

## NAZI FIREARMS LAW AND THE DISARMING OF THE GERMAN JEWS

17 *Arizona Journal of International and Comparative Law*, No. 3, 483-535 (2000)

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We are in danger of forgetting that the Bill of Rights reflects experience with police excesses. It is not only under Nazi rule that police excesses are inimical to freedom. It is easy to make light of insistence on scrupulous regard for the safeguards of civil liberties when invoked on behalf of the unworthy. It is too easy. History bears testimony that by such disregard are the rights of liberty extinguished, heedlessly at first, then stealthily, and brazenly in the end.

Justice Felix Frankfurter<sup>1</sup>

The most foolish mistake we could possibly make would be to allow the subject races to possess arms. History shows that all conquerors who have allowed their subject races to carry arms have prepared their own downfall by so doing.

Adolph Hitler<sup>2</sup>

Gun control laws are depicted as benign and historically progressive.<sup>3</sup>

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1. *Davis v. United States*, 328 U.S. 582, 597 (1946) (Frankfurter, J., dissenting).  
2. HITLER'S SECRET CONVERSATIONS 403 (Norman Cameron and R. H. Stevens trans., 1961).

3. "But if watering down is the mode of the day, I would prefer to water down the Second Amendment rather than the Fourth Amendment." *Adams v. Williams*, 407 U.S. 143, 152 (1972) (Douglas, J., dissenting). "There is no reason why all pistols

However, German firearm laws and hysteria created against Jewish firearm owners played a major role in laying the groundwork for the eradication of German Jewry in the Holocaust. Disarming political opponents was a categorical imperative of the Nazi regime.<sup>4</sup> The Second Amendment to the U.S. Constitution declares: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."<sup>5</sup> This right, which reflects a universal and historical power of the people in a republic to resist tyranny,<sup>6</sup> was not recognized in the German Reich.

This article addresses German firearms laws and Nazi policies and practices to disarm German citizens, particularly political opponents and Jews. It begins with an account of post-World War I chaos, which led to the enactment in 1928 by the liberal Weimar republic of Germany's first comprehensive gun control law. Next, the Nazi seizure of power in 1933 was consolidated by massive searches and seizures of firearms from political opponents, who were invariably described as "communists." After five years of repression and eradication of dissidents, Hitler signed a new gun control law in 1938, which benefitted Nazi party members and entities, but denied firearm ownership to enemies of the state. Later that year, in *Kristallnacht* (the Night of the Broken Glass), in one fell swoop, the Nazi regime disarmed Germany's Jews. Without any ability to defend themselves, the Jewish population could easily be sent to concentration camps for the Final Solution. After World War II began, Nazi authorities continued to register and mistrust civilian firearm owners, and German resistance to the Nazi regime was unsuccessful.<sup>7</sup>

The above topic has never been the subject of a comprehensive account in the legal literature.<sup>8</sup> This article is based on never before used sources from archives

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should not be barred to everyone but the police." *Id.* at 150-51.

4. Besides gun control, the Nazis were supposedly ahead of their time in such socially-responsible causes as the eradication of tobacco use. ROBERT N. PROCTOR, *THE NAZI WAR ON CANCER* (1999).

5. U.S. CONST., amend. II.

6. On the history of this right, see this author's *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* (1984; reprint Independent Institute 1994); *A RIGHT TO BEAR ARMS: STATE AND FEDERAL BILLS OF RIGHTS AND CONSTITUTIONAL GUARANTEES* (1989).

7. *Infra, passim.*

8. See David B. Kopel, *Lethal Laws*, N.Y. L. SCH. J. INT'L & COMP. L. 15 (1995); Don B. Kates & Daniel D. Polsby, *Of Genocide and Disarmament*, 86 CRIM. L. & CRIMINOLOGY 297 (1995). Although the disarming of the Jews as a prelude to and in

in Germany, German firearms laws and regulations, German and American newspapers from the period, and historical literature. It contributes to the debate concerning firearms ownership in a democracy and presents the first scholarly analysis of the use of gun control laws and policies to establish the Hitler regime and to render political opponents and especially German Jews defenseless.

### I. A LIBERAL REPUBLIC ENACTS GUN CONTROL

Germany's defeat in World War I heralded the demise of the Second Reich and the birth of the Weimar republic. For several years thereafter, civil unrest and chaos ensued. Government forces, buttressed by unofficial *Freikorps* (Free Corps), battled Communists in the streets.<sup>9</sup> The most spectacular event was the crushing of the Spartacist revolt in Berlin and other cities in January 1919, when *Freikorps* members captured and murdered the Communist leaders Rosa Luxemburg and Karl Liebknecht.<sup>10</sup> This coincided with the passage of the *Verordnung des Rates der Volksbeauftragten über Waffenbesitz* (Regulations of the Council of the People's Delegates on Weapons Possession), which provided: "All firearms, as well as all kinds of firearms ammunition, are to be surrendered immediately."<sup>11</sup> Whoever kept a firearm or ammunition was subject to imprisonment for five years and a fine of 100,000 marks.<sup>12</sup> That decree would remain in force until repealed in 1928.<sup>13</sup>

When Spartacists attacked a Berlin police station in March, Reich Minister of Defense Gustav Noske declared that "any person who bears arms against government troops will be shot on the spot."<sup>14</sup> A Social Democrat, Noske was known

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the course of the Holocaust does not appear to be the subject of any historical study, numerous excellent studies have been published on armed Jewish resistance in the Nazi-occupied countries. *E.g.*, SIMHA ROTEM (KAZIK), *MEMOIRS OF A WARSAW GHETTO FIGHTER AND THE PAST WITHIN ME* (1994); ANNY LATOUR, *THE JEWISH RESISTANCE IN FRANCE, 1940-1944* (1970).

9. ROBERT G.L. WAITE, *VANGUARD OF NAZISM: THE FREE CORPS MOVEMENT IN POSTWAR GERMANY, 1918-1923* (Harvard Univ. Press, 1952), *passim*.

10. *See id.* at 59-71.

11. *Reichsgesetzblatt* 1919, Nr. 7, 31, § 1.

12. *See id.* § 3.

13. *Reichsgesetzblatt* 1928, I, 143, 147, § 34(1).

14. WAITE, *supra* note 9, at 72-3, citing *VORWÄRTS*, March 10, 1919 (morning edition).

as the “Bloodhound of the Revolution”.<sup>15</sup> Another order was issued that anyone in mere possession of arms would be shot with no trial.<sup>16</sup> Under these orders, hundreds of Berliners were killed.<sup>17</sup>

An inept April Communist uprising in Bavaria fared no better.<sup>18</sup> Lieutenant Rudolf Mann, a regimental adjutant in the *Freikorps*, was humored by the “mopping-up operations” against the Reds:

The supreme commander tacked proclamations to the walls: “Warning! All arms are to be surrendered immediately. Whoever is caught with arms in his possession will be shot on the spot!” What could the poor citizen of average intelligence do? Surrender -- but how? If he took his rifle under his arm to take it to the place where arms were collected, he would be shot on the steps of his house by a passing patrol. If he came to the door and opened it, we all took shots at him because he was armed. If he got as far as the street, we would put him up against the wall. If he stuck his rifle under his coat it was still worse . . . I suggested that they tie their rifles on a long string and drag them behind them. I would have laughed myself sick if I had seen them go down the street doing it.<sup>19</sup>

Armed conflict continued into 1920 when Communists called a general strike in the Ruhr, attacked the *Freikorps*, and then were defeated.<sup>20</sup> A young *Freikorps* member wrote about the counteroffensive:

Our battalion has had two deaths; the Reds 200-300. Anyone who falls into our hands first gets the rifle butt and then is finished off with a bullet . . . We even shot 10 Red Cross nurses (*Rote-Kreuz-Schwester*) on sight because they were carrying pistols. We shot those little ladies with pleasure--how they cried and pleaded with

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15. *See id.* at 14.

16. *See id.* at 73 & n. 42, citing FREIHEIT, March 18, 1919.

17. *See id.* at 73.

18. *See id.* at 84-87.

19. *Id.* at 91-92, quoting RUDOLF MANN, MIT EHRHARDT DURCH DEUTSCHLAND, ERINNERUNGEN EINES MITKÄMPFERS VON DER 2. MARINEBRIGADE 71-72 (1921).

us to save their lives. Nothing doing! Anybody with a gun is our enemy. . . .<sup>21</sup>

While the government officially proclaimed that it would no longer rely on the services of the *Freikorps*, the latter continued obtaining financial support and arms from the government, often by theft or fraud.<sup>22</sup> *Freikorps* members would go on to become part of the backbone of National Socialism.<sup>23</sup>

The *Gesetz über die Entwaffnung der Bevölkerung* (Law on the Disarmament of the People), passed on August 7, 1920, provided for a *Reichskommissar* for Disarmament of the Civil Population.<sup>24</sup> He was empowered to define which weapons were “military weapons” and thus subject to seizure.<sup>25</sup> The bolt action Mauser rifles Models 1888/98, which had 5-shot magazines, were put in the same class as hand grenades.<sup>26</sup> Persons with knowledge of unlawful arms caches were required to inform the Disarmament Commission.<sup>27</sup>

Civil disorders would continue off and on, particularly the Hamburg uprising of 1923. This revolt was instigated by Communists who attacked a few police stations and seized arms, only to be suppressed.<sup>28</sup> Under Communist ideology, arms were to be obtained in the course of the revolution itself.<sup>29</sup> Whatever the support or lack of support of members of the “working class” for Communism, the lack of arms in their hands would in later years prevent them from creating armed resistance to the Nazi regime.

By 1928, the Weimar republic was ready to enact a comprehensive firearms law. The *Gesetz über Schußwaffen und Munition* (Law on Firearms and Ammunition)<sup>30</sup> required a license to manufacture, assemble, or repair firearms and

20. See *id.* at 172-81.

21. *Id.* at 182, quoting MAXIMILIAN SCHEER ed., *BLUT UND EHRE* 43 (1937).

22. See *id.* at 182, 194-95, 200-01.

23. See *id.* at 268, 281.

24. *Reichsgesetzblatt* 1920, Nr. 169, I, at 1553-57, §§ 1, 7.

25. See *id.* § 2.

26. See *id.* § 6.

27. See *id.* § 4.

28. A. NEUBERG, *ARMED INSURRECTION* (1970), 81-104. This work was originally published under a pen name as *Der bewaffnete Aufstand* (1928).

29. See *id.* at 194-95.

30. *Reichsgesetzblatt* 1928, I, 143. A reprint of the German text with English translation is available in JAY SIMKIN and AARON ZELMAN, “GUN CONTROL”: GATEWAY

ammunition, or even to reload cartridges.<sup>31</sup> A license was also required to sell firearms as a trade.<sup>32</sup> Trade in firearms was prohibited at annual fairs, shooting competitions, and other events.<sup>33</sup>

Acquisition of a firearm or ammunition required a *Waffen oder Munitionserwerbscheins* (license to obtain a weapon or ammunition) from the police.<sup>34</sup>

The requirement applied to both commercial sales and private transfers. It did not apply to transfer of a firearm or ammunition to a shooting range licensed by the police for sole use at the range.<sup>35</sup> Exempt were “authorities of the Reich” and various government entities.<sup>36</sup>

Carrying a firearm required a *Waffenschein* (license to carry a weapon). The issuing authority had complete discretion to limit its validity to a specific occasion or locality.<sup>37</sup> “Licenses to obtain or to carry firearms shall only be issued to persons whose reliability is not in doubt, and only after proving a need for them.”<sup>38</sup> Licenses were automatically denied to “gypsies, and to persons wandering around like gypsies”; persons with convictions under various listed laws, including this law (i.e., the 1928 *Gesetz*) and the 1920 Law on the Disarming of the Population; and “persons for whom police surveillance has been declared admissible, or upon whom the loss of civil rights has been imposed, for the duration of the police surveillance or the loss of civil rights.”<sup>39</sup>

The above categories of persons who were disqualified from obtaining an acquisition or carry license were prohibited from possession of a firearm or ammunition. Persons not entitled to possess firearms were ordered to surrender them immediately.<sup>40</sup> Further, a license was required to possess a firearms or ammunition “arsenal,” which was defined as more than five firearms of the same type or more than 100 cartridges.<sup>41</sup> (These quantities would have been very low for collectors or target

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TO TYRANNY 15-25 (1992).

31. *See id.* § 2(1).

32. *See id.* § 5.

33. *See id.* § 7.

34. *See id.* § 10(1).

35. *See id.* § 10(3)1.

36. *See id.* § 11.

37. *See id.* § 15.

38. *Id.* § 16(1).

39. *Id.* § 16(2).

40. *See id.* § 17.

41. *See id.* § 23.

competitors.) Also included in the definition was more than ten hunting arms or more than 1000 hunting cartridges.<sup>42</sup> Licenses were available only to “persons of unquestioned trustworthiness.”<sup>43</sup>

It was forbidden to manufacture or possess firearms which are adapted for “rapid disassembly beyond the generally usual extent for hunting and sporting purposes.”<sup>44</sup> Firearms with silencers or spotlights were prohibited.<sup>45</sup>

The penalty for willfully or negligently violating the provisions of the law related to the carrying of a firearm was up to three-years imprisonment and a fine.<sup>46</sup>

The same penalty applied to anyone who inherited a firearm or ammunition from a deceased person and failed to report it in a timely manner.<sup>47</sup> Three years imprisonment was also the penalty for whoever deliberately or negligently failed to prevent a violation of the law by a member of his household under 20 years of age.<sup>48</sup> Other violations of the law or implementing regulations were punishable with fines and unspecified terms of imprisonment.<sup>49</sup>

The new law was passed on April 12, but did not take effect until October 1, 1928. On the effective date, the 1919 law requiring immediate surrender of all firearms and ammunition would be repealed.<sup>50</sup> That would allow over six months for compliance with the new law while leaving the more draconian but widely ignored law on the books for the same period.

Reichskommissar Kuenzer published an explanation of the new firearms law in the newspaper *Deutsche Allgemeine Zeitung*.<sup>51</sup> He explained that, after preparations that lasted over three years, the law was submitted by the Reich Ministry of the Interior to the Reichsrat in 1926.<sup>52</sup> “The law necessitated long consultations in the Reichsrat because it interferes strongly with the police authority of the Länder

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42. *Id.*

43. *Id.*

44. *Id.* § 24.

