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Guns, Democracy, and the Insurrectionist Idea

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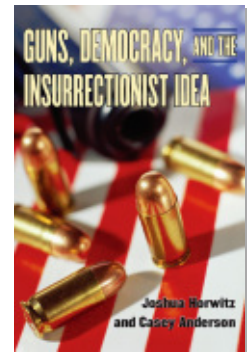
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CHAPTER SIX

THE RISE OF THE THIRD REICH

“Loyalty to the Fatherland required disloyalty to the Republic.”
adage among the German Right in the 1920s

“I love my country but fear my government”
bumper sticker in the United States at the
beginning of the twenty-first century

German Gun Laws and the Holocaust

“How can anyone support gun control after what Hitler did to the Jews?” What began several years ago as a throwaway line used by gun rights activists to suggest that perhaps European Jews could have organized themselves to resist the Nazis if they had been better armed has become a fully elaborated revisionist theory of the history of the Holocaust. One gun rights group, Jews for the Preservation of Firearms Ownership, is dedicated specifically to promoting the idea that Jews have the most to lose if private ownership of firearms is regulated or restricted because persecuted minorities cannot count on the government to protect them. Any government, the story goes, might well be hijacked by anti-Semites bent on exterminating the Jews. The group’s logo is a Star of David flanked by a musket on one side and an assault weapon on the other, and its motto is “America’s Most Aggressive Defender of Firearms Ownership.”¹

The alleged link between gun control and genocide is now a staple of

gun rights advocacy. Gun rights blogs are replete with calls to remember that the “first thing Hitler did was to take the guns from the people.”² In *Guns, Freedom, and Terrorism*, Wayne LaPierre claims that firearm registration paved the way for the Holocaust.³ In a later book, *The Global War on Your Guns*, he maintains that gun control laws have enabled governments to murder 169 million of their own citizens. “If every family on this planet owned a good-quality rifle, genocide would be on the path to extinction,” he asserts.⁴

Of course, for someone who believes that gun rights are essential to the prevention of genocide, extremism in defense of an absolutist vision of those rights is no vice. For the activists who transformed the National Rifle Association (NRA) from a moderate group representing the interests of sportsmen into an intensely partisan and ideological organization in the mid-1970s, the standard interest-group model of negotiating with opponents to try to find common ground is simply unacceptable. Former NRA lobbyist Richard Feldman’s tell-all book, *Ricochet: Confessions of a Gun Lobbyist*, relates how, as early as 1969, Harlan Carter, the father of the modern NRA, “compared the growing gun control movement [and specifically the Gun Control Act of 1968] to the confiscatory actions of Nazi Germany that permitted only a privileged few like Hermann Goering to own firearms and hunt.”⁵

Carter and his allies had no patience for the earlier generation of NRA leaders, who at one point endorsed a ban on cheap handguns as a means of limiting the impact of gun violence. After all, when the stakes are as high as stopping state-sponsored mass murder, nothing can be allowed to stand in the way. As discussed in chapter 3, the Carter faction overthrew the weak-kneed old guard at the NRA’s 1977 convention, and the Insurrectionist fantasy became the NRA’s basic organizing principle.

By now, the genocide claim is tossed out casually, as if its logic were self-evidently unimpeachable and as if it need not even be explained in great detail. David Kopel and his associate Richard Griffiths, for example, have said, “One of the things that [genocidal tyrants such as] Robert Mugabe . . . and Adolf Hitler all have in common is their strong and effective programs of gun control. Simply put, if not for gun control, Hitler would not have been able to murder 21 million people.”⁶ The lament that gun registration will lead first to gun confiscation and then to tyranny has been repeated countless times in the popular press.⁷

This is not to suggest that the gun control/genocide argument has not been discussed in detail. Robert Cottrol produced a law review article asking, "Could the overstretched Nazi war machine have murdered 11 million armed and resisting Europeans while also taking on the Soviet and Anglo-American armies?"⁸ The current dean of the George Mason University law school, Daniel Polsby, and Don B. Kates Jr. wrote an article, "Of Holocausts and Gun Control," in which they state, "It is hardly a secret that lawful governments sometimes do grotesque things, quite often to popular acclaim." They continue, "One thinks, for example, of the *Kristallnacht*. On November 9, 1937, German mobs perpetrated a nationwide 'spontaneous uprising' against the Jews, assaulting and killing hundreds of people, smashing shops and homes, burning synagogues, and inflicting losses of over one billion Reichmarks. . . . Though it may be an extreme example, the Holocaust draws into question precisely the problem of relying exclusively and simply on 'the law . . . your representatives . . . [and] your fellow citizens.'"⁹

