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ON THE NRA, ADOLPH HITLER, GUN REGISTRATION,  
AND THE NAZI GUN LAWS:  
EXPLODING THE CULTURE WARS  
[A Call to Historians]

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Say the words “gun registration” to many pro-gun Americans—especially to the 3.5 million or more members of the National Rifle Association—and you are likely to hear about Nazi gun laws, Adolph Hitler, and the Holocaust. More specifically, you’re likely to hear that one of the first things that Hitler did when he seized power was to legislate strict gun control registration laws that enabled him to identify all gun owners and then confiscate all guns, effectively disarming his opponents and the civilian population, and paving the way for the genocide of Jews. “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,” writes Stephen Halbrook, a prolific pro-gun constitutional litigator.<sup>2</sup> “If the Nazi experience teaches anything,” Halbrook declares, “it teaches that totalitarian governments will attempt to disarm their subjects so as to extinguish any ability to resist crimes against humanity.”<sup>3</sup> Or, as David Kopel, research director of the Independence Institute in Colorado, states more succinctly, “Simply put, if not for gun control, Hitler would not have been able to murder 21 million people.”<sup>4</sup>

The reference to Hitler is often dressed in Second Amendment rhetoric. The idea is that our Founders crafted the Second Amendment specifically to

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<sup>2</sup> Stephen P. Halbrook, *Nazi Firearms Law and the Disarming of the German Jews*, 17 ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, No. 3, 483–535 (2000).

<sup>3</sup> Halbrook, *supra*, at 537.

<sup>4</sup> David Kopel and Richard Griffiths, *Hitler’s Control: The Lessons of Nazi History*, NATIONAL REVIEW ONLINE, May 22, 2003 (available at [www.nationalreview.com/kopel/kopel1052203.asp](http://www.nationalreview.com/kopel/kopel1052203.asp)).

protect the Republic from dictatorial or totalitarian overthrow. Adolph Hitler *proved* the Founders right: “Disarming political opponents was a categorical imperative of the Nazi regime. The Second Amendment to the U.S. Constitution,” Halbhook explains, “was not recognized in the German Reich.”<sup>5</sup> Charlton Heston, the late president of the NRA, often drew highly emotional connections between the Second Amendment and Nazi Germany—as illustrated in his 1997 speech to the National Press Club, “The Second Amendment: America’s First Freedom.”<sup>6</sup> Wayne R. LaPierre, executive vice-president and chief executive officer of the NRA, gives the following account of gun registration systems in his book *Guns, Crime, and Freedom*. Under the heading “National Firearms Registration,” LaPierre writes:

Ultimately registration will let the government know who owns guns and what guns they own. History provides the outcome: confiscation. And a people disarmed is a people in danger.

In Germany, firearm registration helped lead to the holocaust. Each year we solemnly remember in sorrow the survivors and those lost in the holocaust, but the part gun registration and gun confiscation played in that horror is seldom mentioned. The German police state tactics left its citizens, especially Jews, defenseless against tyranny and the wanton slaughter of a whole segment of its population.<sup>7</sup>

LaPierre traces the historical argument a few pages later:

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<sup>5</sup> Halbhook, *supra*, at 484.

<sup>6</sup> Heston, “The Second Amendment: America’s First Freedom,” at 200. Heston’s speech on the Second Amendment is laced with references to the Holocaust and Hitler’s Germany. At every level, from the subliminal to the nakedly exposed, Heston weaves together the American and German experiences, declaring for instance:

I remember when European Jews feared to admit their faith. The Nazis forced them to wear yellow stars as identity badges. It worked. So — what color star will they pin on gun owners’ chests? How will the self-styled elite tag us? There may not be a gestapo officer on every street corner, but the influence on our culture is just as pervasive.

*Id.* at 200.

<sup>7</sup> Wayne R. LaPierre, *Guns, Crime, and Freedom*, 86-87 (Washington, D.C.: Regnery Publishing, Inc. 1994).

In Germany, Jewish extermination began with the Nazi Weapon Law of 1938, signed by Adolph Hitler, that required police permission of ownership of a handgun. All firearms had to be registered. Germans who enjoyed using bolt-action rifles for target practice were told to join the Wehrmacht if they wished to shoot “military” rifles. The Nazis also enacted the “Regulations against Jews’ possession of weapons” within the days of *Kristallnacht*—the “night of broken glass”—when stormtroopers attacked synagogues and Jews throughout Germany. . . .

Firearms registration lists, moreover, were used to identify gun owners. When the SS arrived, more than the gun would disappear—the owner would never to be seen [sic] again. These policies were promulgated in every country conquered by Hitler, and with the same results.<sup>8</sup>

Other pro-gun organizations deploy the Nazi gun-control argument, sometimes even more graphically. The Citizens Committee for the Right to Keep and Bear Arms is a national pro-gun organization, much smaller and somewhat more radical than the NRA. It was founded in 1974 by Alan Merrill Gottlieb to “defend the Second Amendment of the United States Constitution and to provide aid and information to individuals throughout the Nation seeking to maintain the right to keep and bear arms.”<sup>9</sup> It has an educational arm called the Second Amendment Foundation, also founded in 1974. This is from an ad of theirs from 1986 which featured a photo of Hitler, Castro, Khadafy and Stalin:

The experts have always agreed that gun control is the single best way to take freedom away from the people. It worked in Nazi Germany, and gun control works today in Cuba, Libya and the Soviet Union. Today, a bunch of do-gooders, politicians and their friends in the media are trying to make gun control work in America. These people feel that if you aren’t

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<sup>8</sup> LaPierre, *Guns, Crime, and Freedom*, at 167–168.

<sup>9</sup> Josh Sugarmann, *National Rifle Association: Money, Firepower & Fear*, 131 (Washington D.C.: National Press Books 1992).

allowed to own a gun, our nation will be a ‘better’ place. And they’re very close to making it happen.<sup>10</sup>

Another group, Jews for the Preservation of Firearms Ownership (JPFO) was founded in 1989 and labels itself “America’s Aggressive Civil Rights Organization.”<sup>11</sup> Its logo is a Star of David with two assault rifles. JPFO has published two books on the Nazi gun laws, with counterpart reproduction of the German laws and English translation. In the first book, “*Gun Control*” *Gateway to Tyranny: The Nazi Weapons Law, 18 March 1938*, Executive Director Aaron Zelman and Research Director J.E. Simkin explain in bold, under the heading “WHY YOU SHOULD USE THIS BOOK TO DENAZIFY AMERICA,” that “**Germany’s Nazis were criminals—mass murderers. Those who support Nazi-style public policies—e.g., gun control—are also criminals or ‘criminal-coddlers’ . . . G-d forbid! Nazi policies—of which ‘gun control’ surely is one—have no place in America or in any other ‘civilized’ country.**”<sup>12</sup> This is from a swastika-headed advertisement for the organization:

Stop Hitlerism in America! Gun haters who support gun banning, registration, and waiting period schemes are elitist Fascists who want *total* control of people’s lives. Gun haters, knowingly or unknowingly, are advocating the Hitler doctrine of the 1990s. Gun control is a tragic mistake of the past. Millions of tortured and mutilated corpses testify to that fact. The Hitler Doctrine and those that favor it, must not be tolerated in America. Politicians, police officials, and media liberals who support the Hitler Doctrine of gun hate are un-American and have betrayed the public’s trust. BE ANTI-NAZI!! Help eradicate gun hate in American [sic]. . . .<sup>13</sup>

And this is JPFO’s most popular poster:


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<sup>10</sup> Sugarmann, *NRA*, at 131.

