supported disarmament and allowed police great latitude—almost complete license—in search and seizure of weapons. This should remind all Americans of the importance of our Second and Fourth Amendments.

If the Weimar Republic thought that violent extremist groups would be left without weapons, the government was sadly mistaken. While peaceable, law-abiding citizens were generally disarmed, extremists were not. Kurt Ludecke, leader of the paramilitary wing of the Nazi Party, revealed the results of his efforts:

Arms were being bootlegged, and

it was an exciting business. One had to risk danger a hundred times to find a single weapon that was intact, rustless, and uniform with the rest.

By the end of December 1922 . . . I had managed to secure and hide outside of Munich, fifteen heavy Maxim guns, more than two hundred hand grenades, one hundred and seventy-five perfect rifles, and thousands of rounds of ammunition—a real arsenal.

The German communists were also collecting arms, but, with help from Stalin's Comintern, they simply attacked police stations and seized guns and ammunition. The Hamburg Uprising of October 1923, although it ultimately failed, was particularly successful in raiding police stations and seizing not only rifles and pistols but also machine guns.

Since the Weimar Republic's gun laws were interpreted, enforced, and prosecuted in diverse manners by the various German states, and since attempts at prohibition had failed, the Law on Firearms and Ammunition was enacted in 1928. This law was intended to be comprehensive and definitive, to be enforced equally in all the states, and to allow limited use and highly restrictive possession of guns. Acquisition of a firearm or ammunition required a license issued by the police. Carrying a gun required another license. Still another license was required to manufacture,

assemble, or repair firearms or ammunition, including reloading cartridges. A license was also required to possess more than five firearms of the same type or more than 100 rounds of ammunition. Licenses would be issued only to “persons of unquestioned trustworthiness.” There were several categories of people who were denied licenses, including those with a conviction and “Gypsies or persons traveling like Gypsies.”

Halbrook argues that the new law was “aimed not so much at armed crime as at political violence,” but, again, it “had little effect and instead served primarily to restrict law-abiding citizens.” The new law also had the effect of strengthening the Nazis. In 1930, communists killed the Nazi SA (storm troopers) leader Horst Wessel, who was hailed as a martyr and celebrated in song. As a consequence, the police saw the Nazi SA as an ally against the communists. This meant members of the Nazi SA obtained the various gun licenses with relative ease and that Joseph Goebbels’ SA headquarters in the Berlin neighborhood of Kreuzberg was welcomed by the police of the local precinct. At the same time, Nazis were becoming police officers. Since all records of gun licenses were kept at police stations, this resulted in immediate Nazi access to such sensitive information when Hitler came to power.

In 1931, the Weimar Republic determined that all guns should be registered, and authorized the German states to begin the process. Most Germans dutifully registered their guns, and ownership lists were quickly compiled. Penalties of stiff fines and prison were imposed for noncompliance.

Once guns were registered, confiscations began, not *en masse* but against selected individuals, usually political “troublemakers.” All this was done by the “liberal” Weimar Republic and set dangerous precedents for the Nazis. Says Halbrook,

[T]he attempts to control vio-

lence in the country meant that private and generally harmless citizens were primarily the ones whose names found their way onto firearms lists. This period also established a chaotic legal environment for gun control laws. Police authorities were given limitless discretion, and the laws themselves would be decreed and redcreed to focus on whatever weapon or activity (such as public demonstrations) needed controlling for the moment. This firearms control regime and generally the power to issue emergency decrees would be quite useful to the coming of the Nazi regime.

On January 30, 1933, Adolf Hitler was elected chancellor of Germany. On the night of February 27, the Reichstag was set ablaze. A Dutch communist was caught in the building. Later that night arrests of communists began. The next day Hitler convinced German President Paul von Hindenburg to issue “The Decree of the Reich President for the Protection of the People and the State”—all perfectly in keeping with Article 48 of the Weimar Constitution—to control communist terrorism. Among other things, the decree authorized the central government to seize executive power in any state that failed to maintain law and order. “The task of combating all movements dangerous to the state,” said Werner Best, chief legal counsel for the Gestapo, “implies the power of using all necessary means, provided they are not in conflict with the law.” All this couldn’t help but remind me of our own USA PATRIOT Act, which is formally the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act.