Gun Control and the Nazis

The argument tying gun control to the Holocaust has two elements: first, that Hitler and the Nazis enacted laws that restricted private access to firearms; and second, that these laws helped him further his murderous agenda. The work of Stephen Halbrook, a prolific writer and lawyer specializing in firearms litigation, illustrates the general approach taken by gun rights enthusiasts. In reference to the Second Amendment, Halbrook says, "This right, which reflects a universal and historical power of the people in a republic to resist tyranny, was not recognized in the German Reich." He provides a brief history of the rise of the Weimar Republic after World War I and the accompanying violence between the communists and *Freikorps* (right-wing militias) that gave rise to restrictive German gun laws, including the banning of private possession of firearms. Halbrook describes the German gun law of 1928 in detail, noting that it did not include the ban on gun possession but was considered more enforceable because it developed a licensing scheme for manufacturers and "ensured that the police had records of all firearms acquisitions." Halbrook says these laws enacted by a "lib-

eral republic" were "quite useful to the new government that came to power a half decade later."¹⁰

Halbrook glosses over Hitler's rise but chronicles the Nazi regime's efforts to disarm political opponents immediately after coming to power. He describes a typical incident that followed the shooting deaths of two Nazi Party members by "Communists" the day after Hitler became chancellor in 1933: "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." He documents many similar incidents, including the confiscation of 1,702 firearms during the *Kristallnacht* campaign, and describes how Hitler finally took away all weapons in the hands of Jews with his 1938 gun control measure. Halbrook concludes, "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."¹¹

Halbrook also asks, "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?"¹² In other words, did gun control laws enable Hitler's rise to power?

The first element of the argument—the claim that Hitler and the Nazis adopted significant new restrictions on private gun ownership—is actually quite easy to address because it simply arranges the facts backward. Contrary to what Halbrook and others have asserted, Hitler's 1938 gun control act actually made it easier for ordinary Germans to get guns. Bernard Harcourt, a law professor at the University of Chicago, writing partly in response to Halbrook, observes, "The history of gun control in Germany from the post-World War I period to the inception of World War II seems to be a history of *declining*, rather than increasing, gun control. The Weimar Republic gun laws of 1928 represented a liberalization of the draconian post-World War I prohibitions on gun possession." He continues, "With regard to ordinary gun possession, as opposed to manufacture, the 1938 Nazi laws represented a further liber-

alization of gun control. In fact, most of the changes in the laws with regard to possession and carrying reflected a *loosening* of the regulations, not a tightening." For example, the 1928 law applied a licensing requirement on the acquisition of all weapons, while the 1938 measure applied the license requirement only to handguns, completely dropping rifles and shotguns from the regulatory scheme.¹³

This correction of Halbrook's counterfactual account does not in itself settle the debate, because Germany indeed had gun control laws before, during, and after Hitler's rise to power. Did these laws help the Nazis consolidate power and carry out the extermination of the Jews? The superficial logic of the argument is undeniable, because anyone confronted with the prospect of being carted off to the gas chambers obviously would want to have something—anything—that might be used to fight back. Who would deny the victims of a genocidal regime the means to defend themselves? No reasonable person would want to leave the Jews defenseless.

In the Insurrectionists' ideal world of weak government, the oppressed will own guns to protect themselves. The problem is that the oppressed will need those guns because the state will be in no position to protect them. By itself, access to small arms is unlikely to be of much help to minorities or individuals who find themselves singled out for persecution. Whether the oppressors are agents of the state itself or private militias operating with the state's acquiescence will not matter much one way or the other. Remember, the Insurrectionist dream requires that the institutions of the state be kept in a condition of weakness so that organized force can be used effectively independent of the rule of law. As to minorities—Jews or otherwise—who would look to the state for protection from mob violence, the Insurrectionists in effect say, "Let them eat guns."

In this regard, it is useful to think for a moment about what might have happened—and in fact almost did happen—when the federal courts began to order racial integration of the schools in the United States. In the Insurrectionist view, where centralized power is always to be regarded with suspicion and hostility, the federal government never should have sent troops to ensure the safety of the first African American student at the University of Mississippi. Instead, James Meredith

should have brought a gun—and as many armed friends as he could muster—to the Oxford campus. With enough of them, perhaps Meredith would have prevailed. As it was, two people died and thirty National Guardsmen received gunshot wounds in the rioting that surrounded Meredith's enrollment as a student. It is hard to imagine that less violence would have resulted if he had invoked his "rights" under the Second Amendment rather than the Fourteenth to gain admission to a public institution of higher learning.

