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Lethal Laws

Lethal Laws. By Jay Simkin, Aaron Zelman, & Alan M. Rice. Milwaukee, Jews for the Preservation of Firearms Ownership, 1994. Pp. 347. $24.95

Reviewed by David B. Kopel [*]

> *"If someone comes to kill you, rise up and kill him first."*
> The Talmud. [1]

This book ought to be a non-controversial item that will quickly find its way onto the shelves of all libraries with an interest in international law. The authors' method is quite standard: a compilation from seven nations of statutes on a particular subject. The translation of the statutes into English is meticulous, and each of the statutes is accompanied by commentary explaining its significance. [2]

In addition, as the legal academy works to improve itself at hearing voices which have too long been ignored, this book makes a profound effort to bring to our attention the lives of people, such as persecuted ethnic minorities, who have been marginalized by scholarly research.

But in fact, this book will likely be bought by few law school libraries. It is unlikely to be reviewed in the usual international law journals, because in a number of ways, the book is so politically incorrect.

What is "wrong" with this book? First, its lead author is an economist, not a law professor or even an attorney. Second, the topic of the book is gun control statutes in nations which have perpetrated genocide in the twentieth century. Third, the book's insistent thesis is that gun control paves the way for genocide.

I. The Nations

The core of the book—the translations of the various foreign laws—is excellent, and should serve as a model for similar books on other subjects. On the even-numbered pages are photocopies of the foreign laws. On the odd-numbered, facing pages, are English translations of the laws. The foreign statutes are photocopied from foreign statute books. Copies of the cover and publication information pages from the foreign statute books are provided as well. This approach encourages the most accurate translations, since any person who can read the language of the foreign statute can instantly verify the

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accuracy of the translation. Meticulous citations make the book all the more credible and valuable as a reference work.

While the authors do an excellent job in compiling the various foreign statutes (many of which, such as Ottoman Empire statutes from 1860, are quite obscure), the authors run into a serious difficulty as they attempt to analyze the various gun laws in their historical context in each nation. As the authors acknowledge, only the Nazi genocide has been carefully investigated. [3] The victims of most of the other genocides were much less likely than European Jews to be able to write Western languages (or to be able to write at all). Accordingly, they were less able to leave any kind of record for history. Likewise, most genocidal regimes of the twentieth century were considerably less devoted than the Nazis were in recording their own activities.

Let us now turn to the individual nations whose gun control laws and genocide records form the core of *Lethal Laws*.

A. Armenia

After the government of the Ottoman Empire quickly crushed an Armenian revolt in 1893, tens of thousands of Armenians were murdered by mobs armed and encouraged by the government. As anti-Armenian mobs were being armed, the government attempted to convince Armenians to surrender their guns. [4] A 1903 law banned the manufacture or import of gunpowder without government permission. [5] In 1910, manufacturing or importing weapons without government permission, as well as carrying weapons or ammunition without permission was forbidden. [6]

During World War I, in February 1915, local officials in each Armenian district were ordered to surrender quotas of firearms. When officials surrendered the required number, they were executed for conspiracy against the government. When officials could not surrender enough weapons from their community, the officials were executed for stockpiling weapons. Armenian homes were also searched, and firearms confiscated. Many of these mountain dwellers had kept arms despite prior government efforts to disarm them. [7]

The genocide against Armenians began with the April 24, 1915 announcement that Armenians would be deported to the interior. The announcement came while the Ottoman government was desperately afraid of an Allied attack that would turn Turkey's war against Russia into a two-front war. In fact, British troops landed at Gallipoli in western Turkey the next day. Although the Anglo-Russian offensives failed miserably, the Armenian genocide continued for the next two years. [8] Some of the genocide was accomplished by shooting or cutting down Armenian men. The bulk of the 1 to 1.5 million Armenian deaths, however, occurred during the forced marches to the interior. Although the marches were ostensibly for the purpose of protecting the Armenians through relocation, the actual purpose was to make the marches so difficult (for example, by not providing any food) that survival was impossible. [9]

The Armenian genocide differs from the six other genocides detailed in *Lethal Laws* in one important respect. Although many Armenians apparently complied with the gun control laws and the deportation orders, some did not. For example, in southern Syria (then part of the Ottoman Empire), "the Armenians refused to submit to the deportation order . . . . Retreating into the hills, they took up a strategic position and organized an impregnable defense. The Turks attacked and were repulsed with huge losses. They

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proceeded to lay siege." [10] Eventually 4,000 survivors of the siege were rescued by the British and French. [11] These Armenians who grabbed their guns and headed for the hills are the converse to the vast numbers of Armenian and other genocide victims in *Lethal Laws* who submitted quietly; although many of the Armenian fighters doubtless died from lack of medical care, starvation, or gunfire, so did many of the Armenians who submitted. As was the case of the Jewish resistance during World War II, armed resistance was enormously risky, but the resisters had a far higher survival rate than the submitters.

B. Soviet Union

As the authors note, the Bolsheviks were a minority of Communists in a vast and disparate nation where Communists themselves were a tiny minority. It should not be surprising that the Bolsheviks worked hard to ensure that any person potentially hostile to them did not possess arms. [12]

The first Soviet gun controls were imposed during the Russian Civil War, as Czarists, Western troops, and national independence movements battled the central Red regime. Firearm registration was introduced on April 1, 1918. [13] On August 30, Fanny Kaplan supposedly wounded Lenin during an assassination attempt; the attempted assassination spurred a nationwide reign of terror. [14] In October 1918, the Council of People's Commissars (the government) ordered the surrender of all firearms, ammunition, and sabres. [15] As has been the case in almost every nation where firearms registration has been introduced, registration proved a prelude to confiscation. Exempt from the confiscation order, however, were members of the Communist Party. [16] A 1920 decree imposed a mandatory minimum penalty of six months in prison for (non-Communist) possession of a firearm, even where there was no criminal intent. [17]

After the Red victory in the Civil War, the firearms laws were consolidated in a Criminal Code, which provided that unauthorized possession of a firearm would be punishable by hard labor. [18] A 1925 law made unauthorized possession of a firearm punishable by three months of hard labor, plus a fine of 300 rubles (equal to about four months' wages for a highly-paid construction worker). [19]

Stalin apparently found little need to change the weapons control structure he had inherited. His only contributions were a 1935 law making illegal carrying of a knife punishable by five years in prison and a decree of that same year extending "all penalties, including death, down to twelve-year-old children." [20]

This chapter of *Lethal Laws* summarizes the genocide perpetrated by Stalin from 1929 to 1953, starting with his efforts to collectivize farming by destroying the class of property-owning farmers. Altogether, about twenty million people were murdered, worked to death in slave labor camps, or deliberately starved to death by Stalin's government. From 1929 to 1939, Stalin killed about ten million people, more than all the people who died during the entirety of World War I. Stalin's successful campaign of genocide against the *Kulaks* and against dissident Communists served as a model for similar campaigns in China and Cambodia. [21]

C. Germany

German gun control laws are the authors' area of expertise. Mr. Simkin and Mr. Zelman have previously written a book analyzing the Weimar and Nazi gun laws in great

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detail. [22] The German chapter in *Lethal Laws* contains the most relevant statutes and regulations, but does not include gun registration forms and similar materials found in the previous book. Because *Lethal Laws* does contain more analysis of the German gun laws in their social context, *Lethal Laws* is the more valuable book to anyone except a specialist in German law.

After Germany's defeat in World War I, the democratic Weimar government, fearing (with good cause) efforts by Communists or the militaristic right to overthrow the government, ordered the surrender of all firearms. Governmental efforts to disarm the civilian population—in part to comply with the Versailles Treaty—apparently ended in 1921. [23]

The major German gun control law (which was not replaced by the Nazis until 1938) was enacted by a center-right government in 1928. [24] The law required a permit to acquire a gun or ammunition and a permit to carry a firearm. Firearm and ammunition dealers were required to obtain permits to sell and to keep a register of their sales. Also, persons who owned guns that did not have a serial number were ordered to have the dealer or manufacturer stamp a serial number on them. Permits to acquire guns and ammunition were to be granted only to persons of "undoubted reliability," [25] and carry permits were to be given "only if a demonstration of need is set forth." [26] Apparently police discretion cut very heavily against permit applicants. For example, in the town of Northeim, only nine hunting permits were issued to a population of 10,000 people. [27]

In 1931, amidst rising gang violence (the gangs being Nazi and Communist youths), carrying knives or truncheons in public was made illegal, except for persons who had firearm carry permits under the 1928 law. Acquisition of firearms and ammunition permits was made subject to proof of "need." [28]

When the Nazis took power in 1933, they apparently found that the 1928 gun control laws served their purposes; not until 1938 did the Nazis bother to replace the 1928 law. The leaving of the Weimar law in place cannot be attributed to lethargy on the Nazis' part; unlike some other totalitarian governments (such as the Khmer Rouge in Cambodia), the Nazis paid great attention to legal draftsmanship and issued a huge volume of laws and regulations. [29] The only immediate change the Nazis made to the gun laws was to bar the import of handguns. [30]

Shortly after the Nazis took power, they began house-to-house searches to discover firearms in the homes of suspected opponents. They claimed to find large numbers of weapons in the hands of subversives. [31] How many weapons the Nazis actually recovered may never be known. But as historian William Sheridan Allen pointed out in his study of the Nazi rise to power in one town: "Whether or not all the weapon discoveries reported in the local press were authentic is unimportant. The newspapers reported whatever they were told by the police, and what people believed was what was more important than what was true." [32]

Four days after Hitler's triumphant *Anschluss* of Austria in March 1938, the Nazis finally enacted their own firearms laws. Additional controls were layered on the 1928 Weimar law: Persons under eighteen were forbidden to buy firearms or ammunition; a special permit was introduced for handguns; Jews were barred from businesses involving firearms; Nazi officials were exempted from the firearms permit system; silencers were outlawed; twenty-two caliber cartridges with hollow points were banned; and firearms

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which could fold or break down "beyond the common limits of hunting and sporting activities" became illegal. [33]

On November 9, 1938 and into the next morning, the Nazis unleashed a nationwide race riot. Mobs inspired by the government attacked Jews in their homes, looted Jewish businesses, and burned synagogues, with no interference from the police. [34] The riot became known as "Kristallnacht" ("night of broken glass"). [35] On November 11, Hitler issued a decree forbidding Jews to possess firearms, knives, or truncheons under any circumstances, and to surrender them immediately. [36]

Nazi mass murders of Jews began after the invasion of the Soviet Union. Extermination camps were not set up until late 1941, so mass murder was at first accomplished by special S.S. units, *Einsatzgruppen*, on June 22, 1941. Working closely with regular army units, the *Einsatzgruppen* would move swiftly into newly-conquered areas, to prevent Jews from fleeing. In some cases, Jews were ordered to register with the authorities, an act which made them easy to locate for murder shortly thereafter. As noted above, most of the Soviet population had been disarmed by Lenin and Stalin or had never possessed arms in the first place. [37] Raul Hilberg, a leading scholar of the Nazi military, summarizes that

> The killers were well armed, they knew what to do, and they worked swiftly. The victims were unarmed, bewildered, and followed orders. . . . It is significant that the Jews allowed themselves to be shot without resistance. In all reports of the Einsatzgruppen there were few references to "incidents." The killing units never lost a man during a shooting operation. . . . [T]he Jews remained paralyzed after their first brush with death and in spite of advance knowledge of their fate. [38]

How could Jews with "advance knowledge of their fate" allow themselves to be murdered? The authors suggest that

> These Jews' passivity doubtless was the result of centuries of victimization in Russia. They had come to believe that being victimized was normal. In most cases in Jewish experience, the victimizers were satisfied after the first few victims. In such situations, resisting was likely to prolong the victimization, and thus to increase the number of victims. Most Jews did not realize that the Nazis were different. Most Jews did not realize the Nazis had no use for living Jews.