<sup>11</sup> Sugarmann, *NRA*, at 139.

<sup>12</sup> Jay Simkin and Aaron Zelman, “*Gun Control*” *Gateway to Tyranny: The Nazi Weapons Law, 18 March 1938*, 2, Jews for the Preservation of Firearms Ownership, 2872 South Wentworth Avenue, Milwaukee, Wisconsin, 53207, (414) 769-0760 (1993).


<sup>13</sup> Sugarmann, *NRA*, at 139.



**ALL IN FAVOR OF  
"GUN CONTROL"  
RAISE YOUR  
RIGHT HAND**

Political prisoners and Death Camps can't exist without 'Gun Control'.  
Some Americans still feel "Gun Control" is a good idea.  
To prevent a 'Schindler's List' in America, we must destroy 'Gun Control'!!

P. 183 JFFD



JEWISH DEFENSE LEAGUE OF FREEDOM SOCIETY, INC.  
CITY OF NEW YORK, NEW YORK 10011-4141 212-693-8800  
JDL TODAY! ANTI-ARAB ISRAELI STRIKE

According to the leaders of the JPFO, **“the hardest lesson of the Holocaust—for Jews and Gentiles alike, and one yet to be learned—is that ‘gun control’ is a lethal policy.”**<sup>14</sup>

Not surprisingly, the Hitler-as-gun-control-proponent argument has entered the public imagination and, today, is repeatedly rehearsed on editorial pages and in letters to the editor. This, from the pages of *The Post-Standard* of Syracuse, New York:

Throughout history, every country that has registered guns has always told its populace it is for the greater good and safety of all. Once the registration was complete, the confiscation began. Remember Hitler? How about Stalin? Saddam Hussein?<sup>15</sup>

A bill was recently introduced in the Florida legislature, in November 2003, intended to ban any person from keeping a list of gun owners in Florida. This is from the preamble:

WHEREAS, history has also shown that the registration of firearms in Nazi Germany enabled Adolph Hitler to confiscate firearms and render the disarmed population helpless in the face of Nazi atrocities.<sup>16</sup>

In fact, you may even have heard an infamous statement by Adolph Hitler himself, where he praises Germany’s gun registration system in these chilling terms:

This year will go down in history! For the first time, a civilized nation has full gun registration! Our streets will be safer, our police more efficient, and the world will follow our lead into the future!

The quote usually runs with the following attribution: attributed to

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<sup>14</sup> *Lethal Laws* at 159.

<sup>15</sup> *The Post-Standard* (Syracuse, New York), November 12, 2002.

<sup>16</sup> See 2004 Bill Tracking FL H.B.155.

Adolph Hitler (1889-1945), “Abschied vom Hessenland! [“Farewell to Hestia!”], [‘Berlin Daily’ (Loose English Translation)], April 15<sup>th</sup>, 1935, Page 3 Article 2, Einleitung Von Eberhard Beckmann [Introduction by Eberhard Beckmann].

This quote has been published more than a hundred times in letters, editorials, and some news stories in papers across the country. In fact, a quick Lexis search of newspapers returns 106 hits. The quote has apparently developed its own little cottage industry of referents.

*Puzzles of History and Rhetoric*

Now, much of the rhetoric is questionable as a historical matter. It turns out, for instance, that Hitler’s infamous statement, rehearsed in so many newspapers, is probably a fraud and was likely never made. The citation reference is a jumbled and incomprehensible mess that has never been properly identified or authenticated, and no one has been able to produce a document corresponding to the quote. It has been the subject of much research and has entered the annals of urban legends. The webloggers seem to have this one right: “This quotation, however effective it may be as propaganda, is a fraud. . . . This quotation, often seen without any date or citation at all, suffers from several credibility problems, the most significant of which is that the date often given has no correlation with any legislative effort by the Nazis for gun registration, nor would there have been any need for the Nazis to pass such a law, since gun registration laws passed by the Weimar governments (in part to address street violence between Nazis and Communists) were already in effect.”<sup>17</sup>

More important, as a historical matter, the passage of gun registration laws in Germany during the first part of the twentieth century is a complicated matter. Following Germany’s defeat in World War I, the Weimar Republic passed very strict gun control laws essentially banning all gun ownership, in an attempt both to stabilize the country and to comply with the Versailles Treaty of 1919. The Treaty of Versailles itself imposed severe gun restrictions on German citizens. One of the key provisions of the Versailles Treaty, Article

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<sup>17</sup> [http://www.urbanlegends.com/politics/hitler\\_gun\\_control.html](http://www.urbanlegends.com/politics/hitler_gun_control.html); see also [www.alt.folklore.urban.com](http://www.alt.folklore.urban.com); [www.straightdope.com/mailbag/mhitlergun.html](http://www.straightdope.com/mailbag/mhitlergun.html); <http://rkba.org/research/rkba.faq>.

169, stated that “Within two months from the coming into force of the present Treaty, German arms, munitions, and war material, including anti-aircraft material, existing in Germany in excess of the quantities allowed, must be surrendered to the Governments of the Principal Allied and Associated Powers to be destroyed or rendered useless.” But even before the Treaty was signed, the German parliament of the Weimar Republic enacted legislation prohibiting gun possession: on January 13, 1919, the Reichstag enacted legislation requiring the surrender of all guns to the government. This law, as well as the August 7, 1920, *Law on the Disarmament of the People* passed in light of the Versailles Treaty, remained in effect until 1928, when the German parliament enacted the *Law on Firearms and Ammunition* (April 12, 1928)—a law which relaxed gun restrictions and put into effect a strict firearm licensing scheme. The licensing regulations foreshadowed Hitler’s rise to power—and in fact, some argue, were enacted precisely in order to prevent armed insurrection, such as Hitler’s attempted coup in Munich in 1923, as well as Hitler’s later rise to power. “Gun control was not initiated at the behest or on behalf of the Nazis—it was in fact designed to keep them, or others of the same ilk, from executing a revolution against the lawful government. In the strictest sense, the law succeeded—the Nazis did not stage an armed coup.”<sup>18</sup>

And there are other curious aspects to the Nazi gun control argument. In the first place, the argument is of an odd form for the NRA. After all, the NRA stands for the proposition that “it’s not guns that kill people, it’s people who kill people.” The central idea here is that instrumentalities—in this case handguns—are just that: instrumentalities. They are not to be blamed for what people do *wrongly* with them. If you follow the logic of that argument, then you would expect a member of the NRA to respond, when confronted with the Nazi gun laws argument, in the same manner: “it’s not gun registration that causes genocide, it’s people who cause genocide.”