Returning to the Holocaust experience of the Jews, an attempt to weigh the costs and benefits of an expansive view of gun rights based on the Insurrectionist paranoia about centralized power warrants a short look at the history of the Weimar Republic and Hitler's rise to power.

A Dangerously Weak State

Hitler's ascent was not inevitable. Contrary to popular belief, Hitler was never elected to fill the position of chancellor. Nor did the Nazi Party win a majority of the national vote or have a majority of seats in the Reichstag in any free election. Hitler seized power because by 1930, Germany was no longer a democracy. The fledgling Weimar Republic, Germany's first, short-lived experiment in democracy, had ceased to function when Hitler took control. To gain the office, his main task was to convince a small circle of powerful insiders that he was the man for the job. Hitler certainly appealed to popular opinion as he jockeyed for position, and once in office, he used his private army to consolidate his grip on the state. But he was initially installed through a backroom deal based on one man's approval, sitting Reich president and former war hero Paul Von Hindenburg.

Of course, there is more to the downfall of Weimar democracy than this one mistaken judgment—the seeds of German democracy's destruction were sown in the aftermath of World War I, which created the conditions for the rise of totalitarianism and highlighted the lack of commitment to core democratic values such as equality and pluralism. Prior to World War I, the German constitutional system differed from the more responsive systems of France and Britain. Many parties were represented in the Reichstag but held little real power. Entrenched in-

terest groups, including the army and big landholders, prevented true parliamentary democracy. Foreign policy and military affairs remained outside the Reichstag's jurisdiction. The powerful position of Reich chancellor was appointed by the kaiser and thus "stood above" the political parties. Democratization met stiff opposition.¹⁴

Germany's path to nationhood accounts in part for its powerful nationalism in the Nazi era. The nation took shape through the unification of a number of smaller states bound together by "culture and language rather than attaching itself to and emerging from the institutions of a pre-existing unitary state as in the case of England or France. This promoted an ethnic definition of nationhood which could easily slide over (though it by no means always did so) into forms of racism." In the 1912 Reichstag elections, the Social Democratic Party, devoted to a Marxist agenda, was the largest party. In its path stood the collective forces of "a highly aggressive integral nationalism aiming to destroy Marxist socialism." After the war, Hitler harnessed this nationalism to exploit "the belief that pluralism was somehow unnatural or unhealthy in a society" and destroyed his enemies, including Jews and Social Democrats.¹⁵

Germany entered World War I following the assassination of the heir to the Austrian throne, Archduke Franz Ferdinand, with widespread support from most sectors of society.¹⁶ The war caused severe hardship for the German people. About 2,000,000 German soldiers were killed, and 5,000,000 more were wounded. By 1917, food shortages in Germany caused malnutrition on a large scale, killing 750,000 people. Coal shortages left people cold all winter. These developments led to increased social tension and worker strikes.¹⁷ War efforts in the spring of 1918 had gone well, but disastrous reversals, hidden from the people and even from the Reichstag, forced the German government to seek a peace treaty in October. At the armistice, the army was outside German territory, but the situation was hopeless.

In replying to the German request for peace in October, President Woodrow Wilson noted that autocratic monarchs and military rulers posed an impediment to negotiations. By November 7, the Bavarian monarchy had crumbled, and the kaiser abdicated two days later, forced out by a "groundswell of popular demand for radical change."¹⁸ The

masses wanted democracy, yet there was no agreement on what that meant in practice. The Social Democratic Party never fully embraced democratic change and even called out government troops and counter-revolutionary *Freikorps* (illegally armed militias, often supported by the army as a means to get around the troop limitations imposed on Germany after the armistice) to suppress radical leftists.¹⁹ Even as a democratic republic was proclaimed, this split in the Left created wounds that never healed. Eventually, it rendered Hitler's opposition too fragmented to stop him.²⁰

The destruction of the imperial monarchy led to the "reluctant assumption of power by the democratic parties in the Reichstag. The Republican Government had to bear the odium of signing, first the surrender and then the peace terms." The terms, as enshrined in the Treaty of Versailles, were harsh and included massive monetary reparations to the allied nations and limited the German military to one hundred thousand men. Although the initiative to end the war had come from the Army High Command, "this fact was concealed. The High Command not only left the civil government, hitherto denied any voice in the conduct of the war, to take the full responsibility for ending it, but tried to dissociate itself from the consequences of the decision."²¹

