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The Development of the British Faith in Strict Gun Control

Derek Bernard

The British government's gun control policy is based on evidence-free faith that onerous laws imposed on law-abiding firearms owners are self-evidently necessary. This article examines the history of that faith, and its dangerous and deadly consequences. Derek Bernard is a businessman based in the Island of Jersey, which is a possession of the British Crown, in the English Channel. He has been researching and writing about firearms policy since 1979.

Keywords: United Kingdom, Jersey, gun control, Firearms Act 1920, McKay Report, police homicides

Faith, according to the *Oxford English Dictionary*, is “firm belief ... without logical proof.” Faith is, therefore, the appropriate term for the strong and widespread British belief in strict gun control.

Ever since the late 19th century the English Home Office has assiduously encouraged the view that guns, in and of themselves, are evil, dangerous, anti-social devices that will turn ordinary, non-violent people into murderers.¹ In consequence the Home Office has progressively developed gun control policies and bureaucratic procedures that have no beneficial effect on criminals, but do discourage civilians from possessing firearms for any purpose, but especially not for self-defence.

Sometimes extraordinarily biased data is put forward to support the government's stance, but knowledgeable review always discloses that the data has been carefully selected to support the Home Office's pre-conceived position; such was the case, for example, with the Home Office submission to the 1996 Cullen Inquiry into the Dunblane killings, and the 2004 Home Office Consultation Paper.

It is a deeply-worrying fact that the HO and police policy positions are never based on research into cause and effect, or anything





remotely related to cost/benefit analysis. On the contrary, they are virtually always based on opinions expressed as “facts”, which are perceived as so self-evidently true that they require no supporting evidence. Both of the two major documents generated to create and sustain this policy were produced in secret, without research, comment or input from independent experts, either during their preparation or when completed. Indeed, they were both kept secret for decades.

THE “BLACKWELL” REPORT OF 16TH NOVEMBER 1918

The first of these secret documents was produced a few days after World War One ended. The Home Office was worried by the 1917 Russian Revolution: perhaps British “working class” soldiers would do the same thing and overthrow the British establishment when they came home at the end of the Great War. In the eyes of the Home Office, these men could not be trusted. The Home Office was much more concerned by the fact that, in fighting for their country, such men had become familiar with firearms, than the greater truth that the men had also been prepared to die for their country—and their fellow soldiers had done so in vast numbers.

In the view of the Home Office guns should only be permitted in the hands of those “approved” by the State.

So a Home Office official, Sir Ernley Blackwell, chaired a secret Committee, and his Report of 16th November 1918, “The Control of Firearms”, was used as the basis for the seminal 1920 Firearms Act. The Blackwell Report itself was never published and only entered the public domain several decades later.

The 1920 Act contained the concept of gun-owner certification, with discretionary approval by the police; and individual firearms registration.

The certification and the registration procedures were (and remain) immensely labour-intensive, both for the police and honest gun-owners. But the total absence of any identifiable social benefits, such as reduced crime trends, solving crimes, or catching criminals, either then or later, arising from this substantial and ongoing investment, has never caught the attention of any of the various government agencies charged with cost/benefit analysis, nor has it





diverted the Home Office from its apparent, long-term objective of completely disarming the (honest) civilian population.

Whenever enough publicity is generated to the effect that violent crime is increasing and/or that the existing gun controls are “not working”, the Home Office uses the clamour to extend the controls, rather than analyse their clear lack of benefit. When the new controls also fail to improve crime trends—which is invariably the case—further new controls are devised.

Thus major new controls have been introduced in 1967/8, 1988 and 1997, with a host of lesser impediments in-between. Each major firearms law revision of the last 40 years has been promptly followed by significantly worse violent crime trends. At the same time they have all been hugely successful in terms of the Home Office’s long-term objectives, by greatly, sometimes dramatically, reducing the numbers of law-abiding citizens owning guns.²

Although the government has established large, sophisticated and extremely expensive bodies, such as the National Audit Office and the Audit Commission, whose specific remit is to subject government activities to cost/benefit analysis, the overall case for gun control has never been looked at in depth, presumably because extremely restrictive controls are so self-evidently essential that such analysis is claimed to be unnecessary, indeed inappropriate. On the occasions when some analysis has been carried out, the terms of reference are always restricted to the efficiency with which the bits of paper and information are handled and resolutely exclude the question of whether the bits of paper and information should be generated at all. But the Home Office is then able to claim that the subject has been “exhaustively” examined.

THE “MCKAY” REPORT OF 11TH SEPTEMBER 1972

The second major known document is the “McKay” Report, a lengthy document formally titled “The Working Party on the Control of Firearms.” It followed the pattern of the Blackwell Report. A Committee of policemen was chaired by a policeman, John McKay. The Report was based largely on telephone enquiries to other policemen, was compiled in secret, with no research into cost/effectiveness and without any independent review or input. It repeatedly uses assertions, without any supporting evidence, as the basis of policy.





For example, see page 27, clause 44: “we consider that the number of section 1 (i.e. ordinary rifles and pistols) firearms held in private hands should be kept to the absolute minimum.”

The attitude behind the above assertion continues to be the foundation stone of UK government and police policy to the present day.

The Home Office produced a 1973 Green Paper based on the McKay Report, but the Green Paper aroused so many objections that it was temporarily shelved—until the emotions aroused by the Hungerford killings of 1987 allowed the Home Office to wheel out the proposals contained in the 1973 Green Paper as the “answer” to the problem.

The McKay Report itself remained secret and unpublished until 1996, when a Parliamentary Select Committee mentioned the rumours that such a Report existed—and a copy was surreptitiously slipped into Parliament’s Library.

CURRENT HOME OFFICE “CONSULTATION” POLICY

Nowadays, in the interests of “open” government, the Home Office has modified its approach and it usually goes through what it refers to as a “Consultation” process, in which further controls are proposed and the public are invited to submit their comments. For example, this happened in 2000 and 2004; it was used again in 2009 in relation to non-guns (de-activated, imitation, and toy guns).

Many of the resulting submissions to the Home Office that have been copied to the author are detailed and serious, suggesting considerable research and/or knowledge. What happens to those submissions at the Home Office is unknown to the author, since he has never received even an acknowledgement with respect to his own submissions, much less a thoughtful response which actually deals with the issues and questions. One has difficulty in avoiding the conclusion that the Home Office “Consultation” process is, in fact, a total charade.³

EFFECT OF THE “GUNS ARE BAD” POLICY

Not surprisingly, when a policy is maintained, indeed continuously strengthened, for over a century, it becomes an institutionalised belief system, completely eliminating any need for evidence





of benefit. In such an unhealthy atmosphere it was disgraceful, but not surprising, to see an editorial in the *Police Review* magazine of October 1982 state: “There is an easily identifiable police attitude towards the possession of guns by members of the public. Every possible difficulty should be put in their way.”

This strongly-held belief system, or Faith, sometimes has tragic effects.

The Home Office and police regard and promote themselves as *the* experts on such worrying and emotive subjects as violence and armed crime. Perhaps not surprisingly, this perception of expertise is shared by much of the media and a significant proportion of the public. So the Home Office faith, that guns are evil and dangerous, rather than neutral, inanimate objects, has become widely held. The faith often confuses and distorts the fundamental reality that it is human willingness to injure and kill that is the all-important characteristic that needs to be assessed, rather than the presence of any particular device.

As a result of the faith, a number of people, some drunk, some disturbed and some playing games, are shot by the police because they have a gun, sometimes a toy or airgun, despite the absence of evidence of dangerous use of the gun.

Excessive “gun sensitivity” led to the tragic killing of Harry Stanley in London in September 1999.

Mr. Stanley was walking home with a broken chair leg in a plastic bag when he stopped at a pub. A well-intentioned person in the pub assumed that the chair leg was a shotgun—which automatically implied criminality, danger and violence, as constantly hammered home by the Home Office and police. Thus sensitised, that person was able to mistake Mr. Stanley’s Scottish accent as Irish—and called the police to tell them that there was an Irishman in the pub with a sawn-off shotgun.

A police armed response unit came immediately. Just like the caller in the pub, they were “sensitised”: sure that there was a shotgun in the shopping bag and so brainwashed by the police “guns are evil and dangerous” belief system that they were fearful that it would leap into deadly action from inside the shopping bag.

Mr. Stanley had no reason to expect anyone to be shouting at him from behind, so probably did not respond instantly to the





policemen's shouted commands. The policemen have claimed that Mr. Stanley pointed the bag at them as though it contained a shotgun, putting them in fear for their lives; to believe the police, one also has to believe that Mr. Stanley had somehow become infected by the gun sensitivity madness and also thought that he had a shotgun in the bag, even though he actually knew it was only a broken chair leg. In any event, from his wounds it is clear that, as soon as he started to turn towards them in response to their shouting, he was shot dead.

The various enquiries have ended with the policemen exonerated on the grounds that they were in fear for their lives. The real culprit—the grossly exaggerated Home Office and police belief system that “all guns are evil and dangerous” was never even questioned, much less put in the dock.

FURTHER COSTS

In addition to the many hundreds of millions of pounds spent in creating, supporting and encouraging this belief system over the past century (e.g. at least £150m was spent on the 1997 pistol ban, which was followed by a doubling of pistol crime), more related destructive waste is arising in the government support for sport.

In 1986 the Commonwealth Games were held in Edinburgh. Amongst the many investments in new, high-quality sporting facilities were the shooting ranges, which cost several million pounds. Although there has long been a government policy of “legacy benefits” —that facility investment for major sporting events should provide long-term benefits for the community when the event is over—the entire range complex was destroyed as soon as the Games were over.

Now the same wasteful policy is to be pursued for the 2012 London Olympics. Rather than invest in long-term range improvements at Bisley, the splendid old British shooting centre less than 30 miles from central London; or build a permanent range facility closer to East London, a very expensive, but temporary, range complex is to be built at Woolwich and then destroyed as soon as the Olympics are over.





The absence of legacy benefits and the extra millions of wasted taxpayers' money appear to be of little significance when weighed against supporting "The Faith."

Glasgow have won their bid to host the 2014 Commonwealth Games. It will be interesting to see what happens to the ranges being specially built for those Games.

CRIME

In parallel with this long and expensive construction of The Faith, the Home Office and police have presided over extraordinary growth in crime, especially violent crime. There is now more armed crime in London on an average day than there was in the UK in the whole of 1900, when there was virtually no gun control.

Part of this growth in criminal activity was likely be due to the considerable success of the government's efforts to demonise self-defence. If the actual or intended victim of an attack has made any attempt to forcefully resist his attacker, the English Criminal Justice system now has great difficulty in distinguishing between them, indeed it is quite likely to treat the victim more severely than the criminal.⁴

But these are minor and insignificant sacrifices, well worth making in the great cause of The Faith.

ENDNOTES

1. In 1870 the UK Gun Licences Act was introduced. It required a licence, readily available for ten shillings, with no personal details needed, for carrying a gun off one's own property. In 1879 a similar, but more complex Porte d'Armes Law was introduced in the author's home jurisdiction of the Island of Jersey. That Law wasted everyone's time and money there for 121 years until it was repealed and replaced with an even more wasteful procedure in 2000.

In 1881 the Home Office proposed the Regulation of Carrying of Arms Bill, the purpose of which was to "to require any person possessing arms for the suspected purpose of committing an offence to obtain a licence." Perhaps because the unusually honest language made the irrationality clear, the Bill was lost.





In 1882/4 Secretary of State Harcourt strongly criticised the Metropolitan Police Chief for issuing legal advice to the police force regarding the many circumstances under which it would be legally proper for someone to use a revolver. He insisted that the advice be re-issued with most of the circumstances deleted.

In 1903, after some failed attempts, the Home Office succeeded in convincing Parliament to pass the Pistols Act, which placed various modest pistol purchasing hurdles in the path of anyone who was not a householder. In other words, it was aimed at poorer citizens.

2. By creating the widespread belief that guns are evil and dangerous, are likely to cause catastrophic accidents and have the capacity to turn ordinary people into criminals and ordinary criminals into murderers, the Home Office and police have been able to justify compulsory security requirements and then use these to force lawful gun-owners out of the sport. The 1988 Act introduced compulsory security for shotguns. For the next four years it was used to push a thousand lawful shotgun owners out of the sport every week, leading to a total reduction of 200,000. In Home Office and police terms it was, therefore, a huge success. The fact that, at the same time, armed robbery with shotguns increased by 27% was, no doubt, seen as irrelevant.

These security requirements now have the strength of “tablets of stone”, so clearly necessary, indeed essential, that they are widely used throughout the British Isles, including Jersey, to harshly prosecute lawful gun-owners who have committed no anti-social act whatsoever. Naturally they have no impact on criminals who have not applied for a Certificate.

3. The Jersey Islands have their own legislature, make their own laws, and are not governed in (except in regards to foreign policy) by the Parliament in London. In Jersey, the government has published detailed and eminently sensible consultation rules which all government departments are supposed to follow. Indeed there is a government department whose purpose in life is to train other departments to follow consultation “best practise” and monitor that this is done.

But what actually happens— when the subject is Gun Control?

The equivalent Jersey government department to the English Home Office is currently called Home Affairs. Over the last 25 years or so, the author has sent to Home Affairs (or its predecessor, known as the Defence Committee), a large number of detailed queries and submissions. Very, very few have ever generated even an acknowledgement and not one has generated a thoughtful, analytical response to the questions raised or proposals made.





4. Libby Purves, "A law nobody can defend: When a burglar breaks in, should you thump him or give him a cup of tea? Answers to Mr Blunkett," *The Times* (London), Nov. 2, 2004. ("Last year, learned government lawyers advised ministers that 'as members of the public, burglars have the right to be protected from violent householders'.") The quoted text appeared in the printed edition of *The Times*, but is not included in *The Times*' electronic archive. *The Times* has not informed author Libby Purves why the text was excised from the archive. Libby Purves, e-mail to Derek Bernard, May 29, 2009 (on file with Derek Bernard).





Prohibition without a Law: Gun Control in Italian History from the Roman Age to Fascism

Silvia Gentile

This article provides an overview of arms control in Italy from the ancient Rome until the present. Much of the contemporary Italian law regarding arms was created during the period of Fascist rule. Then, as during the 19th century, as today, the government was very afraid of arms in the hands of the politically incorrect.

Silvia Gentile is a lawyer living in Bologna, Italy, and a graduate of Bologna State University Law School. Her legal practice involves civil rights, especially the rights of self preservation and self determination, including the legal possession of weapons and their legal usage and commerce in Italy and Europe. She is a founder of FISAT (Italian Guns Shooting History Association), which provides affordable legal assistance to citizens in the matters of legal and responsible possession and use of weapons.

This is a study of legislation on the subject of gun control under the Fascist regime, particularly from the viewpoint of the right of lawful access to arms. Since the beginning I realized that this research could not be possible without introducing gun legislation in Italian history starting from the Roman age. The Fascist regime promulgated laws that increased and encouraged shooting disciplines but in the meanwhile—very subtly—introduced control. Access was reserved only to citizens who had shown total compliance to the regime itself, excluding all others.

WEAPON LAWS IN THE ROMAN AGE

The most ancient definition of a weapon in Roman law is given by the jurist Ulpiano and later by Iustinianus in his Institutions: “Telum autem, ut Gajus noster...”¹ In other words, a weapon is any object useable in an offensive or defensive manner. No distinction was made between “offensive” or “defensive” uses, because arms





possession was not generally prohibited to Roman citizens; only the use of arms in criminal activities was outlawed.

One restriction on weapons use is found in the law *Julia Majestatis*, which declared to be a sacrilege punishable with death any attempt “to take weapons against the Republic.” Another law, *Julia de vi publica*, prohibited the possession of a number of weapons superior to those normally necessary for hunting, travel or navigation. Excluded from the prohibition were weapons acquired by inheritance or necessary for self defense. The same law punished whoever would use weapons in a robbery, and the use of weapons was considered an aggravation of crimes against the public safety and order.

The use of weapons was considered lawful in defense of property against aggressors, under the condition that aggressors were armed (even if the aggressors did not use the arms), or if the aggressors arrived without weapons but armed themselves with improvised weapons found in crime site, such as sticks or rocks (*fustes aut lapides sumerent*). The very same edict recognized the right to self-defense “*arma armis repellere*” (to repel arms with arms) as an immediate response to an attack.

The possession of weapons was reserved to Roman citizens only; the Romans were absolutely uncompromising regarding the possession of weapons by non-citizens or former enemies. In the case of Carthage, weapon deprivation of citizens was a condition of the peace treaty, so the citizens of Carthage realized too late that they could not melt statues to make swords and spears.

WEAPON LAWS AFTER THE ROMAN EMPIRE

The spread of firearms at the beginning of 1800s, extremely lethal in comparison to former weapon types, and the revolutionary climate resulted in the adoption of new restrictive legislation by reigning European dynasties. For example, the King of Sardinia promulgated a measure prohibiting “in absolute manner the keeping and bearing of both firearms and edged weapons.”²² The prohibition even extended to normal work instruments such as an ax or a knife.

The Penal Law Code of the Grand Duchy of Tuscany (1853) made an important distinction between proper and improper arms. “Proper weapons” those tools made to be used for offense or defense (including hunting). Stated another way, a “proper” weapon is





a weapon designed to kill or maim. Examples include the sword, the stiletto, and all firearms whatever their kind (even side by side shotguns which are clearly designed as hunting tools).

The “improper” kind of weapons means all those instruments which were not designed or engineered to kill or maim but can be employed offensively or defensively by the owner. For example, a hammer is designed to push nails but if it is taken to a soccer stadium it becomes an “improper” weapon since the bearer has no “justifiable motive” to bear it there.

In practice, the correct application of the proper/improper weapon law is very difficult. A real life example: a woodsman comes back from the woods and forgets his axe in the closed trunk of the car. He is stopped at a police checkpoint; the police find the axe and the man is charged with “possession of an improper weapon” since the guy has no “justifiable motive” to bear the tool/improper weapon with him on the car at the moment. (He is in the city not in the woods; and is not in the course of directly returning from work in the woods.)

Is he guilty? According to the law, obviously not, because the crime requires an intent to use the tool as a weapon. But the police charge the woodsman anyway, and he will be acquitted only after a trial, and only then if the judge is sympathetic.

The proper/improper weapon laws were originally designed to fight banditry, as bandits would use any kind of instrument or weapon to commit crimes. However, the laws proved useful to control the population, since they could transform any citizen into a criminal just by interpretation.