The Hitler-as-gun-control-proponent argument is also a bit disorienting because, at least whenever I’ve been to a gun show, there are always displays of Nazi paraphernalia. The fringe pro-Nazi element in this country has far more ties to the pro-gun community than it does to the anti-gun community, and you are far more likely to see a swastika at a gun show or a pro-gun rally than you are on the other side. The relationship between the NRA or other

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<sup>18</sup> N.A. Browne, *The Myth of Nazi Gun Control*, on [www.guncite.com](http://www.guncite.com).



pro-gun organizations and minorities has always been a topic of heated debate. Although the NRA and other pro-gun organizations try to appeal to minorities by rehearsing the idea that the government wants to disarm blacks in the inner-city in order to oppress,<sup>19</sup> the NRA nevertheless often appeals most directly to the white middle-class male. Here's Charlton Heston again:

Heaven help the God-fearing, law-abiding, Caucasian, middle class, protestant, or even worse evangelical Christian, midwest or southern or even worse rural, apparently straight or even worse admitted heterosexual, gun-owning or even worse NRA-card-carrying, average working stiff, or even, worst of all, a male working stiff, because then, not only don't you count, you're a downright nuisance, an obstacle to social progress, pal.<sup>20</sup>

Finally, the Hitler argument is somewhat puzzling because we have, in a number of states in this country, a long tradition of gun registration. In fact, the Anglo-American tradition of gun registration dates back to seventeenth-century England. Both prior to and after the adoption of the English Bill of Rights, there were a number of gun regulations in place in England, including registration requirements. In 1660, for instance, all gunsmiths were ordered to produce a record of all firearms they had sold and their buyers from the past six months.<sup>21</sup> Gunsmiths were then required to report this information weekly.<sup>22</sup> These requirements—which constitute the first known gun registration scheme—remained in place after the adoption of the English Bill of Rights of 1689, which declared that “the subjects which are Protestants may have arms for their defence suitable to their conditions and as allowed by law.”<sup>23</sup> The English history reflects a substantial statutory limitation on gun ownership before and after 1689<sup>24</sup>

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<sup>19</sup> See, e.g., Sugarmann, *NRA*, at 158–162. As Wayne R. LaPierre writes, “Gun licensing and other restrictions, for example, were used to suppress blacks before and after the Civil War.” LaPierre, *Guns, Crime, and Freedom* at 90.

<sup>20</sup> Heston, “The Second Amendment,” at 201.

<sup>21</sup> Joyce Lee Malcolm, *Guns and Violence: The English Experience*, at 52, see also *id.* at 49-50.

<sup>22</sup> *Id.*

<sup>23</sup> [www.yale.edu/lawweb/avalon/england.htm](http://www.yale.edu/lawweb/avalon/england.htm)

<sup>24</sup> Malcolm, *Guns & Violence: The English Experience* at 49-53

In the United States today, there are a significant number of state gun registration schemes in place. Hawaii and the District of Columbia require registration of primary and secondary transfers of firearms.<sup>25</sup> Twenty-one states have record-of-sales registration laws: Alabama, Alaska, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Washington, and Wyoming.<sup>26</sup> Among these states, California, Maryland, Massachusetts and Minnesota require information on gun sales to be forwarded to a state authority for centralized tracking.<sup>27</sup> Other states require local law enforcement to retain the information, usually for a limited period of time.<sup>28</sup>

Both the Hawai'i and D.C. registration schemes have been challenged on Second Amendment grounds, to no avail. The District of Columbia registration and licensing statutes were challenged on purely Second Amendment grounds in Sandidge v. United States.<sup>29</sup> The court there stated that "the second amendment says nothing that would prohibit a state (or the legislature for the District of Columbia) from restricting the use or possession of weapons in derogation of the government's own right to enroll a body of militiamen bearing arms supplied by themselves as in bygone days."<sup>30</sup> The Hawai'i registration and licensing scheme, in turn, was similarly challenged under both federal and state constitutional provisions. In State v. Mendoza,<sup>31</sup> the court held, first, that "the Second Amendment does not apply to the States through the fourteenth amendment to the United States Constitution (Fourteenth Amendment) . . . . Thus, we hold that Mendoza cannot claim that State firearms regulations infringe upon any rights protected by the Second Amendment."<sup>32</sup> The court went on to examine the Hawai'i statutes in light of the state constitution, and concluded that "the right to bear arms may be regulated by the state in a reasonable manner . . . . Mendoza has failed to meet

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<sup>25</sup> HRS § 134-3 (2003); D.C. Code § 7-2502.01 (2003)

<sup>26</sup> <http://www.bradycampaign.org/facts/faqs/?page=licreg>

<sup>27</sup> Cal Pen Code § 12073 (2004); *ALM GL ch. 140, § 123* (2004); *Md. PUBLIC SAFETY Code Ann. § 5-120* (2003)

<sup>28</sup> <http://www.bradycampaign.org/facts/faqs/?page=licreg>

<sup>29</sup> Sandidge v. US, 520 A.2d 1057, (D.C. App. 1987).

<sup>30</sup> Id. at 1058 (internal quotation marks omitted).

<sup>31</sup> State v. Mendoza, 82 Haw. 143 (Haw. 1996).

<sup>32</sup> Id. at 146 (internal citations omitted).

his burden of showing unconstitutionality beyond a reasonable doubt.”<sup>33</sup>

*All is fair in love and war*

Why is it, then, that gun registration would trigger images of Adolph Hitler among pro-gun Americans—rather than the blue transparency and corral reefs of the Hawai’ian islands? The obvious answer is that these debates are not about history, nor are they about truth. These are *cultural* arguments. They are the stark manifestations of one of our most heated cultural wars today—the gun wars. And, as they say, all is fair in love and war. In this respect, Charlton Heston had it right—at least, the metaphor. There’s a culture war going on out there. Here’s Heston’s take on it: there’s “a cultural war that’s about to hijack you right out of your own birthright.”<sup>34</sup> If you own guns, but don’t dare tell others you own guns, “Then you are a victim of the cultural war. You’re a casualty of the cultural battle being waged against traditional American freedom of beliefs and ideas.”<sup>35</sup> Pro-gunners are silenced, Heston proclaims, because “That’s how cultural war works.”<sup>36</sup>

According to Heston, “we are losing.”<sup>37</sup> Now, Heston has a prescription, a remedy for success. According to Heston, “There is only one way to win a cultural war. Do the right thing. Triumph belongs to those who arm themselves with pride in who they are and what they believe, and then do the right thing. Not the most expedient thing, not what’ll sell, not the politically correct thing, but the right thing. . . . Do not yield, do not divide, do not call truce. It is your duty to muster with pride and win this cultural war.”<sup>38</sup>

Not everyone agrees. Some argue that, instead, we need to develop a more muted expressive idiom that brings opposing factions closer and reconciles, rather than aggravates, the cultural conflict. Dan Kahan at Yale

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<sup>33</sup> *Id.* at 154

<sup>34</sup> Charlton Heston, “The Second Amendment: America’s First Freedom,” 199, in *Guns in America: A Reader*, eds. Jan E. Dizard, Robert Merrill Muth, and Stephen P. Andrews, Jr. (New York: New York University Press 1999).