On top of this tendency to accept being victimized, twenty years of Communist rule—of which Stalin's terror had occupied ten years—had shown Jews that failure to obey orders was a fatal mistake. [39]

Although many Jews remained passive throughout the Holocaust, some did not. In 1943, the Nazis attempted to commence the liquidation of the Warsaw ghetto. [40] But as the Nazis moved in, members of the Jewish Fighting Organization opened fire. "[T]he shock of encountering resistance evidently forced the Germans to discontinue their work in order to make more thorough preparations." [41] The revolt continued, leading Goebbels to note in his diary: "This just shows what you can expect from Jews if they lay

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hands on weapons." [42] Although the Jews of the Warsaw ghetto were eventually defeated, the Warsaw battle was perhaps the most significant ever for the Jews, according to Raul Hilberg: "In Jewish history, the battle is literally a revolution, for after two thousand years of a policy of submission the wheel had been turned and once again Jews were using force." [43]

There were other Jewish uprisings; even in the death camps of Sobibor and Treblinka, Jews seized arms from the Nazi guards and attempted to escape. A few succeeded, and more significantly, the camps were closed prematurely. [44] The authors do not attempt to tell the complete story of Jewish guerilla resistance during World War II. [45]

The German chapter is the most successful in the book. The perpetrators and the victims of Naziism both left extensive written records, allowing Simkin, Zelman, and Rice to integrate their always-strong textual analysis of the gun laws with a discussion of the actual impact of the laws on the lives of victims. [46]

D. China

The China chapter is much less enlightening, mostly because the victims of Mao's genocide, unlike Hitler's, left much less of a record for Western historians to uncover. While many scholars agree that about one million people were murdered during the Cultural Revolution (1966-1976), the number of people who were starved to death by Mao's communization of the economy from 1957 to 1960 ("the Great Leap Forward") might be as low as one million, or as high as thirty million. [47]

Mao, like Hitler, inherited gun control from his predecessor's regime. [48] A 1912 Chinese law made it illegal to import or possess rifles, cannons, or explosives without a permit. [49] The law was apparently aimed at the warlords who were contesting the central government's authority; Chinese peasants were far too poor to afford guns. [50] Communist gun control was not enacted until 1957, when the National People's Congress outlawed the manufacture, repair, purchase, or possession of any firearm or ammunition "in contravention of safety provisions." [51]

E. Guatemala

Perhaps the most overlooked genocide of the twentieth century has been the Guatemalan government's campaign against its Indian population. One reason that the genocide has attracted little attention may be that the Guatemalan government has been friendly to the United States.

Gun control in Guatemala has always been intimately tied to the military's determination to maintain itself as the dominant institution in society. [52] After taking power with a revolutionary army of just forty-five men, the Guatemalan government of 1871 speedily decreed the registration of all "new model" firearms. [53] Registered guns were subject to impoundment whenever the government thought necessary. [54] In 1873, firearms sales were prohibited, and firearms owners were required to turn their guns over to the government. [55]

Apparently, the enforcement of the 1873 law began to wane. In 1923, General Jose Orellana, who had taken power in a coup a few years before, put into force a comprehensive gun control decree. [56] The law barred most firearms imports, outlawed the carrying of guns in towns (except by government officials), required a license for

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carrying guns "on the public roads and railways," set the fee for a carry license high enough so as to be beyond the reach of poor people, and prohibited ownership of any gun that could fire a military caliber cartridge. [57]

In 1944, two officers led a revolt against the military government. [58] "Distributing arms to students and civilian supporters, they soon gained control of the city [Guatemala City, the capital], and two days later Ponce [the dictator] resigned, though not before nearly a hundred people had died in the sporadic fighting." [59] The first free elections in half a century were held. [60] The new government did not eliminate the gun control laws, but it did regularize the issuance of carry permits by specifying that the permits would be issued to an applicant who could "prove his good character by means of testimonials from two persons of known honesty." [61]

In 1952, the democratically-elected government of Jacobo Arbenz began an agrarian reform plan that expropriated large uncultivated estates. [62] Compensation was based on the taxable value of the land. The United Fruit Company was angry at the seizure of 386,000 acres of the company's reserve land in exchange for what the company considered inadequate compensation. [63] In June 1954, a force of Guatemalan exiles, trained by the CIA, invaded Guatemala from Honduras. [64] "Unable accurately to assess the situation in the capital, Arbenz resolved to do as he had done in 1944 and distribute weapons to the workers for the defense of the government. The army refused to obey, and on 27 June, Arbenz resigned . . . ." [65]

Contrary to the assertion of the authors, [66] it is unclear whether total repeal of the gun controls a decade before would have saved the democratic government. Firearms at a free-market price might still have been beyond the financial reach of the peasants and students in a very poor country. What might have made a difference, however, is the actual distribution of surplus military arms for free to the citizens of Guatemala while the democratic regime was in power. [67] But such a policy was not implemented, and for all practical purposes, the military retained a monopoly of force. As the authors note, the monopoly "made Arbenz, a duly elected President, serve at the Military's pleasure. When they wanted him to go, he went." [68]

In November 1960, reformist military officers attempted a coup and garnered the support of about half the army. [69] Peasants, wanting to fight for their own land, asked the rebels for guns so that the peasants could join the battle; the rebels refused. [70] The coup was finally crushed by loyalist forces who were supported by the United States. [71] From the 1960s to the 1980s, the Guatemalan government found itself engaged in perpetual counterinsurgency campaigns. As part of these campaigns, right-wing terror squads were unleashed to murder suspected subversives, although regular army units also participated extensively. [72] Approximately 100,000 Mayan Indians were murdered by the government during this period. [73]

Amnesty International has waged a long and courageous campaign against human rights abuses in Guatemala. [74] The authors reviewing Amnesty International's proposals for restoring human rights to Guatemala, note that the group nowhere advocates recognition of a strong legal right to arms or the arming of the victim populations. [75] Instead, Amnesty argues that the government should control itself better:

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> The government should also thoroughly review the present method of reporting and certifying violent deaths, particularly those resulting from actions taken by any person in an official capacity. The aim of such an inquiry should be to create procedures which will ensure that such deaths are reported to the authorities, who then impartially investigate the circumstances and causes of the deaths. All efforts should be made to identify the unidentified bodies that are found in the country and frequently buried only as "xx", in order to determine time, place and manner of death and whether a criminal act has been committed. [76]

Is the Amnesty proposal realistic? "It seems absurd," write Simkin, Zelman, and Rice, "to appeal to so blood-drenched a government to 'impartially investigate' atrocities its officials have committed." [77]

The failure of the Guatemalan government to prosecute its agents for perpetrating government-sponsored genocide suggests that hopes for domestic legal reform may be of little use in actually stopping genocide. As the next two chapters illustrate, international law may be of little greater practical efficacy.

F. Uganda

If international organizations such as the United Nations were ever going to intervene to stop a genocide in progress, Uganda in the 1970s would have been the ideal spot. Ugandan dictator Idi Amin was a world pariah with no powerful allies. He was generally regarded as insane (perhaps from advanced venereal disease) and his army was, by world power standards, pitiful. [78] From 1990 to 1991, the United States assembled and led a worldwide coalition which easily drove Iraqi conquerors out of Kuwait. [79] A multinational coalition conquest of Uganda would have been all the easier, since Idi Amin's army was tiny compared to Saddam Hussein's war machine. [80] Kuwait, however, was a strategic oil resource, [81] while Uganda had few resources other than the Ugandan people who were being slaughtered by their government. Although the existence of the Ugandan genocide was well-established as it was being perpetrated, the possibility of a multinational campaign to oust Idi Amin was never even a topic for serious discussion, whereas discussion about the reconquest of Kuwait began days after Iraqi tanks entered Kuwait. [82]

Not once in this century has one nation or a coalition of nations launched a military action to stop a genocide in progress. It is true that wars have sometimes led to a genocidal regime being deposed; Tanzania ousted Amin, and the Allies defeated Hitler. But Tanzania and the Allies acted only because their territory had been invaded, not because they were moved to action by reports of the murders within Uganda or within Nazi Germany.

Notably, even when the Allies were engaged in all-out war against Hitler, they refused to take military action against the extermination camps, such as by bombing the rail lines that led to them. [83] As historian Raul Hilberg writes, "The Allied nations who were at war with Germany did not come to the aid of Germany's victims. The Jews of Europe had no allies. In its gravest hour Jewry stood alone, and the realization of that desertion came as a shock to Jewish leaders all over the world." [84] The people of

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Uganda likewise stood alone from 1971 to 1979, when Idi Amin's dictatorship killed about 300,000 people, roughly 2.3% of the total population. [85]

The authors began their study of Ugandan gun laws with a 1955 statute promulgated by the British imperial government, although this gun control law may not have been Uganda's first. [86] Although the British/Ugandan law had the length and complexity typical of modern statutes, the essence was a provision requiring that a person could only possess a firearm if he had a permit, and the permit would be granted by the police only upon a discretionary finding regarding the applicant's "fitness" to possess a firearm. [87]

Uganda achieved independence in 1962, [88] keeping the structure of the Colonial gun laws intact. In 1966, Milton Obote assumed dictatorial powers. In 1969, Obote tightened the gun laws, imposing a nationwide ban on firearms and ammunition possession, making exceptions only for government officials and for persons granted an exemption by the government. [89] In 1970, the 1955 British gun law was recodified, with some minor changes. [90]

Idi Amin took power in 1971, and the mass murders began shortly thereafter. The nation's large Asian population was expelled (not murdered), and in the process the Ugandan government seized approximately a billion dollars' worth of the Asians' property. [91] The main targets of the Ugandan government's mass murders were members of tribes whom Amin perceived as a threat to his power. [92] Because Uganda had far less of an infrastructure than Nazi Germany, the murders were perpetrated mostly by bands of soldiers who shot their victims, rather than through extermination camps. [93]

Amin's army numbered about 25,000 and his secret police—the "State Research Bureau"—only 3,000. [94] The army was ill-disciplined and incompetent, and collapsed not long after Amin began his ill-advised war against Tanzania in late 1978. [95] How could such a small and pathetic army get away with mass murder against a nation of thirteen million people? Is it possible that a disarmed Ugandan population was easier to murder than an armed one?

Idi Amin, by the way, now lives in Saudi Arabia. [96] As far as I know, there has been no effort to extradite him and put him on trial for murder. With the exceptions of the rulers of the nations that lost World War II, none of the perpetrators of genocide in the 20th century have been prosecuted for crimes against humanity.

G. Cambodia

Also enjoying a comfortable post-genocide life is Pol Pot, the perpetrator of the best known mass-murders of the post-World War II era.