The 1859 Italian Penal Law Code copied the code of Tuscany.³ The distinction between proper and improper weapons has remained in Italian legislation until the current day.

Another important nineteenth century distinction was between insidious and non-insidious weapons. Defined as “insidious” are all those weapons that, because of their small dimensions or particular design, were engineered to be easily hidden or particularly suited to be used in subtle assaults. The term was applied to small daggers, small pistols and short-barreled shotguns; and the use, carrying or possession of these weapons was subject to extra punishment.





The distinction of the different kinds of weapons—which is still part of current law—is so difficult that the law itself spends many words describing various examples, such as *coltelli fusellati* (stiletto knives), short pistols (like Derringers), pistols with a barrel shorter than 171 millimeters, air guns (at the time called “wind weapons”).⁴

Non-insidious objects, if modified, could become legally insidious. For example, “the woodworker’s file, if reworked to be similar to a stiletto, is an insidious weapon.”⁵

In short, the introduction of absolute prohibitions on possession of all or some arms by citizens was a radical change from ancient Roman law. The right to carry a weapon and thus the right to self defense became—as it is today in most of Europe—a privilege conceded by the Government or its local officials to selected members of the citizenry.

ITALY AFTER WORLD WAR I AND THE SURGE OF FASCISM

Italy emerged from World War I as a winner, but its internal situation was desperate. The northeast part of the country had become a war front, completely destroyed and with hundreds of thousands of refugees.

The new Yugoslav state at the eastern borders, wanted and favored by US President Wilson, had been awarded many territorial concessions that had been promised to Italy for entering the war with the Allies. The result was a sentiment of “crossed victory,” aggravated by the difficult international situation, a national economic crisis resulting in an endemic shortage of goods, the progressive demobilization of a now not-useful army, and a costly and somewhat impossible conversion of the war industry to civilian production.

The grave state of poverty of the country sparked a series of fights—mostly caused by the revolutionary fringe of the Socialist party—between former soldiers and workers who held each other responsible for the betrayed victory and the current situation. This period saw a growth of revolutionary movements, stimulated by the success of the Soviet revolution in Russia. The end of the war permitted the restart of labor unions which sparked conflict even more. Right-wing parties fostered the growth of organizations that contested government activity, particularly on the subject of the peace treaties that had given nothing to the country for its victory.





The betrayed victory sentiment stayed in the country for a long time. Even today the victory of WWI is remembered in Italy with discomfort.

THE BIRTH OF FASCISM

The situation of public anger was the cause of the birth of the Fascist party that was born on March 23, 1919, in Milan—adopting symbols like the skull and black shirt, taken from the Arditi, Special Forces assault units of the Italian army.

The first speech of Mussolini—a former Socialist journalist—in the Fascist party was the “Speech of San Sepolcro” on March 9, 1919, in which Mussolini invoked the creation of a national militia and the seizure of privately owned of guns and ammunition factories around the kingdom.

This speech must not be read as an attempt to deprive the population of guns and ammunition, but must be considered under the point of view of time where, in the public opinion—a small bunch of industrialists had become rich with war production despite the extreme poverty of the population.

Just twenty days after the foundation of the Fascist party, the newly born action squads—direct action groups created to combat the Socialist party—hit their left-wing adversaries in the streets of Milan and assaulted the Socialist newspaper *Avanti*, where Mussolini had once worked as a journalist.

On June 23, 1919, a new government replaced Prime Minister Vittorio Emanuele Orlando, who was considered responsible for the betrayed victory. On November 16, 1919, new elections were held with the Socialist party being victorious (32% of the vote). This resulted in even more strikes and demonstrations followed by fights in the streets caused by the revolutionary wing of the Socialist party itself that tried to take the opportunity to start a revolutionary regime based on the Soviet model. Industrialists and land owners began to look to the Fascist party leader and his war veterans as the only active response to the imminent revolution.

The situation grew worse by the day but the Fascists, whose action squads are filled with experienced veterans superior to their Socialist adversaries even when outnumbered 10 to 1, began to ob-





tain results and rapidly become the “public order” protectors in the public eye.

THE MARCH ON ROME

After a national congress in Naples, Mussolini recruited over 40,000 militants. Mussolini declared a “March on Rome” to force the King to appoint him Prime Minister. So he put together a contingent of over 50,000 militants in the northern Lazio region of Italy and on October 22, 1922, began a fast advance towards Rome, but was stopped by the army at gunpoint.

The truth is that the army could have shredded the Fascist formations into pieces because many of them were nothing more than a token force, but the King decided to avoid another massacre and called Mussolini to Rome and appointed him Prime Minister.

The most important and first of Mussolini’s objectives—for the safe continuation of his own government and power position—was the dismantling (at the time called “normalization”) of the action squads that continued to cause violence in the country, often for private feuds. It was not an easy task since the Fascist regime power movers like Italo Balbo and Roberto Farinacci used action squads as a lever against Mussolini himself.

After the murder of Socialist deputy Giacomo Matteotti, who had personally accused the Fascists of many acts of violence, Mussolini realized that the “normalization” of action squads could not be postponed any more. In 1925 and 1926 Mussolini passed a series of illiberal laws dismantling all political parties except the Fascist party, stopped freedom of expression, meetings or public talk, reinstated the death penalty, and created a special tribunal for acts against the State, with ample powers of arrest and imprisonment even on the feeblest evidence. The normalization of action squads remained an unsolved problem, since they were protected by the regime power brokers like Balbo and Farinacci.

FASCISM AND GUN RIGHTS

Mussolini’s solution to the problems associated with the normalization of the Fascist action squads under control and authority of the Fascist bosses was the creation of the National Security Militia. This was a true party guard of minimal military capabilities but of





great adherence to party credo, very similar to Revolutionary Guards of Iran or the Dignity Battalions of Manuel Noriega in Panama.

The militia was created with King's law 31 of January 14, 1923. It states: "The militia is at the service of God and country and at the orders of the Chief of the Prime minister. Maintains public order together with police forces *and keeps citizens organized in military formations for the defense of the interests of Italy in the world...*" (emphasis added).

The militia was not organized under current military standards but adopted a paramilitary organization with units whose names and ranks recall military formations of the Roman age. The squad sergeant was a Decurion (ten-man commander in Latin). The colonel was a Centurion (commander of a hundred). Rank was assigned upon election from the base, except for "some proved men" who obtained rank and command functions by decision of the organization. The "proved men" system was used to thwart the ascent of extremely popular militia members who were not in line with the Fascist party.

The disciplinary rulebook was instituted with the King's decree number 831 of March 8, 1923, defining the Fascist militia man as "a servant of Italy who, in a mystical purity of *spirit, with indestructible will.*"(emphasis added.) For the militia member, the uniform was official recognition of authority by the party and the state. The *Carabinieri* (militarized police) and the armed forces did not like the new formation that absorbed many of their resources.

The birth of the militia did not solve the problems of violence and personal feuds inherited from the action squads, and many times militia and *Carabinieri* police were on the verge of armed confrontation.

The militia functions were defined by the King's decree of August 20, 1923, number 1880, that states the militia member does not swear allegiance to the King but to the Duce, Mussolini. Recruitment was voluntary (article 3) and was made from men between 17 and 50 years of age. Members attended to their normal occupations until called to duty. Members kept their uniforms at home but returned their guns and ammunition at the end of their duty. Likewise, officers and NCOs attended to their ordinary civilian occupations, except for 10% that were on permanent duty. The arms were the Carcano 1891 rifle and the handgun.⁶





The militia did not use the military salute; they adopted the Roman salute with the arm extended in front. The militia had its own medical and religious services and easily obtained buildings and resources previously reserved for the army by the Ministry of War. Subscription to the Fascist party was mandatory for all its members. Military attitudes, despite the almost infinite availability of resources, were indeed scarce. And this was displayed without doubt during the Spanish Civil War where the Italian Fascist militia showed all its deficiencies.

SHOOTING ACTIVITIES AND ORGANIZATIONS BEFORE THE FASCIST ERA

The Italian Shooting Union took its origins from the “National Shooting Society” established in 1861 by Gen. Giuseppe Garibaldi who, ten years before the founding of the NRA of America by Gen. George Wingate and Col. William C. Church, recognized the importance of shooting training for citizens independent from military formations. The first disciplines were based on military guns and distances (100-200-300 meters) and the society members elected their president and council members. On May 26, 1894, the renamed “Union of Italian Shooters” began matches with the army’s rifle, the Carcano 1891.

With law 2051 of November 21, 1932, the national shooting organization was put under command and control of the National Security Militia and local shooting activities were reorganized under the direction of a militia officer resident in the area of the shooting range. Article 25 states that shooting activities can be directed only by a militia officer but the true (illiberal) innovation is with article 39 that states that to become member of the shooting range and have access to shooting activities, the citizen must have obtained a physical and moral certificate and this must be obtained through county officials with the approval of the local police commander. This was a not too subtle way to control access to shooting ranges and training, and to reserve it to proven and party- favorable citizens only. Today’s Public Security Code prescribes this very same certificate as a condition to obtain any gun-related license, including possession licenses and carry permits.





Legal access to guns was not available to citizens not in line with the Fascist party. Thus shooting activities faded from recreational and sport shooting into military indoctrination and certification, and privately-owned ranges were declared areas of military interest and put under command of the militia.

FASCISM AND HUNTING

Aiming to militarize Italian society, Fascist authorities understood very early that hunting activities could be a tool for military indoctrination of citizens. In 1932 the regime organized a national hunters' rally in Rome and Mussolini introduced his "first hunter of the nation" image in the public eye.

In 1932 the Fascist regime gave birth to the National Fascist Hunting Association. Under the law introduced by Senator Acerbo, the importance of hunting activities was recognized as a prelude to military training. Accordingly, they introduced the idea of the superiority of the right to hunt over the right to own property. In 1939 the second Acerbo law promoted the hunting of migratory rather than resident fauna, and strongly supported wildlife augmentation activities.

THE END OF FASCISM AND GUN CONTROL TOWARD THE END OF WWII

With the fall of Fascism on September 8, 1943, and the armistice, the King ordered two *Carabinieri* officers to arrest Mussolini. Mussolini was taken to Gran Sasso Mountain, but was freed by the German Special Forces of Colonel Otto Skorzeny on orders from Hitler.

Mussolini founded the Social Italian Republic (R.S.I.) for the continuation of the war effort against the Allies in Northern Italy. The *Carabinieri* militarized police paid dearly for this. They were disarmed and 2,500 of them—who refused to join the Social Republic armed forces—were deported to German concentration camps. Most of the remaining *Carabinieri* (11,000 members) joined the monarchist and Catholic groups of freedom fighters. In the meantime, private citizen gun ownership followed the same path as the *Carabinieri* guns. There was a public consignment order and house by house requisitions based on gun registration files kept by local





police stations. Non-compliant gun owners were summarily executed under charges of subversion or banditry.

FASCIST LINKS TO PRESENT LAWS

Unlike many totalitarian regimes, the Italian Fascists did not forbid private gun ownership. Instead, the regime encouraged shooting and hunting, and even forced property owners to allow hunters to use their land.

The law allowing hunters to enter private land without consent is, like many Fascist laws, still in effect today, albeit with some modifications. However, the Fascist regime did organize detailed control of shooters, mandated registration of all shooting activity, all gun serial numbers, and expenditure of ammunition.

The Fascist experience teaches important lessons, still valid today:

First, the constriction of gun rights does not necessarily require new laws. In both Fascist and contemporary Italy, rights can be restricted by the administrative actions of unelected officials.

Second, the introduction of apparently “pro gun” laws can, as a matter of fact, hide the true objective of instituting gun control, with the result being the reduction of gun rights even for citizens near to the power in charge, like militia members.

Mussolini’s subjugation of shooting activities to military supervision still impairs the gun rights situation in Italy. A citizen wanting to obtain a gun license must become a member of the Italian National Shooting Union and must obtain a gun safety certificate. And any non-licensed citizen wanting to join a National Union public shooting range must attest to his good conduct by a self declaration.

The opening of private shooting ranges was impeded by the Ministry of Interior and the Italian Shooting Union until the 1980’s, despite the absence of any law prohibiting the opening of private shooting ranges. The matter was finally settled after a small group of shooters won in court after a three year legal battle.

The Italian Shooting Union, despite the power of more than 5,000 members and official recognition as a state interest organization by law, does not endorse any kind of pro-rights lobbying; the Union constitutes a weak point for the Italian gun rights move-





ment. Indeed, the Union is readily subservient to even the freakiest dispositions of the Ministry of Interior.

For example, a recent ruling of the Ministry of Interior, bans minors from shooting activities except with 22 LR guns of the type previously approved by the Ministry itself, and even then they can only participate in authorized disciplines.⁷ The Ministry maliciously invokes the UN Convention on the Rights of the Child, which bans minors from military activities (unless voluntarily enrolled in armies). Thus minors have been banned from using non-military guns (e.g., Beretta shotguns) in shooting activities that are neither military activities nor military training. The Ministry would never consider itself to be Fascist, yet the ban reflects a profoundly Fascist orientation: imagining that the shooting sports are nothing but a form of military exercise, and imposing severe restrictions on the daily lives of ordinary people by administrative fiat.

The inheritance of Fascist gun control laws and Fascist gun control mindset in Italy is, still today, a heavy and serious burden on the way to freedom.

ENDNOTES

1. Book IV, chapter XVIII, de publicis judiciis, § 5.
2. Repository of Laws, book IV, title XXXIV chapter XIII. The Repository is the compilation of ministerial orders, monarchical decrees, statutes, and other laws from the Kingdom of Sardinia. Many of the various items in the Repository are still in legal effect today.

The story of the Beast of Gévaudan provides a good example of European government attitudes of the period. From 1764 to 1767, a beast (similar to a big wolf) killed more than 115 boys and women in area 80 x 90 sq. km. in south-central France. The people asked to be conceded the right to bear rifles at least at night, but authorities always refused, because rifle-bearing was permitted only for hunting parties which had been authorized by the very same local authorities.

The authorities never gave permission because they feared more the guns of the people than the beast itself; the failures of the hunting experts sent by the King made the kingdom itself tremble.

3. Paragraph 453, Kingdom of Sardinia. The Kingdom of Sardinia was not only Sardinia (which at the time was a big island of minor value and





resources), but also comprised Piedmont, Savoia and other territories pertaining to the Savoia family and was given to the Savoia around 1720 after the War of the Spanish Succession. The Sardinian laws became the principal laws of Italy after unification; they were absorbed “*de plano*” almost completely as the basic laws of the new Kingdom of Italy. (The kingdom of Sardinia was dissolved into the new Kingdom of Italy.) For this reason it is common to refer to the Italian penal code or the Kingdom of Sardinia penal code as to the same body of laws.

At the Italian unification, some laws were also brought in from the Grand Duchy of Tuscany, most of them regarding penal subjects and weapons since the Tuscan laws on those topics were the most advanced of the time.

4. In general, airguns have been subjected to the same legislation and paperwork of firearms. After Law 526/1999—following a European directive—airguns with power inferior to 7.5 Joules are no longer considered to be airguns but rather are “depowered airguns.” Accordingly, their sale and possession does not require any prior authorization.

5. Court of Cassazione (Third grade court in penal and civil matters), Florence, June 22, 1875.

6. Before 1935 many types of handgun were issued (Glisenti 1910, Beretta 1915, Bodeo). After 1935, the Beretta 34 9mm. short was the issued sidearm.

7. 557/PAS.50.105/E/08 of April 16, 2008.





“Arms in the Hands of Jews Are a Danger to Public Safety”: Nazism, Firearm Registration, and the Night of the Broken Glass

Stephen P. Halbrook¹

Examining arrest records of the Nazi police, this Article explains how the Nazi use of firearms control laws rendered German Jews defenseless, and how the confiscation of weapons from Jews was a final step towards the infamous kristallnacht. Stephen Halbrook has argued and won three firearms law cases before the United States Supreme Court, and is author of many books and articles on U.S., German, and Swiss gun law. This article was originally printed in 21 St. Thomas Law Review 109 (2009), published by students at the St. Thomas University School of Law, in Miami Gardens, Florida.

Keywords: Nazi, German, Jews, kristallnacht, gun control

I. INTRODUCTION: A LINGERING QUESTION ON GUN CONTROL AND THE SECOND AMENDMENT

In 1938, just weeks before *Reichskristallnacht* (Night of the Broken Glass), in Nazi Germany, Berlin police arrested Alfred Flatow.² His crime: being a Jew in *lawful* possession of firearms.³ The police knew he possessed firearms because he dutifully registered them in 1932 under a decree by the liberal Weimar Republic.⁴ In anticipation of the pogrom, the Nazi leadership launched a campaign to disarm Jews.⁵ Flatow was one of many who were arrested and turned over to the Gestapo.⁶ He would eventually be deported and die in a concentration camp.⁷

The police may not have realized that they had arrested a world-class gymnast who won the gold for Germany at the 1896 Olympics.⁸ A check of his name, birth date, and birth place from the arrest report corresponds to one and the same Alfred Flatow, who





was among the athletes who competed for Germany in the Athens Games, winning first place in the parallel bar events (individual and team), and second place in the horizontal bar event.⁹

Flatow's arrest record is in the *Landesarchiv* Berlin in a file labeled *House Searches of Jews 1938-39*.¹⁰ The arrest record, made on a standard four page police form entitled *Report Concerning Political Incident*, tells tales about the use of firearms registration laws to repress Jews in Nazi Germany.¹¹ Two similar arrest reports were found in the same file.¹²

An arrest record may speak volumes about the nature of a political system, its legal regime, police power, and character as embodying a free society or a totalitarian dictatorship. This Article initially focuses on the arrest records of Alfred Flatow and two other Jewish firearm owners. Flatow duly registered his weapons in good faith during the waning days of Germany's Weimar Republic.¹³ Coming to power shortly thereafter, the Nazis only had to consult the registration records and conduct house searches to disarm these and other Jews. Having done so in a quiet and systematic manner in the weeks preceding the Night of the Broken Glass, the Nazi leadership found just the right incident to launch this unprecedented pogrom under the guise that Jews with arms were a danger to the state and must be arrested, even though the arms were legally registered, and that their premises—homes, businesses, and even synagogues—must be searched to confiscate any and all remaining arms.¹⁴ Having rendered Jews defenseless, the Nazi government could proceed to expropriate their property, deprive them of all rights, and eventually to subject them to genocide.