45. *See id.*

46. *See id.* § 25.

47. *See id.*

48. *See id.* § 26.

49. *Id.* § 27.

50. *See id.* § 34(1), citing *Reichsgesetzblatt*, 1919, Nr. 7, 31.

51. *See* Reichskommissar Kuenzer, *Das Gesetz über Schußwaffen und Munition*, DEUTSCHE ALLGEMEINE ZEITUNG, Apr. 13, 1928, at 1.

52. *See id.*

[states].”<sup>53</sup> As adopted, the 1928 law prohibited the governments of the Länder from ordering further restrictions, “insofar as the government of the Reich with consent of the Reichsrat excluded certain kinds of firearms or ammunition from the provisions of the law.”<sup>54</sup>

The bill was sent to the Reichstag in 1928, and “the parties unanimously considered the swift settlement of this matter as so urgent that the law passed immediately in the plenary session, without consultation in the committee . . . and was adopted in all three readings without a debate.”<sup>55</sup>

The commentary of Kuenzer continued: “A matter that so far had been settled differently in each State, and in Prussia even differently in various districts, will now be regulated the same way in the whole Reich. The law on firearms and ammunition sets forth terms that are very important politically and economically.”<sup>56</sup>

The law, Kuenzer noted, only regulates firearms and ammunition. When first proposed and published, the press objected that the law failed to regulate weapons for hitting or stabbing, truncheons, and brass knuckles, which were regulated by the Länder. Individual Länder were opposed to a regulation of weapons other than firearms by the Reich. The Reich Ministry of the Interior would now have to draft a uniform weapons law for the whole Reich.<sup>57</sup>

Kuenzer addressed the merits of the new law as follows:

The purpose and goal of the law at hand are to get firearms that have done so much damage from the hands of unauthorized persons and to do away with the instability and ambiguity of the law that previously existed in this area. The difficult task was to find the appropriate limits between this necessity of the state on the one hand and the important interests of the weapons industry that was employing a large number of workers and had been heavily damaged through the peace treaty, the interests of the legal sporting industry, and the personal freedom of the individual.<sup>58</sup>

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53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *See id.*

58. *Id.*



Thus, the law requires a permit for the manufacturing of firearms and ammunition, although “it is important to note that the permit may not be made contingent on an examination of the applicant.”<sup>59</sup> Firearms sold commercially must bear the name or stamp of the manufacturer or dealer “in the interest of solving criminal acts committed with firearms.”<sup>60</sup> Kuenzer noted the following sphere that would not be subject to government control:

For the public the provision is of utmost importance that in the future the possession of firearms and ammunition will be allowed without police permit. Without doubt the sharpest and best control of weapons possession would have been given if the so-called possession permit had been introduced. But in my opinion it was correct not to do that because the danger of illegal weapons use exists mainly when someone is carrying his weapons outside his house; but such a provision would also only then have been successful if there had been a punishment in the case of violations. Such a punishment would have opened the door to denunciations and would also have been useless in practice like the still valid order of the regulation of January 13, 1919 which carries such a prohibition and is still in effect. The legislature has the duty to adopt only laws that can be executed in practice because nothing is more demoralizing for the population than laws that exist only on paper, but cannot be implemented.<sup>61</sup>

The reference was to the 1919 regulation that required immediate surrender of all firearms and ammunition and punished disobedience with five years imprisonment.<sup>62</sup> Thus, the 1928 law was seen as deregulatory to a point but enforceable, in contrast to a far more restrictive albeit unenforceable order. Less regulation meant fewer “denunciations,” although it was unrealistic to anticipate that the odious practice of “denunciations” would end. This would be seen when the Nazis came to power in 1933 and disarmed all political opponents. In any event, Kuenzer’s following explanation illustrates the cautious and limited liberalization:

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* (referring to *Reichsgesetzblatt* 1919, Nr. 7, 31).

In one direction, however, there had to be prevention. Even if someone's possession of firearms in his own house in general is not a grave danger for the public security and order, the situation is very different when someone starts to build a weapons cache in his apartment. The possession of weapons and ammunition depots therefore has to be subject to a permit and a permit may only be given to persons who are reliable.<sup>63</sup>

Kuenzer explained the provision requiring the "arsenal" license for over five firearms of the same kind or over 100 cartridges, and increased quantities for hunting arms and ammunition. However, the Reich government had power under the law to exempt weapons from its coverage, and such weapons would not be counted in an "arsenal."<sup>64</sup> An explanation of the law listed weapons expected to be declared exempt as muzzle loaders, old breech loaders, weapons with unrifled barrels, small caliber air guns, harmless gas weapons and blank cartridge firearms, and similar weapons with limited penetrating power.<sup>65</sup>

The law prohibits possession of firearms by "adolescents, incapacitated persons, gypsies and persons traveling around like gypsies, as well as persons who are considered unreliable because of criminal convictions."<sup>66</sup> Kuenzer added: "This will certainly be welcomed by the general public."<sup>67</sup>

Kuenzer pointed to § 33, "according to which the possession of military weapons made illegal by other laws is of course prohibited."<sup>68</sup> Section 33 provided that the 1928 law had no effect on the 1919 Law on the Peace Between German and the Allied and Associated Powers and the implementing and regulations.<sup>69</sup> The effect of this was to continue the prohibition on possession of "military" arms, such as the bolt action Mauser rifles Models 1888 and 98, which had 5-shot magazines.<sup>70</sup>

Kuenzer continued: "If in principal the possession of a weapon at home has thus been allowed, the law on the acquisition and the carrying of firearms contains

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63. *Id.*

64. *See id.*

65. *See id.*

66. *See id.*

67. *Id.*

68. *Id.*

69. *Reichsgesetzblatt* 1928, I, 143, § 33.

70. For descriptions of these rifle models, *see* EDWARD CLINTON EZELL, SMALL

detailed provisions.”<sup>71</sup> The carry license requirement “is meant to prevent persons who do not offer a guarantee that they will not misuse their weapons from walking around with a weapon without a police permit and [illegible] endanger the life of other persons.”<sup>72</sup> Yet even this license requirement meant liberalization: “Extraordinary progress was made because it is finally possible to issue weapons permits valid for the whole Reich. So far, the validity of a weapon’s permit ended at the border of each State, or in Prussia at the border of each district, and it had not been possible to issue a permit to a person for the whole Reich.”<sup>73</sup>

To “facilitate the shooting sport,” the law did not require a license to acquire or use a firearm at a range with a police permit. Further, “special provisions were adopted for hunters”:

When hunting, conducting game protection or practicing shooting, or on their way to or from those activities, owners of a hunting permit of a German State may carry hunting weapons and a handgun without needing a special weapons permit. Whoever is in possession of a hunting permit for a whole year of a German State may acquire hunting weapons and hand firearms anywhere in the Reich to the extent provided by the hunting permit and may acquire ammunition without an acquisition permit.<sup>74</sup>

Noting the effective date of October 1, 1928, Kuenzer added: “In the meantime the Reich government with the consent of the Reichsrat will issue the provisions necessary for the implementation of the law and in particular will decide which firearms should not be subject to the law at all. The governments of the Länder will make the necessary changes to the laws of their Länder and adopt the provisions left in their competence.” He concluded:

The Reichstag which in order to adopt a law of such important content without extensive consultation in the committee

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ARMS OF THE WORLD 501-503 (1983).

71. KUENZER, *supra* note 51, at 1 (referring to Reichsgesetzblatt 1919, Nr. 7, 31).

72. *Id.*

73. KUENZER, *supra* note 51, at 1.

74. *Id.*

probably had to disregard its misgivings, with the almost unanimous adoption of this encompassing law, which is settling important economic and political questions, before its adjournment has shown that it is willing to neglect formalities and party doctrines when the public welfare asks it to do so.<sup>75</sup>

Implementing regulations adopted in 1928<sup>76</sup> provided that, unless otherwise specified, the firearms acquisition permit entitled one to acquire only one firearm, and the ammunition acquisition permit entitled the holder to acquire only 50 jacketed or ball cartridges.<sup>77</sup> When the firearm(s) authorized by the acquisition permit was obtained, the transferor (whether a dealer or a non-dealer) was required to submit the permit to the police.<sup>78</sup> Dealers kept acquisition and disposition books which were subject to police inspection on demand.<sup>79</sup>

Within a decade, Germany had gone from a brutal firearms seizure policy which, in times of unrest, entailed selective yet immediate execution for mere possession of a firearm, to a modern, comprehensive gun control law. Passed by a liberal republic, this law ensured that the police had records of all firearms acquisitions (or at least all lawful ones) and that the keeping and bearing of arms were subject to police approval. This firearms control regime was quite useful to the new government that came to power a half decade later.

## II. 1933: THE NAZIS SEIZE POWER

Adolph Hitler was named Chancellor of Germany on January 30, 1933. The Nazi regime immediately began a campaign to disarm and obliterate all enemies of the state, who were invariably designated "Communists." The following describes this process from contemporaneous sources.

On February 1, in the Charlottenburg area of Berlin, a large police detachment arrived to investigate the alleged shooting deaths of two National

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75. *Id.*

76. Ausführungsverordnung zu dem Gesetz über Schusswaffen und Munition, 13 Juli 1928, *Reichsgesetzblatt* 1928, I, at 198. Reprinted in SIMKIN & ZELMAN, *supra* note 30, at 27.

77. *See Reichsgesetzblatt* 1928, at § 12.

78. *See id.* at § 14(3).

Socialist officers by “Communists” the night before. “The police closed off the street to all traffic while at the same time criminal detectives conducted extensive raids in the houses. Each individual apartment was searched for weapons. The raid lasted several hours.”<sup>80</sup> Countless reports of this type would appear in the coming months.

It took about a month for the Nazi party to consolidate its power over the central government. On February 28, the Hitler regime persuaded President Paul von Hindenburg to issue an emergency decree, based on Article XLVIII of the Constitution (a provision passed by the Weimar republic), suspending constitutional guarantees and authorizing the Reich to seize executive power in any State which failed to take “the necessary measures for the restoration of law and order.”<sup>81</sup> The official explanation was that evidence of “imminent Communist terrorism” was discovered in a search of the Karl Liebknecht House, Berlin's Communist headquarters, and that Communists were responsible for the Reichstag (German Parliament) fire of the night before. The decree was adopted after Hermann Göring, Minister without Portfolio and chief of the Prussian Interior Ministry, reported on the Reichstag fire and plans for Communist terror. It was claimed that, on the coming Sunday election day, the Communists intended to attack Nazi party members and “to disarm the police by force.”<sup>82</sup> It is widely believed that the Nazis themselves set the Reichstag fire in order to justify the repressive measures which followed.<sup>83</sup>

The decree authorized the government to suspend the constitutional guarantees of personal liberty, free expression of opinion, freedom of the press, and the rights to assemble and to form associations. Secrecy of postal and telephonic communication was suspended, and the government was authorized to conduct search and seizure operations of homes.<sup>84</sup> It provided that whoever commits the offenses defined in the Penal Code as “severe rioting” or “severe breach of public peace” by “using weapons or in conscious and intentional cooperation with an armed person . . . shall be sentenced to death or, if the offense was not previously punishable more severely, to the penitentiary for life or to the penitentiary for up to

79. *See id.* at § 10.

80. *Razzia in Charlottenburg*, DER BUND (Bern), Feb. 2, 1933 (evening edition).

81. *Red Terror Plans Alleged By Reich*, N. Y. TIMES, Mar. 1, 1933, at 11.

82. *Id.*

83. *See* HANS B. GISEVIUS, *TO THE BITTER END: AN INSIDER'S ACCOUNT OF THE PLOT TO KILL HITLER 1933-1944*, at 3-36 (1998).

84. Reichsverordnung zum Schutz von Volk und Staat [Ordinance of the Reich President for the Protection of the People and the State], *Reichsgesetzblatt* 1933, I, 83, § 1.

15 years.”<sup>85</sup> Since the terms “riot” and “breach of peace” could be applied to a protest march by political opponents, the mere keeping or bearing of a weapon might have become a capital offense.

It was reported that measures to suppress “subversive activities” took place throughout Germany. Hamburg, Dresden, Hanover, Stuttgart, and numerous other cities “reported bans on Communist activities and the searching of houses for Communist literature and illegal weapons.”<sup>86</sup> Police were put on constant alert until after the election.<sup>87</sup> As Communist members of the Reichstag fled, a government spokesman noted that votes for Communists would not be counted because they were “non-German.”<sup>88</sup>

Meanwhile, non-Nazis throughout Germany were disarmed as “Communists.” “Party headquarters throughout the country were raided and subversive literature and weapons were seized.”<sup>89</sup> At the same time, even more Nazis were armed by the government. “Throughout Prussia some 60,000 Nazi storm troopers and members of the Stahlhelm have been enrolled as auxiliary police and have been armed with revolvers and truncheons.”<sup>90</sup> The outcome of the “election” could not be in doubt.

The Reich Minister of the Interior, on March 1, sent an urgent, secret memorandum to the governments of the German states regarding the KPD, the German Communist Party, which stated:

The Police Headquarters in Berlin has established that the KPD intends to conduct systematic attacks against members of the national units, especially the SA and the SS, and by doing so to recklessly neutralize any armed members of those units by force of arms. The plan is to conduct the action in such a way that their authors will, if possible, not be recognized as Communists. The plan is also to compel patrolling policemen by force of arms to give up their weapons.

I am informing you of the above with the request to take

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85. *Id.* § 5.

86. *See* N. Y. TIMES, *supra* note 81, at 11.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

further action.<sup>91</sup>

While Communists may have been capable of such attacks, this language is consistent with Nazi assaults on democrats and other opponents of the Nazis who might “not be recognized as Communists” and whose mere possession of firearms was evidence of the conspiracy.