Cambodian gun control was a legacy of French colonialism. [97] A series of Royal Ordinances, decreed by a monarchy subservient to the French, appears to have been enacted out of fear of the Communist and anti-colonial insurgencies that were taking place in the 1920s and 1930s throughout Southeast Asia, although not in Cambodia. [98] The first law, in 1920, dealt with the carrying of guns, while the last law in the series, in 1938, imposed a strict licensing system. [99] Only hunters could have guns, and they were allowed to own only a single firearm. [100] These colonial laws appear to have stayed in place after Cambodia was granted independence. The Khmer

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Rouge enacted no new gun control laws, for they enacted no laws at all other than a Constitution. [101]

Cambodia was a poor country, and few people could afford guns. [102] On the other hand, the chaos that accompanies any war might have given some Cambodians the opportunity to acquire firearms from corrupt or dead soldiers. There is no solid evidence about how many Cambodians, with no cultural history of firearms ownership, attempted to do so. [103]

As soon as the Khmer Rouge took power, they immediately set out to disarm the populace. One Cambodian recalls that

> Eang [a woman] watched soldiers stride onto the porches of the houses and knock on the doors and ask the people who answered if they had any weapons. "We are here now to protect you," the soldiers said, "and no one has a need for a weapon any more." People who said that they kept no weapons were forced to stand aside and allow the soldiers to look for themselves. . . . The round-up of weapons took nine or ten days, and once the soldiers had concluded the villagers were no longer armed, they dropped their pretense of friendliness. . . . The soldiers said everyone would have to leave the village for a while, so that the troops could search for weapons; when the search was finished, they could return. [104]

People being forced out of villages and cities were searched thoroughly, and weapons and foreign currency were confiscated. [105] To the limited extent that Cambodians owned guns through the government licensing system, the names of registered gun owners were of course available to the new government. [106]

The Cambodian genocide was unique in the twentieth century, in that its target was not a single ethnic, religious, or political group, but rather the entire educated populace. Lacking infrastructure for sophisticated Nazi-style extermination camps, the Khmer Rouge used the genocide methods which had been used by the Turkish government (internal deportations with forced marches designed to kill), the Soviet government (hard labor under conditions likely to kill), and the Guatemalan government (murders of targeted victims). [107]

Like other victims of genocide, the Cambodians forced into slave labor were kept so desperately hungry that revolt became difficult to contemplate, as every thought focused on food. One slave laborer explained that

> There was no possibility of an uprising. . . . Contact between many people was made impossible by the chlops [informers] . . . . Besides, we had no arms and no food. Even if we'd been able to produce arms and kill the fifty Khmer Rouge in the village, what would happen to us? We didn't have enough food to build up any reserves to sustain a guerilla army. In our state of weakness, after a few days wandering in the jungle, death would have been inevitable. [108]

The authors estimate that Pol Pot and his Khmer Rouge murdered about a million people, at least 14% of the Cambodian population. [109] The percentage was about the

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same as the percentage of the Soviet population murdered by Stalin, except that Pol Pot accomplished in three-and-a-half years what took Stalin twenty. [110]

The mass murders of the Khmer Rouge became well-known in the international community, but no nation made an effort to try to rescue the Cambodian people. Finally, Pol Pot was driven from power by a Vietnamese invasion that was motivated by imperialist, rather than humanitarian reasons. [111]

Pol Pot's fate was thus similar to Idi Amin's: the world would tolerate genocide, but threatening the borders of a neighboring country would lead to the regime's demise. According to the *New York Times*, "Pol Pot is today a free, prosperous and apparently unrepentant man who, 15 years after his ouster from Phnom Penh, continues to plot a return to power. The calls for some sort of international genocide tribunal for Pol Pot and his aides have not been heard for years." [112]

The authors have demonstrated that every nation in the twentieth century which has perpetrated genocide has chosen a victim population which was disarmed. If the intended victims were not already "gun-free," then the murderous governments first got rid of the guns before they attempted to begin the killing.

II. Is Resistance Practical?

The most common argument against an armed population as an antidote to genocide is that, in the late twentieth century, the balance of power between governments and the people has tipped decisively towards the government side. How can a rag-tag collection of citizens with rifles, pistols, and shotguns hope to resist a modern standing army with artillery, helicopters, tanks, jets, and nuclear weapons? Such a question is most frequently posed by persons who have neither personal nor intellectual familiarity with the military or with guerilla warfare. If we actually try to answer the question, rather than just presuming the government will win, then the case for the uselessness of citizen resistance becomes weak indeed.

First, the purpose of civilian small arms in any kind of resistance scenario is not to defeat the federal army in a pitched battle, and then triumphantly march into Washington, D.C. Citizen militias and other popular forces, such as guerilla cadres, have rarely been strong enough to defeat a professional army in a head-on battle. Guerilla warfare aims to conduct quick surprise raids on the enemy, at a time and place of the guerillas' choosing. Almost as soon as the first casualties have been inflicted, the guerillas flee, before the army can bring its superior firepower to bear.

In the early years of a guerilla war, as Mao Tse-Tung explained, before guerrillas are strong enough to attack a professional army head on, heavy weapons are a detriment, impeding the guerrillas' mobility. As a war progresses, the guerrillas use ordinary firearms to capture better small arms and eventually heavy equipment. [113]

The military history of the twentieth century shows rather clearly that if guerillas are willing to wage a prolonged war, they can be quite successful. As one author notes that

> Far from proving invincible, in the vast majority of cases in this century in which they have confronted popular insurgencies, modern armies have

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> been unable to suppress the insurgents. This is why the British no longer rule in Israel and Ireland, the French in Indo-China, Algeria, and Madagascar, the Portuguese in Angola, the whites in Rhodesia, or General Somoza, General Battista, or the Shah in Nicaragua, Cuba, and Iran respectively—not to mention the examples of the United States in Vietnam and the Soviet Union in Afghanistan. [114]

Moreover, guerillas need not overthrow a government in order to accomplish their purposes. During World War II, Yugoslav partisans did not directly overthrow the occupying Nazi government, but they did tie down a large fraction of the entire German army, leaving the German armies in the Eastern, Western, and Mediterranean fronts that much weaker. As the war ended, the presence of a well-equipped popular fighting force, ready to assume power, helped convince the advancing Soviet armies not to move into Yugoslavia, and consequently set the foundation for a Yugoslavia that would, relative to the rest of Eastern Europe, be less subject to a Soviet sphere of influence.

A popular guerilla resistance can also deprive an occupying government of much or all of the economic benefit that would normally be gained by occupation. And perhaps most importantly for purposes of this Article, an armed populace can ensure that any efforts to kill people or to send them to prisons and concentrations camps carry a price that must be paid by the government. If the Jews of Nazi-occupied Europe had shot the Nazi soldiers who came to herd them onto cattle cars, the Jews would still have been killed, but so would some of the Nazis. Would the Nazis have had such an easy time sending soldiers into the ghettos to collect the Jews if the soldiers knew that some of them would not come back alive? If the kind of people who specialize in perpetrating genocide are bullies by nature, how many bullies are willing to take a chance of getting shot by the intended victim? If potential massacre victims can plausibly threaten to harm at least a few of their attackers, then the calculus of the attackers may change dramatically. As Sanford Levinson notes, it is not implausible to argue that

> "[I]f all the Chinese citizens kept arms, their rulers would hardly have dared to massacre the [Tiananmen Square] demonstrators. . . ." It is simply silly to respond that small arms are irrelevant against nuclear-armed states . . . . A state facing a totally disarmed population is in a far better position, for good or for ill, to suppress popular demonstrations and uprisings than one that must calculate the possibilities of its soldiers and officials being injured or killed. [115]

Finally, even in cases where resistance saves not a single victim's life, resistance is still better than submission. Lloyd R. Cohen observes that

> Dying even futilely defending yourself, your family, and your group has an honor and a dignity to it that is not vouchsafed by being helplessly slaughtered. Thus even if none had escaped from the Warsaw or Vilna Ghettos or the Sobibor extermination camp, those who took vengeance there honored themselves, their families, and their people. [116]

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Although the American federal government is the best-armed and wealthiest in the world, so is the American populace. Approximately half of all American households possess a gun. [117] In the United States, there is more than one gun for every adult American. [118] Hundreds of thousands (or millions) of Americans practice "reloading"—the home manufacture of ammunition—as a hobby. [119] As of the fall of 1994, commercial American ammunition makers were producing *well over a million rounds of ammunition per day* and yet cannot keep up with the immense consumer demand. [120] In response to the gun control laws being enacted and proposed in 1993 and 1994, the American gun-owning public has begun stockpiling weapons and ammunition in quantities that may be without historical precedent. [121] Now that *Guns and Ammo*, a magazine with a circulation of half a million, has begun publishing tips about how to bury guns for long-term storage, it is safe to assume that a rather large number of gun owners are putting away a great deal of provisions for a rainy day. [122]

Everything else that a guerilla army could want is also abundant in America: binoculars, camouflage (owned by millions of hunters), ham radios and other sophisticated communications equipment, and abundant quantities of well-preserved food.

There is something else in abundance in America that guerillas love: a place to hide. The great swamps of the South, the thick forests of the Rocky Mountains and the Northwest, and the dense, crowded cities throughout the nation are only a few of the American locales that would be eminently suitable to providing havens for guerilla fighters.

The American military is also powerful. But, as the authors point out, the police and military combined (assuming that every soldier and every police officer would assist a genocidal government) comprise only about one percent of the U.S. population. [123] Many of the modern army's most effective weapons—such as tanks, artillery, and helicopters—are easy to deploy in a Kuwaiti desert, but considerably less effective in a built-up city. Indeed, a million dollar tank can be incapacitated by a Molotov Cocktail (a glass bottle filled with gasoline and topped with a wick that is lit just before the cocktail is thrown). [124] As a last resort, a dictatorial government could initiate nuclear warfare, but such a step would risk provoking the non-militant fraction of the population into full-scale rebellion, risk provoking a faction of the army into attempting a coup, and by destroying the bombed area, certainly deprive the government of any benefit of controlling the area.

Finally, the most important benefit of defensive arms is their deterrent power. As long as a potential dictator (or a potentially genocidal dictator) must take into account very serious risks involved with taking action against the American people, then the prospect for such actions being taken becomes markedly smaller.

No one can forecast exactly what would happen if the American people took up arms against a dictatorial government. But there is no evidence from the history of warfare, or from any other source, to support a simplistic assertion that resistance could not possibly achieve any success.

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III. When to Resist

A much more plausible objection to the authors' thesis is that, even though an armed populace *can* resist genocide, the population may not know *when* to resist. Had European Jews shot the soldiers who were herding them into cattle cars for transportation to concentration camps, the survival rate for European Jews might have been much higher. But there were other instances, some of them well-known to European Jewry, where non-resistance proved to be the correct approach.

The classic example involves the Babylonian captivity of Biblical times. As the Babylonian Empire of King Nebuchadnezzar was sweeping westward, the tiny kingdom of Judea fell within its path. As the final Judean stronghold, Jerusalem, was besieged, the Jews faced a choice of surrendering, with the likelihood of being taken into slavery and exile, or fighting to the last man. The prophet Jeremiah insisted on the former course, and that is the course Judea's king eventually chose.

As things turned out, that was the right choice historically for the Jews. The Babylonian captivity turned out not to be terribly arduous; many Jews grew quite prosperous in Babylon. Captivity in Babylon also took the Jews away from Canaanite influence, meaning that the continuing struggle to resist syncretism between Canaanite nature religion and strict Yahwism was ended. The Judaism that emerged from the Babylonian captivity was a purer, stronger form of Judaism than the one that had been under continuous Canaanite assimilative pressure, although some Babylonian myths and legends were incorporated. Within a few generations, Babylon was conquered by the Persian Empire of King Cyrus, and Cyrus allowed many of the Jews to return to Jerusalem and begin rebuilding the Temple. Eventually, re-establishment of an independent Judean state was allowed. Acceptance of transportation and captivity turned out to be a much better long-term choice than a battle to the last man.

During World War II, the Japanese-Americans who were herded into concentration camps fared better by accepting several years of confinement than they would have by taking to the California hills and launching a guerilla war.

How is one to know that the impending forced march or transportation by cattle car is intended not merely for an onerous relocation, but for mass murder? Generally, one cannot. As the authors point out in their chapter on Germany, the Jewish policy of submission had been, for over 1800 years, the policy which saved the most Jewish lives. [125] Not until the Jews realized that Hitler intended to murder them all did Jewish resistance groups begin taking action.

Of the seven genocidal governments studied in *Lethal Laws*, not one announced its intention to its victims. All of the victims were told that they were being temporarily relocated or another lie in order to induce them not to resist. And one of the reasons that the lies were believed by so many people is that there are many governments throughout world history which have sent people on forced marches or other forms of forced relocation and *not* killed them. [126]

One guide for when a subject people should resist may be the people's assessment of the government's degree of hatred. King Nebuchadnezzar was no anti-Semite and bore the Jews no more ill will than he bore the people of any nation he conquered. Hitler was obviously different: hatred of Jews was one of the fundamental principles of his life, as he had demonstrated throughout his public career.