Controversy has raged in recent decades about whether law-abiding civilians should have a right to possess firearms at all and, if so, whether all firearms should be registered with the government, or whether firearms should be prohibited except to the military and police. In the United States, in a debate over bills to include a national firearms registration system in the Gun Control Act of 1968, opponents raised the specter of the then more recent Nazi experience,¹⁵ while proponents denied that the Nazis made any use of firearm records or registration lists to disarm enemies.¹⁶ Although it focused on Nazi policies in the occupied countries, a Library of





Congress study was “unable to locate references to any German use of registration lists to collect firearms.”¹⁷

Of relevance to this debate is the purpose and meaning of the Second Amendment to the United States Constitution, which provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”¹⁸ In *District of Columbia v. Heller*, the U.S. Supreme Court held that a ban on handguns violates the individual right to possess arms for self defense, also noting that “when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.”¹⁹ While the Supreme Court focused on the text and historical understanding of the Second Amendment, some of the amici curiae briefs filed in the case made references to the experience of Nazi Germany.²⁰

In support of the District’s prohibitions in the *Heller* case, an amici curiae brief filed on behalf of various Jewish, Christian, and secular organizations referred to “the myth that gun control laws make it easier for government to tyrannically oppress its citizens. While many have suggested that gun control eased Hitler’s rise to power, [the] history of gun control in Germany from the post-World War I period to the inception of World War II seems to be a history of declining, rather than increasing, gun control.”²¹ The brief further argued: “While Germany had discriminatory laws that barred Jews from having firearms, that proves only the evils of discrimination. It surely does not support the myth that arming everyone might allow an oppressed minority, no matter how courageous, to restore democracy and liberty when confronted with Hitler’s (or another demagogue’s) larger armed mob.”²²

An amici curiae brief filed by this author in *Heller* on behalf of a majority of members of Congress recalled a law enacted in the United States just before the Pearl Harbor attack prohibiting the requisitioning or registration of firearms or any other action that would “impair or infringe in any manner the right of any individual to keep and bear arms”²³ It was passed “in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties,”²⁴ and supported by such arguments as:

Before the advent of Hitler or Stalin, who took power





from the German and Russian people, measures were thrust upon the free legislatures of those countries to deprive the people of the possession and use of firearms, so that they could not resist the encroachments of such diabolical and vitriolic state police organizations as the Gestapo, the Ogpu, and the Cheka.²⁵

To be sure, such arguments have been simmering in other cases involving the Second Amendment. When the U.S. Court of Appeals for the Ninth Circuit denied a petition to reconsider en banc the holding that individuals have no rights under the Amendment, Circuit Judge Alex Kozinski wrote a dissent in which he reflected:

All too many of the other great tragedies of history—Stalin's atrocities, the killing fields of Cambodia, the Holocaust, to name but a few—were perpetrated by armed troops against unarmed populations. Many could well have been avoided or mitigated, had the perpetrators known their intended victims were equipped with a rifle and twenty bullets apiece If a few hundred Jewish fighters in the Warsaw Ghetto could hold off the Wehrmacht for almost a month with only a handful of weapons, six million Jews armed with rifles could not so easily have been herded into cattle cars.

. . . But few saw the Third Reich coming until it was too late. The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed—where the government refuses to stand for reelection and silences those who protest; where courts have lost the courage to oppose, or can find no one to enforce their decrees. However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.²⁶

The debate is hardly limited to the United States, as the controversy boils over internationally. Great Britain, which supplied its citizens with arms contributed by the United States and even private American citizens to fight an anticipated Nazi invasion, now bans most guns.²⁷ Proposals to require registration of all firearms and to





prohibit firearms are being debated in Switzerland, whose traditional militia army consisting of a populace with arms at home helped to dissuade a Nazi invasion.²⁸ A proposal to ban civilian possession of firearms in Brazil in 2005 initially seemed headed toward victory, but was defeated near the end of the campaign.²⁹ The United Nations holds that, while governments should be armed, individuals have no right to armed self defense, and seeks to repress private firearms ownership at the international level.³⁰

In the wake of domestic and international controversies about whether to require registration of and to prohibit civilian firearms ownership, there has been a recent surge of scholarly interest in the subject of Nazi firearm policies.³¹ This Article seeks to contribute hitherto unknown historical facts so as to advance the scholarly literature to a higher level. Given the enormous literature in the field of Holocaust studies, it seems incredible that the disarming of the German Jews is rarely if ever mentioned.

The following begins with a detailed analysis of the arrest reports of Alfred Flatow and two other Berlin Jews who possessed registered firearms or whose firearms were discovered in house searches by the police. It then shows these arrests to have been part of an orchestrated Nazi police campaign to disarm all Berlin Jews, including those whose firearms were lawfully possessed. Having rendered Jews defenseless, the stage was set for a major pogrom. When an incident, which took place abroad, gave the Nazis the excuse they needed for a rampage throughout all of Germany, the Night of the Broken Glass—characterized by massive searches and seizures against Jews allegedly for weapons, and involving the destruction of homes, businesses, and synagogues—was the result.³²

II. NAZI ARREST REPORTS OF JEWS FOR POSSESSION OF FIREARMS REGISTERED UNDER WEIMAR REPUBLIC LAWS

A. The Arrest of Alfred Flatow

An arrest report specifying Alfred Flatow as the perpetrator was filed at Police Station 106 Berlin, SW 68, on October 4, 1938.³³ Flatow was born on October 3, 1869, in Danzig.³⁴ His address was Berlin SW 19, Alexandrinenstraße 50.³⁵ That street intersects with



the well-known Oranienstraße, in the Kreuzberg district of Berlin, where Police Station 106 was located.³⁶

As noted, the name, birth date, and birthplace correspond to one and the same Alfred Flatow who competed in the 1896 Olympics.³⁷ Before that, he had served in the 66th Prussian Infantry Regiment during 1893–94.³⁸ Flatow would be an active gymnast in the Berlin Turnerschaft, Germany's largest gymnastic society, for 46 years.³⁹ He had a small bicycle shop, officiated at sporting events, and wrote widely on the theory of gymnastics.⁴⁰

The Nazis came to power in early 1933, and by October forced Jews out of the Berlin Turnerschaft.⁴¹ Club chairman Rupert Naumann supported the Jewish athletes, but Flatow only wished to avoid confrontation and resigned.⁴²

All German Olympic champions were invited as honorary guests to the 1936 Olympic Games in Berlin, and Alfred Flatow's name—together with his cousin, Gustav Felix Flatow, another champion of the 1896 Games—were printed in the program.⁴³ However, their names and photographs did not appear in news accounts of the event, as they apparently refused to attend due to the Nazi regime's anti-Semitic policies.⁴⁴

For over three decades, Alfred Flatow lived in the Kreuzberg area of Berlin, in an old house on Alexandrinenstraße, the address shown on his 1938 arrest report.⁴⁵ However, the census (*Volkszählung*) of 1939 indicated that he then lived at 33 Landshuter Straße in Schöneberg, where he shared an apartment with Else and Margarete Flatow.⁴⁶ Perhaps he moved in with these relatives after being released from Gestapo custody. The census listed his descent as “JJJJ,” i.e., all four grandparents were Jewish.⁴⁷

Flatow's 1938 arrest report states: “Political affiliation: Jew.”⁴⁸ The “crime scene” (*Tatort*) was listed as Berlin SW 68, Curtdamm 16, and the time was 1:50 p.m.⁴⁹ Yet Curtdamm 16 was the address for Police Station 106.⁵⁰ This was no crime scene—Flatow appears to have been standing in line with other Jews to surrender his legally-registered arms, as shown below, because they were ordered to do so by the Berlin Police President.⁵¹

Under “Weapons Found,” the form specified: “Surrendered a) Slashing and thrusting weapons: 1 dagger, 31 knuckledusters. b) Firearms: 1 revolver, 2 pocket pistols, 22 rounds of ammunition.”⁵²



Under the type of police intervention, the form indicated “Special operation” (*Sonderaktion*) instead of routine patrol.⁵³

“Criminal act (include pertinent statutory sections)” was described simply as “possession of weapons,” but the blank for the statutory section called for by the form was not completed, as there was none to cite.⁵⁴ After all, the law had not yet been officially revised to prohibit Jews from possessing a weapon, although a secret Gestapo directive dictated as much.⁵⁵ The arrest report continued:

The Jew Alfred Flatow was found to be in possession of one revolver with twenty-two rounds of ammunition, two pocket pistols, one dagger, and thirty-one knuckledusters. Arms in the hands of Jews are a danger to public safety.

[signed] Police First Sergeant Colisle

The arms were registered at Police Station 13 on January 26, 1932. Written confirmation is there.⁵⁶

As stated, First Sergeant Colisle was mentioned as the source of the information that Flatow’s 1932 weapons registration remained at Police Station 13.⁵⁷ Station 13 was a kilometer north of Station 106.⁵⁸ The officer filling out the report, who listed himself as a “witness to the crime,” was Police First Sergeant Edmund Weise of Police Station 106.⁵⁹ Perhaps a list of all firearms registered to Jews was circulated to all of the police stations. Officers in charge of the registrations could confer with arresting officers, in writing or by telephone, to verify that the Jewish gun owner in question possessed a registered firearm.⁶⁰

The arrest form required a listing of objects confiscated from the arrested person, including items he supposedly could use to hurt himself or someone else.⁶¹ The policeman here listed a briefcase with journals and various documents (perhaps including Flatow’s own copy of his weapon registration papers from 1932 in light of the fact that he was apparently there to surrender his weapons voluntarily and to show his compliance with the law).⁶² Also included were a wallet, a tiepin, a penknife, a cigarette case with six cigarettes, glasses, keys, and pencils.⁶³ Personal belongings seized but not confiscated included about 118 Reichsmark and a gold watch.⁶⁴ Flatow signed to acknowledge the accuracy of the inventory of his property.⁶⁵





Then came the ominous words, signed by the *Pol. Oberm. und Revierführer* (Police Chief and Precinct Head): “The perpetrator . . . has been turned over to the Gestapo.” “Put into cell from 1:25 p.m. to ____.”⁶⁶ The latter blank was not filled out,⁶⁷ perhaps suggesting that Flatow had an extended stay, or the officer was not there when the Gestapo picked up Flatow. The report includes nothing about what occurred after Flatow was taken into Gestapo custody. Unlike “arrest” which led to a trial, “protective custody” by the Gestapo entailed indefinite incarceration until the suspect was no longer considered a threat to the state.⁶⁸ Gestapo chief counsel Dr. Werner Best was architect of this procedure, also known as “preventive detention,” which wholly abrogated any judicial review.⁶⁹

Following his 1938 arrest on weapons charges, Flatow’s fate is sketchy. Hitler instigated World War II the following year. In early 1942, the Nazi leadership adopted the Wannsee Protocol, which outlined steps to be taken to accomplish the “final solution of the Jewish question.”⁷⁰ Later that year, Flatow, then seventy-three years old, was ordered to be deported.⁷¹ Flatow’s friend Karl Schumann, two-time Olympic champion in Athens, alerted the Olympic Chief of Staff Christian Busch, asking the Reich Sport Leader for intervention.⁷² The objection was abruptly rejected.⁷³ Flatow was transported as prisoner number 8230 with 1,021 other deportees on Transport I/71-8230 from Berlin to Terezin in October 1942.⁷⁴ Placed in the Theresienstadt concentration camp, he died of starvation in December 1942.⁷⁵

To commemorate his memory and that of his cousin Gustav Flatow—another champion gymnast from the 1896 games who starved to death in Theresienstadt in 1945—in 1997, Berlin renamed the *Reichssportsfeldstraße* (Reich Sport Field Street) as *Flatowallee* (Flatow Boulevard).⁷⁶ The location is in Charlottenburg-Wilmersdorf, Ortsteil Charlottenburg.⁷⁷

B. The Arrest of Julius Ignatz Gold

Flatow was not alone when arrested for weapons. A second police report also dated October 4, 1938, prepared at the same Police Station 106, and also forwarded to the Gestapo, concerned Julius Ignatz Gold.⁷⁸ Gold was born on May 4, 1893, in Polock, Poland, and resided at Berlin SW. 19, Kommandantenstraße 49.⁷⁹ That street





intersects with Alexandrinenstraße, where Flatow resided, in the Kreuzberg district of Berlin.⁸⁰

As before, the “Political affiliation” is “Jew.”⁸¹ The address of the “crime scene” was identical with that of Flatow—Curtdamm 16, the address for Police Station 106—and the time was ten minutes later: 2:00 p.m.⁸² “Weapons Found . . . Firearms: 1 Walther pistol with 6 rounds.”⁸³

Once again, this was the same “Special operation,” the crime was “possession of weapons,” and the statement of facts—again filled out by the same Police First Sergeant Weiser, whose source for the pistol’s registration was the same Police First Sergeant Colisle—read:

The Jew Julius Ignatz Gold was in possession of one Walther pistol with 6 rounds. In the hands of Jews, this weapon is a danger for public security. Gold had registered this weapon on February 13, 1932, at Police Station 105 (now Police Station 112).

Police First Sergeant Colisle⁸⁴

Other than this arrest report, no information on the identity of Julius Ignatz Gold could be found. His name does not appear in the Holocaust victim’s central database maintained by Yad Vashem.⁸⁵ All that can be surmised is that he may have been standing in line behind Flatow at the police station to surrender his registered firearm. One can only wonder who the other Jewish gun owners were that stood in the same line that day, and in the days before or after.

While Gold must have lived in Berlin at least since 1932, since he registered his Walther pistol there, he was born in Poland. The arrest report does not state whether he was a German or Polish citizen.

C. The Arrest of Alois Adler

The arrests of Flatow and Gold were not isolated incidents. An orchestrated campaign against Jewish firearm owners was afoot. Another arrest report and referral to the Gestapo like the above was issued from Police Station 113 in Berlin, SW 68, on October 3, 1938.⁸⁶ Station 113 was a kilometer west from Station 106, where the above arrests were made, and was also in the Kreuzberg district.⁸⁷





Alois Adler was born in Vienna, Austria, in 1884, and lived at SW 11, Saarlandstraße 52, in Berlin's Kreuzberg district.⁸⁸ Although his "Political affiliation" is listed as "Allegedly none," this form is stamped at the top with an oversized "J"—meaning Jew.⁸⁹ The "crime scene" was at his home address, and "Weapons found" included only a "double-barreled hunting shotgun."⁹⁰

Under "Criminal act (include pertinent statutory sections)," the arresting police officer wrote only: "Subversive attitude of a Jew," without citing any statute.⁹¹ The statement of facts reads:

Adler, a former Austrian Jew, always was obstreperous. His behavior showed that he has the attitude of a public enemy. At the slightest provocation, he immediately turned to the Consulate. In order to avoid being found in possession of weapons during a house search, he left his hunting rifle with a representative, Albrecht Kriener, at the address of Blücher Street 1 in Berlin SW 61. When Adler was taken to the police station and asked about weapons, he confessed to this. The rifle, including an extra barrel, has been secured at the police station for the time being.

Adler has been arrested because of his attitude as a public enemy.⁹²

The police already were familiar with Adler, as noted, because of his repeated complaints with the Austrian Consulate. Perhaps he was an Austrian businessman who objected to Nazi harassment. The police may have known that he possessed a firearm from the registration records, by conducting a house search, or perhaps through some informer. Alerted that the police knew he was a Jew with a firearm, he refused to comply with the Nazi confiscation order.⁹³ He secreted his hunting gun with a friend, the arrest report states, "in order to avoid being found in possession of weapons during a house search . . ."⁹⁴

It may have been that the police were searching the houses of Jews who had registered firearms, or were for other reasons thought to possess firearms, but who had not surrendered them at a police station. The report also makes clear that Jewish gun owners had friends—"Aryans," possibly gun owners themselves, who were not Nazis and were willing to risk hiding firearms for their Jewish





friends.⁹⁵ Such “Aryans” doubtlessly got unwelcome visits from the Gestapo.

The arresting officer who filled out this report contradictorily called the weapon both a shotgun and a rifle, although the double barreled gun may have included a shotgun barrel and a rifle barrel.⁹⁶ Unlike the Flatow and Gold arrest reports, the officer did not explicitly allege that a weapon in the hands of a Jew is a danger for public security.⁹⁷ Adler had only five Reichsmark on his person.⁹⁸

The arrest form was signed by Deputy Police Chief Biense, who noted that Adler was jailed from 12:15 p.m. to 1:20 p.m.⁹⁹ By order of Police Chief Gaster, the case was referred to the Gestapo.¹⁰⁰ It is not known how long the Gestapo detained this Jew whose “crime” was possession of a hunting gun.

Other than this arrest report, no information could be found on the identity or fate of Adler, other than that he still resided at the same address in the 1939 census, which listed his descent as “JJJJ,” i.e., all four grandparents were Jewish.¹⁰¹ His name does not appear in the Holocaust victim’s central database maintained by Yad Vashem.¹⁰²

III. “THE ARMS WERE REGISTERED”

As First Sergeant Colisle noted in Flatow’s arrest report, “The arms were registered at Police Station 13 on January 26, 1932. Written confirmation is there.”¹⁰³ He also wrote that “Gold had registered this weapon on February 13, 1932, at Police Station 105”¹⁰⁴ Indeed, that seems to be the most likely reason why the police knew that they possessed firearms and were able to confiscate them.

In 1928, the Weimar Republic enacted the Law on Firearms and Ammunition, which required licenses issued by the police authorities for the acquisition of firearms and the carrying of firearms.¹⁰⁵ Depending on the laws of the various States before that enactment, registration of firearms or other forms of police records on firearm owners may or may not have existed.

The above law was amended in 1931 to authorize the German States to require the registration of all firearms and other weapons as follows:

The highest State authorities or their delegates may order that in their jurisdiction, the possession of firearms





and ammunition regulated by the Law on Firearms and Ammunition, as well as of slashing and thrusting weapons . . . , must be registered with the police authorities.¹⁰⁶

Next, the decree authorized the police to confiscate all weapons if deemed necessary, which would have been practical only in regard to those persons who had dutifully registered them:

Weapons and ammunition found in a jurisdiction in which an order under paragraph (1) has been issued may, if the maintenance of public security and order (*öffentlichen Sicherheit und Ordnung*) so requires, be taken into police custody during the validity of this Chapter. The possessor must deliver them to the police authority on demand. The duty to surrender arms may also be extended to items that by their nature are not weapons, but which in the circumstances may be used as weapons.¹⁰⁷

Any person who failed to register weapons or who failed to surrender them on demand, or who was found in possession of weapons he should have registered or surrendered, was subject to imprisonment for “not less than three months,” with no maximum.¹⁰⁸

The potential for misuse of the registration records was acknowledged by none other than Dr. Joseph Wirth, the Reich Minister of the Interior, who wrote to the State governments in early 1932:

In this context I would hereby like to draw the attention of the State governments to the secure storage of the lists of persons who have registered their weapons. Precautions must be taken that these lists cannot, in local disturbances, fall into the hands of radical elements. For this purpose, it is recommended that the lists not be stored in single police precincts or at similar local places, but be secured in the custody of the respective central districts.¹⁰⁹

The above did not anticipate that an extremist, radical party would seize power, and that the lists of registered weapon owners would fall into their hands because they were the new government. When the Nazis took power just a year later, they became the masters of the lists of firearm owners, regardless of whether stored at local police stations or in the central districts.