The situation gave rise to the myth that the new republic had stabbed the country in the back. "The fact that its institutions were democratic, that the Social Democratic Party and the working-class organizations supported it, and that there was a demand for more radical action from the Left—finding expression in workers' demonstrations, strikes, and, on occasion, street fighting—added to the hostility with which the extremists of the Right viewed the new regime." Opponents branded the new government the "November criminals" and made it a scapegoat for the failed war effort. The republic was "damned from birth" by the Right and became forever linked with the "shameful" and "treacherous" surrender. "Rarely has a more fraudulent lie been foisted on a people, yet it was persistently repeated and widely believed—because so many wanted to believe it." The Nationalists and the army managed to escape the blame for their rash actions in taking the nation to war.²² Hitler referred to the defeat and to the democratic revolution as "the greatest villainy of the century."²³ He used the November crim-

inals as targets as he made his rise to power and apparently had a receptive audience. After the war, "it was openly said that loyalty to the Fatherland required disloyalty to the Republic."²⁴

Massive civil unrest, including the revolution in Bavaria in the early months of the Republic, tarnished the image of the Left. Although Bavaria had been consolidated into the unified Germany, it kept a great deal of autonomy, as did other states, such as Prussia. The Bavarian Revolution started before the fall of the kaiser, but violent clashes continued into May 1919. For a few days, power was held by a Soviet-inspired communist government (*Raterepublik*), a number of whose leaders were Jewish. The *Freikorps* and troops from other states eventually crushed the revolt amid much bloodshed. The reaction to the communist revolution pushed politics in Bavaria to the right, a trend that was further solidified when the leaders of a failed right-wing coup against the Reich government found sanctuary and support there. To this crowd, "Not just the legend of the 'stab-in-the-back,' but the notion of an international Jewish conspiracy could be made to sound plausible in the light of the Munich Raterepublik."²⁵ Such an environment was tailor-made for someone like Hitler to exploit.

Hitler toiled in relative obscurity until Germany's economic condition declined precipitously in the late 1920s. A world economic slowdown and severe structural problems with the German economy led to massive unemployment and real pain among the country's people.²⁶ Hitler's Nazi Party gained strength as the economy worsened, and the Reichstag, its power hopelessly divided among many small parties, failed to stabilize the economy. Through a tireless campaign and the shrewd use of propaganda and agitation by Hitler's private army, the SA, the Nazis scored a major political breakthrough in the Reichstag elections of 1928, improving their position in the body from 12 to 107 deputies. Meanwhile, their archenemies, the Communists, made large gains as well, garnering 77 deputies. This was an ominous development for German democracy. As Alan Bullock points out, "The two parties which had openly campaigned for the overthrow of the existing regime and had deliberately framed their appeal in extremist terms had together won close on a third of the votes."²⁷

If there were any doubts about Hitler's determination to get rid of

the republic, his statements around the time of the election should have put them to rest. "It is not parliamentary majorities that mould the fate of nations. We know, however, that in this election democracy must be defeated with the weapons of democracy," he said.²⁸ Hitler stuck to his script of trying to use democracy (along with some clearly antidemocratic tactics) to gain power. His party steadily gained votes and deputies in the Reichstag, and by July 1932, the Nazis had, at their highest free-election level, 37.3 percent of the vote and 230 seats in the Reichstag, still well short of a majority.²⁹

Hitler was the most powerful political leader in Germany but was blocked by a cacophony of other parties, including the second-largest party, the Communists, from assembling a parliamentary majority. His appeals to Hindenburg to name him chancellor and let him form a government fell on deaf ears. The lack of a clear majority in the Reichstag led to yet another election in November 1932, and this time the Nazis suffered a setback, losing seats for the first time since 1928.³⁰

Hitler's ascent to the post of chancellor at a time when his political support was waning is one of the most profoundly tragic political stories of all time and a cautionary lesson about the need to safeguard democracy. The nationalists who opposed the government as the November criminals never reconciled with the republic. Hitler used the Nazi propaganda machine to excoriate the government for its inability to deal with the nation's economic problems. These dissatisfactions combined to threaten not just a particular group of political leaders but the democratic form of government that had been so recently adopted. "In Germany, the 'system' itself, the very nature of the state, was at stake from the beginning of the crisis. Hitler and his party were the beneficiaries of this systemic crisis of the Weimar state. They were not its primary cause. Even in its 'golden' years, Weimar democracy had never won the hearts and minds of large numbers of Germans. . . . Not a few among the power elites were awaiting the opportunity to discard the democracy they detested so much."³¹