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Forewarned is forearmed, but the problem of knowing when to take up arms poses a significant challenge to the authors' thesis that gun ownership can always prevent genocide. Even if all of the genocide victims discussed in *Lethal Laws* had possessed their own semiautomatic rifle, it is far from certain that they all would have decided at the right time to shoot enemy soldiers. Still, some of the genocide victims might have done so, and the more that did so, the less genocide there might have been. It appears that, despite the hopes of the authors, civilian gun ownership may sometimes, but not always, prove capable of stopping genocide.

IV. It Can't Happen Here

It *did* happen here. The conquest of North America by the European settlers of the future United States was accomplished by "the extermination of some Native American tribes and the near-extinction of others, by U.S. government forces . . . ." [127] The forced march of the Cherokee people from the southeastern United States into Oklahoma along the "Trail of Tears" resulted in the deaths of a large fraction of the Cherokee population, and at best, differs quantitatively rather than qualitatively from the 20th-century genocides described in *Lethal Laws*. Hitler looked with admiration at how the United States government had cleared the continent of Indians, and he used the U.S. government's 19th-century policies as a model for his own 20th-century policies of clearing *Lebensraum* for the German people.

In the twentieth century, the United States government forced 100,000 United States citizens into concentration camps. [128] In 1941, American citizens of Japanese descent were herded into concentration camps run by the United States government. [129] Like the victims of other mass deportations, these Americans were allowed to retain only the property they could carry with them. Everything else—including family businesses built up over generations—had to be sold immediately at fire-sale prices or abandoned. [130] The camps were "ringed with barbed wire fences and guard towers." [131] During the war, the federal government pushed Central and South American governments to round up persons of Japanese ancestry in those nations and have them shipped to the U.S. concentration camps. [132]

The American concentration camps were not death camps. The American-held prisoners were subject to strict discipline, but not to mass murder. [133] After the American victory at Midway in June 1942, the threat of a Japanese landing on the mainland U.S. vanished, and the tide in the Pacific began to turn. [134] Nevertheless, the incarceration of Japanese-Americans continued long after any plausible national security justification had vanished.

But, the authors ask, what if the war had gone differently? What if a frustrated, angry

America, continuing to lose a war in the Pacific, had been tempted to take revenge on the "enemy" that was, in the concentration camps, a safe target. [135] Would killing all the Japanese be a potential policy option? In 1944, by which time America's eventual victory in the war seemed assured, the Gallup Poll asked Americans, "What do you think we should do with Japan, as a country, after the war?" Thirteen percent of Americans chose the response "Kill all Japanese people." [136]

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Sadly, Roger Daniels, the author of a recent study of the Japanese internment, concludes that a concentration camp episode could indeed happen again in America. [137] He points out that in 1950, a time by which the oppressiveness and uselessness of the American concentration camps during World War II had been well-established, Congress enacted the Emergency Detention Act, which gave the Attorney General unilateral authority to imprison Americans at will, using the World War II concentration camps as a model. [138] Fortunately, the law was repealed in 1971, but as Daniels points out, the original detentions occurred even though they were not authorized by any law. [139]

Disarming citizens before killing or oppressing them is a time-honored American tradition. After the Civil War, the first act of the Ku Klux Klan (like the Khmer Rouge) was to round up all the guns in the hands of ex-slaves. Only then did other oppressions begin. [140] From the middle of the nineteenth century to the first quarter of the twentieth, race riots in the United States usually took the form of white mobs rampaging against innocent blacks. Black attempts to resist or to shoot back were often followed with governmental efforts to disarm the blacks. [141]

Are modern Americans so dramatically different from their ancestors that concentration camps or mob violence are safely confined to the past? While Mayor of New York City, Edward Koch (who is Jewish) proposed that the federal government set up concentration camps for drug users, in remote locations such as Nevada and Alaska. [142] Under Mayor Koch's successor David Dinkins, after a Jewish religious leader's driver killed a black child, rampaging black mobs conducted a three-day pogrom against a Jewish section of Brooklyn and killed an Australian Jew who was visiting the United States, while the police passively refused to intervene. [143]

Hatemongers such as Louis Farrakhan are now treated as important leaders by an increasingly large segment of the American black community, including the NAACP, which for decades before had been steadfastly opposed to racial hatred and anti-Semitism. In an age of Louis Farrakhan and Al Sharpton, is America immune from the influence of bigots, crackpots, hatemongers, or potential dictators? A Klansman and former Nazi named David Duke was elected to the State House of Representatives in Louisiana in 1989. He then won 44% of the vote against the incumbent U.S. Senator in 1990. [144] The next year, he won 39% of the vote in a race for Governor, garnering over 60% of the vote from the white middle-class and from white Protestants. [145]

What other countries can be presumed forever safe from hatemongering rule? In August 1994, the Labor Minister of the Italian government—a government which a half-century earlier was a Fascist ally of Hitler—blamed the fall of the lira on the "Jewish lobby" in the United States. [146] Virtually none of the world's democratic nations can boast an uninterrupted history of democracy, nor can they claim that racist or anti-Semitic elements are of no significance in the nation's current political life.

Imagine that the year is 1900. You are told that within fifty years, a nation in the world will kill over six million members of a religious minority. Which nation would you pick? If you were well-informed about world affairs, it is very unlikely that you would pick Germany. In 1900, Germany was a democratic, progressive nation. Jews living there enjoyed fuller acceptance in society than they did in Britain, France, or the United States. In 1900, probably much less than 13% of the German population favored killing all Jews. Thirty-five years later, circumstances had changed.

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The prospect of a dictatorial American government thirty-five years from now seems almost impossible. What about a hundred years from today? Two hundred? It is possible to say, with near-certainty, that "it can't happen here—in the near future." But in the long run, no one can say; the fact that it did happen here in the nineteenth century, coupled with the fact that American concentration camps were opened in the twentieth century, ought to suggest that only someone wilfully blind to American and world history would attempt to guarantee to future generations of potential American victims that "it can't happen here."

V. The Roots of the Right to Arms

Lethal Laws' thesis that the ultimate purpose of gun ownership is for citizens to shoot government troops (or simply to possess arms, thereby deterring governmental violence) will offend many persons, including many gun owners, who like to consider gun ownership in the pleasant, bucolic context of hunting. [147] But the authors' viewpoint is precisely the viewpoint of the intellectual world from which the Second Amendment sprang.

The framers of the American Constitution were strongly of the opinion that "it could happen here." They drafted the Constitution as a counterpoint to the abuses of government which they had endured themselves and which they knew about from history. Not the least of these abuses were the French government's mass persecutions of the disarmed Huguenots in the previous century. Indeed, a sizeable number of Huguenots fled to the United States. [148]

After the English Civil War, the Glorious Revolution, and religious persecutions in 17th-century Great Britain, William Blackstone in the eighteenth century described the right to arms as the fifth and last "auxiliary right" of the subject, meant to protect all other rights. The right "of having arms for their defence" was "a public allowance under restrictions, of the natural right of resistance and self preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression." [149] Sir Walter Raleigh was simply repeating the conventional wisdom of his age when he noted that a tyrant will seek "to unarm his people of weapons, money, and all means whereby they resist his power." [150]

The drafters of the American Constitution trusted the people more than the government, intended the armed populace to be the ultimate check in the system of checks and balances, and meant to reserve to the American people the right affirmed in the Declaration of Independence to "alter or abolish" a tyrannical government. James Madison's friend Tench Coxe explained that

> [T]he powers of the sword are in the hands of the yeomanry of America from sixteen to sixty. The militia of these free commonwealths, entitled and accustomed to their arms, when compared with any possible army, must be *tremendous and irresistible*. Who are the militia? *Are they not ourselves*. . . . Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are *the birthright of an American*. . . . [T]he unlimited power of the sword is not in the hands of

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> either the *federal or state governments*, but, where I trust in God it will ever remain, *in the hands of the people*. [151]

Tench Coxe's words from across the centuries are not very different from those of the late Vice President Hubert Humphrey: "The right of citizens to bear arms is just one more guarantee against arbitrary government, one more safeguard against the tyranny which now appears remote in America, but which historically has proved to be always possible." [152] Consistent with these quotations, virtually every scholar in the last 15 years who has studied the history of the Second Amendment finds that it was intended to recognize, not create, a fundamental human right to possess weapons, a right whose primary purpose was to facilitate resistance to a tyrannical government. [153]

Although the Bible was less influential in the political theory of the early American republic than the histories of Great Britain, Greece, and Rome were, all of the people who shaped the Constitution and the Bill of Rights (including Deists such as Jefferson and Franklin) knew the Bible well and took its history lessons seriously. The Book of Esther is set in the period of the Babylonian captivity and stands as a counterpoint to Jeremiah, which is set in the period leading up to the conquest of Judea by Babylon. Babylonian King Ahasuerus, influenced by a malicious advisor, orders the extermination of all Jews. The King's wife, Queen Esther, is secretly a Jew and risks her life by telling the King and convincing him to execute the malicious advisor. Unfortunately, the King's order to execute and plunder the Jews has already gone out and cannot legally be rescinded. But the King can send out a second decree, so he sends a decree telling

> the Jews which were in every city to gather themselves together, and to stand for their life, to destroy and slay, and to cause to perish, all the power of the people and provinces that would assault them . . . . Thus the Jews smote all their enemies with the stroke of the sword . . . . [T]he other Jews that were in the king's provinces gathered themselves together, and stood for their lives, and had rest from their enemies, and slew of their foes seventy and five thousand . . . . [154]

Although the authors focus primarily on the physical implications of gun controls—of genocide victims being deprived of tools which would facilitate resistance—the classical ideologists of the right to bear arms would have agreed with them. However, they might have added another point which they thought even more important: disarmament upsets the proper relationship between the master (the people) and the servant (the government) by making the people accustomed to dependence on the government. Machiavelli observed that

> [A]mong other ills which ensue from being disarmed is contempt . . . . There can be no proper relation between one who is armed and one who is not; nor is it reasonable to expect that one who is armed will voluntarily obey one who is not, or that the latter will feel secure among servants who are armed. [155]

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Joel Barlow observed that

> [it] palsies the hand and brutalizes the mind: an habitual disuse of physical force totally destroys the moral; and men lose at once the power of protecting themselves, and of discerning the cause of their oppression. [156]

To the generation that drafted the Second Amendment, possessing arms to deter a government (or a mob which might be inspired by the government) that might contemplate mass murder was an uncontroversial moral imperative. The fact that the same message in the 20th-century book *Lethal Laws* may be considered so radical as to be not even worth discussing is perhaps one reason why genocide has become the great pandemic of the twentieth century.

VI. Conclusion: Taking Genocide Seriously

One of the contributions of *Lethal Laws* is that it moves the gun control debate beyond the point where it has been stuck for a very long time on what might be called the "lone homeowner." Gun rights advocates have claimed that armed citizens can use guns to defend themselves against criminals, while gun prohibition advocates have countered that ordinary people cannot use firearms effectively under stress, and that the defensive home gun is more likely to be used to kill a loved one during an argument than to provide any meaningful protection. What results from the lone homeowner debate is an attempted calculus of net lives saved—or lost—due to gun control, as one attempts to weigh the self-defense value of firearms, the ability of gun control laws to disarm criminals, to factor in whatever extra quantum of suicide is attributable to the presence of guns in the home, to guess how many gun accident victims are so reckless that they would likely die in some other accident, and so forth. [157] Notably, many gun control advocates acknowledge that proposed controls will have little effect, but they support new restrictions with the theory "if it saves one life, it's worth it."