Halbrook notes that Hindenburg’s decree became the informal constitution of the Third Reich, while the Weimar con-

stitution remained in effect throughout the Nazi years.

Police searches of offices and homes for subversive literature and illegal firearms began with a vengeance. Illegal possession of firearms was considered *prima facie* evidence of a treasonous conspiracy. Although only communists were targeted at first, raids were soon conducted against other “enemies of the state,” which could mean anyone opposed to the Nazi regime. With Jews so prominent in German communism, they were particularly targeted.

UNTIL 1938, THE NAZIS were using the Weimar Republic’s 1928 gun law and 1931 registration requirement to restrict or confiscate firearms in Germany. Then in March of that year, the Reichstag passed the Weapons Law. Licensing requirements were very similar to the 1928 law. Although Jews were prohibited from engaging in any manufacturing or commercial activities involving guns, they were not prohibited from personal possession of firearms. The only racial group disqualified from firearms possession was Gypsies. The law also disqualified any person “who has acted in an inimical manner toward the state, or it is to be feared . . . will endanger the public security.”

The new law actually made it easier for many Germans to possess and carry firearms. No license was required to acquire or carry a gun if the person was a member of the armed forces, the police, the SS, SS reserve units, the SA, or was a Nazi official. Moreover, no license was required of anyone to acquire rifles or shotguns, weapons typically used for hunting.

By early October 1938 police departments in Germany began calling for Jews to turn in their guns. Since all law-abiding Jews had registered their guns, the police knew who had them. If a Jew on the list didn’t surrender his guns at his local police station, he could expect a police raid. If a raid occurred, he would be arrested and then turned over to the Gestapo. Even some Jews

who did hurry to their local police stations with their registered firearms found themselves arrested as “a danger to public safety.”

One of these was Alfred Flatow, who had competed for Germany as a gymnast in the first modern Olympics, held at Athens in 1896. He won a gold medal in the parallel bars and returned home to be the proprietor of a bicycle shop. He was also an active member of the Berlin Turnerschaft, Germany’s largest gymnastics club, officiated at meets, and regularly wrote about the sport. Flatow, then 69 years old, surrendered one revolver, two “pocket pistols,” 22 rounds of ammunition, one dagger, and 31 pairs of brass knuckles at his local police station in Berlin. Just why he had so many brass knuckles is not known. His guns had been properly registered in 1932, but, nonetheless, he was arrested for

being in “possession of weapons” and “a danger to public safety.”

Flatow was subsequently taken away by the Gestapo and interrogated, but later released. Halbrook says what became of Flatow during the next four years is “sketchy.” Evidently, he was living quietly in Berlin until October 1942 when he was taken into custody and sent to the Theresienstadt concentration camp in what is today the Czech Republic. He died in December at the age of 73.

Within only a few weeks of initiating the confiscation program, Berlin police alone had collected more than 1,700 guns and 20,000 rounds of ammunition from Jews. Similar disarmament was occurring throughout Germany—and the Jews were left defenseless for what followed, beginning with *Kristallnacht* in November 1938.

Halbrook is wary of concluding that if the Jews had kept their guns and resisted, their fate would have been different. However, he does note that the Nazis certainly thought so and did not begin the removal and dispossession of the Jews until after they had been disarmed.

Gun Control in the Third Reich reminds us what can happen to a people deprived of arms, but it should also remind us that in Germany it wasn’t the Third Reich that created the laws and machinery to confiscate firearms but the liberal Weimar Republic—and it was done in the name of protecting people. Protecting them to death, as it turned out.

Roger D. McGrath is the author of Gunfighters, Highwaymen, and Vigilantes.