The economic crisis allowed the old-guard nationalists to show their antidemocratic nature. The political fragmentation came to a head in 1930. The fragile parliamentary coalition that had enabled Chancellor Hermann Muller to govern fell apart in a fight over whether em-

ployer contributions to unemployment insurance should be increased. Hindenburg refused to give Muller the power to rule by decree, as authorized in the Weimar Constitution. Hindenburg eventually gave such power to Muller's successors, but the president let the government fall as he "was anxious not to miss the chance of creating an 'anti-parliamentary and anti-Marxist' government and afraid of being forced to retain a Social Democrat administration." As historian Ian Kershaw writes, Muller's fall and his "replacement by Heinrich Brüning of the Zentrum [a right-wing political party] was the first unnecessary step on the suicidal road of the Weimar Republic."³²

Despite a series of elections in 1932, the German people did not get another elected chancellor. Hindenburg appointed chancellors from a small group of ambitious political players, including first Brüning, then Franz Von Papen, and finally General Kurt Von Schleicher.³³ Each of these men wanted to extinguish the democratic republic as well as undermine the other men.³⁴ Parliament was dissolved and national elections called on more than one occasion, but no parliamentary government could be formed. The chancellors were forced to rule by relying on the president for decrees. That "fatal reliance on the President . . . produced a situation in which governments could be made and unmade by the simple grant or withdrawal of the President's confidence. . . . [I]t was the end of democratic government in Germany. The key to power over a nation of sixty-five million people was now openly admitted to lie in the hands of an aged soldier of eighty-five and the little group of men who determined his views."³⁵

During this period, Hitler and the Nazi Party remained on the outside looking in, lacking a majority of the Reichstag that would enable them to claim the chancellor's post outright but remaining the country's strongest party. Papen, eager to regain power and get revenge on Schleicher for replacing him as chancellor, hit on the idea of including Hitler as chancellor in a right-wing coalition cabinet that Papen would control in the role of vice chancellor. He reasoned that he could harness Hitler's popular appeal while controlling him with a strong group of old-guard nationalists in the cabinet. Even though Hindenburg had twice refused to make Hitler chancellor, the request from his close adviser, Papen, changed the president's mind.³⁶

How could such a decision have been made? Hindenburg knew that Hitler was filled with hate, probably mentally unstable, and controlled a large private army. There is no way of knowing exactly what went through Hindenburg's mind, but he and his minions clearly did not believe in the basic equalities that are imperative in a democracy. In their view, workers, democrats, and other supporters of the Weimar Republic were not worthy of political power. To wrest the government from those who differed from them, Hindenburg and Papen were willing to get into bed with a madman. The machinations that brought Hitler to power "were the miscalculations of a political class determined to inflict what injury it could on (or at least make only the faintest attempts to defend) the new, detested, or at best merely tolerated democratic Republic."³⁷

Every government needs a basis for legitimacy to command the loyalty of its citizens. In principle, democratic governments derive legitimacy from a popular mandate conferred through elections. In Germany, however, a relentless drumbeat of attacks on the legitimacy of the government took its toll as the Right argued that the government comprised November criminals and leftist agitators. "After the First World War, and indeed for the whole of the Weimar period, 'a strong government that had the entire population behind it' was precisely what was absent from German politics. Weimar governments lacked the basis of support, and popular legitimacy, to push through unpleasant but necessary [political] measures."³⁸

Overwhelming Private Violence

This lack of support did not develop in a vacuum. The Nazis not only put their propaganda machine into overdrive starting in the late 1920s but used a carefully crafted campaign of violence to limit the effectiveness of their political opponents who supported the state. These campaigns were carried out by the storm troopers of the *Sturmabteilung*, better known as the SA, the armed wing of the Nazi Party.

The SA was originally formed in 1925 as a protection squad for Nazi Party events but did not grow significantly until late in the decade. Members of the SA received military training, and many leaders were

former military officers and veterans of *Freikorps* units. Instruction included "practice with grenades and machine guns." Police raids "often revealed considerable numbers of weapons in the hands of the SA." The SA was a beast different from the *Freikorps* units that were active at the founding of the Weimar Republic because the SA's violence was employed in service of the Nazis' political goals, which Nazis intended to achieve with at least the pretense of legality. Not that the Nazis were above using illegal tactics—they did so all the time—but Hitler hoped to gain power through a constitutional and legal process.³⁹

The SA's main duties "revolved around violence and the threat of violence, and this was directed primarily against the Left. The *raison d'être* of the SA was not, in the first instance, to act as anti-Semitic crusaders or to shape the policy of the Nazi movement, but to challenge the Nazi party's left-wing opponents."⁴⁰ The SA gained members as the Nazi Party grew and developed more electoral support. In January 1931, the SA stood approximately one hundred thousand strong, but by August 1932, just after Nazi support in a free election had peaked, its ranks had grown to more than four hundred thousand.⁴¹