This gun control calculus will no doubt continue to interest many criminologists, but *Lethal Laws* offers some powerful evidence that the calculus is of little relevance to the ultimate question of the human cost of gun control. Let us assume that the *entire* difference in the homicide rate between the United States and Europe is due to the absence of sufficiently stringent American gun laws comparable to the European laws. [158] Thus, if Europe moved to an American-style system of less-restrictive gun controls, the European homicide rate would immediately rise to American levels. If we make these assumptions, then we find, as the authors note, that "with an American-style murder rate it would take *400 years* for Europe's common criminals to murder as many people as the Nazi government murdered in just 13 years." [159]

In other words, over the long run, the risk to life from criminal governments is overwhelmingly larger than the risk to life from lone criminals. Gun control measures which substantially reduce the possibility of resistance to genocide, but which offer little commensurate increase in lives saved, might thus be considered to endanger rather than enhance public safety. For example, so-called "assault rifles" are virtually never used in crime in the United States (they are used in less than one percent of homicides), but they

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are the best weapons for civilian resistance to a genocidal government. [160] The authors force us to consider whether the recently-enacted Congressional prohibition on so-called "assault weapons" may actually be a lethal law. Conversely, laws which do not disarm the populace and which do not create government-owned lists of gunowners—such as laws punishing reckless conduct with a gun which causes the injury of a child—would seem unobjectionable under the *Lethal laws* thesis.

Even persons who reject the book's thesis will find it helpful in understanding why many gun owners resist seemingly "reasonable" controls. America's leading gun prohibition lobby, Handgun Control, Inc., hypothesizes that those who objected to the "Brady Bill" simply had a selfish objection to the "inconvenience" of waiting a week to buy a handgun. [161] The more fundamental objection, however, was that to let the government take control over the populace's acquisition of firearms was to put in place precisely the kind of laws which a murderous government could use to disarm its victims. Whether the fears are considered credible or not, they are real, and serious advocates of gun control need to address them.

Another valuable feature of *Lethal Laws* is that it traces the connection between gun prohibition and prohibition of alcohol and drugs. This story should one day merit its own book, but in the meantime, the authors remind us how parasitic gun control has been on drug and alcohol control. America's first major gun control law, the National Firearms Act of 1934, was a direct result of the violence engendered by alcohol prohibition. [162] The authors might have noted also that current "gun control" efforts are partly a response to the violence that has resulted from the "drug war," and partly a reflection of the drug war's message that the government should prevent adults from possessing objects, such as semiautomatic rifles or marijuana, whose possession offends the sensibilities of the majority of the population.

But by far the most important accomplishment of *Lethal Laws* is that it forces us to think seriously about genocide—forcing us to do more than simply deplore mass murder by the government, and to start thinking about how to end such murders.

The rhetoric of the "public health" campaign against gun ownership labels gun violence a "disease" and guns a "disease vector." [163] But if malicious human acts are to be classified as a disease, then as *Lethal Laws* observes, "[g]enocide is among humankind's deadliest 'diseases.'" [164]

It is important to note the crisis situation that the world has come to regarding genocide. Since World War II, more people have been killed in state-sponsored genocide than have been killed by war. [165] Genocide is more common in the twentieth century than in any century. As this Article was written, genocide was in progress in Rwanda [166] and Bosnia, and the world community had done nothing effective to stop the genocide in either nation. (Although discovered by the authors too late for inclusion in *Lethal Laws*, the gun control laws in both Rwanda and the former Yugoslavia were similar to gun control laws which have facilitated genocide in other nations.)

In fact, the authors may significantly *underestimate* the 20th-century death count from genocide. Their eight-nation study uses conservative estimates of genocide in each of the nations to arrive at a total death count of 56 million. [167] University of Hawaii political science professor R.J. Rummel has researched the demographic evidence regarding genocides in much more detail, and he puts the total number of victims of mass murders by governments during the twentieth century at 169,198,000. If the deaths of

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military combatants are included, the death total rises to 203,000,000. Rummel's book, *Statistics of Democide: Estimates, Sources, and Calculations on 20th Century Genocide and Mass Murder*, includes data on mass murders by several regimes not discussed in *Lethal Laws*. These regimes (number of deaths in parentheses) include: Nationalist China (10,076,000 from 1928 to 1949); Japan (5,964,000); Vietnam (1,678,000); North Korea (1,663,000); Poland (1,585,000 from 1945 to 1948); Pakistan (1,503,000); Mexico (1,417,000 from 1900 to 1920); Yugoslavia (1,072,000 from 1944 to 1987); and Czarist Russia (1,066,000 from 1900 to 1917). [168] There is no evidence that any of these nations deviated from the pattern described in *Lethal Laws*: the preference to murder unarmed victims who were subject to gun controls. [169]

Stated another way, the number of people killed by governments in the twentieth century is over two-thirds of the current population of the United States. As a cause of premature death, criminal governments massively outpace ordinary criminals, as well as most types of disease.

Are we serious about ending the genocide epidemic? If so, then we must seriously consider what kind of genocide control measures have any prospect of success. International organizations such as the United Nations are plainly insufficient. The United Nations has failed to stop the current genocides in Rwanda and Bosnia. Nor did the United Nations or any other international body take action even against Idi Amin in Uganda, since Uganda had no serious strategic protectors, unlike the Guatemalan generals, who were U.S. allies, or the Khmer Rouge, who were Chinese allies. The Ugandan army was powerful only in comparison to the disarmed Ugandan people; Amin's army could have been rapidly toppled by any international force. Amin's mass murder and repression were well-known as they were occurring. And yet, the world did nothing. There is no historical evidence to believe that any collection of nations will ever take action against a genocidal nation for humanitarian reasons. Hitler, Idi Amin, and the Khmer Rouge provoked international action only when they attacked other nations. As long as the genocide was an internal affair, nothing was done. The majority of governments represented at the United Nations are dictatorships which rule by armed force rather than by consent. [170] A body dominated by such dictatorships is unlikely to become a powerful force for human rights.

If international action to interrupt genocide is not a realistic solution, is post-hoc punishment of genocide perpetrators any better? The Nazi war crimes trials were an appropriate way to mete out justice. [171] But other than the losers of World War II, none of the 20th-century genocide perpetrators has been brought to justice. To the contrary, most of them died in their beds, wealthy and powerful. Pol Pot and Idi Amin even today live comfortable lives, and Pol Pot continues to plan a return to power. The deterrent effect of the possibility of prosecution for crimes against humanity appears to be rather small, or at least not large enough to have prevented Stalin and Mao from perpetrating genocide not long after the war crimes trials were completed, or to have prevented later genocide in Cambodia, Uganda, Guatemala, East Timor, Kurdistan, Rwanda, and Bosnia. [172] Also living comfortable lives after a career of mass murder are Haile Mengitsu, who deliberately starved rebellious Ethiopian provinces, and Mohammad Najibullah, who ruled as the Soviet puppet in Afghanistan while one million Afghanis were killed. [173] If the world cannot muster the will to bring small-time tyrants such as Idi Amin and

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Pol Pot to justice, it is hard to believe that grander criminals, running more powerful nations, will have much fear of an international genocide tribunal.

Persons who support post-hoc punishment of genocide organizers are advocates of a worthwhile cause, but it will be a long time before genocide perpetrators are prosecuted with a regularity and certainty that deters future perpetrators. To the contrary, the history of the 20th century suggests that most people who perpetrate genocide get away with it. And notably, government officials who order genocide policies do not usually expect to be deposed, so they are unlikely to be deterred by the possibility of prosecution.

Reducing hatred is a worthwhile anti-genocide strategy. Educational programs may play an important long-term role in reducing the kinds of hatred that pave the way for genocide. Promoting respect for peoples of all races and religions should be a key objective of every educational system in the world. [174] But as the authors point out, hatred has been part of the human condition as long as there have been humans. Unless we believe that human nature can be fundamentally reformed, then hatred is going to persist in some form, and as long as there is hatred, there will be inclinations for genocide.

The authors give us a formula for three key preconditions of genocide: hatred, government, and gun control. Without any of these three elements, genocide is not possible. Obviously, not all countries which have all three elements also have genocide, but every country which has genocide has all three elements. The authors assume too readily that the second key precondition for genocide—government—is inevitable. To the contrary, as Bruce L. Benson argues persuasively in his book, *The Enterprise of Law*, it is possible to have law, peace, and civility without having government. [175] And it is not impossible that coming decades may see a major trend towards "panarchy"—that is, governments which have power over only small communities and which enjoy the true consent of the governed, since the governed are free to move anywhere else, or to choose a new government. The break-up of the Soviet Union may perhaps be a beginning of a trend in this direction. But while a world without government may make for interesting speculation among futurologists, such a world is not our current one, nor is it likely to be for several decades, if ever.

Reducing the power of government, however, is a far more plausible goal. The authors note the increasing surveillance powers that the United States government has achieved in recent years, often as a result of the "drug war." In Nazi-occupied Europe, some Jewish children were sheltered by Gentile families, who successfully claimed the children as their own. Greater governmental ability to verify and track the identity of persons from cradle to grave obviously makes it much harder for genocide targets to slip through the cracks. Thus, when greater government identity controls are proposed for the purposes of tax compliance, control of illegal immigration, health care, drug law enforcement, or gun law enforcement, we should consider rather seriously whether we really want the government to always be able to know someone's identity. [176]

The problem of restricting government power is that people are most likely to actually be able to reduce the powers of governments which abide by popular control and the rule of law. These governments are the very governments least likely to perpetrate genocide. Should the law-abiding government with reduced powers be one day replaced

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by a different government, attempting to control the new government is likely to be much more difficult.

A democratic system of government and a free press can also help prevent genocide. But these protections are not always sufficient. Hitler came to power legally, after winning a democratic election. And even democratic governments can be overthrown by violent coups or by war. That is how most genocidal governments in this century have come to power. In short, there are a number of viable anti-genocide strategies, all of which may do some good, and all of which should be tried. But none of them, or all of them together, may be sufficient.

And so we are left with the prescription of *Lethal Laws* and its focus on the third element of the genocide triad: the unarmed victim. If all potential genocide victims (i.e. everyone) have a gun (ideally a semi-automatic rifle), then genocide becomes much more difficult. As *Lethal Laws* demonstrates, governments will not attempt genocide until they have first disarmed the victims. Victims cannot be disarmed against their will. If potential victims are willing to draw a line in the sand, then they can, at the least, inflict casualties on government forces before the surviving soldiers or policemen "take my gun from my cold dead fingers." [177] Genocide is pre-eminently the work of bullies, and if bullies take a large risk of being shot, then many bullies are apt to desist. Moreover, the very presence of an armed populace is likely to deter any attempt at genocide in the first place; at least that is the theory which animated the founders of the American republic, and it is a theory which *Lethal Laws* suggests will have continued viability in the twentieth century.

No one can tell whether Jeremiah or Esther will provide the best guidance for a future situation. But it is undeniable that the twentieth century has been a century of pandemic genocide. Governments have never been more murderous than in this century. Something needs to change if the twenty-first century is not going to be as lethal as the twentieth. The Nazi and Soviet regimes which perpetrated two of the leading Mass Murders of the century are gone now, but anti-Semitic fascism is currently a powerful political force in Russia. And the current Chinese government is the successor to the one that killed so many people during the cultural revolution. Most of the Third World continues to be ruled by the same kinds of tyrants who have perpetrated the Third World genocides of the last several decades. We need to recognize that the authors have advanced an anti-genocide theory which looks considerably stronger and more realistic than any competing anti-genocide scheme.

While *Lethal Laws* focuses on gun ownership as a deterrent to genocide, the authors also have an opinion about the relationship between a disarmed populace and other human rights abuses: "Amnesty International—an organization devoted to ending abuses of human rights and the freeing of political prisoners—could prevent much of the evil it denounces, if it promoted unrestricted civilian ownership of military-type firearms." [178] Not all countries with severe gun controls perpetrate torture or genocide; but how many governments which perpetrate torture permit any but the most politically reliable segments of the population to own guns? If every government which engages in systematic torture has disarmed its victim population, is there reason to believe that those governments see a relationship between gun control and the maintenance of the government's power?