As to the immediate effect of the registration requirement, a government official in Königsberg, capital of East Prussia, was quoted as privately stating that “the tightened emergency decree on arms registration has actually had an effect like hitting water, since only the decent and peaceable members of the public have registered arms, while nothing has been registered by the radical elements.”¹¹⁰ The radical elements were, of course, the Nazis and the Communists.¹¹¹ The German Association of Gun Makers and Dealers wrote to the Reich Interior Minister that the new arms regulations disarmed the law-abiding population while the smugglers and black market traffickers provided radicals with arms.¹¹²

When the ultimate radical element—the Nazis—came to power in 1933, they had available the firearm registration lists and license records to identify, disarm, and arrest opponents, principally Social Democrats and other political enemies, and, to a lesser extent, Jews.¹¹³ Prussian Minister of the Interior Hermann Göring ordered that all governmental heads and the Berlin Police Chief “immediately register the holders of firearm licenses on special lists and then send these lists to the municipal government.”¹¹⁴

Massive search-and-seizure operations were conducted to confiscate arms from perceived enemies of the Nazi regime. Some raids were notorious because of the identities of the targets. In one instance, Nazi storm troopers raided the apartment of the widow and son of former Weimar Republic President Friedrich Ebert, a Social Democrat.¹¹⁵ They searched “for hidden arms, but found only a revolver belonging to Herr Ebert, which he handed to them together with a permit that had expired. With these the Nazis marched off.”¹¹⁶ In another instance, “Charging that Professor Albert Einstein had a huge quantity of arms and ammunition stored in his secluded home in Caputh, the National Socialists sent Brown Shirt men and policemen to search it today, but the nearest thing to arms they found was a bread knife.”¹¹⁷

House-to-house searches were conducted in Jewish neighborhoods.¹¹⁸ “A large force of police assisted by Nazi auxiliaries raided a Jewish quarter in Eastern Berlin, searching everywhere for weapons and papers.”¹¹⁹ The raid was in the *Scheunenviertel* (Barn District), where Jewish homes were searched and, according to Hitler’s chief newspaper: “During the very extensive search, the search details





found a whole range of weapons. Further, a large amount of subversive printed material was confiscated.¹²⁰

When coming to power in 1933, the Nazis consolidated existing records identifying persons by ethnicity, including Jews.¹²¹ The year 1935 saw the enactment of the Nürnberg Laws, which more exactly defined Jews and deprived them of citizenship rights.¹²² The ability to keep and to access records quickly about Jews as well as all others was facilitated by the IBM punch card technology utilized by the *Deutsche Hollerith Maschinen Gesellschaft (Dehomag)*.¹²³ Births and marriages, including religion, were key punched by officials.¹²⁴

Dr. Werner Best, chief legal advisor and second in command to the Gestapo, issued a directive in late 1935 stating:

With regard to the issuing of weapons permits to Jews, the regular police authorities must always obtain the opinion of the *Geheimen Staatspolizei* [Gestapo or Secret State Police] authorities on the political reliability of the individual requestor. I request that the following be heeded:

In principle, there will be very few occasions where concerns will not be raised regarding the issuance of weapons permits to Jews. As a rule, we have to assume that firearms in the hands of the Jews represent a considerable danger for the German people. Therefore, in the future, an extreme measure of scrutiny will have to be applied to the question of political reliability of the requestor in all cases where an opinion needs to be given about the issuance of weapons permits to Jews. Only in this way will we be able to prevent numerous Jews from obtaining firearms and causing danger to the German population.¹²⁵

The above suggests that police records on applicants to acquire or carry firearms and on firearm registrants showed ethnicity or religion, including the status of being Jewish.¹²⁶ Even if firearm registration records did not identify Jews, it became an easy matter to correlate those records with census records which did identify Jews.¹²⁷ This became simpler when the requirement passed in July 1938 that all Jews register with the authorities.¹²⁸





Looking at the three arrest records examined here, police knew from the weapon registration records that Flatow and Gold possessed firearms. Police also knew from the same or other records that they were Jewish.

Adler was an Austrian, and he may well have been in Austria in 1931 when the Weimar Republic decreed its firearm registration scheme. The *Anschluss* or annexation of Austria by Germany had only taken place in March 1938.¹²⁹ It is not known when Adler became a resident of Berlin, at which time he may or may not have registered his hunting gun. That he may have done so is suggested by the fact that police searched his house for weapons, and when no one was found, they arrested and interrogated him about weapons, inducing a confession.¹³⁰ No indication exists that police searched every Jewish house for weapons and took every adult Jew to the police station to question them about weapons.

Thus, through existing police records generated by the laws and decrees of the Weimar Republic, the Nazi regime was able to correlate the registration lists of firearm owners and Jews and, having identified Jews who possessed arms, to confiscate their weapons and arrest them. Just weeks after the above arrests, the pogrom known as the Night of the Broken Glass took place in which thousands of Jews would be disarmed and placed in concentration camps.¹³¹ Jews thereby could not use arms to resist the coming deprivations, deportations, and eventual genocide.

IV. THE ARMS SEIZED

As noted, Flatow and Gold were both arrested on October 4, 1938, which was one day after Flatow's 69th birthday. Flatow's arrest report stated that he possessed a "revolver with 22 rounds of ammunition [and] 2 pocket pistols," which suggests that the ammunition was only for the revolver and that no ammunition was found for the pistols.¹³²

The 1931 law authorized jurisdictions to require registration not only of firearms, but also of various hand weapons.¹³³ The arrest report records confiscation from Flatow of hand weapons which had apparently also been registered in 1932, including a "dagger [*Dolch*]" and "31 knuckledusters [*Schlagringe*]," also known as brass knuckles.¹³⁴ Thirty-one of these devices would have been rather heavy to





carry, especially by the sixty-nine year old Flatow, and why he possessed them is mysterious. Perhaps they were left-over inventory of items for sale at his bicycle shop. Back in the last days of the Weimar Republic, one never knew when street fighting between extremists would break out, and a simple hand weapon could come in handy to defend oneself. Indeed, knuckledusters were issued to some Weimar police agencies, including to women police.¹³⁵

It seems implausible that the elderly Flatow possessed the registered weapons as head of some anti-Nazi group to engage in a street brawl with police armed with firearms. Perhaps they were used innocuously as hand weights for exercise by student gymnasts, similar to today's "heavy hands," or as martial arts weapons for exercise.

One can imagine Berlin Jews standing in line to surrender weapons to the police. Perhaps it took ten minutes for Sergeant Weiser to process Flatow, collect his weapons, and write the arrest report, then Gold was next. The fact that the police arrested both men and turned them over to the Gestapo could have meant that they were discovered through the registration records, but had not obeyed an announcement that Jews must surrender arms. Or it may have reflected the official attitude that any Jew with a weapon—even if both the weapon and the Jew were lawfully registered—was dangerous to the state, and that the Jewish gun owner needed to be arrested and interrogated by the Gestapo.

As noted, Gold turned in only a Walther pistol with six rounds of ammunition, suggesting that it was his personal weapon which he perhaps discreetly kept or carried loaded with these six cartridges for self defense. The police report did not state the model of the pistol. In World War I, German servicemen acquired numerous civilian pistols, and large numbers of Walthers were sold, particularly the Model 4 in 7.65 mm.¹³⁶ The Model 1 pocket pistol had been carried by many German officers.¹³⁷ Gold, who was 25 years old when the war ended in 1918, could have acquired the pistol in service. In 1929, Walther introduced the Model PP pistol, and shortly thereafter the more compact model PPK.¹³⁸ Maybe Gold turned in one of these popular Walther pistols.

Finally, Adler possessed only a "double-barreled hunting shotgun," also described as a "rifle" with "an extra barrel."¹³⁹ Adler was Austrian, and Austrian gunmakers crafted very fine and expensive





double guns of this type.¹⁴⁰ German gunmakers produced similar fine hunting guns.¹⁴¹ The Nazis obviously felt that any firearm, including hunting shotguns and rifles, was a danger to the state when possessed by a Jew.¹⁴²

V. A “SPECIAL OPERATION” AGAINST JEWISH GUN OWNERS

Under the type of police intervention, the above arrest forms indicated “Special Operation” (*Sonderaktion*) instead of routine patrol.¹⁴³ Was this an orchestrated police campaign to disarm all Jews in Berlin? The literature on *Reichskristallnacht* suggests that the Nazis were making ready for a major new action against the Jews, which was evidenced by the vast expansion of concentration camps in the previous months and their ability to absorb some 20,000 Jews during that pogrom.¹⁴⁴ Equally significant evidence of an invigorated anti-Jewish campaign was the special operation which sought to confiscate firearms from Jews in order to render them defenseless from attack.¹⁴⁵

The Nazis found just the incident they needed on November 7, 1938, when Herschel Grynszpan, a 17-year old Polish Jew, shot and mortally wounded Ernst vom Rath, the third secretary in the German Embassy in Paris.¹⁴⁶ Grynszpan was despondent because his parents were among thousands of Polish Jews deported from Germany who became stranded at the border with Poland, which refused to accept them as they were no longer regarded as Polish citizens.¹⁴⁷ The Nazis would use this tragedy as the excuse to unleash an unprecedented pogrom against the German Jews.

The above Special Operation involving Flatow and other Berlin Jews was not initially reported in the highly censored German press.¹⁴⁸ But with the shooting at the Embassy in Paris, on the morning of November 9, German newspaper headlines reported variously “Police Raid on Jewish Weapons,”¹⁴⁹ “Armed Jews,”¹⁵⁰ “Berlin’s Jews were Disarmed,”¹⁵¹ “Disarming the Berlin Jews,”¹⁵² and “Surrender of Weapons by Jews in Berlin, A Measure by the Police President.”¹⁵³ The articles all contained substantially the same text as follows:

In view of the Jewish assassination attempt in the German Embassy in Paris, Berlin’s Police President made known publicly the provisional results so far achieved, of a general disarming of Berlin’s Jews by the police, which



has been carried out in recent weeks.

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

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

Upon completion of the weapons campaign, if a Jew in Berlin is found still to possess a weapon without having a valid weapons permit, the Police President will, in every single case, proceed with the greatest severity.¹⁵⁴

The Berlin Police President, Count Wolf Heinrich von Helldorf, apparently announced the above results the day before.¹⁵⁵ As noted, the “general disarming of Berlin's Jews by the police” being carried out in the previous weeks—the net in which Flatow and other Jewish firearm owners had been caught—was now made public because of the wholly unrelated shooting by a Polish Jewish teenager at the Paris Embassy.¹⁵⁶ The implication was that, because of the act of a single foreign Jew in a foreign country, no German Jew could be trusted with a firearm.¹⁵⁷

While the “few individual incidents” were not specified, disarming the entire Jewish population was necessary to maintain “public security and order” (*öffentliche Sicherheit und Ordnung*).¹⁵⁸ Helldorf was thus invoking the very power granted by the 1931 Weimar firearm-registration decree which provided: “Weapons and ammunition . . . may, if the maintenance of public order and security so requires, be taken into police custody The possessor must deliver them to the police authority on demand.”¹⁵⁹ So the police knew that Jews such as Flatow and Gold possessed firearms because of the Weimar



registration requirement, and the Weimar confiscation power made the seizures legal, even if the arms were registered. Police President Helldorf had merely to find that it was necessary for “public security and order.” In short, the Nazi government relied precisely on the legal authorizations decreed by the Weimar Republic.

The order to surrender weapons was “made known to Jews by police stations,” which could have been carried out in a variety of ways.¹⁶⁰ The police located and notified some Jewish weapon owners from the firearm registration records,¹⁶¹ discovered others through interrogations and house searches,¹⁶² could well have been assisted by informants, and may have posted notices in locations such as the Jewish Quarter, the *Scheunenviertel* (Barn District) in the east of the Spandauer Vorstadt.¹⁶³

The result was that “weapons until now found by the police to be in the possession of Jews who have no weapons permit were voluntarily surrendered.”¹⁶⁴ This seems to be belied by the broad statement in the previous sentence that the Police President “felt compelled to disarm Berlin’s Jewish population,” not just Jews with no weapons permit.¹⁶⁵ Flatow and Gold had their weapons duly registered.¹⁶⁶ Of course, it is possible that additional weapons permits were required even for registered weapons. After all, Werner Best’s 1935 Gestapo directive declared that “there will be very few occasions where concerns will not be raised regarding the issuance of weapons permits to Jews.”¹⁶⁷

Notably, there were “a few exceptions, in which the explicit nature of the ban on possession of weapons had to be articulated”¹⁶⁸—perhaps a polite euphemism for the arrest and turning over to the Gestapo of Jews such as Flatow and Gold, whose firearm registrations should have been considered a “weapons permit” as referenced above. Of course, the police could have revoked these registrations causing them no longer to have a valid weapons permit, and thus, in Kafkaesque fashion, justifying their arrest. The weapon ban definitely “had to be articulated” to Jews such as Adler, who sought to keep secret his weapon with an apparent “Aryan” friend.¹⁶⁹

The announcement declared “what a large amount of weapons have been found with Berlin’s Jews,” noting the confiscation of “2,569 stabbing and cutting weapons, 1,702 firearms, and about 20,000 rounds of ammunition.”¹⁷⁰ The edged weapons could have





been anything from kitchen knives to bayonets left over from the Great War. Assuming that the statistics were reliable, the number of weapons did not indicate the number of weapon owners.¹⁷¹ Gold had a pistol and Adler had a long gun, but Flatow had a pistol and two revolvers, not to mention a dagger and thirty-one knuckledusters (which were blunt weapons, not cutting and stabbing weapons).¹⁷²

As to the “about 20,000 rounds of ammunition,” one can imagine petty Nazi functionaries counting each cartridge.¹⁷³ That amounts to only just over ten rounds per firearm—a low number suggesting that many firearms may have been inherited or war souvenirs not kept functional with cartridges for ready use. Firearms possessed for hunting or sporting use would have needed far more cartridges for practice and use, although firearms kept for self defense may have only enough cartridges needed to load the weapon.

To illustrate, Flatow had “1 revolver with 22 rounds of ammunition, [and] 2 pocket pistols” with no ammunition mentioned.¹⁷⁴ “Gold was in possession of one Walther pistol with 6 rounds.”¹⁷⁵ No ammunition was recorded in relation to Adler, who had sought to keep his weapon a secret, and could have been more successful secreting his ammunition.

The announcement concluded that, “if a Jew in Berlin is found still to possess a weapon without having a valid weapons permit, the Police President will, in every single case, proceed with the greatest severity.”¹⁷⁶ Since they had been arrested and turned over to the Gestapo, presumably Flatow, Gold, and Adler had been treated with such severity. And speaking of severity, the entire Jewish community of Germany would be attacked the following day, *Reichskristallnacht* (Night of the Broken Glass).¹⁷⁷

Further background information puts the above in context. This was a period in which Nazi Germany was seizing Jewish assets and expelling Jews from Germany.¹⁷⁸ Helldorf extorted money from Jews seeking to emigrate.¹⁷⁹ Bella Fromm, Berlin socialite and Jewess, noted in her diary on September 1, 1938:

The president of police, Count Helldorf, has an enormously profitable racket. He seizes the passports of such emigrants as are still well off and sells the passports back to them for whatever sum he can get. In some instances as much as two hundred and fifty thousand





marks.

They pay it. No price is too much if it's liberty one is buying.¹⁸⁰

Beginning with his diary entry of October 1 through the next month, Nazi Propaganda Minister Joseph Goebbels recorded numerous lengthy meetings with Helldorf.¹⁸¹ The October 12th entry read: "Helldorf gives me a report on the status of the Jewish operation in Berlin. It continues as scheduled. And the Jews now gradually withdraw."¹⁸² If seizing their assets gave them incentive to flee, seizing their weapons must have made the Jews who possessed arms feel particularly insecure and threatened.