<sup>35</sup> Heston, “The Second Amendment,” at 200.

<sup>36</sup> Heston, “The Second Amendment,” at 201.

<sup>37</sup> Heston, “The Second Amendment,” at 201.

<sup>38</sup> Heston, “The Second Amendment,” at 203–204.

Law School is the major proponent here. In his work with Donald Braman, Kahan argues that culture has a distorting effect on the gun debates. Kahan and Braman set out to prove that “*culture* is one of the forces that ‘suppress[es]’ truth.” And, they argue, “circumstances will become favorable for public enlightenment on gun control only *after* the development of an expressively pluralist idiom for debating guns. Those who want to resolve the gun debate should do everything in their power to fashion that idiom as soon as possible.”<sup>39</sup>

The background to this argument appears in Kahan’s essay, *The Tyranny of Econometrics and the Circumspection of Liberalism: Two Problems with the Gun Debate*,<sup>40</sup> where Kahan explores and deconstructs the rhetorical structure of the American gun debates. Kahan argues that there are two distorting influences on the gun debates. The first is an excessive and numbing attention to empirical data. The best public opinion research demonstrates, Kahan argues, that individuals do not rely on empirical studies to formulate their positions regarding guns, but instead base their opinions on their cultural interpretation of gun possession. It is not statistics, but rather “cultural allegiances and outlooks that determine citizens’ attitudes toward gun control,” Kahan writes. The second distorting influence is our pervasive liberal discourse norm, which orients the public debate toward consequentialist arguments and away from appeals to cultural values. Yet it is precisely such appeals to values, Kahan suggests, that are needed to resolve expressive controversies. The result is devastating to the gun debates. But not necessarily or entirely paralyzing. Kahan urges us to construct a new, more respectful expressive idiom to debate guns. “In order to civilize the gun debate,” Kahan writes, “*moderate* citizens . . . must come out from behind the cover of consequentialism and talk through their competing visions of the good life without embarrassment.”<sup>41</sup>

In subsequent work with Donald Braman, Kahan uses the NORC General Social Survey to statistically demonstrate that individuals’ positions on gun control derive from their cultural world views rather than from

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<sup>39</sup> D. Kabraman [Dan Kahan and Donald Braman], *Modeling Facts, Culture, and Cognition in the Gun Debate*, paper delivered at *The University of Chicago* (November 14, 2003).

<sup>40</sup> In *GUNS, CRIME, AND PUNISHMENT IN AMERICA*, ed. Bernard E. Harcourt (NYU Press 2003).

<sup>41</sup> *Id.*

empirical studies.<sup>42</sup> Individuals of an egalitarian or solidaristic orientation, they argue, have a tendency to support gun control, whereas individuals of a hierarchical or individualist orientation tend to oppose gun control. As a result, empirical studies have little effect on personal views about gun control: when individuals evaluate the empirical evidence, they tend to credit or dismiss the empirical evidence based on their cultural values. Kahan and Braman suggest that academics should therefore work on developing new expressive idioms to address gun issues and help citizens debate the cultural issues that divide them, rather than focusing on quantifying the costs and benefits of guns.

### *Exploding the Culture War*

I disagree with Kahan and Braman. First, their argument seems to assume that the two groups—pro- and anti-gunners—are in some sense culturally monolithic. They seem to assume belt-buckle NRA members and flower-children Brady bunch. That can't be right. There is much more internal variety, and the variety matters.

Second, they assumes that we can agree on *what* policy to follow. The problem is, the muted expressive idiom tells us nothing about *what* we should advocate. The truth is, we often deploy the rhetorical tactics that Kahan and Braman advocate when we make arguments. We use a neutral party to make the pitch or front the internal candidate to critique the policy. The sports star accused of rape hires a woman to defend him. We retain Ken Starr *and* Floyd Abrams to argue that campaign reform is unconstitutional—or, more to the point here, the NRA *and* the ACLU. The Democrats promote General Wesley Clark to argue that the war in Iraq is misguided. We deploy these muted expressive idioms all the time—they're called political strategy. But they tell us nothing about whether we think the accused is guilty, campaign reform constitutional, or the war in Iraq misguided. These rhetorical methods tell us nothing about the *substantive decision* we need to make. Why should we compromise on guns? Why should we seek acceptable middle-ground? If it is true, as Kahan and Braman demonstrate, that our cultural values dictate our views on guns, then why should we give an inch on those cultural values?

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<sup>42</sup> See Dan M. Kahan and Donald Braman, *More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions*, 151 U. PENN. L. REV. 1291 (2003); also *Caught in the Crossfire: A defense of the Cultural Theory of Gun-Risk* at 1395.

They seem to matter! We don't want to resolve the gun debates for the sake of resolution. We want to get them *right*. It's like the old Starkist Tuna ad: "We don't want tuna with good taste, we want good-tasting tuna." If everything turns on cultural visions, then we should want *our* cultural visions to *dominate*.

Rather than seek a muted expressive idiom, we would be better off exploring in greater depth the culture wars and the cultural conflicts *within* shared culture groups. The fact is, these cultural wars tend not to be two-sided. There are, within each camp, significant conflicts and tensions, and we need to understand those better. In the context of our sexual culture wars—specifically, in the context of *Lawrence v. Texas*, the Supreme Court's 2003 homosexual sodomy case—I argue that it is far too simplistic to think of the culture war as a two-party conflict between homosexual advocates and the anti-homosexual mainstream.

In an essay, *You Are Entering a Gay- and Lesbian-Free Zone: On the Radical Dissents of Justice Scalia and Other (Post-) Queers*,<sup>43</sup> I explore the multiple positions on our sex war map. I argue that there has been a fragmentation of sexual projects in the West and that, as a result, it is far too simplistic—in fact profoundly counterproductive—to talk about a "homosexual agenda" or an "anti-homosexual agenda." In the *Lawrence* litigation, the surprising coalitions, the telling alliances, the strange bedfellows were most clearly visible on the libertarian side—with amicus briefs filed in support of John Lawrence by Republican groups,<sup>44</sup> Baptist ministers and representatives of twenty-five other religious organizations,<sup>45</sup> conservative think-tanks,<sup>46</sup> the American Bar Association,<sup>47</sup> the American Psychiatric and Psychological Associations,<sup>48</sup> and NOW,<sup>49</sup> in addition to the usual suspects, the ACLU and

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<sup>43</sup> Available on SSRN at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=508942](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=508942).