The term “Communist Underground” took on a dual meaning in the following report: “Searches of houses of Kottbus Communists uncovered, among other things, numerous weapons and illegal flyers and also improved catacombs similar to those found in Berlin. The catacombs served as hiding places for the Communists and their weapons.”<sup>92</sup>

Scores were being settled for anti-Nazi activity that took place before Hitler's ascension to power. The *Völkische Beobachter* (*People's Observer*), Hitler's newspaper, reported:

Following the conclusion of the preliminary investigation, the Office of the Public Prosecutor I in Berlin has now filed charges against nine Communists for severe breach of peace of the land, attempted murder and offenses against the Firearms Law committed during the assault conducted in the night of December 28, 1932 on the National Socialist meeting room at Landwehrstrasse which severely injured three National Socialists.<sup>93</sup>

The above reports indicate the use of the “Communist gun owner” bogeyman as a propaganda tool, the extensive searches and seizures being conducted by the police to confiscate firearms and arrest their owners, and the use of the Firearms Law against Nazi opponents. It is clear that firearms were being seized from persons of all types, not just “Communists.” For example, Wilhelm Willers, an apparently prominent citizen of Munich, complained to authorities that “the SA members took several things when they searched my apartment, such as several bottles of mineral water and from my living room a box of cigarettes. A flashlight was

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91. Der Reichsminister Des Innern, An die Landesregierungen, I A 2130/1.3, (March, 1 1933). Found in Bayerisches Hauptstaatsarchiv, München [hereinafter BHStA], MA 106312.

92. DER BUND (Bern), Mar. 3, 1933, at 3.

93. *Anflage gegen 9 Kommunisten*, VÖLKISCHE BEOBACHTER, Mar. 4, 1933.

lent, but not returned. I ask that my flashlight and the above-mentioned pistol which belongs to me personally be returned to me.”<sup>94</sup>

Not surprisingly, the Nazis won the election, leaving the Hitler regime with executive power in all the German States.<sup>95</sup> The repression continued unabated. Anti-Semitic actions began to be reported. One account noted, “The Produce Exchange in Breslau was entered today by Nazi storm troops, who searched the place for arms and ousted the occupants. Several Jewish-owned department stores there were forcibly closed, and the storm troopers ejected Jewish judges and lawyers from the courts.”<sup>96</sup>

In another incident, six Nazi storm troopers raided the apartment of the widow of former President Friedrich Ebert.<sup>97</sup> They demanded her “mustard flag,” the Nazi term for the republican black, red, and gold emblem.<sup>98</sup> When her son protested that they had no flag on the premises, they conferred among themselves on whether to search the apartment anyway.<sup>99</sup> “They decided finally to look for hidden arms, but found only a revolver belonging to Herr Ebert, which he handed to them together with a permit that had expired. With these the Nazis marched off.”<sup>100</sup>

By this point in time the Nazis had foisted a totalitarian regime over all of Germany. Not only had the Socialist and Communist presses been shut down, but also Centrist and neutral presses were subject to immediate suppression should anything objectionable to the regime be published.<sup>101</sup> Germans were forbidden to reveal any information to foreigners. To enforce this repression, telephones were tapped and informants lingered in cafes.<sup>102</sup> The police and the courts were instruments of the dictatorship. Jews were fleeing persecution.<sup>103</sup>

Despite the repression, foreign presses continued to report the news. The following *New York Times* account demonstrates that the Nazi drive to seize arms was

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94. Letter from Wilhelm Willers, 12 March 1933. Found in BHStA, MA 105475.

95. Frederick T. Birchall, *Hindenburg Drops Flag of Republic*, N. Y. TIMES, Mar. 13, 1933, at 6.

96. *Nazis Seek Sweep of Local Offices*, N. Y. TIMES, Mar. 12, 1933, at 19.

97. *Nazis Raid Home of President Ebert's Widow: Hindenburg Orders Inquiry of Flag Search*, N. Y. TIMES, Mar. 15, 1933, at 11.

98. *Id.*

99. *Id.*

100. *Id.*

101. *See All News is Censored and Opposition Press Suppressed*, N. Y. TIMES, Mar. 20, 1933, at 1.

102. *See id.*

103. *See id.*



in part a ruse to conduct searches and seizures and to harass selected persons:

NAZIS HUNT ARMS IN EINSTEIN HOME  
Only a Bread Knife Rewards Brown Shirts'  
Search for Alleged Huge Cache

OUSTING OF JEWS GOES ON . . . .

BERLIN, March 20. - Charging that Professor Albert Einstein had a huge quantity of arms and ammunition stored in his secluded home in Caputh, the National Socialists sent Brown Shirt men and policemen to search it today, but the nearest thing to arms they found was a bread knife.

Professor Einstein's home, which for the present is empty, the professor being on his way back to Europe from the United States, was surrounded on all sides and one of the most perfect raids of recent German history was carried out. The outcome was a disappointment to those who have always regarded Professor Einstein's pacifist utterances as a mere pose.<sup>104</sup>

If one could find humor in the above, the reality was not humorous. The above report also described the elimination of Jews from the professions. Jewish physicians were being dismissed from the hospitals, Jewish judges in criminal court were removed and placed in civil court, and Jewish prosecutors were terminated.<sup>105</sup>

On March 23, the Reichstag passed, by a vote of 441 to 94, the enabling act that permitted the Cabinet to make laws without consulting that body and without action by the President. The Reichstag then dissolved *sine die*. The Cabinet of eleven members included three Nazis: Chancellor Hitler, Dr. Wilhelm F. Frick, and Hermann Göring.<sup>106</sup> The others were Nationalists and appointees of President von Hindenburg.<sup>107</sup>

The enabling act made the Hitler cabinet a dictatorship through three simple provisions. Article I provided: "Federal laws may be enacted by the government [the

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104. *Nazis Hunt Arms in Einstein Home*, N. Y. TIMES, Mar. 21, 1933, at 10.

105. *See id.*

106. *See Hitler Cabinet Gets Power to Rule As a Dictatorship: Reichstag Quits Sine Die*, N. Y. TIMES, Mar. 24, 1933, at 1.

107. *See id.*

cabinet] outside of the procedure provided in the Constitution . . .”<sup>108</sup> Article II stated: “The laws decreed by the government may deviate from the Constitution . . .”<sup>109</sup> And Article III provided: “The laws decreed by the government are to be drafted by the Chancellor [Hitler] and announced in the *Reichsgesetzblatt*.”<sup>110</sup>

The above accounts concern Nazi policy to seize all arms from political opponents. Nazi policy also mandated the prohibition of possession of “military” firearms by citizens at large. An SA *Oberführer* warned about an ordinance issued by the provisional Bavarian Minister of the Interior:

The deadline set by § 4 of the Ordinance for the Surrender of Weapons will expire on March 31, 1933. I therefore request the immediate surrender of all arms from former army stores to the local stations of the Gendarmerie.

Pursuant to § 3 of the ordinance, individuals may be permitted to keep a handgun together with proper ammunition for the protection of house and farm. Well-founded requests in this regard may be submitted to the local Gendarmerie stations by way of the mayor.

The units of the national revolution, SA, SS, and Stahlhelm, offer every German man with a good reputation the opportunity to join their ranks for the fight. Therefore, whoever does not belong to one of these named units and nevertheless keeps his weapon without authorization or even hides it, must be viewed as an enemy of the national government and will be held responsible without hesitation and with the utmost severity.<sup>111</sup>

In other words, anyone who possessed a military rifle or handgun was a public enemy unless he or she was a member of a Nazi-approved organization. Of the three listed organizations, the SS (*Schutzstaffeln*) or Elite Guard of the National Socialist Party, headed by Heinrich Himmler, emerged as the most powerful Nazi police

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108. *Id.*

109. *Id.*

110. *Id.*

111. Zur Verordnung des kommissarischen bayer. Innenministers vom 24.3.33. über Wehrverbände. Found in BHStA, LRA Bad Tölz 133992, No2501c51.

organization.<sup>112</sup> The SA (*Sturmabteilung*) or storm troopers were appointed as an auxiliary police force which carried out many of the excesses of the Nazi revolution until its leadership, headed by Ernst Roehm, were eliminated in the “night of the long knives” in 1934.<sup>113</sup> The *Stahlhelm* or Steel Helmets, a veterans’ organization,<sup>114</sup> had as its honorary commander President Hindenburg, whose death in 1934 would complete Hitler’s consolidation of absolute power<sup>115</sup> and doubtlessly eliminated this organization’s special privileges.

On March 28, the State Ministry of the Interior headed by Frick issued a secret directive to the government units, police, municipal commissars, and special commissioners of the highest SA leaders regarding the execution of the ordinance on the surrender of military weapons. It began: “Despite all of the measures taken so far, parts of the population opposed to the national government and the national movement behind it are still in possession of military weapons and military ammunition.”<sup>116</sup> It ordered the police “immediately to order the population to surrender any military weapons in a timely manner to the special commissars listed in the official gazettes as well as in the local press.”<sup>117</sup> Weapons to be surrendered included not just heavy weapons but also “military rifles” (which were bolt actions)

and “army revolvers.”<sup>118</sup> The directive continued:

Pursuant to § 4, paragraph 2, of the ordinance the Special Commissar of the Highest SA Leader may exempt members of the SA, SS, and Stahlhelm units as well as members of veterans’ associations by confidential order to the pertinent leaders of those units/associations. Under no circumstances may the public,

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112. See RAPHAËL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE* 15-16 (1944).

113. GISEVIUS, *supra* note 83, at 103, 148-49 (1998).

114. See *id.* at 608.

115. See WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* 157, 226 (1990).

116. Staatsministerium des Innern. An 1. die Regierungen, KdJ. [*et al.*], Betreff: Vollzug der Verordnung über die Ablieferung der Militärwaffen, (March 28, 1933). Found in BHStA, LRA Bad Tölz 133992, No. 2501c51.

117. *Id.*

118. *Id.*

especially the press, be informed about this exemption, given the fact that the provisions on disarmament of the Versailles Treaty are still in effect. Further, upon request, the Special Commissar may allow reliable persons to keep a rifle together with the necessary ammunition for the protection of house and farm. The same applies to army revolvers that are the personal property of the owner. Only such persons can be considered reliable from whom a loyal attitude toward the national government can be expected. These approved exceptions must also be treated as confidential.<sup>119</sup>

The surrendered arms were to be stored with the SA, SS, and Stahlhelm.<sup>120</sup> These groups in turn would assist the police “to conduct weapons searches in places where military weapons and military ammunition are still suspected.”<sup>121</sup>

A terse newspaper announcement about the above began: “We would like to point out one more time that all military weapons and ammunition in private possession have to be surrendered by March 31, 1933 . . . .”<sup>122</sup> It warned: “If we find military weapons or ammunition after 31 March 1933, we will be forced to proceed ruthlessly . . . .”<sup>123</sup>

Having disarmed and mopped up the “Communists,” at times a euphemism for citizens who were not National Socialists, and having prohibited possession of “military” firearms to citizens who were not members of Nazi-approved organizations, the Nazis now turned their attention more toward the Jews. Apparently hoping to depict Jews as subversive by proving them to be in possession of illegal firearms, search and seizure operations were executed on April 4, 1933.<sup>124</sup> The *New York Times* reported:

#### *Raid on Jewish Quarter*

A large force of police assisted by Nazi auxiliaries raided a Jewish quarter in Eastern Berlin, searching everywhere for weapons and papers. Streets were closed and pedestrians were

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119. *Id.*

120. *See id.*

121. *Id.*

122. Betreff: Ablieferung der Militärwaffen, (March 29, 1933). Found in BHSStA, LRA Bad Tölz 133992, No. 572.

123. *Id.*

halted. Worshipers leaving synagogues were searched and those not carrying double identification cards were arrested. Even flower boxes were overturned in the search through houses and some printed matter and a few weapons were seized.<sup>125</sup>

The *Völkische Beobachter* contained a revealing account of the raid on the Jewish quarter under the headline: “The Time of the Ghetto Has Come; Massive Raid in the Scheunenviertel;<sup>126</sup> Numerous Discoveries of Weapons--Confiscation of Subversive Material; Numerous Arrests of ‘Immigrants’ from East Galicia.”<sup>127</sup> The article included a dramatic and lengthy description of how the police, supported by the SS and criminal detectives, approached the Scheunenviertel (“Barn District”) of Berlin and searched the houses and basements of the Jewish inhabitants. It reported:

During the very extensive search, the search details found a whole range of weapons. Further, a large amount of subversive printed material was confiscated. 14 persons who did not have proper identification were detained. Most of them were Jews from Poland and Galicia who were staying in Berlin without being registered.<sup>128</sup>

Despite the headlines, the article does not state how many or what types of arms were seized or whether they were even unlicensed or otherwise illegal--as will be seen, no prohibition on Jewish possession of firearms was enacted until 1938. The article does expand on the “subversive material” discovered. It includes two illustrations: first, the assemblage of SS and police on the street, and second, a pathetic picture of an elderly Jewish man in front of a microphone explaining to Nazi radio broadcasters on the scene that he did not know why he was being searched. *Beobachter* readers were apparently supposed to “get it,” but the picture and statement evokes sympathy for the old man.

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124. See *Raid on Jewish Quarter*, N. Y. TIMES, Apr. 5, 1933, at 10.

125. *Id.*

126. Since it was Berlin's Jewish quarter, the Scheunenviertel would become the site of the 1938 anti-Jewish pogrom which changed the “Communist weapon” scare to the “Jewish weapon” scare described below. TIME OUT BERLIN 53-54 (1998). This area of Berlin has been renovated and the Neue Synagogue on Oranienburger Street rebuilt since the reunification of Germany in 1989. *Id.*

127. *Gross Razzia im Scheunenviertel*, VÖLKISCHE BEOBACHTER, Apr. 5, 1933.

128. *Id.*

Nazi repressive measures against Jewish firearms owners were facilitated by the 1928 Weimar gun control law, which banned firearms from “untrustworthy” persons and allowed the police to keep records on who acquired or carried firearms.<sup>129</sup> As the *New York Times* reported:

*Permission to Possess Arms Withdrawn From Breslau Jews*

Breslau, April 21. The Police President of the city has decreed that “all persons now or formerly of the Jewish faith who hold permits to carry arms or shooting licenses must surrender them forthwith to the police authorities.”

The order is justified officially on the grounds that Jewish citizens have allegedly used their weapons for unlawful attacks on members of the Nazi organization and the police.