On November 8, Helldorf drove to Munich with Goebbels.¹⁸³ Goebbels noted about the then-overriding event:

In Paris, the Polish Jew Grynspan [*siz*] has shot the German diplomat vom Rath in the Embassy and wounded him severely. As revenge for the Jews. Now however the German press cries out In Hesse big anti-Semitic rallies. The synagogues are burned down. If one could now for once release the popular fury!¹⁸⁴

November 9 was the "*Tag der Bewegung*" (Day of the Movement), when Hitler gave his annual speech in Munich to commemorate the anniversary of his failed 1923 Beer Hall Putsch.¹⁸⁵ Vom Rath's condition worsened, noted Goebbels in his diary, adding: "Helldorf has completely disarmed the Jews in Berlin. They will have to get prepared for a lot more."¹⁸⁶ While Helldorf's disarming of the Berlin Jews had only that morning been made public in the newspapers, it had undoubtedly been a major point of discussion and planning between Goebbels, Helldorf, Hitler, and the rest of the Nazi hierarchy.¹⁸⁷ Now that the Jews were defenseless, as Goebbels added above, they would have to endure escalating hardship.¹⁸⁸ And it would begin that very night.¹⁸⁹

VI. NIGHT OF THE BROKEN GLASS

Vom Rath's death was reported on the evening of November 9, at which time Hitler authorized Goebbels to give the orders for the pogrom known as the Night of the Broken Glass or





Reichskristallnacht.¹⁹⁰ Among the instructions were: “All Jewish stores are to be destroyed immediately by SA men in uniform”; “Jewish synagogues are to be set on fire immediately”; “the Führer wishes that the police do not intervene.”¹⁹¹ The following instruction would ensure the success of the attacks as well as achieve an ultimate goal: “All Jews are to be disarmed. In the event of resistance they are to be shot immediately.”¹⁹²

Similarly, on behalf of Gestapo Headquarters in Berlin, SS Standartenführer Heinrich Müller sent this message on the night of November 9 to every state police bureau in Germany: “If, during the actions about to take place, Jews are found in possession of *weapons* the most severe measures are to be applied. The special task units of the SS as well as the general SS may be employed for all phases of the operation.”¹⁹³

Beginning in the early morning hours of November 10, Nazis attacked Jewish shops, homes, and synagogues, breaking windows, trashing furniture, and setting fires.¹⁹⁴ When the newspapers hit the stands, the following blasted out:

Jews Forbidden to Possess Weapons

By Order of SS Reichsführer Himmler

Munich, November 10 [1938]

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

Persons who, according to the Nürnberg law, are regarded as Jews, are forbidden to possess any weapon. Violators will be condemned to a concentration camp and imprisoned for a period of up to 20 years.¹⁹⁵

News of the terrible events unfolding was described only in foreign newspapers. The *New York Times* reported: “Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt.”¹⁹⁶ In Berlin and throughout Germany, thousands of Jewish men, particularly prominent leaders, were taken from their homes and arrested.¹⁹⁷ The *Times* account reported the arms prohibition as follows:

Possession of Weapons Barred

One of the first legal measures issued was an order by





Heinrich Himmler, commander of all German police, forbidding Jews to possess any weapons whatsoever and imposing a penalty of twenty years confinement in a concentration camp upon every Jew found in possession of a weapon hereafter.¹⁹⁸

The destruction was carried out by *Rollkommandos* (wrecking crews) under the protection of uniformed Nazis or police.¹⁹⁹ However, the people at large generally did not participate, and most appeared to be gravely disturbed by the attacks.²⁰⁰ Some members of the public helped Jews leave their stores unmolested, but citizens who protested against the attacks on Jews were threatened and silenced by the *Rollkommandos*.²⁰¹

The pogrom spilled over into Austria, about which the *Times* reported: “Thousands of Jews had their dwellings searched for concealed arms, documents and money. The police claim to have found quantities of them”²⁰²

The Swiss newspaper *Neue Zürcher Zeitung* reported from Berlin on November 11 under the headline “Numerous Arrests?” the following:

Last night the Gestapo started to arrest Jews in Berlin and in other German cities. Most of those arrested were respected Jewish personalities. At a reception for the press, the Reich Minister for Propaganda [Goebbels] denied that there had been any arrests; when asked again later, however, [his office] said that the arrests had been made in connection with Himmler’s decree prohibiting Jews from owning arms. The explanation given was that the Jews had retained weapons even though the Chief of the German Police in his latest decree had threatened to punish them with protective detention of 20 years.²⁰³

Memoirs of the event by Jewish victims reported that persons conducting searches announced that they were looking for weapons.²⁰⁴ Victor Klemperer served honorably in Germany’s armed forces during World War I and retired as a university professor in 1935.²⁰⁵ A resident of Dresden, his acclaimed diary includes the following description of a search for weapons and arrest of a Jew during *Reichskristallnacht*:



On the morning of the eleventh[,] two policemen accompanied by a “resident of Dölzschen.” Did I have any weapons?—Certainly my saber, perhaps even my bayonet as a war memento, but I wouldn’t know where.—We have to help you find it.—The house was searched for hours . . . They rummaged through everything, chests and wooden constructions Eva had made were broken open with an ax. The saber was found in a suitcase in the attic, the bayonet was not found. Among the books they found a copy of the *Sozialistische Monatshefte* (Socialist Monthly Magazine—an SPD theoretical journal) [. . .] this was also confiscated.²⁰⁶

A “good natured and courteous” young policeman took Klemperer’s statement and stated that they would have to go to the court building at Münchner Platz, adding: “There’s nothing to fear, you will probably (!) be back by evening.”²⁰⁷ Klemperer asked if he was under arrest. “His reply was good-natured and noncommittal, it was only a war memento after all, I would probably be released right away.”²⁰⁸ At the court building, a policeman copied Klemperer’s statement.²⁰⁹ After some waiting, a magistrate with a Party badge made out a certificate of discharge, without which Klemperer would be arrested again.²¹⁰ “At four o’clock I was on the street again with the curious feeling, free—but for how long?”²¹¹

On November 11, Interior Minister Frick promulgated the *Verordnung gegen den Waffenbesitz der Juden* (Regulation Against Jews’ Possession of Weapons).²¹² Its preamble recites that it was issued pursuant to § 31 of the 1938 Weapons Law, which in turn empowered the Interior Minister to issue “the necessary legal and administrative regulations for the implementation and fulfillment of this Law.”²¹³ Section 1 of the new regulation provided:

Jews (§ 5 of the First Regulations of the German Citizenship Law of November 14, 1935 . . .) are prohibited from acquiring, possessing, and carrying firearms and ammunition, as well as cutting or stabbing weapons. Those now having in their possession weapons and ammunition must at once surrender them to the local police authority.²¹⁴



As to the property, § 2 stated: “Weapons and ammunition found in a Jew’s possession will be forfeited to the Reich without compensation.”²¹⁵ As to the person in violation, § 4 provided: “Whoever willfully or negligently violates the provisions of § 1 shall be punished with imprisonment and a fine. In especially severe cases of deliberate violations, the punishment is imprisonment in a penitentiary for up to five years.”²¹⁶ The regulation was applicable in Germany, Austria, and the Sudetenland.²¹⁷

There were about 550,000 Jews in those jurisdictions.²¹⁸ The number of Jews arrested during the rampage may have reached 30,000 males, aged 16 to 80.²¹⁹

Despite the threats, some Jews still did not surrender their firearms.²²⁰ A Berlin Jewish scientist told a reporter how at 6:00 a.m. on November 12, a Nazi official in a brown uniform and four assistants in mufti took him from his home, only to order him back home.²²¹ He related that while many of his friends who were arrested were not so lucky, the home of one was searched for weapons by six men, who broke the china and smashed furniture.²²² The scientist related: “Only one thing they had missed – an old army revolver which was lying in a drawer of a table in my friend’s bedroom. That rusted weapon, probably fired for the last time in 1918, might have gotten him twenty years in a concentration camp.”²²³

The American Consulate in Stuttgart, headed by Samuel W. Honaker, reported to U.S. Ambassador Hugh R. Wilson in Berlin on November 12 that “the Jews of Southwest Germany have suffered vicissitudes during the last three days which would seem unreal to one living in an enlightened country during the twentieth century”²²⁴ He described the horrors of November 10, from the torching of synagogues before daylight to the midnight arrests.²²⁵ He continued:

So great had become the panic of the Jewish people in the meantime that, when the Consulate opened after Armistice Day, Jews from all sections of Germany thronged into the office until it was overflowing with humanity, begging for an immediate visa or some kind of letter in regard to immigration which might influence the police not to arrest or molest them. Women over sixty years of age pleaded on behalf of husbands imprisoned in some unknown place Men in whose homes old, rusty





revolvers had been found during the last few days cried aloud that they did not dare ever again to return to their places of residence or business. In fact, it was a mess of seething, panic-stricken humanity.²²⁶

Honaker learned that “practically the entire male Jewish population of the City of Stuttgart, ranging from the age of eighteen to sixty-five years, has been arrested by authorities representing the police.”²²⁷ On the 11th, some of the prisoners were taken to Welzheim, a concentration camp in Württemberg.²²⁸ Many people believed that the action was planned and not spontaneous.²²⁹ “The vast majority of the non-Jewish German population, perhaps as much as 80 per cent, has given evidence of complete disagreement with these violent demonstrations against the Jews.”²³⁰

From Paris and Geneva appeared the headline: “The anti-Semitic Measures of the Reich,” with the following under the caption “Premeditated Destruction”:

To illuminate the recent events one now better understands the special liabilities imposed on the Jews in recent times. Events since last June make clear the obvious methods of their measures. They have simplified the destruction. One method was to confiscate their arms from them, rendering the operation without danger. The other demanded from them a formal declaration of assets (currency, jewelry, pieces of furniture, carpets), which facilitated the confiscation thereof. All was ready.²³¹

A month after the pogrom, the Gestapo in Munich issued a memorandum to the police, commissars, and mayors concerning the regulation requiring Jews to surrender all weapons.²³² Likely reflecting Gestapo directives throughout Germany, it explained how the regulation was to be implemented:

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

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



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

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

Because this will have to be reported to the Gestapo office in Berlin, this deadline will absolutely have to be observed.²³³

VII. CONCLUSION

Over a period of several weeks in October and November 1938, the Nazi government disarmed the German Jewish population. The process was carried out both by following a combination of legal forms enacted by the Weimar Republic and by sheer lawless violence. The Nazi hierarchy could now more comfortably deal with the Jewish question without fear of armed resistance by the victims.

It may be tempting to argue that the possession of firearms by the German Jews would have made no difference, either in the 1938 pogrom or later in the Holocaust, when the majority were deported and then eradicated in death camps. Yet this fatalistic view ignores that the Nazis themselves viewed armed Jews as sufficiently dangerous to their policies to place great emphasis on the need to disarm all Jews. In 1938, it was by no means certain that Jewish armed resistance movements could not develop, and even less certain that individual Jews would not use arms to resist arrest, deportation, or attacks by the Nazis.

Even after the Final Solution calling for the eradication of European Jewry was adopted in early 1942,²³⁴ the Nazis feared individual armed resistance sufficiently to search the homes of Jews to be deported for weapons. A mid-1942 Gestapo directive to the Police President in Rostock concerning the deportation of Jews to the East ordered: "Before the Jews leave, their apartments must be searched for weapons, ammunition, explosives, poison, money, jewelry, etc."²³⁵



For the deportees, the Nazis continued their mania for seizure of any weapons held by Jews. Alfred Hartmann recalled about Jews sent to the Milbertshofen barracks camp near Munich, a staging area for deportation to more deadly camps: “After their arrival at the camp and assignment to individual barracks, Gestapo members collected the luggage of the Jews and searched it for weapons, jewelry, etc.”²³⁶

Is there a larger lesson to learn from the experiences of the liberal Weimar Republic decreeing firearms registration, and the Nazi regime using the records to disarm the Jews? While this does not foretell what *will* happen, it demonstrates what *can* happen. Contemporary prohibitionists may argue that this would never happen again anywhere in the world, whether in Europe, Asia, Africa, or the Americas, especially in the United States. Consistent adherents of a “Never Again!” policy—which assumes that what has happened in history, could again happen—would seek policies to help ensure that it does not indeed occur again.

That brings us back to Alfred Flatow. What if he—and an unknown number of other Germans, Jews and non-Jews alike—had not registered his firearms in 1932? Or if the Weimar Republic had not decreed firearm registration at all? What if the Nazis, when they took power in 1933 and disarmed social democrats and other political enemies, or when they decided to repress the entire Jewish population in 1938, did not have police records of registered firearm owners? Can it be said with certainty that no one, either individually or in groups small or large, would have resisted Nazi depredations?

One wonders what thoughts may have occurred to Alfred Flatow in 1942 when he was dying of starvation at the Theresienstadt concentration camp. Perhaps memories of the 1896 Olympics and of a better Germany flashed before his eyes. Did he have second thoughts, maybe repeated many times before, on whether he should have registered his revolver and two pocket pistols in 1932 as decreed by the Weimar Republic? Or whether he should have obediently surrendered them at a Berlin police station in 1938 as ordered by Nazi decree, only to be taken into Gestapo custody? We will never know, but it is difficult to imagine that he had no regrets.



ENDNOTES

1. Copyright © Stephen P. Halbrook 2009. Stephen P. Halbrook received his Ph.D. in Philosophy from Florida State University and J.D. from Georgetown University Law Center. In addition to arguing *Printz v. United States*, 521 U.S. 898 (1997), and other constitutional law cases in the Supreme Court, he is author of the following books: *The Swiss and the Nazis: How the Alpine Republic Survived in the Shadow of the Third Reich* (2006); *Target Switzerland: Swiss Armed Neutrality in World War II* (in five languages) (1998); *The Founders' Second Amendment* (2008); *Firearms Law Deskbook: Federal and State Criminal Practice* (1995–2008); *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms: 1866–1876* (1998); *That Every Man Be Armed: The Evolution of a Constitutional Right* (1984, 2000); and *A Right to Bear Arms: State & Federal Bills of Rights & Constitutional Guarantees* (1989); see also <http://www.stephenhalbrook.com>. All German sources are on file with the author.
2. Alfred Flatow, *Bericht über einen polit. Vorfall*, 4.10.38, [hereinafter Alfred Flatow]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938–39 (FB Bd. 5), Landesarchiv Berlin. [Alfred Flatow, *Report Concerning Political Incident*, Oct. 4, 1938. House Searches of Jews 1938–39, Berlin State Archives.]
3. *Id.*
4. *Id.*
5. See *infra* part IV.
6. Alfred Flatow, *supra* note 2.
7. See *infra* note 75 and accompanying text.
8. Hajo Bernett, *Alfred Flatow – vom Olympiasieger zum Reichsfeind*, in *Sozial- und Zeitgeschichte des Sports* Heft, 2, 94 (1987); see also Arnd Krüger, *Once the Olympics are Through, We'll Beat up the Jew: German Jewish Sport 1898–1938 and the Anti-Semitic Discourse*, 26 *J. Sports Hist.* 353, 367 (Summer 1999); Joseph Siegman, *Jewish Sports Legends: The International Jewish Sports Hall of Fame* 92 (Brassey's 1997).
9. *Id.* Bernett, *supra* note 8, at 2, 94; see also Krüger, *supra* note 8, at 353, 367.
10. Alfred Flatow, *supra* note 2.
11. *Id.*
12. See *infra* notes 78 and 86 and accompanying text.
13. Alfred Flatow, *supra* note 2.



14. *See infra* part VI.

15. For example, Rep. John Dingell (D. Mich.) argued that: “Sportsmen fear firearms registration. We have here the same situation we saw in small degree in Nazi Germany. There they did not prohibit citizens from having guns. All they said was first of all we want to register them, and we are going to stop crime by it.” *Federal Firearms Legislation: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 90th Cong., 2nd Sess. 478 (1968) [hereinafter *Federal Firearms Legislation*]. As discussed below, the Nazis actually used registration records generated under the laws of the Weimar Republic to confiscate firearms from selected groups in society. *See infra* part III.

16. For instance, Senator Joseph Tydings (D. Md.) disputed “that registration or licensing of guns has some connection with the Nazi takeover in Germany.” *Federal Firearms Legislation*, *supra* note 15, at 478–79.

17. *Id.* at 483. “However, the possibility cannot be denied that the Germans may have used these registration lists (or indeed hunting license registration), after issuing their proclamations [to surrender firearms].” *Id.* The study included a translation of the Nazi *Waffengesetz* (Weapons Law) of 1938 [*Reichsgesetzblatt* 1938, I, 265] which was applicable in Germany. *Id.* at 489. Senator Thomas Dodd (D. Conn.) who had been a prosecutor at the Nuremberg War Crimes Trials and would be a chief sponsor of the Gun Control Act, supplied his own copy of “the original German text” to the Library of Congress to translate. *Id.*

18. U.S. Const. amend. II.

19. *District of Columbia v. Heller*, 128 S. Ct. 2783, 2801 (2008), *aff’g*, *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). *Parker* wrote in more detail:

The right of self-preservation . . . was understood as the right to defend oneself against attacks by lawless individuals, or, if absolutely necessary, to resist and throw off a tyrannical government With respect to the right to defend oneself against tyranny and oppression, some have argued that the Second Amendment is utterly irrelevant because the arms it protects, even if commonly owned, would be of no use when opposed to the arsenal of the modern state. . . . [I]ncidents such as the Warsaw ghetto uprising of 1943 provide rather dramatic evidence to the contrary. . . . The deterrent effect of a well-armed populace is surely more important than the probability of overall success in a



full-out armed conflict. Thus, could Madison write to the people of New York in 1788:

Notwithstanding the military establishments in the several kingdoms of Europe, which are carried as far as public resources will bear, the governments are afraid to trust the people with arms. And it is not certain that with this aid alone they would not be able to shake off their yokes.

Parker, 478 F.3d at 383 (quoting *The Federalist* No. 46, at 299–300 (James Madison) (Clinton Rossiter ed., 1961)).

20. *E.g.*, Brief of Amicus Curiae Jews for the Preservation of Firearms Ownership in Support of Respondent, *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 405561.

21. Brief Supporting Petitioners of Amici Curiae American Jewish Committee, et al., *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 189545, at 31 n.11 (quoting Bernard E. Harcourt, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws*, 73 *Fordham L. Rev.* 653, 671 (2004)).

22. *Id.* If disarming one group in society “proves only the evils of discrimination,” is the disarming of all private persons unobjectionable? The German government instituted this noble experiment in occupied Poland, where only the military and police were armed and all Poles and Jews were disarmed by law. “The death penalty or, in less serious cases, imprisonment shall be imposed [on any Pole or Jew] . . . If he is in unlawful possession of a firearm, . . . or if he has credible information that a Pole or a Jew is in unlawful possession of such objects, and fails to notify the authorities forthwith.” *Reichsgesetzblatt*, I, 759 (Dec. 4, 1941), as reprinted in *Federal Firearms Legislation*, *supra* note 15, at 482. As for the “myth” that “an oppressed minority” might resist oppression with arms, the Warsaw Ghetto Uprising proved that Jews with only a few pistols could stop deportations, resist German troops, and escape to join the resistance in the forest. See Simha Rotem (Kazik), *Memoirs of a Warsaw Ghetto Fighter* 118–19 (1994). Nazi Propaganda Minister Joseph Goebbels exclaimed: “The Jews have actually succeeded in making a defensive position of the Ghetto. Heavy engagements are being fought there It shows what is to be expected of the Jews when they are in possession of arms.” *The Goebbels Diaries: 1942–1943* 350–51 (1948).

23. Property Requisition Act, P.L. 274, 55 Stat. 742 (1941); see Brief for Amici Curiae 55 Members of U.S. Senate, the Senate President, and 250 Members of U.S. House of Representatives in Support of Respondent,

District of Columbia v. Heller, 128 S. Ct. 2783 (2008) (No. 07-290), 2008 WL 383530, at 19–22.

24. Rpt. No. 1120 [to accompany S. 1579], House Committee on Military Affairs, 77th Cong., 1st Sess. 2 (Aug. 4, 1941).

25. 87 Cong. Rec., 77th Cong., 1st Sess. 6778 (Aug. 5, 1941) (statement of Rep. Edwin Arthur Hall); see Stephen P. Halbrook, *Congress Interprets the Second Amendment: Declarations by a Co-Equal Branch on the Individual Right to Keep and Bear Arms*, 62 Tenn. L. Rev. 597, 618–31 (Spring 1995).