<sup>44</sup> See *Amicus Curiae* Brief of Log Cabin Republicans; *Amicus Curiae* Brief of Republican Unity Coalition.

<sup>45</sup> See *Amicus Curiae* Brief of Baptist ministers and 25 religious organizations.

<sup>46</sup> See *Amicus Curiae* Brief of the Cato Institute.

<sup>47</sup> See *Amicus Curiae* Brief of the American Bar Association.

<sup>48</sup> See *Amicus Curiae* Brief of APA and APA.

<sup>49</sup> See *Amicus Curiae* Brief of NOW.

ACLU of Texas,<sup>50</sup> Amnesty International,<sup>51</sup> and gay-rights organizations.<sup>52</sup> To be sure, the cornucopia of *amicus briefs* reflects strategy and lobbying on the part of John Lawrence's lawyers. But, more important, it reflects the kind of political coalition-formation that produced the result in *Lawrence*. The same kind of fragmented politics occur on both sides of sex wars on most issues—same-sex marriage, public sex, sado-masochism for example. And it is what will account for the outcomes there too. In order to properly understand *Lawrence*—and other sex and cultural wars, I argue—we need a much finer grained understanding of sexual projects and of the fragmentation of those projects.

### *Exploring the Nazi Gun Law Argument*

The same is true in the gun culture wars—and the Hitler-as-gun-control-proponent argument is perhaps the best illustration. The fact is, there is tremendous fragmentation *internal* to the pro-gun community on the specific issue of Hitler and gun registration. Not all pro-gunners buy the Hitler argument. The pro-gun folks at the talk.politics.guns web site, for instance, debunk the infamous Hitler quote. They rely primarily on the research of Clayton Cramer, a pro-gunner,<sup>53</sup> in his book, *Firing Back*, which refutes the Hitler reference, and they tend, to a certain extent—at least Cramer does—to minimize the connection between gun registration and the Holocaust.

More interesting, though, within the pro-gun community, there is sharp conflict over whether Hitler was a gun control proponent or not. The moving force behind the Hitler-as-gun-control-proponent argument is the organization *Jews for the Preservation of Firearms Ownership* (JPFO), which has published two books documenting Hitler's use of gun registration, translated the German laws, and drawn fierce attention to the issue of totalitarian gun control measures—the two books are entitled *Lethal Laws: "Gun Control" Is the Key to Genocide* (1994) and *"Gun Control" Gateway to Tyranny: The Nazi Weapons Law, 18 March 1938* (1993). This organization is clearly anti-Nazi and pro-gun.

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<sup>50</sup> See *Amicus Curiae* Brief of ACLU and ACLU of Texas.

<sup>51</sup> See *Amicus Curiae* Brief of Amnesty International.

<sup>52</sup> See *Amicus Curiae* Brief of National Lesbian and Gay Law Association.

<sup>53</sup> [www.straightdope.com/mailbag/mhitlergun.html](http://www.straightdope.com/mailbag/mhitlergun.html)

One of the leading defenders of Hitler on the question of gun control, however, is also pro-gun. It's the National Alliance & National Vanguard, a white supremacist organization. According to a pamphlet published by National Vanguard Books, *Gun Control in Germany, 1928–1945* by William L. Pierce, Adolf Hitler was actually very much in favor of liberal gun possession. Pierce writes:

A common belief among defenders of the Second Amendment to the U.S. Constitution is that the National Socialist government of Germany under Adolf Hitler did not permit the private ownership of firearms. Totalitarian governments, they have been taught in their high school civics classes, do not trust their citizens and do not dare permit them to keep firearms. Thus, one often hears the statement, "You know, the first thing the Nazis did when they came to power was outlaw firearms," or "The first thing Hitler did in Germany was round up all the guns."

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Unfortunately for those who would like to link Hitler and the National Socialists with gun control, the entire premise for such an effort is false. German Firearms legislation under Hitler, far from banning private ownership, actually facilitated the keeping and bearing of arms by German citizens by eliminating or ameliorating restrictive laws which had been enacted by the government preceding his: a left-center government which had contained a number of Jews.

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When you have read [and compare the 1928 and 1938 German gun laws], you understand that it was Hitler's enemies, not Hitler, who should be compared with the gun-control advocates in America today. Then as now it was the Jews, not the National Socialists, who wanted the people's right of self-defense restricted. You will understand that those who continue to make the claim that Hitler was a gun-grabber are either ignorant or dishonest. And you will understand that it was not until 1945, when the communist and democratic



victors of the Second World War had installed occupation governments to rule over the conquered Germans that German citizens were finally and completely denied the right to armed self-defense.<sup>54</sup>

Now, make no mistake. This argument is from a pamphlet published and promoted by National Vanguard Books and the National Alliance. In order to be a member of National Alliance, you have to be a “White person (a non-Jewish person of wholly European ancestry) of good character. . . . No homosexual or bisexual person, . . . no person with a non-White spouse or a non-White dependent” need apply.<sup>55</sup> This is a white supremacist organization. Yet it is also, perhaps, one of the most vocal *opponent* of the Hitler-as-gun-control-proponent argument and the Nazi-Second-Amendment connection. *And it is vehemently pro-gun.* Oddly, the Jews for the Preservation of Firearms Ownership (JPFO) and the National Alliance are bedfellows when it comes to gun regulation—though not, obviously, when it comes to Adolph Hitler.

#### *Reading the Nazi Gun Laws*

The two most vocal commentators in the debate over the Nazi gun laws are, first, Stephen Halbrook, whose writings, most recently *Nazi Firearms Law and the Disarming of the German Jews*,<sup>56</sup> set forth the position that the Nazis were pro-gun-control;<sup>57</sup> and, second, William Pierce, whose four-page essay *Gun Control in Germany, 1928–1945*, published with the translated texts of the German laws by the white supremacist organization National Vanguard, set forth the position that the Nazis were *not* pro-gun-control. As noted, the other important participant in these debates is the organization Jews for the

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<sup>54</sup> William L. Pierce, *Gun Control in Germany, 1928–1945*, at 3 and 6 (Hillsboro, WV: National Vanguard Books, 1994). This 48-page pamphlet consists of Pierce’s four-page essay and the original and English translations of the 1928 *Firearms and Ammunition Act*, the 1938 *Firearms Act*, and the 1938 implementing regulations. Pierce’s essay of the same name, *Gun Control in Germany, 1928–1945* is available on the internet at the web site of a historical revisionist, Russ Granata at <http://www.russgranata.com/gun-control.html>.

<sup>55</sup> See [www.natvan.com/what-is-na/na7.html](http://www.natvan.com/what-is-na/na7.html).

<sup>56</sup> 17 *Arizona Journal of International and Comparative Law*, No. 3, 483–535 (2000).