Inasmuch as the Jewish population “cannot be regarded as trustworthy,” it is stated, permits to carry arms will not in the future be issued to any member thereof.<sup>130</sup>

Meanwhile, Wilhelm Frick, the Reich Minister of the Interior, wrote to Hermann Göring, Minister of the Interior of Prussia and head of the police of that state, that pistol imports had increased tenfold, and that “for reasons of public security we cannot tolerate the unrestrained import of such huge amounts of weapons.” While the 1928 law already restricted firearm acquisitions, “the rules will not be observed by all of the weapons dealers, [and] that unauthorized persons will obtain foreign weapons flowing into the country . . . .”<sup>131</sup> Accordingly, on June 12, Frick decreed a prohibition on the importation of handguns.<sup>132</sup> Handgun ownership by German citizens, including Jews and political opponents, was apparently subversive to the Nazi regime.

Historians of the period have shown little or no interest in the above phenomena, with the exception of William Allen, whose *The Nazi Seizure of Power* is based on the experiences of the town of Norheim in Lower Saxony. This work

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129. *See Reichsgesetzblatt* 1928, I, 143, § 23.

130. *Permission to Possess Arms Withdrawn From Breslau Jews*, N. Y. TIMES, Apr. 23, 1933, at 1.

131. Der Reichsminister des Innern, Betrifft: Einfuhr von Schusswaffen, I A 8310/24.4 (May 31, 1933). Bundesarchiv Berlin (hereinafter “BA Berlin”), R 43 II/399, Fiche 1, Row 1.

demonstrates the Nazi's manipulative hysteria about firearms owners in 1933.<sup>133</sup> As Allen demonstrates, the town's citizens found "that it was extremely unhealthy to have any sort of weapon around the house."<sup>134</sup> Discovery of firearms by the police "was a first-class justification for the repeated police raids and arrests."<sup>135</sup>

Allen observes that the town's *Reichsbanner* (armed section of the Social Democratic party) awaited orders from party headquarters in Berlin to fight the Nazis, but the order never came. "Had it been given, Norheimer's *Reichsbanner* members would have carried out the tested plan they had worked on so long--to obtain and distribute weapons and to crush the Nazis."<sup>136</sup> Social Democrats were "the only defenders of democracy in Germany, the men who should have been gathering guns and calling the general strike," but instead their homes were being raided in midnight arms searches and they were being hauled off to concentration camps.<sup>137</sup>

In any event, the Nazi seizure of power was complete. It remained to consolidate this power for the aims of National Socialism.

### III. HITLER'S GUN CONTROL ACT OF 1938

On seizing power, as the above demonstrates, the Nazis were well served by the 1928 Firearms Law. However, leisurely discussions on possible amendments were held over a five-year period. The discussants included Wilhelm Frick, the Reich Minister of the Interior; Hermann Göring, who as Minister of the Interior of Prussia controlled the police of that State; Heinrich Himmler, the Reichsführer SS and Chief of the German Police; the Head Office of the Security Police (*Hauptamt Sicherheitspolizei*); and other members of the Nazi hierarchy.<sup>138</sup>

The result was the Nazi *Waffengesetz* (Weapons Law) of March 18, 1938.<sup>139</sup>

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132. See *Reichsgesetzblatt* 1933, I, 367.

133. See WILLIAM SHERIDAN ALLEN, *THE NAZI SEIZURE OF POWER: THE EXPERIENCE OF A SINGLE GERMAN TOWN 1922-1945* at 184-86 (1984).

134. *Id.* at 186.

135. *Id.*

136. *Id.* at 191.

137. *Id.* at 192.

138. The Security Police comprised the criminal police and the Gestapo (State Secret Police). LEMKIN, *supra* note 112, at 15-16.

139. *Reichsgesetzblatt* 1938, I, 265.

It was decreed and signed by Adolph Hitler and Reich Minister Frick under the Enabling Act passed in 1933, which stemmed from the provision of the Weimar Constitution allowing rule by decree during emergencies. Indeed, the Reichstag, the legislative body, passed only seven laws during Hitler's entire reign.<sup>140</sup>

Hitler and Himmler would commit suicide at the war's end, while Göring and Frick would be condemned to death at the postwar Nürnberg trials.<sup>141</sup> While Frick was less well known, Hitler had expressed admiration for Frick as early as *Mein Kampf*.<sup>142</sup> On assuming office in 1933, Frick wrote police stations that Communists dressed like SA members were rioting and smashing Jewish shop windows.<sup>143</sup> He planned anti-Semitic policies from the beginning.<sup>144</sup>

In mid-1933, Frick wrote to the other members of the cabinet: "Following the victory of the national revolution I consider it necessary to undertake a basic examination of the Weapons Law . . . ."<sup>145</sup> By Fall a draft was circulated. It would have adopted a nominal amount of deregulation for some, subject to its ultimate postulate expressed in the title to Chapter 1: "Prohibition of Firearms by Enemies of the People and the State."<sup>146</sup> It provided: "The police authority may prohibit the acquisition, possession or carrying of firearms by any person who is an enemy of the people and the state or who is a danger to public security."<sup>147</sup>

An analysis of the proposal explained:

The Reich Minister of the Interior is of the opinion that the Weapons Law should be amended in its entirety only after the German people has been permeated with the National Socialist ideas to the degree that we no longer have to fear extensive armed

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140. See ANTON GILL, AN HONOURABLE DEFEAT: A HISTORY OF GERMAN RESISTANCE TO HITLER, 1933-1945 at 19-20 (1994).

141. See SHIRER, *supra* note 115, at 1133, 1141-43.

142. See ADOLF HITLER, MEIN KAMPF 367-68 (1971).

143. See SAUL FRIEDLÄNDER, NAZI GERMANY AND THE JEWS: VOL. 1 THE YEARS OF PERSECUTION, 1933-1939 at 18 (1997).

144. See *id.* at 26-27, 119.

145. Des Reichsminister des innern, Betrifft: Schußwaffengesetz, I A 6310/19.6, 7 July 1933. BA Berlin, R 43 II/399, Fiche 1, Row 2.

146. Ch. 1, § 3(1). Der Reichskanzler; Der Reichsminister des Innern, Entwurf eines Gesetzes zur Aenderung des Schußwaffenrechts, Re: I A 6310/4, 11 November 1933. BA Berlin, R 43 II/399, Fiche 1, Row 3.

147. *Id.*



riots of enemies of the people and the state.<sup>148</sup>

Certain relaxations would be possible, however, as long as “enemies of the people and the state and other elements endangering public security shall not possess any firearms. To achieve that goal, the draft grants the police the authority to prohibit such persons from acquiring, possessing and carrying such firearms.”<sup>149</sup>

So as to leave no mistake, a section-by-section analysis stated: “If these provisions guarantee that no enemies of the National Socialist state possess any weapons, then it is justifiable and appropriate to relax the current limiting provisions of the Weapons Law for the population faithful to the state.”<sup>150</sup> In determining who may not possess firearms, “the perpetrator’s prior conduct will have to be investigated thoroughly, in particular also with regard to his political activity.” Further, the law would be “aimed at professional criminals in addition to enemies of the National-Socialist state.”<sup>151</sup>

Purging society of enemies of Nazism apparently was taking longer than expected, for discussion of reform of the firearms law was dropped for the next two years. Then, in November 1935, Frick circulated a new draft.<sup>152</sup> Besides similar language about enemies of the state, it introduced the following qualification for issuance of a permit to manufacture firearms: “No permit may be issued if the requestor or the person contemplated as technical manager of a facility is Jewish.”<sup>153</sup>

Once again, an analysis of the draft explained that the police would have absolute discretion to deny entitlement of firearm possession to enemies of the state, and thus “it will therefore be possible for any national comrade faithful to the state to acquire firearms without a special permit.”<sup>154</sup> Its discussion about licenses to be in the firearms business indicates in part a motive to suppress competition. It stated that “the weapons industry has to be subject to strict control by the state,” and that it was

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148. Zu Reichsministerialsache, Betrifft: Reichsminister des Innern: Entwurf eines Gesetzes zur Änderung des Schußwaffenrechts, 1 December 1933. BA Berlin, R 43 II/399, Fiche 1, Row 4.

149. *Id.*

150. *Id.*

151. *Id.*

152. See Ch. II, § 3(3). Der Reichs- und Preußische Minister des Innern, An die Herren Reichsminister [et al.], I A 13258/6310, 12 November 1935. BA Berlin, R 43 II/399, Fiche 1, Row 6.

153. *Id.*

154. *Id.* at Row 7, p. 3.

“the request of the weapons industry itself to keep the industry free of inappropriate elements.”<sup>155</sup> It added that only citizens of the German Reich may obtain permits, and avowed that “there will be no room for Jews in the German weapons industry and trade.”<sup>156</sup>

The above may be understood in the context of the Nürnberg Laws that Hitler announced on September 15, 1935. They included the Citizenship Law, which excluded Jews from civil rights, and the Law for the Defense of German Blood and Honor, which forbade marriages between Jews and citizens of German blood.<sup>157</sup> A Jew was defined as a person who is or has been a member of the Jewish faith or who has more than two Jewish grandparents, who in turn were Jews if they had been members of the Jewish faith.<sup>158</sup>

Although Jews were to be explicitly excluded from the firearms industry, the draft did not propose that they be prohibited from firearm possession or acquisition.<sup>159</sup> However, the latter would be assumed, given that the police could simply declare that a person was an enemy of the state and bar firearm possession.<sup>160</sup> Indeed, the 1928 Weimar firearms law that was still in place empowered the police the discretion to issue or refuse to issue permits to acquire or carry firearms. As the following 1936 memorandum from the Bavarian Political Police to all subordinate police reveals, in late 1935 the Gestapo had ordered that no weapons permits would be issued to Jews without Gestapo approval:

Pursuant to an order of the Political Police Commander of the States [Länder] of December 16, 1935, No. I G - 352/35, the police authorities always have to obtain the opinion of the Geheimen Staatspolizei [Gestapo or Secret State Police] authorities on the political reliability of the individual requestor, before any permits to carry weapons are issued to any Jews.

Requests by Jews for the issuance of weapons permits therefore have to be sent to the Bavarian Political Police, II/1 for special disposal, so that it can state its opinion about the political reliability of the requestor.

155. *Id.* at 4-5.

156. *Id.*

157. *See* FRIEDLÄNDER, *supra* note 143, at 141-42.

158. *See Reichsgesetzblatt* 1935, I, 1333, § 5 (Nov. 14, 1935).

159. *See* Der Reichs- und Preußische Minister des Innern, An a) die Herren Reichsminister [et al.], I A 13258/6310, 12 November 1935. BA Berlin, R 43 II/399, Fiche 1, Row 6, at 4-5.

In general, the following has to be taken into account with regard to the issuance of weapons permits to Jews:

In principle, there will be very few occasions where concerns will not be raised regarding the issuance of weapons permits to Jews. As a rule, we have to assume that firearms in the hands of the Jews represent a considerable danger for the German people. Therefore, in the future, an extreme measure of scrutiny will have to be applied to the question of political reliability of the requestor in all cases where an opinion needs to be given about the issuance of weapons permits to Jews. Only in this way will we be able to prevent numerous Jews from obtaining firearms and causing danger to the German population.

Most likely, the forwarding of applications will come into consideration only in special cases.<sup>161</sup>

In short, the legal and police tools were already in place to disarm whatever group the Nazis disfavored. Indeed, Frick wrote to the other ministers in early 1936:

Authoritative sources have expressed their concerns to me that this might not be the appropriate time to replace the acquisition permit requirement for firearms and ammunition with a police weapons prohibition. I have therefore decided to postpone for the time being the issue of amending the weapons law . . .”<sup>162</sup>

However, one or more drafts continued to circulate, as the Reichsführer SS and Chief of the German Police Heinrich Himmler made written comments in November 1936, and Frick’s office submitted a new draft and invited Himmler and the Hauptamt Sicherheitspolizei (High Office of Security Police) to a meeting in February 1937 to resolve differences.<sup>163</sup>

In mid-1937, Frick again sent out a new draft, which would have maintained

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160. *See id.* at 3.

161. Bayerische Politische Polizei, Waffenscheinen an Juden, February 5, 1936. Found in BHStA, B.Nr.51722.

162. Der Reichs- und Preußische Minister des Innern, Betrifft: Entwurf des Waffengesetzes, January 7, 1936. BA Berlin, R 43 II/399, Fiche 2, Row 3.

163. *See* Abschrift. Der Reichs- und Preußische Minister des Innern, Betrifft: Waffengesetz, Nr. I A 13480/6310, January 16, 1937. BA Berlin, Aktenbandes 0056, S. 145.

the requirement of a firearm acquisition permit.<sup>164</sup> However, Nazis would be exempt from permit requirements: “The position of the NSDAP in the German state is taken into account in that those political leaders and leaders of the SA, SS, NSKK [National Socialist Motor Corps] and Hitler Youth with a certain rank who have been granted the right to carry firearms by the competent party office do not in addition need a police permit to carry firearms or acquire small firearms.”<sup>165</sup>

By year’s end, Frick had feedback “from the Reich agencies and the Deputy of the Führer” and enclosed a semi-final draft. Unless objections were received within three weeks, noted Frick, “I will assume that all pertinent agencies agree with this draft to the weapons law and will submit it to the Reich Cabinet for adoption by circulation, since I do not consider it necessary for the Cabinet to debate this draft.”<sup>166</sup>

The Reich Minister of War and Commander-in-Chief of the Wehrmacht Wilhelm Keitel responded that “war material” may be acquired only by the permission of his agency.<sup>167</sup> This was to make sure that citizens could not obtain permits to acquire military firearms, such as ordinary Mauser bolt action rifles.

Final changes were made, and at last Frick could announce: “None of the Reich Ministers has filed an objection against the proposal submitted to the members of the Reich Government . . . by way of circulation. The Führer and the Reich Chancellor has approved it and the following is herewith adopted . . . .”<sup>168</sup>

As adopted, the Hitler-Frick weapons law combined many elements of the 1928 law with National Socialist innovations. A license was required to manufacture, assemble, or repair firearms and ammunition, or even to reload cartridges. “A license shall not be granted if the applicant, or the persons intended to become the commercial or technical managers of the operation of the trade, or any one of them, is a Jew.”<sup>169</sup> Firms with licenses under the 1928 law had to comply with this provision

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164. See Der Reichs- und Preußische Minister des Innern, Mit Beziehung auf mein Schreiben vom 7. Januar 1936. BA Berlin, R 43 II/399, Fiche 2, Row 3.