26. *Silveira v. Lockyer*, 328 F.3d 567, 569–70 (9th Cir. 2003) (Kozinski, C.J., dissenting from denial of rehearing en banc), cert. denied, 540 U.S. 1046 (2003). *Accord Nordyke v. King*, 364 F.3d 1025 (9th Cir. 2004) (Gould, C.J. joined by O’Scannlain, Kleinfeld, Tallman, and Bea, C.J.s, dissenting from denial of rehearing en banc). Similarly, Judge Janice Rogers Brown, recognizing the individual character of the right to keep and bear arms, noted about those who advocate a disarmed society: “I suspect the freedmen of the Reconstruction Era would vehemently disagree. So would the Armenians facing the Ottoman Turks in 1915, the embattled Jews of the Warsaw Ghetto in 1943, and the victims of Pol Pot’s killing fields.” *Kasler v. Lockyer*, 23 Cal. 4th 472, 510, 2 P.3d 581 (2000) (Brown, J., concurring).

27. “When the ships from America approached our shores with their priceless arms, special trains were waiting in all the ports to receive their cargoes. The Home Guard in every country in every town, in every village, sat up all through the nights to receive them.” Winston Churchill, *The Second World War: Their Finest Hour* 272 (Houghton Mifflin 1949); see also *Sporting Guns Sought: Group Here Also Wants Pistols to Send to Britain for Defense*, N.Y. Times, Sept. 12, 1940, at 9.

28. See Kevin Sullivan, *An Armory in Gun-Shy Europe: Switzerland Weighs Curbs on Its Culture of Firearm Ownership*, <http://www.washingtonpost.com/wp-dyn/content/article/2007/04/28/AR2007042800944.html> (last visited Aug. 16, 2007); S. Halbrook, *Citizens in Arms: The Swiss Experience*, 8 Tex. Rev. L. & Pol. 141, 162–74 (2003).

29. Todd Benson & Terry Wade, *Violence-Torn Brazil Votes to Keep Gun Sales Legal*, <http://www.njcsd.org:80/forum/showthread.php?t=79> (last visited Aug. 16, 2007).

30. See Human Rights Council, Subcommittee on the Promotion and Protection of Human Rights, 58th Sess., agenda item 8, Adoption of the Report on the Fifty-Eighth Session to the Human Rights Council, A/HRC/Sub.1/58/L.11/Add.1 (Aug. 24, 2006) (advocating prohibition of civilian



firearms as a “human right”); David B. Kopel et al., *The Human Right of Self Defense*, 22 *BYU J. Pub. L.* 43 (2007).

31. See S. Halbrook, *Nazi Firearms Law and the Disarming of the German Jews*, 17 *Ariz. J. Int'l & Comp. L.* 483 (2000), <http://www.stephenhalbrook.com/article-nazilaw.pdf>. This article was criticized in Bernard E. Harcourt, *On Gun Registration, the NRA, Adolf Hitler, and Nazi Gun Laws: Exploding the Gun Culture Wars (A Call to Historians)*, 73 *Fordham L. Rev.* 653 (2004); Deborah Homsher, *Response to Bernard E. Harcourt's "On Gun Registration,"* 73 *Fordham L. Rev.* 715 (2004); Robert J. Spitzer, *Don't Know Much About History, Politics, or Theory: A Comment*, 73 *Fordham L. Rev.* 721 (2004). The author responded in S. Halbrook, *Nazism, the Second Amendment, & the NRA: A Reply to Professor Harcourt*, 11 *Tex. Rev. L. & Pol.* 113 (2006), http://www.stephenhalbrook.com/law_review_articles/nazism.nra.pdf.

32. See *infra* part VI; see generally Gerald Schwab, *The Day the Holocaust Began: The Odyssey of Herschel Grynszpan* (Praeger 1990); Anthony Read & David Fisher, *Kristallnacht: The Unleashing of the Holocaust* (Peter Bedrick Books 1989).

33. Unless otherwise indicated, all facts in reference to the Flatow arrest are from Bericht über einen polit. Alfred Flatow, *supra* note 2.

34. *Id.*

35. *Id.*

36. See Map of Police Precincts in the Central Districts of Berlin in 1930, in Hsi-Huey Liang, *The Berlin Police Force in the Weimar Republic* 12–13 (U. Cal. Press 1970).

37. See Bernett, *supra* note 8.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*; see Krüger, *supra* note 8, at 367.

42. *Id.*

43. Gerd Steins, *Gustav Felix Flatow: Ein vergessener Olympiasieger*, in *Sozial- und Zeitgeschichte des Sports Heft*, 2, 103, 109 (1987).

44. *Id.*





45. Bernett, *supra* note 8, at 97.
46. Ergänzungskarten der Volkszählung von 17.05.1939, Bundesarchiv R2/GB [hereinafter Ergänzungskarten]. This source also shows: RAD: J. Datum: 22091941 [Sept. 22, 1941].
47. *Id.*
48. Alfred Flatow, *supra* note 2.
49. *Id.*
50. The 1938 Berlin address book listed Police Station 106 as located in Luisenstrasse 37 Kreuzberg. *Berlin Adressbuch 1938*. In 1938, the street was renamed Curthdamm and the station's new address was Curthdamm 16. *Berlin Adressbuch 1939*. More precisely, Luisenstrasse became Curthdamm on May 20, 1937, and was renamed Segitzdamm on July 31, 1947. Hans-Jürgen Mende, *Lexikon. Alle Berliner Strassen u. Plätze. Von der Gründung bis zur Gegenwart Bd. 1 A-Fre* (Berlin 1998). Curthdamm was named for Udo Curth, a Nazi SA (*Sturmabteilung*) man or Storm Trooper, who was killed in street riots in 1932.
51. *See infra* note 154 and accompanying text.
52. Alfred Flatow, *supra* note 2.
53. *Id.*
54. *Id.*
55. *See infra* note 125 and accompanying text.
56. The German text reads:
- Der Jude Alfred Flatow hatte 1 Revolver mit 22 Schuss Munition, 2 Terzerole, 1 Dolch u. 31 Schlagringe im Besitz. Die Waffen in den Händen der Juden bilden eine Gefahr für die öffentliche Sicherheit.
- Colisle, Pol. Hw. [Polizei Hauptwachtmeister]. Die Waffen sind von dem Fl. Am 26.1.1932 dem 13. R. gemeldet worden. Bescheinigung liegt vor.
57. *Id.*
58. *See* Map in Hsi-Huey Liang, *The Berlin Police Force in the Weimar Republic*, 12–13.
59. Alfred Flatow, *supra* note 2.
60. This evidently occurred in the Flatow arrest. *Id.*





61. *Id.*
62. *Id.*
63. *Id.*
64. *Id.*
65. Alfred Flatow, *supra* note 2.
66. *Id.*
67. *Id.*
68. Richard L. Miller, *Nazi Justiz: Law of the Holocaust* 52 (Praeger 1995).
69. Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* 175 (Deborah Lucas Schneider trans., Harvard Univ. Press 1991).
70. Wannsee Protocol, Jan. 20, 1942, Avalon Project, Yale Law School, <http://www.yale.edu/lawweb/avalon/imt/wannsee.htm> (last visited Aug. 16, 2007).
71. Bernett, *supra* note 8, at 99.
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.*; see also Siggie Emmerich, *Olympische Geschichte(n): Alfred Flatow, unsere Zeit – Zeitung der DKP* 13. (Aug. 2004), <http://www.dkp-online.de/uz/3633/s0302.htm> (last visited Aug. 16, 2007); Flatow, Alfred, in Central Database of Shoah Victims' Names, http://www.yadvashem.org/wps/portal/IY_HON_Welcome (last visited Aug. 16, 2007).
76. *Die unendliche Geschichte der Flatowallee*, Berliner Zeitung, Oct. 4, 1996, <https://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/1996/1004/none/0019/index.html> (last visited Nov. 2, 2008).
77. *Id.*
78. Julius Ignatz Gold, *Bericht über einen polit. Vorfall*, 4.10.38 [hereinafter Gold]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938-39 (FB Bd. 5), Landesarchiv Berlin. Unless otherwise indicated, all references to the Gold arrest are from this document.
79. *Id.*
80. Berlin streets may be located at http://www.berlin.de/stadtplan/_html/index.html (last visited Aug. 16, 2007).





81. Gold, *supra* note 78.

82. *Id.*

83. *Id.*

84. *Id.* The German text reads:

Der Jude Julius Ignatz Gold hatte eine Walther-Pistole mit 6 Schuss Munition im Besitz. In den Händen der Juden bildet die Waffe eine Gefahr für die öffentliche Sicherheit. G. hat die Waffe am 13.2.32 dem 105. R. (jetzt R. 112) angemeldet.

Colisle, Pol. Hw.

85. *See* Central Database of Shoah Victims' Names, http://www.yadvashem.org/wps/portal/IY_HON_Welcome (last visited Aug. 16, 2007).

86. Alois Adler, *Bericht über einen polit. Vorfall*, 4.9.38 [hereinafter Adler]. A Rep PrBrRep. 030/21620 Bd. 5 Haussuchungen bei Juden 1938–39 (FB Bd. 5), Landesarchiv Berlin. Unless otherwise indicated, all references to Adler are to this report.

87. *See supra* note 58, at 12–13.

88. Adler, *supra* note 86.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. Adler, *supra* note 86.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. Adler, *supra* note 86.

101. *See* Ergänzungskarten, *supra* note 46.

102. *See* Central Database of Shoah Victims' Names, *supra* note 85.





103. Alfred Flatow, *supra* note 2.
104. Gold, *supra* note 78.
105. *Gesetz über Schußwaffen und Munition, Reichsgesetzblatt* 1928, I, 143; see § 10(1) (acquisition permit), § 15 (license to carry).
106. Vierte Verordnung des Reichspräsidenten zur Sicherung von Wirtschaft und Finanzen und zum Schutze des inneren Friedens [Fourth Decree of the Reich President on the Protection of the Economy and Finance and on the Defense of Civil Peace] vom 8.Dezember 1931, Achter Teil, Kapitel I, *Reichsgesetzblatt*, I, S. 699, 742, at § 1(1) [hereinafter Vierte Verordnung].
107. *Id.* § 1(2).
108. *Id.* § 1(3).
109. RMI to Landesregierungen 8.2.32 Massnahmen gegen Waffenmissbrauch. BA Lichterfelde, R 1501/125940 Gesetz über Schußwaffen und Munition Bd. 4 1931–32, 416–17.
110. Letter from Rudolf Reger (gunsmith) to Reich President Hindenburg 3.3.32. BA Lichterfelde. R 1501/125941 Gesetz über Schußwaffen und Munition Bd. 5 1932–33, S. 4–5.
111. See Hans Mommsen, *The Rise and Fall of Weimar Democracy* Ch. 12 (Univ. of North Carolina Press 1996).
112. Letter Reichsverband Dt. Büchsenmacher, Waffen- u. Munitionshändler eV to RMI 4.8.32 Schusswaffengesetz. BA Lichterfelde. R 1501/125941 Gesetz über Schußwaffen und Munition Bd. 5 1932–33, S. 374–372.
113. See Halbrook, *supra* note 31, at 493–503.
114. Der Pr.Min.d.Inn. to Reg. Präs. 15.2.33 Inhaber von Waffenscheinen listenmäßig zu erfassen. BrLHA, Pr. Br. Rep. 3B Reg. Frankfurt/O I Pol/1877 Waffenscheine 1933–42.
115. *Nazis Raid Home of President Ebert's Widow*, N.Y. Times, Mar. 15, 1933, at 11.
116. *Id.*
117. *Nazis Hunt Arms in Einstein Home*, N.Y. Times, Mar. 21, 1933, at 10.
118. *Raid on Jewish Quarter*, N.Y. Times, Apr. 5, 1933, at 10.
119. *Id.*
120. *Gross-Razzia im Scheunenviertel*, Völkische Beobachter, Apr. 5, 1933.





121. Götz Aly & Karl Heinz Roth, *The Nazi Census: Identification and Control in the Third Reich* 73 (Edwin Black & Assenka Oksiloff trans., Temple Univ. Press 2004).
122. For a legal treatise with the pertinent laws and regulations, see Bernhard Lösener und Friedrich A. Knost, *Die Nürnberger Gesetze* (Verlag Franz Vahlen 1936).
123. Edwin Black, *IBM and the Holocaust: The Strategic Alliance Between Nazi Germany and America's Most Powerful Corporation* 188 (Random House 2001).
124. *Id.* at 197.
125. Betr.: Erteilung von Waffenscheinen an Juden, Preußische Geheime Staatspolizei, B.Nr. I G - 352/35 (16. Dezember 1935). DCP 0072, BA R 58/276.
126. Even in the United States today, one's "race" must be disclosed on the federal form required to acquire a firearm from a licensed dealer. 27 C.F.R. § 478.124(c).
127. Aly & Roth, *supra* note 121, at 73.
128. *Reichsgesetzblatt* 1938, I, S. 922.
129. William L. Shirer, *The Rise and Fall of the Third Reich* Ch. 11 (Simon & Schuster 1988).
130. As the arrest report states: "In order to avoid being found in possession of weapons during a house search, he left his hunting rifle with a representative, Albrecht Kriener . . . When Adler was taken to the police station and asked about weapons, he confessed to this."
131. Read & Fisher, *supra* note 32.
132. Alfred Flatow, *supra* note 2.
133. Vierte Verordnung, *supra* note 106.
134. Alfred Flatow, *supra* note 2.
135. John R. Angolia & Hugh Page Taylor, *Uniforms, Organization & History of the German Police* 129 (R. James Bender Publishing 2004).
136. Wolfgang Finze & Philip Pai, *Mangel-Erscheinungen*, Visier: Das Internationale Waffen-Magazin, July 2006, at 136, 142.





137. About Walther, *see* <http://www.waltheramerica.com/webapp/wcs/stores/servlet/CustomContentDisplay?langId=-1&storeId=10002&catalogId=13102&content=10002> (last visited Nov. 2, 2008).
138. *Id.*
139. Adler, *supra* note 86.
140. *See* Hans E. Pffingsten & George A. Hoyem compls., German and Austrian Gunmakers Trade Catalogs (Armory Publications, n.d.) (reprint of catalogues dating from 1914 to 1935).
141. *Id.*
142. Adler, *supra* note 86.
143. *E.g.*, Alfred Flatow, *supra* note 2.
144. *See* Schwab, *supra* note 32, at 24–25; Read & Fisher, *supra* note 32, at 68.
145. A comprehensive search of the literature in English and German on *Reichskristallnacht* did not reveal a single source which mentioned the disarming of Jews before the pogrom. Read and Fisher misread the date the disarming began, but otherwise correctly observed: “The police had, in fact, already taken precautions to ensure that the Jews could not fight back effectively. On November 8, they had begun disarming Jews, removing anything that could be used for protection from every Jewish household.” Read & Fisher, *supra* note 32, at 64, 260 (citing *Völkische Beobachter*, Nov. 9, 1938 (citing statistics of weapons seized)); *see infra* notes 149–54 and accompanying text.
146. *See* Schwab, *supra* note 32, at 1–6.
147. *Id.* at 59–76.
148. No reference to the subject could be found in a search of issues of *Der Völkische Beobachter* dated Oct. 1–Nov. 8, 1938.
149. *Razzia auf Judenwaffen*, *Der Angriff*, Nov. 9, 1938, at 14.
150. *Bewaffnete Juden*, *Fränkische Tageszeitung*, Nov. 9, 1938, at 2.
151. *Berlins Juden wurden entwaffnet*, *Berliner Morgenpost*, Nov. 9, 1938.
152. *Entwaffnung der Berliner Juden*, *Der Völkische Beobachter*, Nov. 9, 1938.
153. *Waffenabgabe der Juden in Berlin*, *Berliner Börsen Zeitung*, Nov. 9, 1938, at 1.
154. *Id.*





155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.*
159. Vierte Verordnung, *supra* note 106, at § 1(2).
160. *See Waffenabgabe der Juden in Berlin, supra* note 153 and accompanying text.
161. The Flatow and Gold arrest records verify this.
162. The Adler arrest record exemplifies this.
163. Arnt Cobbers, *Architecture in Berlin, The Most Important Buildings and Urban Settings* (Jaron Verlag 2002), <http://www.berlin.de/tourismus/sehenswuerdigkeiten.en/00055.html> (last visited Aug. 16, 2007).
164. *See Waffenabgabe der Juden in Berlin, supra* note 153 and accompanying text.
165. *Id.*
166. *See supra* notes 56 and 84 and accompanying text.
167. *See supra* note 125 and accompanying text.
168. *See supra* note 153 and accompanying text.
169. *Waffenabgabe der Juden in Berlin, supra* note 153.
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *See supra* note 57 and accompanying text.
175. *See supra* note 84 and accompanying text.
176. *See supra* note 155 and accompanying text.
177. Read & Fisher, *supra* note 32.
178. Miller, *supra* note 68, Ch. 3; Saul Friedländer, *Nazi Germany and the Jews: Vol. I, The Years of Persecution, 1933–1939* 177, 257–63 (1997).