These men were not interested in sitting around and blowing hot air; they were ready to fight. In fact, in a country racked by indecision, "the willingness of the Nazi movement—and, in particular, the SA—to engage in this kind of politics was an important drawing card. Among the strengths of the Nazi movement was the fact that, unlike its rivals either on the Left or on the Right, it appealed both to roughness *and* respectability." The SA used violence to quell dissent at Nazi rallies as well as to disrupt opponents. Any event planned by the Social Democrats or other left-wing parties became an opportunity for SA intimidation and harassment. In 1931 and 1932, the SA destroyed opposition newspapers and political headquarters and in some instances even killed opponents. Political violence spread across Germany. Brawls and street violence became common in "every city neighborhood and town, and in the countryside as well."⁴²

As the country prepared for the July 1932 Reichstag elections, dozens of Germans were killed and hundreds injured. "In the worst incident, the Altona 'Blood Sunday' of 17 July, seventeen people were killed and sixty-four injured as shooting broke out during an SA parade seen as a direct

provocation by the town's Communists."⁴³ While the Communists seemed better able to respond, when "Weimar politics became the politics of violence, the Social Democrats no longer could compete." The police initially tried to quell the violence but often found themselves overwhelmed. In 1932, as the Nazis gained more power, especially at the local level, the police became less strict with the SA.⁴⁴

After Hitler was installed as chancellor, he persuaded Hindenburg to dissolve the Reichstag and call for new elections. Hitler was determined to use his new power to purge his enemies in the Reichstag and gain a solid majority there. He needed that majority to support his plans for an enabling bill that would allow him to rule by decree and obviate the need for support from the Reichstag. In effect, he intended to create a dictatorship. None of his new partners in the cabinet, including the defense minister, General Werner Von Blomberg, who presumably could have called on the armed forces to defend democracy, thought to stop him. They were "as keen as he was to end parliamentarism and eliminate the Marxist parties." The other cabinet members assumed that they would be participants in a new, strong right-wing government that could rule without interference from the Left. Surely enough, the Left lost, but cabinet members, with the exception of the defense minister, who was rewarded with a promised buildup of the armed forces, did not share in the spoils.⁴⁵

New elections were set for March 5, 1933. The SA immediately swung into action, attacking other political parties. "Their meetings were broken up, their speakers assaulted and beaten, their posters torn down and their papers continually suppressed. . . . This time the Nazis were inside the gate, and they did not mean to be robbed of power by any scruples about fair play or free speech." Now the SA was under the control of the chancellor, and its members were not only totally immune from the criminal justice system but sometimes had active assistance from the police.⁴⁶

During the last week of February, the Nazis "uncovered" a plan for a communist revolution and a mysterious fire burned down the Reichstag. Some historians believe the fire was set by the Nazis themselves but skillfully blamed on the Communists. These events provided ample political cover for the cabinet to declare a state of emergency and sus-

pend the individual liberties guaranteed by the Weimar Constitution. The rights to free speech and free press, free association, and privacy, among others, no longer existed. The SA stepped up its campaign to brutalize leftists and arrest their leaders.⁴⁷

Even with the power of the SA and the state at their disposal, the Nazis could not get a majority of the electorate to support them. When the election results came in, the Nazis had taken only 43.9 percent of the vote. Even with the support of other right-wing parties, Hitler barely had a majority in the new Reichstag.⁴⁸ Hitler's first order of business after the election was to seek passage of the Enabling Act, which would free him from the restraints of the constitution or the Reichstag and allow him simply to rule by decree. Amending the constitution through the Enabling Act required the support of two-thirds of the deputies in the Reichstag. Hitler's dictatorship was within reach if he could summon the necessary votes in a session scheduled for March 23.

One pesky obstacle had already been eliminated. The Communists had eighty-one deputies in the Reichstag, but since the fire, most of the party's representatives had been arrested, and the rest faced certain detention if they showed up to vote. Entering the building on the day of the vote, the remaining opposition deputies must have sensed that their days were numbered, too. The Reichstag met in temporary quarters at Kroll Opera House. Hitler's elite SS units had circled the building in a "solid rank." Brown-shirted SA troops lined the corridors and the walls inside. "They were giving a hint to opposition deputies of what would be the outcome were the Enabling Act not to find the necessary level of support."⁴⁹

Hitler opened the debate with a restrained speech and was followed by the leader of the Social Democrats, Otto Wels. As Wels walked to the tribune, the SA troopers chanted, "We want the Bill—or fire and murder." In Bullock's words, "It needed courage to stand up before this packed assembly—most of the Communists and about a dozen of the Social Democrat deputies had already been thrown into prison—and to tell Hitler and the Nazis to their faces that the Social Democratic Party would vote against the Bill." Hitler returned to the assembly and, abandoning all pretense of moderation, attacked the Social Democrats to "wild cheering."⁵⁰