165. Begründung, No. I A 13258/6310, [May 5, 1937]. BA Berlin, R 43 II/399, Fiche 1, Row 7 - R 43 II/399, Fiche 2, Row 1.

166. Der Reichs und Preußische Minister des Innern, An a) die Herren Reichsminister [et al.], December 18, 1937. BA Berlin, R 43 II/399, Fiche 2, Row 7.

167. See Der Reichskriegsminister und Oberbefehlshaber der Wehrmacht, Betrifft: Entwurf des Waffengesetzes, January 15, 1938. BA Berlin, R 43 II/399, Fiche 3, Row 3.

168. Der Reichsminister und Chef der Reichskanzlei, An der Herrn Reichs-, March 4, 1938. BA Berlin, R 43 II/399, Fiche 3, Row 6.

169. *Reichsgesetzblatt* 1938, I, 265, § 3. This relies on the English translation

within a year or the license would be revoked.<sup>170</sup>

A license was also required to sell firearms as a trade. Again, Jews were excluded.<sup>171</sup> Trade in firearms was prohibited at annual fairs, shooting competitions, and other events.<sup>172</sup> This would have included traditionally-popular events as shooting festivals and gun shows.

Acquisition of a handgun required a *Waffenerwerbschein* (license to obtain a weapon).<sup>173</sup> That did not apply to transfer of a handgun to a shooting range licensed by the police for sole use at the range. Exempt were “authorities of the Reich,” various government entities, and “departments and their subdivisions of the National Socialist German Workers' Party designated by the deputy of the Führer.”<sup>174</sup>

Carrying a firearm required a *Waffenschein* (license to carry a weapon). The issuing authority had complete discretion to limit its validity to a specific occasion or locality.<sup>175</sup> The decree further provided:

- (1) Licenses to obtain or to carry firearms shall only be issued to persons whose reliability is not in doubt, and only after proving a need for them.
- (2) Issuance shall especially be denied to: . . .
  3. gypsies, and to persons wandering around like gypsies;
  4. persons for whom police surveillance has been declared admissible, or upon whom the loss of civil rights has been imposed, for the duration of the police surveillance or the loss of civil rights;
  5. persons who have been convicted of treason or high treason, or against whom facts are under consideration which justify the assumption that they are acting in a manner inimical to the state . . . .

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in *Federal Firearms Legislation*, Hearings before the Subcommittee to Investigate Juvenile Delinquency, Senate Judiciary Committee, 90th Cong., 2d Sess., 489 (1968). Another translation is in SIMKIN & ZELMAN, *supra* note 30, at 53.

170. *See id.* § 29(1).

171. *See id.* § 7.

172. *See id.* § 9.

173. *See id.* § 11.

174. *Id.* § 12.

175. *See id.* § 14.

6. persons who have received final sentence to a punishment of deprivation of liberty for more than two weeks . . . for resistance to the authorities of the state.<sup>176</sup>

It is noteworthy that, on the face of the law, Jews were not named as automatically disqualified. Gypsies were the only ethnic group which did not qualify. It could be that the Nazi leadership did not feel confident of the support of enough Germans to disarm Jews at this time. Many Jewish men had fought in the Great War and retained their side arms.<sup>177</sup> This reluctance would change later that year.

For officially-supplied firearms, a license to acquire or carry firearms was not required of members of the armed forces, the police, “members of the SS reserve groups and the SS skull and cross-bones units [*Totenkopfverbände*],”<sup>178</sup> and the following:

lower echelon leaders of the National Socialist German Workers' Party, from local group leaders upwards; of the SA, the SS, and the National Socialist Motor Corps from *Sturmführer* upwards as well as the *Hitlerjugend* [Hitler Youth] from *Bannführer* upwards, to whom the Deputy of the Führer or an office designated by him, granted the right to carry firearms . . . .<sup>179</sup>

Possession of any kind of weapon could be prohibited where “in individual cases a person who has acted in an inimical manner toward the state, or it is to be feared that he will endanger the public security.”<sup>180</sup> This could include any opponent of Nazism or simply any disfavored person.

It was forbidden to manufacture or possess “firearms which are adapted for

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176. *Id.* § 15.

177. *E.g.*, VICTOR KLEMPERER, *I WILL BEAR WITNESS 1933-1941* at xi, xiv, 275 (Martin Chalmers, trans. 1999). In 1933, the head of the Reich Association of Jewish War Veterans actually sent a copy of a memorial book with the names of 12,000 Jewish German soldiers killed in World War I to Hitler, who acknowledged receipt with “sincerest feelings.” FRIEDLÄNDER, *supra* note 143, at 15. In fact, Jewish participation was in proportion to the rest of the German population. *Id.* at 75. Jewish service in the armed forces was not banned until 1935. *Id.* at 117.

178. *Reichsgesetzblatt* 1938, I, 265, § 18.

179. *Id.* § 19.

180. *See id.* § 23.

folding or telescoping, shortening, or rapid disassembly beyond the generally usual extent for hunting and sporting purposes.”<sup>181</sup> Firearms with silencers or spotlights were prohibited.<sup>182</sup> Finally, .22 caliber rimfire cartridges with hollow point bullets were outlawed.<sup>183</sup>

The penalty for willfully or negligently violating the provisions of the law related to the carrying of a firearm was up to three-years imprisonment and a fine.<sup>184</sup> A fine and indeterminate imprisonment was imposed on anyone who violated other provisions of the law or implementing regulations.<sup>185</sup>

The primary Hitler-Frick innovations to the 1928 Weimar law were the exclusion of Jews from firearms businesses and the extension of the exceptions to the requirements for licenses to obtain and to carry firearms to include various National Socialist entities, including party members and military and police organizations. Although the 1938 law no longer required an acquisition license for rifles and shotguns, but only for handguns, any person could be prohibited from possession of any firearm based on the broad discretion of authorities to determine that a person was “acting in a manner inimical to the state,” had been sentenced “for resistance to the authorities of the state,”<sup>186</sup> or “it is to be feared that he will endanger the public security.”<sup>187</sup> An innovation of the 1938 law was to ban .22 caliber rimfire cartridges with hollow point bullets, which were mostly used for small game hunting but which could be lethal to humans.

The major features of the Weimar law were retained as particularly suitable for Nazism’s goals: the requirement of licenses to make and sell firearms, including recordkeeping on transferees and police powers to inspect such records; the requirements of licenses to obtain and to carry weapons, and the retention by police of the identities of and information on such licensees; the provision that “licenses to obtain or to carry firearms shall only be issued to persons whose reliability is not in doubt, and only after proving a need for them”; the denial of licenses to “persons for whom police surveillance has been declared admissible,” or who presumably “are acting in a manner inimical to the state”; the prohibition on possession of any weapon by a person “who has acted in an inimical manner toward the state, or it is to be

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181. *See id.* § 25.

182. *See id.*

183. *See id.*

184. *Id.* § 26.

185. *See id.* § 27.

186. *Id.* § 23.

feared that he will endanger the public security”; and the prohibition on firearms with certain features not generally used “for hunting and sporting purposes.”

Again following the Weimar law, the Hitler-Frick law directed that the Reich Minister of the Interior shall issue implementing regulations.<sup>188</sup> Pursuant to that power, on March 19, 1938, Frick promulgated extensive regulations governing the manufacture, sale, acquisition, and carrying of firearms.<sup>189</sup> The regulations began by entrusting the higher administrative authority in the hands of the presidents of the governments or highest officials in the various States, except that in Berlin the power was in the hands of the Police Chief.<sup>190</sup>

Extensive recordkeeping was required. A manufacturer, which included not only the original producer but also a person who assembled firearms in his shop from parts made by others, was required to keep a book with each firearm identified and its disposition. A handgun seller was obliged to keep books on the acquisition and disposition of each handgun. Once a year, the book for the previous year was submitted to the police authorities for certification. All records were subject to police inspection on demand. The records were to be kept for ten years except that, on discontinuance of business, were required to be turned over to the police.<sup>191</sup>

Licenses to obtain or carry firearms, the form of which was prescribed, were issued by the district police authority of the residence of the applicant. A firearm acquisition permit was valid for one year, and a license to carry a specific firearm was valid for three years.<sup>192</sup> When a person obtained the handgun authorized by an acquisition permit, the transferor, whether dealer or private person, submitted the permit showing the acquisition to the police.<sup>193</sup> Muzzle loading pistols and revolvers, and blank and gas firearms, were exempt.<sup>194</sup> “Individual exceptions” were now

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187. *Id.*

188. *See id.* § 31.

189. *See Verordnung zur Durchführung des Waffengesetz, Reichsgesetzblatt* [1938], I, 270. For a side-by-side comparison of the Nazi law and regulations and the United States Gun Control Act of 1968 and regulations, *see* SIMKIN & ZELMAN, *supra* note 30, at 83-107.

190. *See id.* § 1. An English translation is available in *Federal Firearms Legislation*, *supra* note 170, at 496-503, and the German text and English translation are in SIMKIN & ZELMAN, *supra* note 30, at 64-75.

191. *See id.* §§ 15-19.

192. *See id.* at Anlage (Appendix) I & II.

193. *See id.* § 25.

194. *See id.* § 20.



permitted to the 1933 ban on importation of handguns.<sup>195</sup> Apparently because the law itself covered the subject in detail, the regulations did not mention the prohibition on Jews being licensed as manufacturers or sellers or the numerous exceptions for government and National Socialist party members.

The *Völkische Beobachter*, Hitler's newspaper, had this to say about the revised weapons law:

The new law is the result of a review of the weapons laws under the aspect of easing the previous legal situation in the interest of the German weapons industry without creating a danger for the maintenance of public security.

In the future, the acquisition of weapons will in principle require a police permit only when the weapons are pistols or revolvers. No permit will be required for the acquisition of ammunition.

The restrictions on the use of stabbing and hitting weapons, restrictions that originated at the time of emergency decrees, have basically been revoked. Compared to the previous law, the statute also contains a series of other alleviations. From the remaining numerous new provisions, the basic prohibition to sell weapons and ammunition to adolescents below the age of 18 should be emphasized. Further, the issuing of permits for the production or commerce with weapons is linked to the possession of German citizenship and to the personal reliability and technical fitness [of the applicant]. No permits may be given to Jews.<sup>196</sup>

While the above sounds like the new law was deregulatory, the Nazis were masters of propaganda. The *Berliner Börsenzeitung* produced identical commentary, adding the following rather ominous language:

The prerequisite for any easing of the applicable weapons law had to be that the police authorities would remain able ruthlessly to prevent any unreliable persons from acquiring or possessing any weapons. The new law is meant to enforce the obvious principle

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195. See *id.* at § 36.

196. *Ein neues Waffengesetz*, VÖLKISCHE BEOBACHTER, Mar. 22, 1938.

that enemies of the people and the state and other elements endangering public security may not possess any weapons. It does so by authorizing the police to prohibit such persons from acquiring, possessing or carrying weapons of any kind. Since it is possible in this way to prevent any weapons possession that the police considers undesirable, the authorities were justified to ease the previous restrictions.<sup>197</sup>

In short, the police determined who could and who could not possess firearms. Aryans who were good Nazis could acquire firearms with relative ease. Any possession of firearms by a person considered “undesirable” by the police was prohibited. The Nazis thereby imposed on the German people a firearms law based on totalitarianism and police-state principles.

#### **IV. KRISTALLNACHT: THE DISARMING OF THE JEWS**

On November 7, 1938, Herschel Grynszpan, a 17-year old German Jewish refugee whose father had been deported to Poland, went to the German Embassy in Paris intending to shoot the ambassador. Instead he shot and mortally wounded Ernst vom Rath, the third secretary in the Embassy, who ironically was being watched by the Gestapo because he opposed anti-Semitism and Nazism.<sup>198</sup> As the following demonstrates, the Nazi hierarchy recognized the incident as creating a favorable opportunity to disarm Germany’s Jewish population.

On the morning of November 9, German newspaper headlines reported variously “Police Raid on Jewish Weapons,”<sup>199</sup> “Armed Jews,”<sup>200</sup> “Berlin’s Jews were Disarmed,”<sup>201</sup> “Disarming the Berlin Jews,”<sup>202</sup> and “Surrender of Weapons by Jews in

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197. BERLINER BÖRSENZEITUNG, March 22, 1938, at 1. In addition to such newspaper explanations, the Weapons Law was the subject of two legal commentaries: FRITZ KUNZE, *DAS WAFFENRECHT IM DEUTSCHEN REICHE* (1938); WERNER HOCHÉ, *WAFFENGESETZ* (1938).

198. See ANTHONY READ AND DAVID FISHER, *KRISTALLNACHT: THE UNLEASHING OF THE HOLOCAUST 60* (1989); see also SHIRER, *supra* note 115, at 430.

199. *Razzia auf Judenwaffen*, DER ANGRIFF, Nov. 9, 1938, at 14.

200. *Bewaffnete Juden*, FRANKISCHE TAGESZEITUNG, Nov. 9, 1938, at 2.

201. *Berlins Juden wurden entwaffnet*, BERLINER MORGENPOST, Nov. 9, 1938.

202. *Entwaffnung der Berliner Juden*, DER VÖLKISCHE BEOBACHTER, Nov. 9, 1938.

Berlin, A Measure by the Police President.”<sup>203</sup> The articles all contained substantially the same text as follows:

In view of the Jewish assassination attempt in the German Embassy in Paris, Berlin's Police President made known publicly the provisional results so far achieved, of a general disarming of Berlin's Jews by the police, which has been carried out in recent weeks.

The Police President, in order to maintain public security and order in the national capital, and prompted by a few individual incidents, felt compelled to disarm Berlin's Jewish population. This measure was recently made known to Jews by police stations, whereupon--apart from a few exceptions, in which the explicit nature of the ban on possession of weapons had to be articulated--weapons until now found by the police to be in the possession of Jews who have no weapons permit were voluntarily surrendered.