179. *See* Bella Fromm, *Blood & Banquets: A Berlin Social Diary 280* (Carol Publ'g Group 1990).
180. *Id.*
181. *Die Tagebücher von Joseph Goebbels*, Teil I Aufzeichnungen 1923 – 1941, Band 6 August 1938 – Juni 1939, Herausgegeben von Elke Fröhlich 124 (K..G. Saur München 1998).
182. *Id.* at 142.
183. *Id.* at 176–77.
184. *Id.* at 178 (Nov. 9, 1938 entry).
185. Read & Fisher, *supra* note 32. at 64.
186. “Helldorff läßt in Berlin die Juden gänzlich entwaffnen. Die werden sich ja auch noch auf einiges andere gefaßt machen können.” *Die Tagebücher von Joseph Goebbels*, *supra* note 181 (Nov. 10, 1938 entry).
187. *Id.*
188. *Id.*
189. *Id.*
190. *See* Read & Fisher, *supra* note 32, at 64–66; Schwab, *supra* note 32, at 20.
191. Schwab, *supra* note 32, at 22.
192. *Id.*
193. “*Sollten bei den kommenden Aktionen Juden im Besitz von Waffen angetroffen werden, so sind die schärfsten Massnahmen durchzuführen. Zu den Gesamtaktionen können herangezogene werden Verfügungstruppen der SS sowie Allgemeine SS.*” Gestapo II Mueller, An alle Staph Steller und Stapoleitstellen, in *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg*, vol. 25, at 377 (original German version); Read & Fisher, *supra* note 32, at 68.
194. *Nazis Smash, Loot and Burn Jewish Shops and Temples Until Goebbels Calls Halt*, N.Y. Times, Nov. 11, 1938, at 1.
195. *Völkische Beobachter*, Nov. 10, 1938, at 1; *Berliner Börsen Zeitung*, Nov. 10, 1938, at 1; *Der Angriff*, Nov. 10, 1938, at 7; *see also* Joseph Walk, *Das Sonderrecht für die Juden im NS-Staat* (1981).
196. *Nazis Smash*, *supra* note 194, at 1.
197. *Id.*
198. *Id.*





199. *Id.*
200. *Id.*
201. *Id.*
202. *Vienna's Temples Fired and Bombed*, N.Y. Times, Nov. 11, 1938, at 2.
203. *Neue Zürcher Zeitung*, Nov. 13, 1938, at 2.
204. See Halbrook, *supra* note 31, at 518–25.
205. Victor Klemperer, *I Will Bear Witness 1933–1941* xi, xiv (Martin Chalmers trans., The Modern Library 1999).
206. *Id.* at 275.
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.*
211. Klemperer, *supra* note 205, at 275–76.
212. *Reichsgesetzblatt* 1938, I, 1571. Printed in *Berliner Borsen Zeitung*, Nov. 12, 1938, 12.
213. *Id.*
214. *Id.* § 1.
215. *Id.* § 2.
216. *Id.* § 4.
217. The regulation was widely noticed in the English-speaking press. *E.g.*, *Jews Pay for Nazi Damage*, Times (London), Nov. 14, 1938, at 12a; *Ban on Firearms for Jews*, Boston Globe, Nov. 12, 1938.
218. Schwab, *supra* note 32, at 25.
219. *Id.*
220. *Jew Charges Nazi Wrecked Home of Friend*, Chicago Tribune, Nov. 13, 1938, at 2b.
221. *Id.*
222. *Id.*
223. *Id.*





224. Honaker, *Anti-Semantic Persecution in the Stuttgart Consular District*, Nov. 12, 1938, U.S. National Archives, Microfilm Series LM 193, No. 23, 862.4016, at 408–15. Reprinted in *The Holocaust*, Vol. 3, *The Crystal Night Pogrom 183–84* (John Mendelsohn ed. Garland 1982); see also Christoph Strupp, *Observing a Dictatorship: American Consular Reporting on Germany, 1933–1941*, *Bulletin of the German Historical Institute*, Issue 39, at 79 (Fall 2006).

225. Honaker, *supra* note 224.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Jour-Echo de Paris* (quoted in *Journal de Genève*, Nov. 16, 1938 at 8).

232. Geheime Staatspolizei Staatspolizeileitstelle München, An Polizeipräsidium München et al., *Betreff: Waffenablieferung durch Juden*. 19 December 1938. BHStA, B.Nr. 39859/38 II G Ma.

233. *Id.*

234. Wannsee Protocol, Jan. 20, 1942, *available at* <http://www.yale.edu/lawweb/avalon/imt/wannsee.htm>.

235. Geheime Staatspolizei, *Evakuierung von Juden nach den Osten*, 6.7.1942, RG-14.006*01, B.Nr. II B 2 - 326/42 g, copy from Rostock city archives in United States Holocaust Memorial Museum, Washington, D.C.

236. Andreas Heusler & Tobias Wenger, *Kristallnacht: Gewalt gegen die Münchner Juden im November 1938* 184 (Buchendorfer Verl. 1998).





How Not to Study the Effect of Gun Levels on Violence Rates

Gary Kleck

Most research on the effects of rates of gun ownership on violence crime rates has little of a persuasive nature to say on the subject, because it is afflicted by the same simple methodological problems that have characterized this field of inquiry for decades: (1) the failure to properly model the possible two-way relationship between gun levels and violence rates; and/ or otherwise confusing the effect of violence rates on gun levels with the effect of gun levels on violence rates, (2) the use of invalid measures of gun levels, and (3) the failure to control for a substantial number of (or any) possible confounding factors, i.e. factors that influence violent crime rates but are also associated with gun levels.

A recent article by Philip Cook and Jens Ludwig is used to illustrate these problems, since it suffers from all three flaws. A review of prior research demonstrates how consequential these problems are, showing that findings interpreted as indicating a violence-increasing effect of gun levels are entirely confined to research that did little or nothing to solve these problems. Finally, it is shown that it is perfectly possible to avoid the problems, and that very different findings are obtained when one does so. The handful of studies that have seriously addressed all three problems consistently find no significant positive effect of gun ownership levels on violence rates.

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The central premise behind gun control as a policy to reduce crime or violence is that gun ownership levels affect rates of crime or violence. While most scholars conclude that gun levels do not affect rates of nonfatal crime such as robbery or aggravated assault, many assert that gun levels do affect homicide rates, primarily be-





cause use of a gun in attacks increases the likelihood that they will result in the victim's death.

Unfortunately, research on the effect of gun levels on homicide and other crime rates has generally been of poor quality. Even more discouraging is the fact that scholars keep making the exact same mistakes over and over again. While many other mistakes are made, probably the three most consequential are these:

- (1) the failure to properly model the possible two-way relationship between gun levels and violence rates, or otherwise confuse the effect of violence rates on gun levels with the effect of gun levels on violence rates,
- (2) the use of invalid measures of gun levels, and
- (3) the failure to control for a substantial number of (or any) possible confounding factors, i.e. factors that influence homicide/crime rates but are also associated with gun levels.

I. ADDRESSING CAUSAL ORDER

Table 1 (at the end of this Article) summarizes 36 published English-language studies in this area, and shows that hardly any scholars in this area even made an attempt to address the chick-and-egg problem of whether

- (a) more guns cause more violent crime, or
- (b) more violent crime causes higher gun levels by motivating people to acquire guns for self-protection.

Researchers have typically adopted one of four unhelpful responses to this problem:

- (1) ignore the issue altogether (e.g., Lester 1988; Killias 1993; Hemenway and Miller 2000),
- (2) mention the issue but explicitly deny it is a problem (e.g., Stolzenberg and D'Alessio 2000; Miller, Hemenway and Azrael 2002),





(3) acknowledge it as a possible problem in a pro forma way but do nothing about it (e.g., Azrael, Cook and Miller 2004; Miller, Hemenway, and Azrael 2007), or

(4) acknowledge the problem but apply inappropriate solutions (see last column, labeled “Causal Order”).

The most common variant of the last response is to simply relate the current crime rate to the previous year’s gun levels (e.g., McDowall 1986; Southwick 1997; Duggan 2001; Sorenson and Berk 2001; Cook and Ludwig 2002; Moody and Marvell 2005). Its intuitive appeal is based on the obvious point that this year’s violence rates cannot affect last year’s gun ownership levels. Thus, the tactic seems to avoid the causal order problem. Unfortunately, the approach is basically an evasion of the causal order problem rather than a solution. It effectively “assumes away” the possibility of gun levels having an *immediate* (rather than lagged) effect on crime rates, and crime rates immediately affecting gun acquisition for self-defense.

This technical issue matters a great deal, because results have been radically different depending on how researchers responded to problem. The few studies that have applied potentially appropriate methodological responses to the causal order problem have found no positive effect of gun levels on crime rates (Kleck and Patterson 1993; Kovandzic et al. 2008).

II. MEASUREMENT OF GUN LEVELS

Table 1 shows that researchers have used a wide variety of measures of gun prevalence (described in detail in endnote b), but direct evaluations of their validity indicate that nearly all of these measures are invalid (Kleck 2004a). Only the percent of suicides committed with guns (PSG) shows strong validity for purposes of measuring levels of gun ownership in different areas. Further, *none* of the measures, including PSG, are valid for purposes of judging trends over time.

Some scholars continue to insist that PSG is valid for measuring trends in gun ownership, but create a false appearance of support for this claim, using one of several techniques. One method is report the correlation of PSG with direct survey measures of gun ownership, combining both cross-sectional covariation and cross-temporal





covariation (e.g., Duggan 2001; Cook and Ludwig 2002; Miller et al. 2002; Azrael et al. 2004). This is wrong because it takes advantage of the genuinely strong correlation of PSG and survey measures *across areas* and lumps it in with the (nonexistent) correlation of PSG and survey measures *across time*. Kovandzic and his colleagues (2008) demonstrated that all of the correlation between PSG and survey measures of gun prevalence, when cross-area and cross-temporal data are mixed together is in fact due to cross-area correlation. Thus, the supposed validity tests of Duggan and the rest actually indicate nothing about the ability of PSG to track changes over time in gun prevalence.

Another technique for seeming to support the cross-temporal validity of PSG is to compute its correlations over time (as is proper), but correlate the levels of the two variables rather than year-to-year changes in the variables (apparently used by Cook and Ludwig 2006). The use of the levels of the variables will exaggerate the strength of the cross-temporal association merely because the magnitude of the variables tend to be of roughly the same size over a period of time, even if year-to-year movements of the two variables do not correlate with one another at all. The more appropriate test of the cross-temporal validity of PSG is to see if year-to-year changes in PSG are correlated with year-to-year changes in direct survey measures of gun prevalence, as are produced in the General Social Surveys.

The two methods were used in the analysis reported in Table 2 (at the end of this Article). Using all the GSS data available up through 2006, the cross-temporal correlations between PSG and the direct GSS measures of gun ownership prevalence were computed, first using the levels of the variables, then correlating year-to-year changes in the variables. The figures in the first column indicate that, contrary to Cook and Ludwig (2006), PSG does not significantly correlate with the GSS measures for four of the nine regions, even when the correlations are computed with the levels of the variables, and the five correlations that are significantly different from zero are far too weak to indicate that PSG is a good proxy for changes in gun prevalence. For example, even for the region with the strongest correlation, the West South Central region, the correlation of 0.694 implies that 48 percent ($0.694^2=0.48$) of the variation in PSG is shared





with variation in the GSS measure. Put another way, most of the variation (52%) in PSG is independent of variation over time in gun prevalence as measured in the GSS. By no stretch of the imagination can a proxy measure be regarded as having good validity if *most* of the variation in the proxy is independent of the target concept being measured. More significantly, the second column of numbers indicates that when the more appropriate year-to-year changes are analyzed, there is essentially *no* association over time between PSG and direct survey measures of gun prevalence. In sum, PSG is apparently useless for tracking changes in gun prevalence, despite its considerable ability to assess differences in gun prevalence across areas.

Consequently, the findings of nearly all studies that have attempted to relate changes over time in gun ownership to changes in violent crime rates are meaningless, because the researchers were not actually measuring changes in gun levels (e.g., Cook and Ludwig 2002; Miller et al. 2002; Moody and Marvell 2005; Cook and Ludwig 2006). The only potential exception to this generalization would be studies that used direct survey measures of gun ownership. The problem with the studies that have used this method so far, however, is that (a) the survey's sample sizes for the areas (typically Census regions) used in the study were too small to provide meaningful estimates of changes in gun prevalence (e.g., Miller et al. 2002), and (b) there apparently has not actually been any significant change in gun prevalence over the last several decades, so there has been no opportunity to estimate what effects on violent crime rates might be produced by changes in gun prevalence (Kleck 2004a). For example, Miller and his colleagues (2002) claimed that region-level changes in survey-measured gun prevalence caused changes in homicide rates, but they did not show that any of their survey-based year-to-year changes in regional gun prevalence were statistically significant. In fact, virtually none of them are significant, and the few that are significant are implausibly large—for example a change in New England in the percent of households with guns from 16.6 in 1982 to 42.9 percent in 1984, and then back down again to 25.1 in 1985 (author's analysis of GSS data—see source in note a of Table 2). Miller and his colleagues apparently were merely modeling statistical “noise,” e.g. patterns in errors in survey measures of gun prevalence. In contrast, Killias and his colleagues (2001) also used survey measures of gun prevalence,





but studied entire nations and consequently had ample sample sizes for estimating gun prevalence; they found *no* significant effect of gun prevalence on rates of homicide, robbery, or aggravated assault. It clearly matters whether survey-based studies had sufficient sample size for stable estimates of gun prevalence.

The general pattern evident in Table 1 is that nearly all studies claiming to find crime-increasing effects of gun levels either

(1) used invalid gun measures, that is, those other than PSG used in a cross-sectional analysis or direct survey measures (e.g., McDowall 1991; Southwick 1997; Stolzenberg and D'Alessio 2000; Duggan 2001), or

(2) used PSG inappropriately to measure changes in gun levels (McDowall 1991; Cook and Ludwig 2002; Miller et al. 2002; Moody and Marvell 2005; Cook and Ludwig 2006).

Of the handful that used PSG appropriately, in a cross-sectional context (i.e., comparing different areas with each other), only two took appropriate steps to address causal order (Kleck and Patterson 1993; Kovandzic, Schaffer, and Kleck 2008), and both of these found no significant positive effect of gun levels on homicide rates or other violent crime rates.

III. CONTROLLING CONFOUNDING VARIABLES

It is also essential that researchers seeking to estimate the effect of gun levels on crime rates statistically control for “confounding variables”—those factors that affect crime rates, but also are associated with gun ownership rates. If this is not done, the supposed effects of gun levels will be confused with the effects of the confounding variables. The more of these likely confounding variables that the researcher controls, the less likely this problem will arise. Statisticians describe this as the “omitted variables” problem, because researchers failed to include confounding variables in their multivariate equations predicting violent crime rates. For example, if an area was characterized by a culture that encouraged violent behavior, but gun ownership was also common in that area, then that violent subculture would be a confounding variable because it affects violence rates but is also correlated with gun ownership. Because the





southern parts of the U.S. are thought to be characterized by a regional culture of violence, but also have higher gun ownership rates (Kleck 1997, p. 102), more careful analysts control for the regional location of states or cities as a way of indirectly controlling for a possible Southern subculture of violence whose effects on violence might be confused with effects of gun levels.

Table 1 indicates that the vast majority of studies of the effect on gun levels on crime rates did a very poor job of controlling for potential confounding variables. Of 36 studies, only eleven studies controlled for more than three significant control variables; fourteen studies controlled for *none* (e.g., McDowall 1986; Killias 1993; Hemenway and Miller 2000; Duggan 2001). Only two studies controlled for more than six significant control variables—Moody and Marvell (2005) and Kovandzic et al. (2008). Both found no significant positive effect of gun levels on violence rates. The pattern is clear—when researchers do a good job of controlling for potential confounding variables, they find no support for the hypothesis that more guns lead to more crime.

To summarize, the only research that supports the hypothesis that higher gun ownership rates cause higher crime rates is poor quality research that makes at least one, and usually all of, the three key methodological errors identified here. Conversely, research that minimizes these flaws consistently finds no support for the hypothesis.

IV. AN EXAMPLE OF HOW NOT TO STUDY THE EFFECT OF GUN LEVELS ON CRIME RATES

A recent article by Philip Cook and Jens Ludwig (2006) nicely illustrates all three of these flaws. The authors used a county-level panel design to study homicide trends in the 200 largest U.S. counties over the period 1980-1999, and also performed a state-level version of the same analysis, measuring gun prevalence as the percent of suicides committed with a gun (which they label FSS). They attempted to deal with causal order problems by estimating the association between the previous year's (lagged) gun prevalence and the current year's homicide rate. They concluded that higher gun prevalence causes higher homicide rates.



A. The Failure to Properly Address Causal Order Issues in the Relationship between Gun Levels and Homicide Rates

Higher gun levels may affect homicide rates, but higher homicide rates can also contribute to higher gun ownership rates. Homicide is both the most frightening of crimes, and the most highly publicized, so the occurrence of homicides can encourage more gun acquisition, especially of handguns, for self-protection. This contributes to a thorny chicken-and-the-egg statistical problem—if one finds more gun ownership in places or times with more homicide, did higher gun ownership lead to higher homicide rates, or did higher homicide rates lead to higher gun ownership levels?

Statisticians refer to a problem of “simultaneity”—X affects Y, but Y simultaneously affects X. Although the strategy is intuitively appealing, one cannot solve a simultaneity problem merely by lagging one of the variables and treating it as the cause and the other variable as the effect. If you could, everyone would do it this simple way, and a lot of very complicated statistical analysis would not need to have been done. The obvious attraction of this simplistic strategy is that it seems to solve the causal order problem by ruling out the possibility of a two-way causal relationship between the key independent variable (gun prevalence in this case) and the dependent variable (the homicide rate). After all, this year’s homicide rate clearly cannot affect last year’s gun prevalence, or anything else in the past. The basic problem nevertheless remains because this year’s homicide rate *can* affect the *current* year’s gun prevalence, which can in turn affect the current year’s homicide rate. Thus, homicides committed in 2003 could motivate some people to acquire guns in 2003, thereby affecting gun prevalence measured for the year 2003, and guns acquired in 2003 could be used to commit murders in 2003.

Changes in gun prevalence can have immediate effects on the homicide rate, notwithstanding Cook and Ludwig’s misleading statements that “transfers that move guns from households to use by criminals will ordinarily take some time” (p. 382). The more pertinent observation would be that sometimes guns take very little time to make this “move,” so gun acquisition by criminals can *immediately* affect the homicide rate. Cook and Ludwig included only the lagged gun prevalence variable as a predictor in their homicide rate



equation, and by doing so were implicitly assuming that gun prevalence can only affect the homicide rate after a period of at least a year has passed (their observations pertained to one-year units of time). That is, they assumed that guns have *only* a lagged effect on homicide, and *no* immediate (within one year) effect whatsoever.

While it is possible that increases in gun prevalence have some lagged effects, it is not plausible that they have no immediate effect. Violence-prone people who acquire guns do not all wait at least one year before committing a homicide with the gun. Thus, the authors misspecified their model of homicide by excluding the current year's gun prevalence level. They also thereby *evaded* the problem of simultaneity rather than solving it by properly modeling it, e.g., by using instrumental variables methods. If there really is a simultaneous two-way relationship between guns and homicide, the authors' estimates of the "effect" of guns were biased and inconsistent, and thus uninterpretable (Maddala 1992).

As a result, the significant positive coefficient that the authors obtained for their lagged gun prevalence variable may merely reflect the impact of previous years' homicides on previous years' gun prevalence levels, combined with the fact that the homicide rates for previous years are very highly correlated with the current homicide rate. The coefficient cannot be interpreted as an estimate of the effect of gun prevalence on homicide rates, as the authors claimed. As far as one can tell, the positive guns/homicide association that the authors obtained was entirely the result of the effect of homicide rates on gun prevalence.