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Although *Lethal Laws* is premised on a political philosophy that would have seemed quite ordinary to the drafters of the Bill of Rights, in today's political climate *Lethal Laws* is a genuinely radical book. But simply because something is radical does not mean that the legal community (and the rest of the world) should ignore it—otherwise, Catherine MacKinnon would not be teaching at the University of Michigan Law School, and Duncan Kennedy would not have tenure at Harvard.

Indeed, *Lethal Laws* reminds me in many ways of the books by MacKinnon's friend Andrea Dworkin. Simkin, Zelman, Rice, and Dworkin all write with an engaging, passionate style. They do not adopt an air of academic detachment; the intensity of their belief in their cause bursts through every word. You will find no more of an attempt to weigh the benefits of gun control in *Lethal Laws* than you will find a list of the ways that patriarchy genuinely benefits women in a Dworkin book. *Lethal Laws*, in contrast to the Dworkin books, is meticulously footnoted and based almost entirely on non-radical source material. Dworkin, Simkin, Zelman, and Rice all suffer from a tendency to overstate their case and to villify their opponents. These flaws have not kept Dworkin's basic point from being acknowledged by the legal academy, nor should the same flaws keep Simkin, Zelman, and Rice locked outside the academy.

Dworkin advances a thesis (all heterosexual intercourse is rape) that is radical and novel. Simkin, Zelman, and Rice bring us a thesis that was once a platitude, but which is now challenging and radical (gun control facilitates murder by the government). In the legal academy, Dworkin is accorded a respectful hearing, even by people who ultimately reject her conclusions. Simkin, Zelman, and Rice are equally entitled to respectful consideration of their radical thesis. If they do not receive such consideration, it will be evidence that in today's legal community, radical feminism is politically correct, but the Second Amendment (and the free-thought principles of the First Amendment) is not.

Genocide is a human rights violation that dwarves all other crimes. If we are to be serious—and not merely sanctimonious—about human rights, then we must be serious about eradicating genocide. Jay Simkin, Aaron Zelman, and Alan M. Rice have shown that a well-armed population which is prepared to resist is much less likely to be murdered by its government than is a disarmed population. If the people of the world were much better armed, many fewer people would be the victims of genocide. Unless one can propose a different method of ending endemic genocide, then the authors' prescriptions stand as the best, and only, potentially effective medicine. The burden has shifted to the opponents of firearms rights to either come up with a more effective anti-genocide medicine or to admit that saving lives was never the primary objective of the gun prohibition movement in the first place.

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[1] Babylonian Talmud, Sanhedrin 72a, *discussed in* George P. Fletcher, *Self-Defense as a Justification for Punishment*, 12 Cardozo L. Rev. 859, 861 (1991). [An alternative translation is: "And the Torah says, 'If someone comes to kill you, arise quickly and kill him.'"]

[2] The book's copyright notice requires the following source citation: Lethal Laws, Jay Simkin, Aaron Zelman, & Alan M. Rice, Jews for the Preservation of Firearms Ownership, Inc., 2872 South Wentworth Avenue, Milwaukee, WI 53207, (414) 769-0760.

[3] Simkin et al., *supra* note 2, at 63.

[4] *Id*. at 81.

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[5] *Id*.
[6] *Id*. at 81, 94.
[7] Simkin et al., *supra* note 2, at 82.
[8] *Id*. at 79.
[9] *Id*. at 83.
[10] *Id*.
[11] Yves Ternon, *Report on the Genocide of the Armenians in the Ottoman Empire*, 1915-16 *in* A Crime of Silence: The Armenian Genocide 117-18 (Gerald Libridian ed., London, Zed Books 1985), *quoted in* Simkin et al., *supra* note 2 at 83.
[12] Simkin et al., *supra* note 2, at 98.
[13] *Id*., at 106-7.
[14] *Id*.
[15] *Id*.
[16] Financial rewards were offered for informants who turned in persons possessing unlicensed guns. Decree of the Council of People's Commissars, 10 December 1918, *reprinted in* 4 Decrees of Soviet Power 123 (Moscow 1968), *reprinted in* Simkin et al., *supra* note 2, at 123.
[17] Simkin et al., *supra* note 2, at 98.

The decree also specified that minors could not be given arms unless the license specified the name of an adult who would be responsible. As in New York City (for handguns) and New Jersey (for all guns) under current laws, unlicensed persons were not permitted even for a moment to touch a firearm, even for supervised use at a range. Decree of the Council of People's Commissars on the Issuing, Keeping, and Handling of Firearms, *reprinted in* 9 Decrees of Soviet Power 104 (Moscow, 1978), *reprinted in* Simkin et al., *supra* note 2, at 129. ("It is absolutely forbidden to hand over weapons to anyone, whether for temporary use, or for storage.")
[18] Simkin et al., *supra* note 2, at 101.
[19] *Id*.
[20] *Id*. The "crime bill" enacted by the United States Congress in August 1994 provides for the death penalty for offenders as young as thirteen-years-old. Violent Crime Control and Law Enforcement Act of 1994, 199th Pub. L. No. 103-332, 108 Stat. 1796.
[21] *Id*. at 100-04.
[22] Jay Simkin & Aaron Zelman, "Gun Control": Gateway to Tyranny (1992). The authors' copyright permission requires the following exact citation: "Gun Control": Gateway to Tyranny, Jay Simkin & Aaron Zelman, Jews for the Preservation of Firearms Ownership, 2872 South Wentworth Avenue, Milwaukee, WI 53207, (414) 767-0760.
[23] Simkin et al., *supra* note 2, at 150.
[24] *Id*. at 151.
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*. at 152.
[29] *Id*. at 153. The Nazis (on a pages per year basis) issued laws and regulations at 2.5 times the rate of the Weimar government. *Id*. at 155.
[30] *Id*. at 153.
[31] William Sheridan Allen, The Nazi Seizure of Power: The Experience of a Single German Town, 1922-1945, at 184-85 (1984), *quoted in* Simkin et al., *supra* note 2, at 154.
[32] *Id*.
[33] Simkin et al., *supra* note 2, at 163-70.
[34] As the then-head of the German police, Hermann Goering, stated, "I refuse the notion that the police are protective troops for Jewish stores. The police protect whoever comes into Germany legitimately, but not Jewish usurers." Restricting Handguns: The Liberal Skeptics Speak Out 188 (Don B. Kates, Jr. ed., 1979).
[35] Simkin et al., *supra* note 2, at 156.
[36] *Id*. at 156.

In the Atlanta suburb of Brownsville in 1906, the press incited the city over a non-existent epidemic of assaults on white women by blacks; a wave of beatings and shooting of blacks followed. The police arrested Negroes who armed themselves against further attack. American Violence: A Documentary

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History 237 (Richard Hofstadler & Michael Wallace, eds., 1971); *see also* Richard Maxwell Brown, Strain of Violence: Historical Studies in American Violence and Vigilantism 210-11 (1975).

In Michigan, handgun permit laws were enacted after Dr. Ossian Sweet, a black, shot and killed a person in a mob that was attacking his house because he had just moved into an all-white neighborhood. The Detroit police stood nearby, refusing to restrain the angry crowd. Don B. Kates, Jr., *History of Handgun Prohibition in the United States*, *in* Restricting Handguns: The Liberal Skeptics Speak Out, *supra* note 34, at 19. Indicted for first degree murder, Sweet was acquitted after a lengthy trial at which Clarence Darrow served as his attorney. Black newspapers such as the *Amsterdam News* and the *Baltimore Herald* vigorously defended blacks' right to use deadly force in self-defense against a mob. Walter White, *The Sweet Trial*, Crisis, Jan. 1926, at 125; Irving Stone, Clarence Darrow for the Defense 529-47 (1941); Herbert Shapiro, White Violence and Black Response: From Reconstruction to Montgomery 188-96 (1988).

Darrow summed up for the jury: "[T]hey may have been gunmen. They may have tried to murder. But they were not cowards . . . . [E]leven of them go into a house, gentlemen, with no police protection, in the face of a mob, and the hatred of a community, and take guns and ammunition and fight for their rights, and for your rights and for mine, and for the rights of every other human being that lives." Clarence Darrow, Attorney for the Damned 241-42 (Arthur Weinberg ed., 1957).

[37] *See supra* text accompanying notes 12-16.

[38] Raul Hilberg, The Destruction of the European Jews 318-20 (1985).

[39] Simkin et al., *supra* note 2, at 157.

[40] David I. Caplan, *The Warsaw Ghetto: 10 Handguns Against Tyranny*, Am. Rifleman, Feb. 1988, at 31.

[41] Caplan, *supra* note 40.

[42] Elliot Rothenberg, *Jewish History Refutes Gun Control Activists*, Am. Rifleman, Feb. 1988, at 30.

The Jews had built bunkers with underground tunnels, and grew increasingly well-armed with rifles, machineguns, handguns, grenades, and other explosives supplied by the Polish resistance, smuggled out of Nazi factories, or taken from dead Nazi soldiers. A major Nazi assault began on April 19, with the expectation that the ghetto would be cleared in time for Hitler's birthday on the 20th. The assault was led by a tank and two armored cars; a Jewish unit set the tank on fire twice, forcing a Nazi retreat. *See* Simkin et al., *supra* note 2; Caplan, *supra* note 40.

The Nazis returned with artillery, and after April 22, Nazi artillery drove many Jews into the Jewish tunnel system that connected with the sewers. The Nazis used poison gasses to attempt to clear the Jews out of the sewers. Nazi forces could not directly take on the buildings where the Jews had built hidden bunkers, cellars, and attics; room-to-room fighting would have inflicted unacceptably high casualties on the Nazis. So the Nazis began to burn down the Warsaw ghetto, one building at a time. Explosives and artillery were used to smash the buildings that were not flammable. On April 25, the Nazi commanding general recorded in his diary "this evening one can see a gigantic sea of flames." Even so, the Jewish will to resist was not broken. Finally, on May 15, the Warsaw synagogue was blown up, and the battle was over. In contrast to the usual result when the Nazis made an area into a "Jew-free-zone", there was nothing of economic value for the Nazis to take; to the contrary, the Nazis had been forced to pay a price in order to take Jewish lives. *Id*.

[43] Hilberg, *supra* note 38, at 499. For a full discussion of the Warsaw ghetto battle, see Yitzhak Zuckerman, A Surplus of Memory: Chronicle of the Warsaw Ghetto Uprising (1993); Jews for the Preservation of Firearms Ownership, The Warsaw Ghetto: The First Battle to Re-Establish Israel (1993).

[44] Simkin et al., *supra* note 2, at 158.

[45] The story can be found, among other places, in Harold Werner, Fighting Back: A Memoir of Jewish Resistance in World War II (1992); Yechiel Granatstein, The War of a Jewish Partisan (1986); Nechama Tec, Defiance: The Bielski Partisans (1993); and Chaika Grossman, The Underground Army: Fighters of the Bialystok Ghetto (1987).

For Jewish difficulty in obtaining arms for resistance, see Israel Gutman, *The Armed Struggle of the Jews in Nazi-occupied Countries*, *in* The Holocaust 457-98 (Leni Yahil ed. & Ina Friedman & Haya Galai trans., 1990).

[46] Another strength of the chapter is that the authors merely mention in passing, but do not elaborate on, their theory from their previous book that the Nazi gun law served as a model for America's Gun Control Act of 1968. Simkin et al, *supra* note 2, at 2. The theory is actually not quite as absurd as it might seem at first glance. The 1968 American law was primarily the work of Connecticut Senator Thomas J. Dodd, who served as a senior prosecutor on the American legal staff at the Nuremburg trials. Dodd was apparently

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familiar with the Nazi gun laws. See Lewis C. Coffin, Law Librarian, Library of Congress, to Senator Thomas J. Dodd, July 12, 1968 (sending Dodd a translation of the 1938 Nazi gun law, and noting that Dodd has supplied the Library of Congress with his own German text of the law). It is also true that Senator Dodd, as a Nuremburg prosecutor, had no reason in any of his professional work to need a copy of the German gun control law. *Id*. at 79-80. But the fact that Dodd was interested in the Nazi law is hardly proof, by itself, that the Nazi law was the basis for the American law.