<sup>57</sup> In fact, none too modestly, Halbrook claims, perhaps rightly, that his article *Nazi Firearms Law* “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.” Halbrook, *supra*, at 485.

Preservation of Firearms Ownership, which, through its two books, “*Gun Control*” *Gateway to Tyranny* (1993) and *Lethal Laws: “Gun Control” Is the Key to Genocide* (1994), presents full English translations of all the relevant German gun laws and regulations.

Neither Halbrook, nor Pierce are historians,<sup>58</sup> and their ideological commitments are so flagrant—Halbrook as a pro-gun litigator and Pierce as a pro-gun white supremacist—that neither can be trusted in these debates. But if you read the German gun laws, it seems fair to say that, first, the Nazi government had in place gun control regulations that required a permit to acquire, transfer, or carry a handgun, or alternatively a hunting license. In this sense, it is an accurate statement that the Nazis had a system of gun licensing. Second, the Nazis enacted regulations pursuant to their gun laws that prohibited Jews from possessing any dangerous weapons, including firearms. Third, in other respects, the Nazis relaxed the gun control regulations that were in place in Germany at the time they seized power. In this sense, the Nazis appeared to be more pro-gun than the predecessor Weimar Republic. How to characterize their treatment of Jewish persons for purposes of gun control—banning the possession of dangerous weapons, including guns, in 1938, and subsequently exterminating Jewish persons—is, in truth, an absurd question. The Nazis sought to disarm and kill Jews, and their treatment of Jews is, for all intents and purposes, orthogonal to their gun-control tendencies. But if forced to weigh in, it actually seems, somewhat surprisingly, that the white supremacist Pierce may have the better of the argument: the Nazis were probably more pro-gun than their predecessors.

The history of general gun control in Germany from the post-World War I period to the inception of World War II seems to be, in general, a history of *declining*, rather than increasing, gun control. First, the Weimar Republic gun laws of 1928 represented a liberalization of the draconian post-World War I prohibitions on gun possession. On January 13, 1919, the Weimar Republic passed, as one of its first acts, a complete ban on the ownership of firearms, a ban which was in effect in Germany until the Weimar government enacted in

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<sup>58</sup> Halbrook is an attorney, holds a Ph.D. in philosophy from Florida State University, and previously taught philosophy. See <http://www.stephenhalbrook.com/profile.html>. William L. Pierce is the leader of the white supremacist organization, the National Alliance, holds a Ph.D. in physics, and is a former college instructor in Oregon. See <http://www.nizkor.org/hweb/orgs/american/adl/paranoia-as-patriotism/william-pierce.html>.

1928 the *Law on Firearms and Ammunition of April 12, 1928*. The 1919 ban—entitled *Regulations of the Council of the People’s Delegates on Weapons Possession*—provided that “All firearms, as well as all kinds of firearms ammunition, are to be surrendered immediately.”<sup>59</sup> Under the regulation as enforced, “Whoever kept a firearm or ammunition was subject to imprisonment for five years and a fine of 100,000 marks. That decree would remain in force until repealed in 1928.”<sup>60</sup> On August 7, 1920, the German government also passed a *Law on the Disarmament of the People*, which put into effect the provisions of the Versailles Treaty regarding the limits on military weapons.<sup>61</sup>

Against this background, the Weimar 1928 *Law on Firearms and Ammunition* represented a significant liberalization—through regulation—of gun possession. The law put into effect a system of permits: it provided for the issuance of permits to own or transfer firearms, to carry firearms including handguns, to manufacture firearms, and to professionally deal in firearms and ammunition.<sup>62</sup> These permit requirements applied to all firearms, whether long guns or handguns.<sup>63</sup> The 1928 law spelled out strict requirements about who could obtain such permits, and who was exempt from the permit requirements. So, for instance, firearms acquisition or carrying permits were “only to be granted to persons of undoubted reliability, and—in the case of a firearms carry permit—only if a demonstration of need is set forth.”<sup>64</sup> Such permits would not, by law, issue to “Gypsies” or “persons who are itinerant like Gypsies.”<sup>65</sup> On the other hand, firearm acquisition permits were not required by “officials of the central government, the states, as well as the German Railways Company,”<sup>66</sup> or by “community officials to whom the highest government

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<sup>59</sup> *Verordnung des Rates der Volksbeauftragten über Waffenbesitz*, *Reichsgesetzblatt* 1919, Volume I, § 1, 31–32; see also Halbrook, *supra*, at 485; *Lethal Laws* at 150.

<sup>60</sup> Halbrook, *supra*, at 485.

<sup>61</sup> These provisions addressed primarily the limitations on military weapons. They were intended to sunset in 1921, but remained in effect until the 1928 laws were enacted. See, generally, . . .

<sup>62</sup> See *Law on Firearms and Ammunition*, Section II, § 2 (permit to manufacture); Section III, § 5 (permit to deal); Section IV, § 10 (permit to acquire or transfer); and Section IV, § 15 (permit to carry), in “*Gun Control*” *Gateway to Tyranny* at 17–19.

<sup>63</sup> 1928 Law, Section I, § 1, in “*Gun Control*” *Gateway to Tyranny* at 17.

<sup>64</sup> 1928 Law, Section IV, § 16(1), in “*Gun Control*” *Gateway to Tyranny* at 19.

<sup>65</sup> 1928 Law, Section IV, § 16(1)(3), in “*Gun Control*” *Gateway to Tyranny* at 20.

<sup>66</sup> 1928 Law, Section IV, § 11(1), in “*Gun Control*” *Gateway to Tyranny* at 19.

authority has permitted acquisition without an acquisition permit.”<sup>67</sup>

The 1928 law put into effect a strict licensing scheme that covered all aspects of firearms—from the manufacture to the sale, including repair and even reloading ammunition.<sup>68</sup> It explicitly revoked the 1919 *Regulations on Weapons Ownership*,<sup>69</sup> which had banned all firearms possession, and thereby liberalized firearms regulation. As Halbrook himself notes, based on review of contemporaneous newspaper reports and official commentary, “the 1928 law was seen as deregulatory to a point but enforceable, in contrast to a far more restrictive albeit unenforceable [1919] order.”<sup>70</sup> Halbrook continues: “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.”<sup>71</sup>

Second, with regard to gun possession, the 1938 Nazi gun laws represented a further liberalization of gun control regulations. In fact, most of the changes in the law reflected a *loosening* of the regulations, not a tightening. The *Weapons Law* of March 18, 1938, is patterned on the *Law on Firearms and Ammunition* of April 12, 1928. The two laws have the same structure, similar section headings, and broadly similar language.

Section IV of both statutes address the same topic with the same header, “Acquisition, Carrying, Possession, and Importation of Firearms and Ammunition.”<sup>72</sup> These are the provisions that deal with possession and carrying of firearms. The first important revision in the 1938 law concerns the scope of the gun control regulation regarding the need for an acquisition permit: whereas the 1928 law regarding the acquisition or transfer of guns applied to “firearms and ammunition,”<sup>73</sup> which included any and all “weapons from which a bullet or a load of pellets may be driven through a barrel, by

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<sup>67</sup> 1928 Law, Section IV, § 11(2), in “*Gun Control*” *Gateway to Tyranny* at 19.