The provisional results clearly show what a large amount of weapons have been found with Berlin's Jews and are still to be found with them. To date, the campaign led to the taking into custody of 2,569 stabbing and cutting weapons, 1,702 firearms, and about 20,000 rounds of ammunition.

Upon completion of the weapons campaign, if a Jew in Berlin is found still to possess a weapon without having a valid weapons permit, the Police President will, in every single case, proceed with the greatest severity.<sup>204</sup>

The Berlin Police President, Count Wolf Heinrich von Helldorf, apparently announced the above results the day before.<sup>205</sup> As noted, the disarming had been carried out in “recent weeks” and had been “prompted by a few individual incidents” which were not specified. Was the disarming an attempt to control any resistance to the repressive measures currently underway which motivated Grynszpan? Or was it in anticipation of a major pogrom against Jews just waiting for the proper incident to

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203. *Waffenabgabe der Juden in Berlin*, BERLINER BÖRSENZEITUNG, Nov. 9, 1938, at 1.

204. *Id.*

205. *See id.*

exploit, which now existed from the shooting at the Paris embassy? The disarming meant that Jews could not protect themselves from attacks.<sup>206</sup>

The *New York Times* reported from Berlin that “Nazis Ask Reprisal in Attack on Envoy,” and that “Berlin Police Head Announces ‘Disarming’ of Jews--Victim of Shots in Critical State.”<sup>207</sup> Its account repeated the above statistics from Police President von Helldorf of weapons seized and the announcement that “any Jews still found in possession of weapons without valid licenses are threatened with the severest punishment.”<sup>208</sup>

The attempted assassination was called “a new plot of the Jewish world conspiracy against National Socialist Germany,” and the German press called for retaliation. Recalling David Frankfurter's shooting in 1936 of Nazi leader Wilhelm Gustloff in Switzerland, the *Börsen Zeitung* declared: “International Jewry and foreign Jews living in Germany as well will soon feel the consequences that the Reich will draw from the fact that for the second time in three years ‘a Jew has shot.’” The *Angriff* asked for “the sharpest measures against Jews.”<sup>209</sup>

Vom Rath died on the 9<sup>th</sup>, which by coincidence was the “*Tag der Bewegung*” (Day of the Movement), the anniversary of Hitler’s failed 1923 Beer Hall Putsch in Munich. Hitler gave his annual speech in the Bürgerbräukeller to commemorate and remember the “fallen heroes” who died in the shootout with the police.<sup>210</sup> Vom Rath's death was reported to Hitler early that evening while dining at Munich's town hall chamber. Hitler turned and spoke quietly to Propaganda Minister Joseph Goebbels.<sup>211</sup> Mentioning localized anti-Jewish riots the night before, the Führer stated that the Nazi party was not to initiate such demonstrations, but would not intervene to halt “spontaneous” pogroms.<sup>212</sup> Hitler was also overheard to say that “the SA should be allowed to have a fling.”<sup>213</sup> Goebbels gave a speech calling for revenge with such vehemence that the party and police leaders would discern that they should take an active role.<sup>214</sup>

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206. See READ & FISHER, *supra* note 198, at 68.

207. *Nazis Ask Reprisal in Attack on Envoy*, N. Y. TIMES, Nov. 9, 1938, at 24.

208. *Id.*

209. *Id.*

210. READ & FISHER, *supra* note 198, at 64.

211. See *id.* at 66.

212. See *id.*

213. *Id.* See also GERALD SCHAWB, *THE DAY THE HOLOCAUST BEGAN: THE ODYSSEY OF HERSCHEL GRYNZSPAN* 20 (1990).

214. READ AND FISHER, *supra* note 198, at 64.

The telephone orders between chief of staff of the SA Group Nordsee, Roempagel, and his superior, were included in a secret SS report prepared the following year.<sup>215</sup> Among the instructions Roempagel received were: “All Jewish stores are to be destroyed immediately by SA men in uniform”; “Jewish synagogues are to be set on fire immediately, Jewish symbols are to be safeguarded”; “the police must not intervene. The Führer wishes that the police does not intervene.” The following instruction would ensure the success of the attacks as well as achieve an ultimate goal: “All Jews are to be disarmed. In the event of resistance they are to be shot immediately.”<sup>216</sup>

After 11:55 p.m. on November 9, SS Standartenführer (Colonel) Heinrich Müller sent an urgent teleprinter message from Gestapo Headquarters in Berlin to every state police bureau in the Reich, alerting them that “demonstrations against the Jews, and particularly their synagogues, will take place very shortly.” The Gestapo was not to interfere, but was to cooperate with the regular police to prevent looting and other excesses.<sup>217</sup> The last paragraph of Müller's message read:

If, during the actions about to take place, Jews are found in possession of *weapons* the most severe measures are to be applied. The special task units of the SS as well as the general SS may be employed for all phases of the operation. Suitable measures are to be taken to ensure that *the Gestapo remains in control of the actions* under all circumstances.<sup>218</sup>

While Müller ordered “severe measures” against Jews who possessed arms, the SA ordered them to be shot.<sup>219</sup> Müller also ordered the arrest of twenty to thirty

215. SCHAWB, *supra* note 213, at 22.

216. *Id.* Also quoted in LIONEL KOCHAN, POGROM: 10 NOVEMBER 1938 at 63-64 (1957) (citing *Urteil des obersten Parteigerichts in dem Verfahren gegen Frühlnig u.a.*).

217. See READ & FISHER, *supra* note 198, at 69, 70.

218. *Id.* at 68. See also RITA THALMANN AND EMMANUEL FEINERMANN, CRYSTAL NIGHT: 9-10 NOVEMBER 1938 at 59 (Gilles Cremonesi, trans. 1974). For the German version and source of this document, see *An alle Stapo Stellen und Stapoleitstellen*, Berlin Nr. 234 404 9.11.2355, in TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL: NUREMBERG, NOVEMBER, 14, 1945 - OCTOBER 1, 1946, VOL. 25 at 377 (1995).

219. THALMANN & FEINERMANN, *supra* note 218, at 59 (citing, Orders of the SA

thousand German Jews, which was not mentioned in the SA instructions.<sup>220</sup>

As an example of an official communique, the Mayor of Nauen, which is near Berlin, reported that at 6:00 a.m. on November 10, the *Staatspolizei* (Gestapo) communicated the following by telephone:

Secret: in consequence of the assassination in the German Embassy in Paris, actions against Jews are shortly expected to take place throughout Germany. These actions are not to be interfered with. However, looting and theft are not to take place. If Jews are found to be in possession of weapons during these actions, these Jews should be arrested. I request that the chief administrative officers of the States and the majors contact the district committees in order to agree on the implementation of the demonstrations. Only such measures as will not endanger German lives or property are permissible. Arson is not permitted on any account. Jewish businesses and apartments may be destroyed but not looted. The police should be instructed to monitor the implementation of this disorder and to arrest any looters. Jews of foreign nationality should not be affected by the actions. All existing archive material should be confiscated from synagogues and business premises belonging to the Jewish religious community. Male Jews who are of a fairly young age in possession of assets should be arrested. Arrested persons should not be mistreated. The actions are to begin immediately. I expect an immediate report by telephone.<sup>221</sup>

On the morning of November 10, the following decree appeared in newspapers throughout Germany:

Jews Forbidden to Possess Weapons  
By Order of SS Reichsführer Himmler

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Commander of the "Baltic Group", in Scheffler-Schwarze, *Broadcast for Brotherhood Week in R.F.A.*, Wiener Library, London).

220. *See id.*

221. Der Bürgermeister Nauen bei Berlin, Ulten betreffend Aktion gegen Juden (10.11.1938). Brandenburgisches Landeshauptarchiv, Potsdam, Rep. 8 Nauen, Nr. 101.

Munich, November 10 [1938]

The SS Reichsführer and German Police Chief has issued the following Order:

Persons who, according to the Nürnberg law, are regarded as Jews, are forbidden to possess any weapon. Violators will be condemned to a concentration camp and imprisoned for a period of up to 20 years.<sup>222</sup>

All hell broke loose. The *New York Times* reported: "Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt."<sup>223</sup> In Berlin and throughout Germany, thousands of Jewish men, particularly prominent leaders, were taken from their homes and arrested.<sup>224</sup> The *Angriff*, Goebbel's organ, implored that, "For every suffering, every crime and every injury that this criminal [the Jewish community] inflicts on a German anywhere, every individual Jew will be held responsible."<sup>225</sup> The *Times* account reported the arms prohibition as follows:

*Possession of Weapons Barred*

One of the first legal measures issued was an order by Heinrich Himmler, commander of all German police, forbidding Jews to possess any weapons whatever and imposing a penalty of twenty years confinement in a concentration camp upon every Jew found in possession of a weapon hereafter.<sup>226</sup>

The destruction was carried out by *Rollkommandos* (wrecking crews) under the protection of uniformed Nazis or police.<sup>227</sup> However, the people at large generally

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222. VÖLKISCHE BEOBACHTER, Nov. 10, 1938; *see also* BERLINER BÖRSEN ZEITUNG, Nov. 10, 1938, at 1; DER ANGRIF, Nov. 10, 1938, at 7. *See also* JOSEPH WALK, DAS SONDERRECHT FÜR DIE JUDEN IM NS-STAAT (1981).

223. *Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt*, N. Y. TIMES, Nov. 11, 1938, at 1.

224. *See id.*

225. *Id.* at 4.

226. *Id.*

227. *See id.*

did not participate, and most appeared to be gravely disturbed by the attacks.<sup>228</sup> Some members of the public helped Jews leave their stores unmolested, but citizens who protested against the attacks on Jews were threatened and silenced by the *Rollkommandos*.<sup>229</sup>

Some personal reminiscences relate experiences on November 10. Yitzhak Herz was in charge of the children at the Orphanage in Dinslaken. Early in the morning Herz opened the door to two Gestapo officers and a policeman, who announced: "This is a police raid! We are looking for arms in all Jewish homes and apartments and so we shall search the orphanage too!" They also searched for money, but found nothing, and departed with the order: "Nobody is to leave the house before 10 a.m.! All the blinds of the building which face the street must be drawn! Shortly after 10 a.m. everything will be over."<sup>230</sup>

Living in a large apartment in Uhlandstrasse in Berlin were the Sinzheimers, a Jewish family with two children. The pogrom began while Mr. Sinzheimer was in Paris on business. On the evening of November 10, Mrs. Sinzheimer heard shouting, glass being smashed, and shooting.<sup>231</sup> At around 6:00 a.m., she heard over the radio an announcement that any Jew found in possession of a firearm would be shot at once. Mrs. Sinzheimer recalled that her husband had a handgun, but the fact that he also had a license for it would not placate the SA if they found it. She called a friendly repairman to break open the secret drawer where the firearm and license were hidden. She then placed the handgun and license in a box of cigars and carried it to the local police station on the Kurfüstendamm. She asked to see a sergeant who she knew well and presented him with the box of cigars. When he discovered the contents, he exclaimed: "Hurry home, Frau Sinzheimer, before you give me a heart attack!"<sup>232</sup>

Victor Klemperer served honorably in Germany's armed forces during World War I and retired as a university professor in 1935.<sup>233</sup> A resident of Dresden, his acclaimed diary includes the following entry concerning *Kristallnacht*:

On the morning of the eleventh two policemen  
accompanied by a 'resident of Dölzchen.' Did I have any

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228. *See id.*

229. *See id.*

230. NIGHT OF POGROMS: "KRISTALLNACHT" NOVEMBER 9-10, 1938 at 39-40 (1988).

231. *See* READ & FISHER, *supra* note 198, at 81.

232. *Id.* at 82.

233. KLEMPERER, *supra* note 177, at xi, xiv.



weapons?— Certainly my saber, perhaps even my bayonet as a war memento, but I wouldn't know where.— We have to help you find it. — The house was searched for hours. . . . They rummaged through everything, chests and wooden constructions Eva had made were broken open with an ax. The saber was found in a suitcase in the attic, the bayonet was not found. Among the books they found a copy of the *Sozialistische Monatshefte* (Socialist Monthly Magazine—an SPD theoretical journal) [ . . . ] this was also confiscated.<sup>234</sup>

A “good natured and courteous” young policeman took Klemperer's statement and stated that they would have to go to the court building, adding: “There's nothing to fear, you will probably (!) be back by evening.”<sup>235</sup> Klemperer asked if he was under arrest. “His reply was good-natured and noncommittal, it was only a war memento after all, I would probably be released right away.” At the court building, a policeman copied Klemperer's statement. After some waiting, a magistrate with a Party badge made out a certificate of discharge, without which Klemperer would be arrested again. “At four o'clock I was on the street again with the curious feeling, free—but for how long?”<sup>236</sup>

Some of the Jews whose homes were searched for arms and ransacked were foreign nationals, leading to diplomatic protests. The following Gestapo report concerning the complaint of Mrs. Gertrude Dawson, a British citizen residing in Döbling, did not deny the systematic vandalism:

Given the sometimes high degree of agitation of the national comrades during the action against the Jews it is no longer possible to determine which persons participated in the riots. That also explains why there was little success in the clarification of the facts, even though the investigations were conducted with vigor. Several persons who were in Mrs. Dawson's apartment explained that they had orders to search for weapons. But it is impossible to determine

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234. *Id.* at 275.

235. *Id.*

236. *Id.* at 275-76.

the details about the damage to the furniture, etc.<sup>237</sup>

The anti-Jewish pogrom extended into Austria, which Germany had annexed earlier that year. Arson was committed against Vienna's temples, and Nazis attacked Jewish businesses. The *New York Times* reported: "Thousands of Jews had their dwellings searched for concealed arms, documents and money. The police claim to have found quantities of them . . . ."<sup>238</sup>

An incident in Vienna became the subject of a Gestapo report, which alleged the following about Henry Coren, a British citizen:

During the action of 10 November 1938 against Jews, the apartment of stateless retiree Hermann . . . was searched and a loaded revolver belonging to his son in law, Henry Coren, who was living with him, was found. The weapon was hidden in a suitcase belonging to Coren. Based on these facts, three SA men belonging to the local group Fuchsröhren of the NSDAP took Mr. and Mrs. Coren, as well as Hermann, to a collection point at Rinnböckstrasse. There, their personal information, etc. was written down. When it was determined that Mr. and Mrs. Coren had British citizenship, they were released immediately.