Ultimately, any claim of linkage between the two laws must depend on common elements in those laws. What similarities do Simkin and Zelman see between the 1938 German law and the 1968 American law? Both laws: exempted the government from the controls that applied to law-abiding citizens; treated firearms ownership as a privilege granted by the government rather than as a right; and required that gun buyers meet some test of reliability. The 1968 American law requires the gun purchaser to affirm under felony penalty that he is not a convicted felon, dishonorably discharged from the military, an alcoholic, a drug user, or otherwise disqualified under federal law.) Simkin & Zelman, *supra* note 22, at 83. All these features are indeed common to the 1938 Nazi and 1968 American laws. But these features are common to virtually any gun control anywhere in the world. The premise of the vast majority of gun laws around the globe, before and after 1938, is that the government can be trusted with weapons, but certain classes of citizens should not, and accordingly gun acquisition or ownership should be regulated by the government so as to disarm those untrustworthy classes. These three common features, rather than proving that the American law derives from the Nazi law, simply prove that American and Nazi law both followed the standard world-wide pattern of gun control.

A fourth feature common to the Nazi and American laws is more intriguing. The Nazi law allowed guns with particular features to be banned based on governmental determination that they were not "sporting." The American law allowed the government to prohibit the import of guns which the government did not find to be "particularly suitable for or readily adaptable to sporting purposes." Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. § 925(d)(3)).

The distinction between supposedly benign "sporting" weapons (supposedly used for killing animals) and other weapons (which might be used for killing government troops) is not, however, original to Nazi law. The 1921 Firearms Act in Great Britain, for example, set up a licensing system for handguns and rifles, but left shotguns unregulated. Although the Act did not use the word "sporting," the reason that shotguns were treated differently from rifles and handguns is that shotguns were seen as benign sports instruments for bird-hunting, whereas rifles and handguns were (in the wake of World War I) considered military weapons whose main purpose was anti-personnel. David B. Kopel, The Samurai, The Mountie, and The Cowboy: Should America Adopt the Gun Controls of Other Democracies? 78-79 (1992).

[47] Simkin et al., *supra* note 2, at 187.
[48] *Id*. at 188.
[49] *Id*.
[50] *Id*.
[51] *Id*. at 190.
[52] *Id*. at 229-234.
[53] *Id*. at 230.
[54] *Id*. at 237. The law actually listed particular firearms manufacturers ("as for example, a rifle or carbine made by Henry, Winchester, Sneider [sic], Remington, etc.). *Id*. The 1971 Guatemalan law was one of the very few brand-specific gun control laws ever enacted, until American local governments began enacting "assault weapon" bans in the late 1980's that defined "assault weapon" not by characteristic, but by brand name and model. David B. Kopel, *Hold Your Fire*, Pol'y Rev., Jan. 1993, at 58.
[55] Simkin et al., *supra* note 2, at 231.
[56] *Id*.
[57] *Id*.
[58] *Id*. at 232.
[59] Peter Calvert, Guatemala: A Nation in Turmoil 75 (1985), *quoted in* Simkin et al., *supra* note 2, at 232.
[60] Simkin et al., *supra* note 2, at 232.
[61] *Id*.
[62] *Id*. at 233.
[63] *Id*.

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[64] *Id*.
[65] *Id*.
[66] *Id*.
[67] By way of historical precedent, some American colonies bought guns for militiamen who could not afford their own. Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 215 n.46 (1983).
[68] Simkin et al., *supra* note 2, at 233.
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id*. at 234.
[73] *Id*. at 229.
[74] *Id*. at 234.
[75] *Id*.
[76] Amnesty International, Guatemala: The Human Rights Record 150-51 (1987), *reprinted in* Simkin et al., *supra* note 2, at 234. By way of disclosure, I should note that I have been a monthly donor to Amnesty International since 1984.
[77] Simkin et al., *supra* note 2, at 234.
[78] *Id*. at 275, 280. *See also* Angus Denning et al., *Idi Amin's Rule of Blood*, Newsweek, Mar. 7, 1977, at 29.
[79] *The MacNeil/Lehrer NewsHour: Excerpts of Bush News Conference, Saddam's Future; Gergen & Shields; A Quiet Patriotism* (Educ. Broadcasting and GWETA television broadcast, Mar. 1, 1991).
[80] Simkin et al., *supra* note 2, at 280; Lee Stokes, *Iraq Warns Against Foreign Interference in Kuwait*, UPI, Aug. 2, 1990, *available in* LEXIS, News Library, UPI File.
[81] Stokes, *supra* note 80.
[82] *See* excerpt from Gen. Norman Schwarzkopf, Schwarzkopf, *in* Newsweek, Sept. 28, 1992, at 52.
[83] Simkin et al., *supra* note 2, at 159.
[84] Hilberg, *supra* note 38, at 1048.
[85] Simkin et al., *supra* note 2, at 269.
[86] *Id*. at 271.
[87] *Id*.
[88] *Id*. at 272.
[89] *Id*. at 274.
[90] *Id*. at 271, 274, 283-99.
[91] *Id*. at 277.
[92] *Id*. at 276.
[93] *Id*. at 278.
[94] *Id*. at 280.
[95] *Id*.
[96] Chet Lunner, *Idi Amin Benefits from Desert Storm Protection*, Gannett News Service, Feb. 11, 1991, *available in* LEXIS, News Library, GNS File.
[97] Simkin et al., *supra* note 2, at 305.
[98] *Id*.
[99] *Id*.
[100] *Id*. at 305.
[101] *Id*. at 306.
[102] *Id*.
[103] *Id*.
[104] Alec Wilkinson, *A Changed Vision of God*, New Yorker, Jan. 24, 1994, at 54-55, *quoted in* Simkin et al., *supra* note 2, at 306. Similarly, one refugee recalled the days after the Cuban revolution overthrew Batista: "We believed [Castro] when he said we should surrender our arms because we did not need guns now that we were a free country . . . [and] we rushed to the police station to give up our guns." Lin Williams, *The Rise of Castro: 'If only we hadn't given up our guns!'*, Medina County Gazette, Oct. 15, 1976, at 5.
[105] Simkin et al., *supra* note 2, at 306.
[106] *Id*.

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[107] *Id*. at 312.
[108] Pin Yathay, Stay Alive, My Son 102 (N.Y., Simon & Schuster 1987), *quoted in* Simkin et al., *supra* note 2, at 314.
[109] Simkin et al., *supra* note 2, at 315.
[110] *Id*. As with the other nations studied, the authors use a conservative estimate for the total number of deaths. Other scholars of genocide put the number of killings in Cambodia much higher. R.J. Rummel, Death by Government 175 (1994).
[111] Simkin et al., *supra* note 2, at 316.
[112] Philip Shenon, *Pol Pot, the Mass Murderer Who Is Still Alive and Well*, N.Y. Times, Feb. 6, 1994, § 4 (Business), at 1.
[113] Mao Tse-Tung, Mao Tse-Tung on Guerilla Warfare, (S. Griffith trans., 1961), *cited in* Raymond Kessler, *Gun Control and Political Power*, 5 L. & Pol'y Q. 395 (1983).
[114] Kates, *supra* note 67, at 270.
[115] Sanford Levinson, *The Embarrassing Second Amendment*, 99 Yale L.J. 637, 657 (1989).
[116] Letter from Lloyd R. Cohen, George Mason University School of Law, to David B. Kopel (Nov. 15, 1994) (on file with author).
[117] Gary Kleck, Point Blank 18 (1991).
[118] U.S. Treasury, Bureau of Alcohol, Tobacco, and Firearms, Press Release, No. FY-91-35, May 22, 1991 (as updated), *cited in* Simkin et al., *supra* note 2, at 71, 73.
[119] Dean Speir, *Reloading Equipment: The 1994 Reloader's Product Guide*, Shooting Industry, Jan. 1994, at 44, *available in* LEXIS, News library, ASAPII file.
[120] Barnaby J. Feder, *As Gun Debate Rages, Ammunition Makers Are Quietly, and Busily, at Work*, N.Y. Times, Mar. 20, 1992, at A20.
[121] Tom Gresham, *Don't Bury that Rifle: Fear of Gun Control Spurs Hoarding*, Sports Afield, Jan. 1995, at 28, *available in* LEXIS, News library, ASAPII file.
[122] Ammunition, if kept dry, has a shelf life of at least several decades.
[123] Simkin et al., *supra* note 2, at 69.
[124] *Id*. at 71.
[125] *Id*. at 158.
[126] For example, some of the forced population exchanges between Greece and Turkey and the Jewish Diaspora after the failed revolt against the Roman Empire.
[127] *Id*. at 21. Even if the conflict between the European settlers and the Indians is viewed as war between sovereign nations, the war (on both sides) included numerous attacks on non-combatants and many successful attempts to starve civilian populations into submission.
[128] *Id*.
[129] *Id*. at 21-23.
[130] *Id*. at 23.
[131] *Id*.
[132] *Id*.
[133] *Id*. at 24.
[134] *Id*.
[135] *Id*.
[136] Gallup Poll released Dec. 20, 1944, question 2, *in* 1 The Gallup Poll: Public Opinion 1935-1971, at 477 (1972).
[137] Roger Daniels, Prisoners Without Trial: Japanese Americans in World War II 114 (1993).
[138] *Id*. at 112.
[139] *Id*. at 110-14.
[140] Michael W. Fitzgerald, *"To Give our Votes to the Party": Black Political Agitation and Agricultural Change in Alabama, 1865-1870*, 76 J. Am. Hist. 489 (1989).
[141] *See* text accompanying note 23.
[142] Susan F. Rasky, *Officials Urge a Wide Military Role in Drug Fight*, N.Y. Times, June 10, 1988, at A32; Peggy Noonan, *The Sound of Ed Koch Clapping*, N.Y. Times, Apr. 29, 1990, § 7 (Book Review), at 1.
[143] *See* Debra Nussbaum, *Crown Heights Indictment Raises Hopes*, Intermountain Jewish News, Aug. 19, 1994, at 7.
[144] Michael Barone & Grant Ujifusa, The Almanac of American Politics 1994, at 531-32 (1993).

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[145] *Id*.
[146] Ruth E. Gruber, *Italian Leader Blames Jews for Fall of Lira*, Intermountain Jewish News, Aug. 19, 1994, at 3.
[147] Hunting is obviously not very pleasant for the prey. But unless one is prepared to go as far as to argue that humans should intervene to prevent animals from hurting each other, it is difficult to argue that a deer which is killed by a clean shot from a high-powered hunting rifle is not better off than a deer which dies after being torn apart by a wolf-pack, or dies a slow, painful death from starvation in the winter.
[148] Don B. Kates, Jr., *The Second Amendment and the Ideology of Self-Protection*, 9 Const. Commentary 87, 98-99 (1992).
[149] 1 William Blackstone, Commentaries on the Law of England 139 (Chicago: U. Chi. Pr.,1979)(1765).
[150] Joyce Malcolm, To Keep and Bear Arms 9 (1994), quoting Sir Walter Raleigh, 3 The Works of Sir Walter Raleigh 22 (T. Birch ed., 1829).
[151] Tench Coxe, Pa. Gazette, Feb. 20, 1788, *quoted in* Stephen Halbrook, *To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791*, 10 N. Ky. L. Rev. 13, 17 (1982).
[152] *Quoted in* David Hardy, *The Second Amendment As a Restraint on State and Federal Firearms Restrictions*, *in* Restricting Handguns: The Liberal Skeptics Speak Out 184-85 (Don B. Kates, Jr., ed., 1979).
[153] Kates, *supra* note 148, at 90. Armed resistance to criminal government was seen simply as a larger case of resistance to a lone criminal, a right which was so generally accepted as to not even be questioned. *Id*.