<sup>68</sup> 1928 Law, Section II, § 2, in “*Gun Control*” *Gateway to Tyranny* at 17 (“The re-loading of cartridge cases is considered to be the same as the manufacture of ammunition”).

<sup>69</sup> 1928 Law, Section VI, § 34, in “*Gun Control*” *Gateway to Tyranny* at 25.

<sup>70</sup> Halbrook, *supra* at 491.

<sup>71</sup> Halbrook, *supra* at 494.

<sup>72</sup> Compare 1928 Law, in “*Gun Control*” *Gateway to Tyranny* at 19, with 1938 Weapons Law, in *Lethal Laws* at 165.

<sup>73</sup> Section IV, §10(1), in “*Gun Control*” *Gateway to Tyranny* at 19.

means of the development of an explosive gas or air pressure”<sup>74</sup>—i.e. rifles, shotguns, handguns, etc.—the 1938 law applied only to “handguns.”<sup>75</sup> In other words, the 1938 revisions completely deregulated the acquisition and transfer of rifles and shotguns, as well as ammunition.

The second set of revisions effectuate an enlargement of the exceptions to the acquisition permit requirement. The 1938 law effectively extended the number of groups of people who were exempt from the acquisition permit requirement. Whereas the 1928 law exempted primarily “officials of the central government, the states, as well as the German Railways Company,”<sup>76</sup> “business owners” dealing in guns,<sup>77</sup> and holders of a “firearms carry permit,”<sup>78</sup> the 1938 law included these exemptions, but extended them to include holders of “annual hunting permits,”<sup>79</sup> as well as a larger group of government workers and Nazi party members.<sup>80</sup> The effect of these changes meant that anyone with an annual hunting permit did not need a permit for the acquisition or transfer of any firearms, whether long guns or handguns. Moreover, an additional provision in the 1938 law states that “a hunting license entitles the holder to carry firearms and handguns,”<sup>81</sup> suggesting that the hunting license also extends an exemption for handgun carrying. Under the 1928 law, the hunting permit only entitled its holder to acquire “handguns as noted on it”<sup>82</sup> and to carry handguns during the hunting activity.<sup>83</sup>

A third revision lowered the age for the acquisition of firearms. Whereas the 1928 law did not allow acquisition or carry permits to issue to persons under 20 years of age, the 1938 law did not allow “juveniles under 18 years of age” to “buy” firearms; the 1938 law also allowed “the competent

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<sup>74</sup> Section I, §1(1), in “*Gun Control*” *Gateway to Tyranny* at 17.

<sup>75</sup> Section IV, §11(1), in *Lethal Laws* at 165.

<sup>76</sup> Section IV, §11(1), in “*Gun Control*” *Gateway to Tyranny* at 19.

<sup>77</sup> Section IV, §11(3), in “*Gun Control*” *Gateway to Tyranny* at 19.

<sup>78</sup> Section IV, §12, in “*Gun Control*” *Gateway to Tyranny* at 19.

<sup>79</sup> Section IV, §12(7), in *Lethal Laws* at 165.

<sup>80</sup> Section IV, §12, in *Lethal Laws* at 165. In § 19(2), the law set forth the exact members of the National Socialist party who were exempt from the acquisition and carrying permit requirement: these included “deputy-leaders of the Nazi Party” from head of the local Nazi party organization upwards, and Hitler Youth from regiment leader upwards, and SA and SS members to whom firearms were supplied.

<sup>81</sup> Section IV, §21, in *Lethal Laws* at 169.

<sup>82</sup> Section IV, §21, in “*Gun Control*” *Gateway to Tyranny* at 21.

<sup>83</sup> Section IV, §21(2), in “*Gun Control*” *Gateway to Tyranny* at 23.

authority [to] make exceptions.”<sup>84</sup> A fourth revision extended the period that a permit to carry was valid. Under the 1928 law, a firearms carry permit was valid for one year from the date of issue; however, under the 1938 law, the permit was valid for a period of three years.<sup>85</sup>

With regard to the manufacture of firearms and ammunition, the 1938 law was similar to the 1928 law with the major exception that the 1938 law banned Jewish persons from the manufacture business. Under both statutes, a license was required to manufacture firearms or ammunition. The 1938 revisions, however, stated that the license would only be granted to German citizens who have permanent residence in German territory, and would not be issued “if the applicant—or if one of the persons proposed for the commercial or technical management of the business—is a Jew.”<sup>86</sup> With regard to dealing in firearms and ammunition, the 1928 and 1938 statutes are for all practical purposes similar. They both require a license, they both exclude itinerants and dealers in second-hand goods, they both require serial numbers on firearms.<sup>87</sup>

The regulations implementing the laws of 1928 and 1938 are substantially similar—with the exception, of course, of the above noted revisions incorporated in the 1938 law. On July 13, 1928, the Minister of the Interior imposed *Implementing Regulations of the Law on Firearms and Ammunition*.<sup>88</sup> Those regulations required manufacturers and dealers of firearms to maintain a “Firearms Book” and “Firearms Dealer’s Book”

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<sup>84</sup> Compare Section IV, §16(1), in “*Gun Control*” *Gateway to Tyranny* at 19, to Section IV, §13, in *Lethal Laws* at 165.

<sup>85</sup> This is actually a tricky point. The English translation offered by the Jews for the Preservation of Firearms Ownership actually mistranslates the period of validity for the right-to-carry permit under the 1928 law. It states that the validity of the permit is “three years.” Translation of 1928 Law, Section IV, § 15(3), in “*Gun Control*” *Gateway to Tyranny* at 19. The original German text, though, reads “eines Jahres” or *one* year. See Original 1928 Law, Section IV, § 15(3) in “*Gun Control*” *Gateway to Tyranny* at page 18. Here, Pierce’s translation is more faithful and does not make the error: “A Weapons Permit is valid for a period of one year from the date of issue.” Pierce, *Gun Control in Germany*, Translation of 1928 Law, at page 15. In contrast, the 1938 law extended the period of validity of the right-to-carry permit to three years. See Original of 1938 Law, Section IV, § 14(3), in *Lethal Laws* at 166 (“drei Jahren” or three years).

<sup>86</sup> Section II, §3(5), in *Lethal Laws* at 163.

<sup>87</sup> Compare Section III, in “*Gun Control*” *Gateway to Tyranny* at 18–19, to Section III, in *Lethal Laws* at 165.

<sup>88</sup> See *Implementing Regulations of the Law on Firearms and Ammunition 13 July 1928*, in “*Gun Control*” *Gateway to Tyranny* at 29 et seq.

respectively, which were to contain the following type of information:<sup>89</sup>

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<sup>89</sup> *See id.* at 29.