After the SA men had taken Mr. and Mrs. Coren and Hermann to the collection point, the local group asked them to also fetch Mrs. Hermann who had stayed back in the apartment. The men therefore returned to the Coren apartment and asked Mrs. Hermann to get dressed to go out and be interrogated. Mrs. Hermann then went to a room on the side for about 2 minutes and changed.<sup>239</sup>

Coren claimed that SA men stole 3,400 Reichsmark from the apartment, and the British Consulate General filed a protest. The Gestapo found the suspicion

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237. Geheime Staatspolizei, Betr.: Beschwerde der britischen Staatsangehörigen Mrs. Gertrude Dawson, Copy, 84-60 - Sdh. 7/2, 7 February 1939. BA Berlin, R 43 II/599, Fiche 3, Row 5.

238. *Vienna's Temples Fired and Bombed*, N. Y. TIMES, Nov. 11, 1938, at 2.

239. Geheime Staatspolizei, Betrifft: Den britischen Staatsangehörigen Henry Coren, Copy 84-50 Sdh. 28/12, 28 December 1938. BA Berlin, R 43 II/599, Fiche 3, Row

unfounded because the SA men “adamantly deny the allegation” and because “it was not possible to interrogate Coren about the matter because he fled the Reich on 30 November 1938. This fact also is an indication that Coren was not saying the truth.”<sup>240</sup> For Coren, however, discretion must have been the better part of valor.

On November 11, Interior Minister Frick promulgated the *Verordnung gegen der Waffenbesitz der Juden* (Regulation Against Jews' Possession of Weapons).<sup>241</sup>

Its preamble recites that it was issued pursuant to § 31 of the 1938 Weapons Law, which in turn empowered the Interior Minister to issue “the necessary legal and administrative regulations for the implementation and fulfillment of this Law.” § 1 of the new regulation provided:

Jews (§ 5 of the First Regulations of the German Citizenship Law of November 14, 1935 . . .) are prohibited from acquiring, possessing, and carrying firearms and ammunition, as well as cutting or stabbing weapons. Those now having in their possession weapons and ammunition must at once surrender them to the local police authority.<sup>242</sup>

Foreign Jews could be exempted by the Interior Minister or delegate.<sup>243</sup>

As to the property, § 2 stated: “Weapons and ammunition found in a Jew’s possession will be forfeited to the Reich without compensation.” As to the person in violation, § 4 provided: “Whoever willfully or negligently violates the provisions of § 1 shall be punished with imprisonment and a fine. In especially severe cases of deliberate violations, the punishment is imprisonment in a penitentiary for up to five years.” The regulation was applicable in Germany, Austria, and the Sudetenland.<sup>244</sup>

There were about 550,000 Jews in those jurisdictions. The number of Jews arrested during the rampage was approximately 30,000 males aged 16-80.<sup>245</sup>

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240. *Id.*

241. *Reichsgesetzblatt* 1938, I, 1571, reprinted in SIMKIN & ZELMAN, *supra* note 30, at 80-81.

242. *Id.* § 1.

243. *See id.* § 3.

244. The regulation was widely noticed in the English-speaking press. *E.g.*, *Jews Pay for Nazi Damage*, THE TIMES (London), Nov. 14, 1938, at 12a; *Ban on Firearms for Jews*, BOSTON GLOBE, Nov. 12, 1938.

245. *See* SCHWAB, *supra* note 213, at 25.

The *Berliner Börsen Zeitung* published the regulation under the headline: "The Weapons Ban for the Jews: A National Law--Imprisonment and Penitentiary compared with Protective Custody."<sup>246</sup> Referring respectively to Himmler's earlier decree and to Frick's new regulation, it stated: "According to the SS Reichsführer and Chief of the German Police in the National Ministry of the Interior, Jewish possession of Weapons, already ended abruptly by police regulations, is now immediately followed by a legal ban. The National Minister of the Interior yesterday issued the following Regulations against weapons possession by the Jews . . ."<sup>247</sup> Following the text of the regulation, the article noted:

"National Minister Dr. Goebbels has made known, as we already reported, that the final answer to the Jewish assassination attempt in Paris would be given to Jewry in the form of legislation or in the form of regulations. For the first of these replies it has not been necessary to wait long!"<sup>248</sup>

The *Völkische Beobachter* published a lengthy official commentary on the new prohibition against firearm possession by Jews and its relation to the 1938 Weapons Law. The author was a Dr. Ehaus, a Senior Executive Officer (*Regierungsrat*). It is reproduced in full below.<sup>249</sup>

**Explanation of the Ordinance against the Possession of Weapons**

The preliminary police decree issued by the Reichsführer SS and the Chief of the German Police in the Reich Ministry of the Interior, which immediately after the assassination in Paris had prohibited persons considered Jews under the Nürnberg laws to possess any weapons, has been followed within a very short period of time by an ordinance which settles the prohibition of weapons for Jews for good. In order to make those concerned understand the extent of this law, it is necessary to explain the few paragraphs of the ordinance of November 11, 1938 in more detail.

To begin with, we need to note that the preventive activity of the Security

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246. *Das Waffenverbot für die Juden*, BERLINER BÖRSEN ZEITUNG, Nov. 12, 1938, at 12.

247. *Id.*

248. *Id.*

249. *Erläuterungen zu der Berordnung gegen den Waffenbesitz*, VÖLKISCHE BEOBACHTER, Nov. 13, 1938.

Police will not be limited by the rules prohibiting Jews from possessing weapons. The security measures ordered by the Reichsführer SS and the Chief of the German Police in the Reich Ministry for the Interior will remain in force. § 1 prohibits any and all Jews from acquiring, possessing or carrying firearms or ammunition, as well as weapons for hitting or stabbing. § 5 of the First Ordinance to the Reich Citizen Law of November 14, 1935 is mentioned in parentheses. That is only meant to point out that the issue of who is Jewish should be settled by using the standard of the Nürnberg law. Of course, not only German Jews of the Reich, but also all foreign Jews (Jews with foreign citizenship and Jews without citizenship) are subject to the ordinance.

The new ordinance makes reference to § 31 of the Weapons Law of March 18, 1938. From that it can be concluded that the definitions for firearms, ammunition, and weapons for stabbing or hitting of § 1 of the Weapons Law apply. According to that, firearms are weapons that allow a projectile to travel through a barrel propelled by gas or air pressure; weapons for hitting or stabbing are weapons that by their nature are meant to inflict injuries by hitting or stabbing.

It is remarkable that muzzle loaders, rifle models of antique design, blank cartridge firearms, gas, stun and dummy weapons [*Scheintodwaffen*], gallery rifles, parlor rifles, small caliber rifles, small caliber sports rifles and spring guns fall under the term “firearm.” Ammunition means not only finished ammunition for firearms, but also gunpowder of any kind. In order to prevent any circumvention of the Weapons Law, finished or pre-fabricated essential parts of firearms or ammunition are given the same status as finished firearms or finished ammunition (§ 1, paragraph 3 of the Weapons Law).

We have already mentioned what the term “weapons for hitting or stabbing” means. Even though the legal provisions are clear enough, we shall list such individual weapons one more time: daggers and stilettoes; swords, sabers, bayonets, fencing foils and students’ rapiers; sword canes and defense canes (canes with metal spirals, wire cable or truncheon); clubs, steel rods and horsewhips; brass knuckles, iron rods and fighting rings; weapon rings, deer knives, and hunting knives. It will depend on each individual case whether lockable folding knives or fixed knives that cannot be folded have to be considered weapons. Knives with a handle will then have the nature of a weapon when their size and design show that they were meant to serve the purpose of a dagger.

The Jews must be warned that they should interpret the new ordinance and the already existing Weapons Law strictly. Otherwise they will have to expect severe penalties pursuant to § 4 and, if applicable, protective custody. When following the order spelled out in § 1 of the new ordinance to immediately turn over all of the

weapons and ammunition to the local police authority, the Jews must make sure that no weapons whatsoever are left behind with them.

One thing in particular should be pointed out: Any Jew who, after this ordinance forbidding the possession of weapons by Jews has become effective, destroys, gives away or otherwise disposes of a weapon, that action violates § 1, sentence 2, and § 4 of the ordinance. He should have turned in the weapon immediately. As for the rest, he did not have the right to dispose of the weapon anymore because pursuant to § 2 weapons and ammunition in the possession of a Jew become the property of the Reich, without compensation. That means that with the entering into force of this ordinance all of the weapons in the possession of Jews have become the property of the German Reich.

§ 3 of the aforesaid ordinance provides exceptions for Jews with foreign citizenship. Of course, those Jews too must immediately fulfill their duty to turn in their weapons. Their weapons too have become the property of the Reich. Should their request to be exempt from the prohibition be granted, the property they lost will be returned to them.

The punishment provided by the ordinance against weapons possession by the Jews goes beyond that provided by the Weapons Law. As the assassination in Paris shows, the German ethnic community has a strong interest in disarming all Jews living within the boundaries of the Reich. By providing for severe prison and penitentiary terms, the State will discourage all Jews from violating its laws enacted to protect the German people. Where even such punishment has no effect, the authorities of the Security Police will ensure full compliance with the authority of the Reich.

It is particularly encouraging that today, when we are reaching the end of the year 1938, we were able to extend the prohibition of weapons possession by the Jews to the Ostmark and the Sudetenland regions. The protection that we are able to offer to our German brothers in the regained regions becomes particularly clear in § 6 of the ordinance of November 11, 1938.

Dr. Ehaus, Senior Executive Officer

A Berlin Jewish scientist told a reporter how at 6:00 a.m. on November 12, a Nazi official in a brown uniform and four assistants in mufti took him from his home, only to order him back home.<sup>250</sup> Many of his friends who were arrested were not so

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250. *See Jew Charges Nazi Wrecked Home of Friend*, CHI. TRIB., Nov. 13, 1938, at 2b.

lucky. The home of one friend was searched for weapons by six men, who broke the china and smashed furniture. The scientist related: "Only one thing they had missed--an old army revolver which was lying in a drawer of a table in my friend's bedroom. That rusted weapon, probably fired for the last time in 1918, might have gotten him twenty years in a concentration camp."<sup>251</sup>

The American Consulate in Stuttgart reported to U.S. Ambassador Hugh R. Wilson in Berlin on November 12 that "the Jews of Southwest Germany have suffered vicissitudes during the last three days which would seem unreal to one living in an enlightened country during the twentieth century . . . ." The Consulate's office was flooded with Jews begging for visas or immigration assistance for themselves and families. He wrote: "Men in whose homes old, rusty revolvers had been found during the last few days cried aloud that they did not dare ever again to return to their places of residence or business. In fact, it was a mass of seething, panic-stricken humanity."<sup>252</sup>

Searches for weapons in Jewish homes and arrests generally continued. Jews who still had wealth, despite the recent campaigns to deprive them of their property, were pinpointed.<sup>253</sup>

The Decree on an Atonement Fine for Jews with German Citizenship (November 12, 1938) levied Jews with one billion reichsmarks as payment to the German Reich for the destruction caused by the Nazis.<sup>254</sup> Ordered by Field Marshal Göring in his capacity as Commissioner for the Four Year Plan, this was enforceable because a registry of all Jewish property had been compiled six months previously.<sup>255</sup> (Similarly, the order prohibiting Jews from possession of arms under penalty of imprisonment and "protective custody" was more enforceable because of the firearms registry laws.)<sup>256</sup> Jews were ordered to repair all damage that had been done to businesses and homes on November 8-10, and the Reich confiscated Jewish insurance

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251. *Id.*

252. THE HOLOCAUST, VOL. 3 THE CRYSTAL NIGHT POGROM 183-84 (John Mendelsohn ed., 1982).

253. *Revenge Laws Drive Semites Out of Business*, CHI. TRIB., Nov. 13, 1938, at 1g.

254. *See* NOVEMBER 1938: FROM "REICHSKRISTALLNACHT" TO GENOCIDE 127 (Walter H. Pehle ed. & William Templer trans., 1991).

255. *See More Arrests, Jews to Pay for Nazi Damage*, THE TIMES (London), Nov. 14, 1938, at 12a.

256. *See supra* notes 30-49 and 169-95 and accompanying text for discussion concerning firearms laws of 1928 and 1938.

claims. Jews were excluded from economic activity in the Reich by the year's end.<sup>257</sup>

A Swiss newspaper reported from Berlin on November 11 under the headline "Numerous Arrests?" the following:

Last night the Gestapo started to arrest Jews in Berlin and in other German cities. Most of those arrested were respected Jewish personalities. At a reception for the press, the Reich Minister for Propaganda [Goebbels] denied that there had been any arrests; when asked again later, however, [his office] said that the arrests had been made in connection with Himmler's decree prohibiting Jews from owning arms. The explanation given was that the Jews had retained weapons even though the Chief of the German police in his latest decree had threatened to punish them with protective detention of 20 years.<sup>258</sup>

Reporting from Frankfurt, the British Counsel observed that for several days beginning on the evening of November 10, SS troopers and Gestapo agents intruded into Jewish homes to conduct searches and seizures. If any arms or a large sum of money were found, the occupants were arrested for illegal possession of arms or for hoarding funds.<sup>259</sup>

French and Swiss newspapers saw *Kristallnacht* as the culmination of earlier anti-Semitic measures of the Reich and as "premeditated destruction":

To illuminate the recent events one now better understands the special liabilities imposed on the Jews in recent times. Events since last June make clear the obvious methods of their measures. They have simplified the destruction. One method was to confiscate their arms from them, rendering the operation without danger. The other demanded from them a formal declaration of assets (currency, jewelry, pieces of furniture, carpets), which facilitated the confiscation thereof. All was

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257. See *Reichsgesetzblatt* 1938, I, 1579. See also THE TIMES (London), Nov. 14, 1938, at 12a.