Among the more recent articles taking the individual right position are: William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 Duke L.J. 1236 (1994); Akhil Amar, *The Bill of Rights As a Constitution*, 100 Yale L.J. 1131, 1162 (1991); Elaine Scarry, *War and the Social Contract: Nuclear Policy, Distribution, and the Right to Bear Arms*, 139 U. Pa. L. Rev. 1257 (1991); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 Geo. L.J. 309, 319 (1991); Stephen P. Halbrook, *The Right of the People or the Power of the State: Bearing Arms, Arming Militias, and the Second Amendment*, 26 Val. U. L. Rev. 131, 135 (1991).
See e.g., Levinson, *supra* note 115; Stephen P. Halbrook, A Right to Bear Arms: State and Federal Bills of Rights and Constitutional Guarantees (1989); Stephen Halbrook, *Encroachments of the Crown on the Liberty of the Subject: Pre-Revolutionary Origins Of the Second Amendment*, 15 U. Dayton L. Rev. 91 (1989); David Hardy, *The Second Amendment and the Historiography of the Bill of Rights*, 4 J.L. & Pol'y 1 (1997); Nelson Lund, *The Second Amendment, Political Liberty and the Right to Self-Preservation*, 39 Ala. L. Rev. 103 (1987); Robert Shalhope, *The Armed Citizen in the Early Republic*, 49 L. & Contemp. Probs. 125 (1986); Don B. Kates, Jr., *A Dialogue on the Right to Keep and Bear Arms*, 49 L. & Contemp. Probs. 143 (1986); David Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 Harv. J.L. & Pub. Pol'y 559 (1986); William Marina, *Weapons, Technology and Legitimacy: The Second Amendment in Global Perspective in* Firearms and Violence: Issues of Public Policy (Don B. Kates, Jr. ed., 1984); Robert Dowlut, *The Current Relevancy of Keeping and Bearing Arms*, 15 U. Balt. L. Rev. 32 (1984); Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 Mich. L. Rev. 204, 244-52 (1983); Joyce Lee Malcolm, *The Right of the People to Keep and Bear Arms: The Common Law Perspective*, 10 Hast. Const. L.Q. 285 (1983); Robert Dowlut, *The Right to Arms*, 36 Okla. L. Rev. 65 (1983); Senate Subcomm. on the Constitution of the Comm. on the Judiciary, 97th Cong., 2d Sess., *The Right to Keep and Bear Arms* (1982); David Caplan, *The Right of the Individual to Bear Arms*, 1982 Det. C.L. Rev. 789 (1982); Richard E. Gardiner, *To Preserve Liberty—A Look at the Right to Keep and Bear Arms*, 10 N. Ky. L. Rev. 63 (1982); Robert Shalhope, *The Ideological Origins of the Second Amendment*, 69 J. Am. Hist. 599 (1982); Charles L. Cantrell, *The Right to Bear Arms: A Reply*, 53 Wis. B. Bull. 21 (1980).

Compare two articles which agree that the Second Amendment does not prevent gun prohibition today but which acknowledge that the Second Amendment was intended to confer an individual right. David C. Williams, *Civic Republicanism and the Citizen Militia: The Terrifying Second Amendment*, 101 Yale L.J. 551 (1991), reasons that since state governments have neglected their duties to promote responsible gun use through drill in a "well-regulated militia," the right to arms is no longer valid. Donald L. Beschle, *Reconsidering the Second Amendment: Constitutional Protection for a Right of Security*, 9 Hamline L. Rev. 69 (1986) concludes that the Amendment guarantees an individual right of personal security, but the right can be protected by outlawing firearms. Articles concluding that the Second Amendment confers only a right on states, and not on persons, are Samuel Fields, *Guns, Crime and the*

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Negligent Gun Owner, 10 N. Ky. L. Rev. 141 (1982); Warren Spannaus, *State Firearms Regulation and the Second Amendment*, 6 Hamline L. Rev. 383 (1983); Lawrence Cress, *An Armed Community: The Origins and Meaning of the Right to Bear Arms*, 71 J. Am. His. 22 (1983); Keith A. Ehrman & Dennis A. Henigan, *The Second Amendment in the Twentieth Century: Have You Seen Your Militia Lately?* 15 Dayton L. Rev. 5 (1989); Dennis A. Henigan, *Arms, Anarchy and the Second Amendment*, 26 Val. U. L. Rev. 107 (1991). Forty-three state constitutions include their own right to bear arms provision. *See generally*, Robert Dowlut, *State Constitutional Rights to Bear Arms: Traditional Interpretation and Public Housing*, 5 St. Thomas L. Rev. 203 (1992).

One interesting piece of new scholarship argues that an individual right to own handguns for personal protection can be found in the federal Ninth Amendment. Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed through the Ninth Amendment*, 24 Rutgers L.J. 1 (1992).

[154] *Esther* 8:11, 9:5, 9:16 (King James). The King James version was used in eighteenth-century America. Religious scholars now concur that the Book of Esther is probably ahistorical, a fact that does not invalidate its theological significance. 1 Isaac Asimov, Asimov's Guide to the Bible 462 (1968).

[155] Niccolo Machiavelli, The Prince 54 (Daniel Donno ed. & trans., Bantam Books 1966).

[156] Joel Barlow, Advice to the Privileged Orders in the Several States of Europe: Resulting from the Necessity and Propriety of a General Revolution in the Principle of Government 45 (London, 1792, 1795 & reprint 1956).

Barlow's viewpoint is shared by Raymond Kessler, a Marxist political scientist who argues that a disarmed populace is more likely to feel dependent on the government and therefore is unwilling to question fundamental social issues. *See* Raymond Kessler, *Gun Control and Political Power*, 5 Law & Pol'y Q. 383 (1983).

[157] The best quantitative analysis of all of these issues can be found in Kleck, *supra* note 117. The book was awarded the Hindelang Prize by the American Society of Criminology for making the most significant contribution to criminology in a three-year period.

[158] Closer analysis suggests that very little, if any, of the difference between the American homicide rate and the homicide rate in other democratic nations is due to gun control laws. *See* Kopel, *supra* note 46.

[159] Simkin et al., *supra* note 2, at 4.

[160] The statistics on "assault weapons" and their utility in insurrection are detailed at length in Simkin et al., *supra* note 2, at 39-48. *See also* David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. Contemp. Law 381 (1994). [Same data available in David B. Kopel, *Assault Weapons*, in Guns: Who Should Have Them (David B. Kopel, ed., 1997).]

[161] David B. Kopel, Guns—In Whose Hands? (forthcoming manuscript on file with the author). [Published as David B. Kopel, *Background Checks and Waiting Periods*, in Guns: Who Should Have Them (David B. Kopel, ed., 1997).]

[162] Simkin et al., *supra* note 2, at 25-27.

Even much of the rhetoric is the same. Today's "gun-free zones" are the direct progeny of "drug-free zones."

The Anti-Saloon League at the beginning of the twentieth century complained that there were more saloons in the United States than there were schools, libraries, hospitals, theaters, parks, or churches. *Id*. at 25. This complaint pre-figures the complaint of the handgun prohibitionist Violence Policy Center that late-20th-century America has "More Gun Dealers than Gas Stations."

The "More X than Y" complaints, while accompanied by high moral dudgeon, often reflect a failure to think through simple economics. A saloon can profitably operate with a few dozen customers a day, only a few of which may be in a saloon at a given moment. In contrast, few hospitals can pay their expenses by having only a half-dozen beds occupied at a given moment. Unlike saloons (which need only chairs, tables, a bar, and a supply of alcohol), hospitals generally require large investments in capital assets—again making the existence of a few large hospitals much more viable than numerous small hospitals. So it should not be surprising that there are fewer hospitals than saloons and that most hospitals are much larger than most saloons.

Similarly, until the Clinton administration's recent "crack-down," it was possible for a person to operate a firearms business as a second business from the home, selling a few dozen guns a year to friends by working an evening or two a week. In contrast, gasoline dealers cannot operate profitably without staying open most daylight hours and attracting a huge traffic of mostly anonymous customers. Selling firearms from one's home requires almost no capital investment, whereas operating a gas station requires a significant capital investment in the station itself, as well as in the (increasingly-expensive) storage tanks

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and fuel pumps that must comply with environmental regulations. Again, it should not be surprising that more small businesspeople can become part-time dealers of firearms than can become full-time operators of capital intensive gas stations. The fact that America has more gun dealers than gas stations (and more saloons than hospitals) should surprise only a person who is ignorant of economics, and who expects that the quantity of any given item in society should be in proportion to his appraisal of its moral worth.

[163] David B. Kopel, *Guns, Germs, and Science*, 84 J. Med. Assoc. Ga. (forthcoming June 1995).

[164] Simkin et al., *supra* note 2, at 75.

[165] *Id*. at vi.

[166] *See* René Lemarchand, *The Apocalypse in Rwanda*, Cultural Survival Q., Summer/Fall 1994, at 29.

[167] Simkin et al., *supra* note 2, at 14.

[168] R.J. Rummel, Statistics of Democide: Estimates, Sources and Calculations on 20th Century Genocide and Mass Murder (1994) (this book is a statistical companion to R.J. Rummel, Death by Government, *supra* note 110.)

[169] *See* Simkin et al., *supra* note 2, at 187-228. As with the countries described in *Lethal Laws*, the gun controls were generally not instituted by the genocidal regimes; rather, the laws were in place before the murderous government took office.

Unless Yugoslavia, North Korea, and Vietnam had different gun control policies from those of every other Communist government whose gun laws have been studied in the West, these nations would have had strict gun controls. Mexico currently has quite strict gun laws. Robert L. Nay, Law Library of Congress, Firearms Regulations in Various Foreign Countries 124-34 (1990). But further research is needed to determine the state of Mexican gun ownership by civilians in the early twentieth century. Further research is likewise required regarding gun laws in Pakistan and Czarist Russia. The victims of the Japanese mass murders were not Japanese, but citizens of other Asian nations, and the details of gun laws in those nations in the 1930s and 1940s are generally sketchy (except in China).

[170] These nations are almost all contemporary confirmation of James Madison's observation that a tyranny in which the government is controlled by a dictatorship, "could not be safe with a numerical and physical force against it, without a standing Army, an enslaved press, and a disarmed populace." *James Madison Autobiography*, 2 Wm. & Mary Q. 191, 208 (1945).

[171] *See* Joseph E. Persico, Nuremberg: Infamy on Trial (1994).

[172] Bosnia is the victim of an international arms embargo that has disarmed the victims but not the aggressors. Thomas L. Friedman, *Foreign Affairs; Free Advice*, N.Y. Times, Apr. 19, 1995, at A23.

[173] Ken Adelman, *Trials to Rekindle International Justice*, Wash. Times, Oct. 6, 1994, at A19.

[174] Teaching tolerance does not, however, have to be synonymous with indoctrinating political correctness.

[175] *See* Bruce L. Benson, The Enterprise of Law: Justice Without the State (1990); *Cf*. Pierre Claustres, Society Against the State (1987).

[176] As a starting point, I would favor immediate repeal of the requirement that children be issued social security numbers in order to be claimed as tax deductions. Internal Revenue Service, Publication 501: Exemptions, Standard Deduction, and Filing Information 17 (1994).

[177] "You can have my gun when you take it from my cold, dead fingers" is a common bumper sticker or t-shirt motto for some gun owners, including the Sheriff of Graham County, Arizona, who used it as the title of his book defending the right to keep and bear arms. Richard Mack, From My Cold, Dead Fingers (1994). Sheriff Mack was the plaintiff in one of the several lawsuits in which the Brady Act's unfunded mandate that local law enforcement perform a background check on handgun buyers was declared a violation of the Tenth Amendment. Mack v. United States, No. CIV 94-113 TCUC JMR (D. Ariz., June 29, 1994).

[178] Simkin et al., *supra* note 2, at 71. Interestingly, one of the former Presidents of Amnesty International USA, a New York attorney named Mark Benenson, now heads the National Foundation for Firearms Education, a group devoted to protecting Second Amendment rights.

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