Seq. No.	Date	Quantity	Type	Stamped Signature	Manuf's Number	Name & Address of acquirer (seller)
1	2	3	4	5	6	7

According to the regulations, the “Firearm- and Firearms Dealer’s Book” were to be “durably bound and provided with consecutive page numbers.” In fact, “Before it can be put into use, the police authority is to certify the page numbers by stamping.” At the end of each year, the book is to be “closed out” and “delivered to the police authority for verification of the closure.” Moreover, the book “is to be produced with the required documents on demand by the police authority or their agents.”<sup>90</sup>

The implementing regulations issued by the Minister of the Interior Wilhelm Frick pursuant to the 1938 *Weapons Law* were substantially similar, with the exception of the above-referenced revisions in the 1938 law. There were some minor changes. So, for instance, whereas the 1928 implementing regulations required dealers to keep the book “until twenty years have elapsed after the date of the last entry,”<sup>91</sup> the 1938 implementing regulations only required dealers to keep their books for ten years.<sup>92</sup> Also, while the 1928 implementing regulations limited the number of guns and ammunition covered by the relevant permits, the 1938 implementing regulations did not contain any such limitation. The 1928 regulations stated that “the firearms acquisition permit entitles the holder to acquire one firearm, so long as the right to acquire a higher number is not marked on it,” and similarly that “the ammunition acquisition permit entitles the holder to acquire 50 jacketed cartridges or 50 ball cartridges for handguns, so long as the right to acquire a higher or a lower number is not marked on it.”<sup>93</sup> In contrast, the 1938 implementing regulations are devoid of such limitations on the number of guns or ammunition.

Finally, with regard to disarming the Jews, there is no dispute that the Nazis did disarm the Jews aggressively—of all firearms, as well as “truncheons

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<sup>90</sup> 1928 Implementing Regulations at Section II, § 10(1), in “*Gun Control*” *Gateway to Tyranny* at 31.

<sup>91</sup> *Id.* at § 10(2), at 31.

<sup>92</sup> *Implementing Regulations of the Weapons Law*, 19 March 1938, Section II, § 18, in *Lethal Laws* at

<sup>93</sup> 1928 *Implementing Regulations*, Section III, § 12, in “*Gun Control*” *Gateway to Tyranny* at 31.



or stabbing weapons.”<sup>94</sup> The Minister of the Interior, Frick, passed Regulations Against Jew’s Possession of Weapons on November 11, 1938, which effectively deprived all Jews of the right to possess firearms or other weapons. It was a regulation prohibiting Jews from having any dangerous weapon—not just guns. Under the regulations, Jews “are prohibited from acquiring, possessing, and carrying firearms and ammunition, as well as truncheons or stabbing weapons. Those now possessing weapons and ammunition are at once to turn them over to the local police authority.”<sup>95</sup> Moreover, prior to that, the German police and Nazis used the 1938 firearms law as an excuse to disarm Jews. In Breslau, for instance, the city police chief decreed the seizure of all firearms from Jews on the ground that “the Jewish population ‘cannot be regarded as trustworthy’”—the language from the 1928 and 1938 firearms laws.<sup>96</sup>

It seems fair to conclude, then, that the 1938 Nazi gun law represented a slight relaxation of gun control. Though the Nazis were intent on killing Jews and used the gun laws to that effect, they aspired to relaxation of gun laws for the “ordinary” or “law-abiding” German citizen, for those who were not, in their twisted minds, “enemies of the National Socialist state.”<sup>97</sup> Stephen Halbrook, in fact, seems to acknowledge as much. Halbrook reviews in some detail, in his article *Nazi Firearms Law*, the proposed reforms of the firearms law that Minister of the Interior Wilhelm F. Frick began preparing in 1933 and continuously proposed in 1933, 1935, and 1937 before enacting them in 1938. What is clear from Frick’s memos to Hitler’s cabinet and from the section-by-section analysis of the proposed reforms is that Frick intended some deregulation of firearms laws, but was concerned about implementing these and more deregulatory initiatives until Nazi ideology had more pervasively permeated the general population and until the “enemies of the state”—i.e. those opposed to National Socialism and Jews—were eliminated. The section-by-section analysis stated, for instance, that “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>98</sup>

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<sup>94</sup> Regulations Against Jews’ Possession of Weapons, 11 November 1938, in *Lethal Laws* at 183.

<sup>95</sup> Regulations Against Jews’ Possession of Weapons, 11 November 1938, in *Lethal Laws* at 183.

<sup>96</sup> See Halbrook, *supra*, at 504 (quoting an article in the *New York Times* dated April 23, 1933).

<sup>97</sup> Halbrook, *supra*, 507 (quoting a Nazi document discussing reform of firearms regulation).

<sup>98</sup> Quoted in Halbrook, *supra*, at 507.

Halbrook offers contemporaneous news accounts, including reports from the German paper, *Völkische Beobachter*, Adolph Hitler's newspaper, which reflect that the Nazis viewed the 1938 law as liberalizing gun control—but Halbrook claims, rightly, that “the Nazis were masters of propaganda.”<sup>99</sup> The question is, were they engaging in propaganda on the question of gun control? Halbrook offers no evidence. This then is what Hitler's paper reported about the 1938 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.

. . . 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>100</sup>

Halbrook suggests that these passages reflect Nazi mastery of propaganda. It's unclear that they do. These and other passages are transparent: Frick and Hitler intended to liberalize gun control laws in Germany for “trustworthy” German citizens, while disarming “unreliable” persons, especially opponents of National Socialism and Jews. In order to disarm Jews, the Nazi government used both the “trustworthiness” requirements originally legislated in 1928, as well as more direct regulations denying Jews the right to manufacture or possess firearms. It is absurd to even try to characterize this

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<sup>99</sup> Halbrook *supra* at 515.

<sup>100</sup> *Ein neues Waffengesetz*, VÖLKISCHE BEOBACHTER, March 22, 1938, quoted in Halbrook at 515.

as either pro-or anti-gun control. But if forced to, it seems fair to conclude—at least preliminarily—that the Nazis were in favor of *less* gun control than the Weimar Republic for the “trustworthy” German citizen—while disarming and engaging in a genocide of the Jewish population.

*A Call to Historians*

These are the utterly bizarre, but fascinating battles that are being fought in our gun-culture wars. “Why even participate?”—you may ask. Why not ignore these preposterous claims? Or mute the tone and expressive idiom? The reason, I believe, is that our culture wars are more complex, more fragmented, and more intriguing than we tend to think. There are odd alliances, odd conflicts, and they need to be explored. My interest is in exposing the internal fractures in our culture wars in order to push the debate forward. Not to mute the conflict, but to prod it along, to move it past the stage of absurd claims and rhetorical volleys. After all, a lot is at stake—our cultural values are at stake. What we need more than anything in this particular debate is scholarship.