258. NEUE ZÜRCHER ZEITUNG, Nov. 13, 1938, at 2:1.

259. See READ & FISHER, *supra* note 198, at 95 (citing British Acting Counsel General A.E. Dowden's reports from Frankfurt-am-Main: F0371/21638).



ready.<sup>260</sup>

As for the shooting in the German Embassy in Paris which was the excuse for the rampage and the disarming of the Jews, the father of vom Rath, the deceased diplomat, said to his Jewish neighbor: "My dear Reverend, neither you nor any other Jew is responsible for this. I think my son was assassinated on orders. He spoke too much and a hired assassin killed him."<sup>261</sup>

A month after the pogrom, the Gestapo in Munich issued a memorandum to the police, commissars, and mayors concerning the regulation requiring Jews to surrender all weapons. It also explained how the regulation was to be implemented:

All weapons of all kinds in the possession of Jews are forfeited to the Reich without payment of compensation and must be surrendered.

This includes all firearms including alarm (starter) pistols and all cutting and stabbing weapons including the fixed blade if like a dagger.

Requests by emigrating Jews to have their weapons returned to them shall not be granted.

A list shall be made of all weapons that belonged to Jews and the list shall be sent to this office by January 5, 1939. The weapons shall be well packaged and, if in small numbers, sent as parcel, and if in larger numbers, by freight.

Because this will have to be reported to the Gestapo office in Berlin, this deadline will absolutely have to be observed.<sup>262</sup>

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260. JOURNAL DE GENÈVE, Nov. 16, 1938, at 8, quoting *Jour-Echo de Paris*. The SWISS NEUE ZÜRCHER ZEITUNG, Nov. 15, 1938, 1, under the headline "The Annihilation Campaign Against the German Jews," reported the following :

As with the action of last summer, the wave of persecution of Jews has spread to Gdansk [Danzig]. There were attacks on shops and raids for weapons. The Gauleiter [Nazi Party Provincial Chief] declared yesterday that Gdansk wanted to get rid of all Jews, even of those with Polish citizenship.

261. THALMANN & FEINERMANN, *supra* note 218, at 57.

262. Geheime Staatspolizei Staatspolizeileitstelle München, An Polizeipräsidium

Thus, over a period of several weeks, Germany's Jews had been disarmed. The process was carried out both by following a combination of legal forms and by sheer lawless violence. The Nazi hierarchy could now more comfortably deal with the Jewish question without fear of resistance.

#### V. AFTERWORD: PRECLUDING ARMED GERMAN RESISTANCE TO NAZISM

The disarming of the Jews made individual or collective resistance in the future impossible. After *Kristallnacht*, the historical record does not reflect that German Jews unlawfully obtained or used arms as tools of resistance. In fact, the *Reichsvertretung der Juden in Deutschland* (National Representative Organization of Jews in Germany), the German-Jewish leadership, insisted that Jewish activities be legal. Militant resistance was rejected as futile and provocative of reprisals.<sup>263</sup> The *Reichsvertretung* did sanction the financing of escapes by opening illegal bank accounts,<sup>264</sup> but it also helped to register Jews selected for deportation and to ensure transportation arrangements for deportees.<sup>265</sup>

Yet it is a myth, observes Arnold Paucker, that Jews did not resist Nazism. Most Jews capable of bearing arms came forward, wherever possible, to fight either in regular armies or as partisans in every European country.<sup>266</sup> The exception was in Germany, where "there was virtually no armed resistance of any sort, and thus no armed Jewish resistance either."<sup>267</sup> German Jews could not be faulted for not instigating military adventurism.<sup>268</sup> Paucker does not speculate on how the course of history could have been altered had German opponents of Nazism, including both Jews and non-Jews, been better armed, more unified, and ideologically more inclined

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München *et al.*, *Betreff: Waffenablieferung durch Juden*. 19 December 1938. Found in BHStA, B.Nr. 39859/38 II G Ma.

263. Konrad Kwiet, *Resistance and Opposition: The Example of the German Jews*, in *CONTENDING WITH HITLER: VARIETIES OF GERMAN RESISTANCE IN THE THIRD REICH*, 65-66 (David Clay Large ed., 1991).

264. *See id.* at 67.

265. *See id.* at 72-73.

266. ARNOLD PAUCKER, *JEWISH RESISTANCE IN GERMANY: THE FACTS AND THE PROBLEMS* 3 (1988).

267. *Id.*

268. *See id.*

to resistance.

After Hitler launched World War II by attacking Poland in 1939, many Germans blamed him for failing to spare Germany an armed conflict. Anti-Nazi sentiment existed. Opined the London *Times*: “All this does not imply that Germany is ready for a revolution. Civilians are disarmed, and so powerless . . . .”<sup>269</sup> Germans generally longed for, it was asserted, the return of legality, freedom, and human dignity.<sup>270</sup>

When the Nazis conquered France (as in other countries), they proclaimed that failure of civilians to surrender all firearms within twenty-four hours would be punishable with the death penalty, and they executed many who failed to comply.<sup>271</sup>

The *New York Times* observed:

The best way to sum up the disciplinary laws imposed upon France by the German conqueror is to say that the Nazi decrees reduce the French people to as low a condition as that occupied by the German people. Military orders now forbid the French to do things which the German people have not been allowed to do since Hitler came to power. To own radio senders or to listen to foreign broadcasts, to organize public meetings and distribute pamphlets, to disseminate anti-German news in any form, to retain possession of firearms--all these things are prohibited for the subjugated people of France, as they have been verboten these half dozen years to the people of Germany.<sup>272</sup>

Even with the glorious victory over France, it could not be that the German people were fully behind the Führer, as the negative answer to the following rhetorical question made clear: “will Hitler now abolish the Gestapo and set up a free press?”<sup>273</sup>

Nor would the Nazis trust ordinary German firearm owners. In addition to the law and regulations already in place, a secret Gestapo order in 1941 established a system of central registration of persons obtaining firearms other than military

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269. *Liberation from Nazism*, THE TIMES (London), Feb. 10, 1940, at 5e.

270. *See id.*

271. *E.g.*, LE MATIN (Paris), June 27, 1940, at 1 (proclamation); LE MATIN, Sept. 22, 1941, at 1 (execution of persons for “illegal possession of arms”). This is the subject of a forthcoming study by this author.

272. *Topics of the Times: Their Common Fate*, N. Y. TIMES, July 2, 1940, at 4.

officers, police, and political leaders. An implementing directive stated:

On order of the Reich Security Main Office, Berlin, the Head Office of the State Police in Munich is in charge of the supervision and control of the sale of weapons and ammunition in your district.

The Rural District Administrators, as well as the Mayors and Mayors of former primary district towns in Upper Bavaria shall therefore record

1. Monthly (beginning on February 10, 1941), all persons who have acquired firearms from arms dealers requiring a permit or who have submitted a request for a permit to acquire firearms if the request was granted by the responsible authority. This also applies to cases where the firearm was not acquired from an arms dealer. The record shall contain first and last names (for women also their maiden name), occupation, date and place of birth, as well as exact street address; further, the type and serial number of the weapon.

2. All persons who purchased ammunition for firearms from weapons dealers requiring a permit. Besides the personal information required, the type of the ammunition shall be listed.

Exempt from the compulsory registration are persons acquiring firearms or ammunition or submitting requests for weapons permits, if they are members of the military with the rank of officer, leaders of SS *Verfügungstruppe* [SS Special Assignment Troops], police officers, or political leaders beginning with the rank of *Ortsgruppenführer* [community group leader] and up; likewise, persons who acquire hunting weapons or ammunition are not subject to compulsory registration.

It appears advisable to have the weapons dealers monitored and checked by the executing police. Separate records shall be kept for each kind of weapons transaction.<sup>274</sup>

The existence of firearms regulations providing for records on all individuals lawfully possessing firearms, coupled with searches and seizures of firearms from the houses of potential dissidents, guaranteed that firearms would be possessed only by supporters of Nazism. These firearms policies made it far easier to exterminate any opposition, Jews, and unpopular groups.

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273. *Id.*

274. Geheime Staatspolizei, Staatspolizeileitstelle München, An die Landräte in Oberbayern *et al.*, Betreff: Überwachung und Kontrolle der Waffen- und Munitionsverkäufe, 21 January 1941. Found in BHStA, B.Nr. 28115/41, II Schd./Roh.

German resistors were different than their European counterparts in that there was no *maquis* or partisan force.<sup>275</sup> The German resistance to Hitler was not characterized by any armed popular movements or uprisings against the Nazi regime. Lone individuals or small military cliques with firearms or bombs sought to kill Hitler himself.<sup>276</sup> Heroic as these attempts were, how might the course of history been different had Germany (not to mention the countries Germany would occupy) been a country where large numbers of citizens owned firearms without intrusive legal restrictions and where the right to keep and bear arms was a constitutional guarantee?<sup>277</sup>

Instead of an armed partisan opposition, there were only individual attempts on Hitler's life, three of them in 1939. Colonel-General Franz Halder of the Chief of Staff repeatedly visited Hitler with a pistol in his pocket to shoot the dictator, but Halder could not bring himself to do it.<sup>278</sup> Georg Elser, a private citizen, set off a bomb at the Bürgerbräukeller in Munich, but Hitler finished his speech and left before the explosion, and Elser was apprehended while attempting to escape over the Swiss border.<sup>279</sup> Swiss theology student Maurice Bavaud got almost close enough to shoot Hitler with a handgun, but was caught and executed.<sup>280</sup>

Then there was the White Rose, a student resistance group that had no ambition to take arms. However, member Sophie Scholl told a school friend in 1942 that, "If I had a pistol and I were to meet Hitler in the street, I'd shoot him down. If men can't manage it, then a woman should."<sup>281</sup> The friend replied, "[b]ut then he'd be replaced by Himmler, and after Himmler, another."<sup>282</sup> Scholl rejoined, "[o]ne's got to do something to get rid of the guilt."<sup>283</sup> Before long, the White Rose students were rounded up by the Gestapo and guillotined.<sup>284</sup>

275. See Claudia Koonz, *Choice and Courage*, in *CONTENDING WITH HITLER*, *supra* note 263, at 60.

276. See GILL, *supra* note 140, *passim*.

277. See David I. Caplan, *Weapons Control Laws: Gateways to Victim Oppression and Genocide*, in *TO BE A VICTIM: ENCOUNTERS WITH CRIME AND INJUSTICE* 308-11 (Diane Sank and David I. Caplan eds., 1991).

278. See GILL, *supra* note 140, at 122.

279. See *id.* at 129-30.

280. See *id.* at 149.

281. *Id.* at 189-190.

282. *Id.*

283. *Id.*

284. See *id.* at 193-94.

On July 20, 1944, Colonel Claus von Stauffenberg set off a bomb to kill Hitler at Wolf's Lair. The plan was to mobilize the Reserve Army and stage a coup in Berlin against the Nazi regime. Hitler survived the blast and the plotters were executed.<sup>285</sup> Thousands more would be rounded up and killed.<sup>286</sup>

In May 1944, Nazi radio broadcasted that 1,400,000 German civilians had been trained in the use of rifles and revolvers to defend the Reich. The *New York Times* quipped: "It is significant that the guarded statement by the German radio does not admit that civilians have been armed, but merely that they have been instructed in marksmanship and the handling of small arms."<sup>287</sup> A totalitarian police state would never trust the people with arms.

Three million Germans were imprisoned for political reasons in the years 1933 to 1945, and tens of thousands were executed. "These numbers reveal the potential for popular resistance in German society--and what happened to it."<sup>288</sup> The same could be said about the far larger numbers of victims of the Holocaust and the mass killings of unarmed peoples of the countries occupied by the Nazis. Once again, what might have been the course of history had firearm ownership been more prevalent and protected as a constitutional right?

Such questions have never been discussed in scholarly publications because the Nazi laws, policies, and practices have never been adequately documented. The record establishes that a well-meaning liberal republic would enact a gun control act that would later be highly useful to a dictatorship. That dictatorship could then consolidate its power by massive search and seizure operations against political opponents, under the hysterical ruse that such persons were "Communist" firearm owners. It could enact its own new firearms law, disarming anyone the police deemed "dangerous" and exempting members of the party that controlled the state. It could exploit a tragic shooting of a government official to launch a pogrom, under the guise that Jewish firearm owners were dangerous and must be disarmed. This dictatorship could, generally, disarm the people of the nation it governed and then disarm those of every nation it conquered.

The above experiences influenced perceptions of fundamental rights in both

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285. *See id.* at 229-50.

286. *See id.* at 253.

287. *German Broadcast Does Not Say Weapons Were Distributed--Fear Over West Surpasses Berlin's Troubled View of East*, N.Y.TIMES, May 11, 1944, at 1.

288. Peter Hoffman, *The Second World War, German Society, and Internal Resistance to Hitler*, in *CONTENDING WITH HITLER*, *supra* note 263, at 122.

the United States and Germany. Before entering the war, America reacted to the events in Europe in a characteristic manner. Seeing the Nazi threat and its policies, Congress passed the Property Requisition Act of 1941 authorizing the President to requisition certain property for defense, but prohibiting any construction of the act to “require the registration of any firearms possessed by any individual for his personal protection or sport” or “to impair or infringe in any manner the right of any individual to keep and bear arms.”<sup>289</sup>

Today, Germany’s *Grundgesetz* (Basic Law) includes the following provision: “When other avenues are not open, all Germans have the right to resist attempts to impose unconstitutional authority.”<sup>290</sup> If the Nazi experience teaches anything, it teaches that totalitarian governments will attempt to disarm their subjects so as to extinguish any ability to resist crimes against humanity.

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289. P.L. 274, 55 Stat. 742 (1941). This was passed “in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties.” Rept. No. 1120 [to accompany S. 1579], House Committee on Military Affairs, 77th Cong., 1st Sess., at 2 (Aug. 4, 1941). Rep. Paul Kilday, the sponsor, explained: “Remember that registration of firearms is only the first step. It will be followed by other infringements of the right to keep and bear arms until finally the right is gone.” 87 Cong.Rec. 7101 (1941). *See also* S. Halbrook, *Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms*, 62 TENN. L. REV. 597, 618-31 (Spring 1995).

290. Basic Law, Art. 20, § 4, quoted in Large, *Uses of the Past: The Anti-Nazi Resistance Legacy in the Federal Republic of Germany*, in *CONTENDING WITH HITLER*, *supra* note 263, at 180.