The result was never in doubt, but the outcome was still shocking. "With 441 votes to the ninety-four votes of the Social Democrats, the Reichstag, as a democratic body, voted itself out of existence."⁵¹ The Enabling Act gave Hitler all the power he needed to create the Nazi war machine and terrorize his enemies. While Hitler had yet to consolidate power after 1933, the cards had been dealt, and stopping Hitler would turn from an internal to an external affair. As Bullock put it, "The street gangs had seized control of the resources of a great modern State, the gutter had come to power."⁵²

So where, if at all, does the private ownership of firearms figure into this equation? By the time Hitler became chancellor in January 1933, German democracy had long since ceased to exist. Hitler quickly suspended most civil rights and within a few months had gained the power to issue laws without the Reichstag's approval. He controlled a private army of four hundred thousand men as well as the police and the regular army and had banned all other political parties. Hitler simply did not need gun control laws to disarm and brutalize his enemies.

The Jews and other opponents of the Nazi regime were not disarmed through record checks and court revocations of handgun permits but rather by unruly mobs of SA storm troopers and police ransacking and searching houses at random. And even if his opponents had resisted with force, they could not have held out for long. The German people gave up democracy without a fight, and most even favored getting rid of it. Without a broad base of popular respect and support for democratic institutions, it is almost impossible to protect individual rights.

Halbrook's assertion that a constitutional guarantee protecting the German people's right to keep and bear arms would have stopped Hitler is laughable. Long-standing rights such as freedom of the press and assembly had summarily been extinguished as soon as the Nazis took power, a power grab that was supported by the German people. A right to keep and bear arms would have been as meaningless as other suppressed rights in the Third Reich. As far as Germany's Jews were concerned, gun control or no gun control, they were the enemies of the state, and as a tiny minority, they could do little to stop the Nazis' terror. Their only recourse was desperate attempts to leave the country.

The 1938 gun law did include special restrictions applicable only to

Jews, but they were a tiny percentage of the German population at that time. For Halbrook's argument to make sense, he must assert that gun control deprived a broad cross-section of political opponents of the Nazis with the means of resistance, because the Jews alone could not have mounted meaningful armed opposition. The historical record makes abundantly clear that whatever barriers to armed resistance may have prevented more Germans from fighting the Nazis, legal impediments to the ownership of firearms were not among them.

Of course, Jews throughout Europe did arm themselves and fight the Nazis, most famously in the Warsaw Ghetto but also in Eastern Europe and in the French underground. Many used firearms to fight the Nazi war machine, but access to guns was not a decisive factor in any of these efforts. Jews take pride in these events not because they stopped the Nazis, for that was well beyond their control, but because they stood and fought evil in impossible circumstances, knowing that the most likely outcome was death. The post-Holocaust admonition "Never again" refers not to gun control but to ensuring that Jews have a country where they are not merely guests dependent on the goodwill of their hosts and not subject to the whims of a political system where they can be disenfranchised and turned into the enemy. Moreover, the modern state of Israel has a gun control regime that includes comprehensive licensing and registration laws.⁵³

The awful truth is that the Jews were a small minority that a demagogue defined as the enemy of a large nation. The Nazis were going to disarm and isolate the Jews through any means necessary, and they had ample means at their disposal to do so no matter what steps—up to and including the acquisition of private arsenals—the Jews could have taken to defend themselves. Looking to answer the question about Hitler's position on gun control, Harcourt sums up the issue: "Truth is, the question itself is absurd. The Nazis sought to disarm and kill the Jewish population. Their treatment of Jewish persons was, in this sense, orthogonal to their gun-control views."⁵⁴

Like the myth that gun control was a crucial factor in permitting the Ku Klux Klan to terrorize newly freed slaves, the parallel fantasy that gun control enabled Hitler to complete his terrible deeds is a powerful way to frame opposition to gun control. The argument aligns gun rights

with a fight against tyranny and unbridled government power. But the argument that gun control led to the Holocaust is baseless.

Conversely, the rise of the Nazis teaches some important lessons about the dangers that can result when private arms are mixed with Insurrectionist ideology. In post-World War I Germany, powerful segments of society deeply distrusted the Weimar Republic and the democratic process that brought it into being. Well-armed and -organized private militias acted on this distrust. Democracy requires that citizens regard each other as equal, that they respect and tolerate their differences, and that they resolve conflicts through the democratic process. Those seeds were never sown in the Weimar Republic. Powerful interests were scheming to topple the democratic order almost as soon as the republic was founded. Hitler's was just one among a cacophony of voices on both the far right and left who wanted to overthrow the new democratic system of government. The republic was a problem for these extremists because it blocked a radical agenda. As the economic crisis in Germany worsened, it created an opportunity for the extremists to gain support from the increasingly frightened people.

The Weimar Republic lacked the benefit of a democratic tradition forged from a common experience to weather the challenges from both left and right, and when these attacks turned violent, the republic was ill equipped to cope. Most of the political parties had military wings, but the Nazis' SA was especially violent and well-armed. The SA used force to destabilize the republic and threaten the other political parties. When the use of violence becomes routine in partisan politics, the democratic process falls apart, and with it the belief that citizens are equal, because force becomes a substitute for representative mechanisms of political expression. Insurrectionist rhetoric holds that an armed citizenry provides a bulwark against government tyranny, but the SA, began in much the same way as our own Michigan Militia or the Militia of Montana, with private resources, worked to undercut democracy.

To add insult to injury, when the Weimar Republic fell, the SA did not stay outside of government as a guardian of the people. Instead, it switched sides and became the most dangerous instrument of Hitler's state. Private gun ownership proved to be an illusory protection to the

citizens of the Weimar Republic. Faced with a four-hundred-thousand-man private army, freedom's response needed to be swift and certain, but the Weimar Republic was incapable of responding. A free state cannot survive without popular support for democratic institutions and a monopoly on force so it can control its streets and protect the integrity of the political process. Hitler's success in seizing power was the product of many factors, but laying responsibility for his murderous ways at the feet of gun control is absurd. The structural breakdown of democracy comes when "the people" become separated from "the government" and when loyalty to a faction or political party trumps loyalty to representative government.

Viewed in this light, the cavalier contempt expressed toward the federal government by right-wing populists in the United States should give all Americans pause. The casual willingness to use language that casts the U.S. government as the enemy of the people threatens to corrode respect not just for people who happen to be in office during any particular election cycle but for our democratic system. When gun rights enthusiasts ask us to remember that Hitler supported gun control, we should remember the real historical record: Hitler castigated democratic institutions and values such as pluralism, and he built a private militia to intimidate and assault political opponents. When gun rights enthusiasts describe their romanticized vision of an America where armed private citizens must be urged continuously to stay on the alert for some new incarnation of the November criminals, we should recall the nightmare experience of the Weimar Republic.

Democracies and Genocide

At the beginning of this chapter, we recounted Wayne LaPierre's assertion that gun control helped governments murder 169 million people. He bases this assertion on Professor Rudy Rummel's work on genocide—the act of government killing its own citizens.⁵⁵ LaPierre never mentions that Rummel believes that totalitarianism, not gun control, leads to genocide. In an e-mail to the authors, he wrote that while he supports the idea that individuals should be permitted to own guns to defend themselves, guns are "not to take on a democratic government,

but for personal protection." He believes that a healthy democracy is the best insurance against genocide. "I do not agree that gun control generally is a precursor—this ignores the fact that democracies do not commit genocide and murder their own citizens, and thus gun control for democracies does not mean that genocide is down the road."⁵⁶

Many of the governments that LaPierre charges with democide came to power through armed overthrows of existing governments. As noted earlier, in *The Global War on Your Guns*, he wrote, "If every family on this planet owned a good-quality rifle, genocide would be on the path to extinction."⁵⁷ But isn't that exactly the path such tyrants as Mao Zedong in China and Fidel Castro in Cuba took to obtain power? In *The Essential Second Amendment Guide*, LaPierre even lauds the accomplishments of such men: "The 20th Century provides no example of a determined populace which had access to small arms being defeated by a modern army . . . Chiang Kai-shek and [Fulgencio] Batista lost."⁵⁸ Mao and Castro, armed insurgents fighting what they believed were tyrannical governments, did not turn out to be such good guys after all. They were both after power, and once they used their weapons to get it, they had little interest in creating democratic states. In these two examples as well as in a host of other countries, armed revolutionaries did not foster democracy but rather totalitarianism, and that is what makes genocide possible. In fact, no democratic government has ever committed genocide against its own people.

Apart from the United States, the countries with the most freedom worldwide are democracies with two things in common: (1) strong regulation of firearms and (2) a lower firearms death rate than the United States.⁵⁹ Democracies regulate guns not simply to control violent crime but more fundamentally because unfettered access to firearms poses a threat to democratic institutions. The most sinister threat to freedom is not from gun control but from the imperishable impulse to jettison freedom's noblest traditions in favor of force. Avoiding that eventuality is the duty of all democratic government. Hitler's rise to power offers a prime example of what happens when private arms are turned against the democratic state.