B. Use of an Invalid Measure of Trends in Gun Levels

The research was also afflicted by a familiar measurement problem. Cook and Ludwig explicitly conceded that (1) for their purposes, their measure of gun prevalence, the percent of suicides committed with guns (FSS), must reflect "variation over time" in gun prevalence, and that (2) validity for measuring cross-sectional differences in gun prevalence (which *has* been established—Kleck 2004a) is not the same as validity for purposes of measuring changes over time (Cook and Ludwig 2006, p. 380). They claimed that they did establish the cross-temporal validity of FSS by demonstrating a significant association over time between FSS and direct survey measures





of gun ownership derived from the General Social Surveys (GSS). The GSS measure was used as the “criterion” variable—a measure already believed to be a relatively valid measure of the target concept being measured.

Their validity test, however, indicated nothing about how strongly correlated FSS is with those survey measures of gun ownership, because the authors merely found that the regression coefficient for FSS, in an equation where the GSS survey measure was the dependent variable, was statistically significant—i.e., significantly different from zero. As any beginning statistics student knows, the fact that an association is statistically significant does not mean it is a strong association. All the authors could legitimately conclude from this information was that the association was not likely to be *zero*—hardly a meaningful standard for measurement validity. To be a valid measure of gun levels, FSS must be *strongly* correlated with actual gun levels, and none of the findings presented by Cook and Ludwig supported such a correlation.

Further, an analyst cannot tell from a regression coefficient how close to a perfect association the association is between the independent variable and the dependent variable, because there is no specific upper limit to a regression coefficient. Consequently, the authors had no objective basis for their claim that the association of FSS with the GSS criterion measure was “especially strong” (p. 381). The authors did not even *report* these regression coefficients, never mind the far more relevant correlation coefficients, measuring the correlation of FSS with GSS over time. If FSS did have a strong association with GSS over time, the authors should have been happy to share this information with readers, since it would bolster their case. Certainly space limitations cannot account for this information—it would have taken a single line of text to say “The average cross-temporal correlation of FSS with the GSS measure across the nine regions was 0.93” or something of that sort.

In fact, the correlation between FSS and GSS over time is not just weak—it is basically zero. Kleck (2004a, pp. 18-25) showed that FSS is unrelated to the GSS survey-based criterion over time. Cook and Ludwig were clearly familiar with this study, since they cited it on p. 380. Depending on exactly which set of years one studies, the correlation of FSS with GSS over time may be weak positive or



weak negative, but it is never very different from zero. As previously noted (see Table 2 and accompanying text), FSS (aka PSG) is only significantly correlated with GSS over time if one inappropriately uses levels of the variables instead of year-to-year changes, and even then the correlations are far too weak to support the use of FSS to measure changes in gun levels.

The authors went to considerable effort to persuade readers that there really is a strong correlation between GSS and FSS, using the technique of shifting to a different level of analysis. In their footnote 6 (p. 382) they reported that the GSS/FSS correlation at the *national* level is $r=.635$. Even using levels of the variables, my computations indicate the national correlation was only 0.359 for the period 1973-2006 (Table 2, first column). The 0.635 correlation, however they obtained it, is in any case irrelevant since the authors' analysis was done at the level of counties and states, not the nation as a whole, and their main test of measurement validity was at the level of Census regions (their footnote 2). This raises the question - why report the national-level correlation? Why not just directly report the region-level correlations over time that were used in their validity tests? One possible explanation is that correlations at lower levels of aggregation (e.g., for regions rather than nations) are far lower, and are sometimes even negative—that is, year-to-year changes FSS are in the opposite direction to changes in the criterion measure (Table 2; Kleck 2004a, p. 20). Thus, the national-level .635 correlation tells us nothing about cross-temporal correlations at the level of regions, and certainly nothing about cross-temporal correlations at the level of counties or states.

In sum, the FSS measure of gun levels is invalid for measuring changes in gun levels, and it therefore is impossible to tell from this research whether changes in gun prevalence caused changes in homicide rates, since there is no basis for believing that the authors actually measured changes in gun prevalence.

C. Arbitrary and Limited Specification of Control Variables

The authors implied that they controlled for possible confounding variables by controlling for burglary and robbery rates - because they “are a good reflection of criminogenic factors in the community



that influence homicide rates,” and because their model “includes year and county/state fixed effects” (i.e., dummy variables for each year and county or state) (p. 382). These fixed effects dummy variables indirectly control for factors that may affect homicide rates but were not directly measured. Thus, year dummies indirectly control for homicide-relevant factors that vary across years but not across areas, while county or state dummy variables indirectly control for factors that vary across areas but not across years. They also explicitly controlled for a handful of other variables (p. 384), for a total of six explicitly controlled variables. These controls very likely did help isolate the effect of gun prevalence, but are not very extensive. Merely including fixed effects variables by itself does not control for the effects of all other potential causes—if that were true, none of the explicitly measured independent variables such as “percent urban” would have had significant coefficients, since all the variation in homicide rates would have already been explained by the fixed effects dummies.

As is unfortunately common in criminological research, the authors did not report trying out any other control variables, or justify why just these six variables were controlled and not others. And if they did try controlling other combinations of variables, as seems very likely, they did not report the results of these alternative specifications. Among the more conspicuous variables omitted from the authors’ models, but commonly included in models of homicide rates, were:

- (1) some measure of Southern culture (such as percent of the population born in the South),
- (2) the poverty rate (e.g., percent of families under the poverty line),
- (3) the divorce rate (a measure of family disorganization),
or
- (4) measures of CJS crime control efforts such as police officers per capita or the share of the population in prison.

The authors did not assert that these variables have no effect on homicide rates or are uncorrelated with gun prevalence—they were merely silent on the question. In fact, past research has found these





variables to affect homicide rates (e.g., Kleck and Britt 1993), and there are sound reasons to expect them to also be correlated with gun prevalence, in which case their omission will bias the estimated effects of gun prevalence. Thus, the authors' failure to control for known determinants of homicide rates that are likely to be correlated with gun levels provides misleading estimates of the effects of gun levels on homicide rates, because the guns/homicide association actually reflects, to an unknown degree, the effects of these omitted variables, rather than the effects of gun levels.

The authors' choice of control variables looks all the more arbitrary in light of the variables they *did* include in their model. For example, in their county-level model, they included two variables (mobility, percent female-headed households) that were not significantly related to homicide rates (p. 384). And although they did not report this in their paper, Moody (2009) replicated their state-level model and found that three of the variables in that model were not significantly related to homicide rates (percent urban, mobility, percent female-headed households). Thus, Cook and Ludwig included variables in their models that apparently did not belong, even though their own estimates indicated they were unrelated to homicide rates, while omitting variables that past research had shown *were* related to homicide rates.

This is not mere technical quibbling. The choice of control variables substantially affects the estimates of the effect of gun levels on homicide rates. Moody (2009) re-estimated Cook and Ludwig's state-level models with a different set of control variables, omitting the three nonsignificant variables, and adding in two variables related to homicide rates, an employment measure and the prison population per capita. With this less arbitrary set of control variables in the model, Moody found there was no significant relationship between gun ownership (as measured by PSG) and homicide rates.

There is no way to know if Cook and Ludwig estimated models with less arbitrary sets of control variables included, but it cannot be argued that it did not occur to them to include the prison rate variable. It not only has a highly significant negative relationship with state homicide rates (as demonstrated by Moody), but Cook and Ludwig themselves had previously used the variable in their own state-level crime rate analyses and found it to be significantly





related to burglary rates (2003, p. 105). It is hard to believe Cook and Ludwig did not estimate any homicide models with the prison rate included, and assuming they did so, hard to understand why they did not obtain the same significant negative association that Moody did. And even if they had somehow found no significant association, why omit the prison rate if they included three other variables that also had no significant association with homicide rates?

In sum, it is clear that estimates of the effect of gun levels on crime rates can differ radically depending on which control variables are included in the model, and researchers like Cook and Ludwig include arbitrary combinations of control variables without justifying either why they omit variables known to be related to the crime rates being analyzed, or why they include variables that their own results (as well as those of prior researchers) indicate are irrelevant. Needless to say, suspicious readers can only wonder whether some researchers try out different combinations of control variables until they get results to their liking. In the absence of theoretically and methodologically legitimate justifications for the choice of control variables, this suspicion is bound to arise.

D. Sample Bias

While the aforementioned flaws are the three most common of the serious problems distorting research on the impact of gun levels on violence rates, the Cook-Ludwig study suffered from other serious problems as well. Sample bias in the county-level analysis was introduced by the authors' decision to confine the analysis to just the 200 counties with the largest populations, i.e. big urban counties. These are places where homicide rates are higher, and thus where guns are more likely to be used to commit homicides. In contrast, in smaller, less urban counties, homicide is lower, gun ownership is higher, and thus a much smaller share of guns are used to commit homicides or other violent crimes, or even to be owned for defense against violent crime (Kleck 2004b). In short, by studying only big urban counties, the authors were confining their analysis to places where there was likely to be a stronger connection between guns and violent crime. Cook and Ludwig offered a possible legitimate explanation for examining only large counties—that the number of suicides per year is large enough to reliably measure FSS only in



bigger population counties—but this does not alter the biased nature of the resulting sample, or mitigate the potentially distorting effects it might have on results. A better approach would have been to use both an all-counties sample and a big-counties sample, and see if results are the same.

If this hypothesis about sample bias is correct, the more one confines analysis to big urban counties, the larger the coefficient representing the effect of gun prevalence on homicide will be. This was directly confirmed in the authors' own results in their Table 3 (p. 385). The gun coefficient was 0.086 in the total homicide model (first column) when the estimate was based on the 200 biggest counties, increased to 0.131 when the sample was further limited to the 100 largest counties, and increased again to 0.223 when it was limited still further to the 50 biggest counties—a near-tripling of the estimated effect. The authors failed to see the sample bias implications of this pattern, instead merely regarding it as an indication that their estimates of gun effects were getting “better” as measurement error in their proxy for gun prevalence, FSS, went down (pp. 385-386). Their own results suggest that if the authors had studied all U.S. counties rather than just big urban counties, the estimated effect of gun levels on homicide rates would have been much lower, and possibly not significantly different from zero.

E. Overinterpretation of the Patterns of Findings Regarding Gun vs. Nongun Homicide

Cook and Ludwig carried out a perfectly reasonable set of analyses in which the dependent variable was, successively, (1) the rate of *total* homicides, (2) the rate of *gun* homicides, and (3) the rate of *nongun* homicides, as many prior researchers have done. They reasoned that if gun prevalence was really contributing to higher homicide rates, rather than being spuriously related due to its association with other homicide-affecting variables, it should be related to the gun homicide rate but not the nongun homicide rate. And this was indeed what the authors found (Table 3), leading them to conclude that this supported their conclusion that higher gun prevalence increases homicide rates.

Unfortunately, this pattern of findings is also perfectly consistent with the opposite proposition—that gun prevalence has *no*



effect on homicide rates, but higher homicide rates motivate more people to acquire guns for protection. If causation runs from homicide rates to gun prevalence (a problem the authors did not solve by using lagged gun prevalence as their gun measure), the authors should have devoted some thought to the possibility that rates of *gun* homicide have a stronger motivating effect on gun acquisition for self-protection than rates of *nongun* homicide. This would be plausible if gun homicides were more frightening than nongun homicides, and more likely to motivate acquisition of guns for protection. This may be true simply because gun homicides involve guns, but it is also reasonable because gun homicides are more likely than nongun homicides to be stranger killings (29 percent vs. 23 percent; author's analysis of FBI Supplementary Homicide Reports data covering 1976-1998 U.S. homicides - Inter-university Consortium for Political and Social Research, 2001). Violence among strangers is more frightening because it is perceived as more random and unpredictable, and thus a risk that can affect anyone, not just those with relatives and other associates known to be violent. Gun homicides are also more likely than nongun homicides to be publicized in newspapers (Duwe 2000, p. 384), so people are more likely to hear about them and possibly be motivated to acquire guns for self-protection as a result. Consequently, one would expect gun ownership rates to be more strongly related to gun homicide rates than to nongun homicide rates because the occurrence of gun homicides is more likely to motivate people to acquire guns for self-protection than the occurrence of nongun homicides—even if gun ownership levels had no effect whatsoever on homicide rates. Thus, the meaning of this pattern of guns/homicide associations is much more ambiguous than Cook and Ludwig's one-sided discussion suggested.

CONCLUSION

Research on the effect of gun levels on violence rates will not progress until researchers start taking these issues seriously. Competent research requires that analysts use accepted methods for modeling the possible two-way causal relationship between gun levels and violence rates, or otherwise sort out the difficult causal order problems involved. Merely relating the lagged gun ownership rate to the current crime rate is not a satisfactory method. Likewise,





they must use valid measures of gun prevalence, which at present means research studying changes over time is not feasible because there are no valid proxies for changes over time in gun prevalence. In particular, the percent of suicides committed with guns is not a valid indicator of trends in gun levels. Finally, researchers must make a conscientious effort to directly control for as many possible confounding variables as possible. The study examined in detail here is, unfortunately, not a conspicuously bad example of work in the area; quite the contrary, it is fairly typical. It was published in a reputable refereed journal, and presumably approved for publication by competent scholars. These anonymous reviewers, however, were evidently not very well-versed in the pitfalls specific to this area of research.

One might be tempted to assert that it is unreasonable to expect researchers to solve all three of these problems, because it is impossible to achieve. In fact, research approximating solutions to these problems has already been conducted (Kleck and Patterson 1993; Kovandzic, Schaffer and Kleck 2008). For example, Kovandzic and his colleagues used a valid measure of gun prevalence (the percent of suicides committed with guns, used in a cross-sectional study), controlled for a large number of potential confounding variables, and used statistically defensible methods for disentangling causal order. More specifically, they used instrumental variables methods to model the two-way relationship between guns and homicide, and carefully tested the relevance and validity of the instrument variables they used. They directly demonstrated how much difference it makes in the results whether one properly models the possible two-way relationship between gun levels and homicide rates. When this issue was ignored, and it was simply assumed that homicide rates could have no immediate effect on gun acquisition, the results seemed to indicate a significant homicide-increasing effect of gun prevalence. Once the model was modified to take account of the contemporaneous effects of homicide rates on gun ownership, however, these apparent effects completely disappeared, and even reversed slightly. That is, the prevalence of gun ownership showed a slight negative effect on homicide rates. Failing to properly treat gun prevalence as an “endogenous” variable (a variable affected by homicide rates) creates a misleading impression that higher gun prevalence leads to





higher homicide rates, when in fact the reverse is true—higher violence rates cause higher gun ownership rates.

At minimum, the work by Kovandzic and his colleagues demonstrates that the problems identified herein are amenable to credible solutions, and that research that makes a serious effort to solve these problems arrives at conclusions diametrically opposed to those drawn in studies that do not make such efforts.

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Table 1. Macro-Level Studies of the Impact of Gun Levels on Crime Rates^a

Study	Sample	Gun Levels ^b	Measure of Rates ^c	Number of Control Variables ^d	Causal Order? ^e	Results ^f
Breardley (1932)	2 states	PGH	THR	0	No	Yes
Krug (1967)	50 states	HLR	ICR	0	No	No
Newton and Zimring (1969)	4 years, Detroit	NPP	THR, TRR, AAR	0	No	Yes
Seitz (1972)	50 states	GHR, FGA	THR, AAR	1	No	Yes
Fisher (1976)	9 years, Detroit	NPP, GRR, PGH	THR	0	(No)	Yes
Phillips et al., (1976)	18 years, U.S.	PROD	THR	1	No	Yes
Brill (1977)	11 cities	PGC	ICR	0	No	No
			THR	0	No	Yes
			TRR	0	No	No
Kleck (1979)	27 years, U.S.	PROD	THR	6	(No)	Yes
Cook (1979)	50 cities	PGH, PSG	TRR	4	No	No
			RMIR	4		Yes

Table 1. Macro-Level Studies of the Impact of Gun Levels on Crime Rates^a (continued)

Study	Sample	Gun Levels ^b	Measure of Rates ^c	Number of Control Variables ^d	Causal Order? ^e	Results ^f
Kleck (1984)	32 years, U.S.	PROD	THR	5	(No)	No
			TRR	2		Yes
Maggadino and Medoff (1984)	31 years, U.S.	PROD	THR	6	(No)	No
Lester (1985)	37 cities	PCS	VCR	0	No	No
Bordua (1986)	102 counties	GLR, SIR	HAR, THR	0-4	No	No
	9 regions		GHR			No
McDowall (1986)	48 cities, 2 years ^g	PGH, PSG	TRR	0	(No)	No
Lester (1988)	9 regions	SGR	THR	0	No	Yes
Lester (1990)	48 states	PSG	THR	0	No	Yes/No
McDowall (1991)	36 years, Detroit	PSG, PGR	THR	3	(No)	Yes

Table 1. Macro-Level Studies of the Impact of Gun Levels on Crime Rates^a (CONTINUED)

Study	Sample	Gun Levels ^b	Measure of Rates ^c	Number of Control Variables ^d	Causal Order? ^e	Results ^f
Killias (1993)	16 nations	SGR	THR, GHR	0	No	Yes
Kleck and Patterson (1993)	170 cities	5-item factor including PSGh	THR, GHR, TRR, GRR, AAR, GAR	4-6	Yes	No
Lester (1996)	12 nations	PGH, PSG	THR, GHR	0	No	Yes
Southwick (1997)	48 years, U.S.	PROD	THR, TPR, TRR, AAR	0	(No)	No
Southwick (1999)	34 years, U.S.	HGS	THR, TRR, AAR, TPR, VCR, BUR	0-2	No	No
Hemenway and Miller (2000)	26 nations	PGH, PSG	THR	0	No	Yes
Lott (2000)	2 years, 15 states ^g	SGR	THR, TPR, TRR, AAR, 3 others	5	No	No

Table 1. Macro-Level Studies of the Impact of Gun Levels on Crime Rates^a (CONTINUED)

Study	Sample	Gun Levels ^b	Measure of Rates ^c	Number of Control Variables ^d	Causal Order? ^e	Results ^f
Stolzenberg and D'Alessio (2000)	4 years, 46 counties	CCW, GUNSTOL	VCR	0-1	No	Yes
Duggan (2001)	19 years, 50 states	GMR	THR, TPR, TRR, AAR	0	No	Yes
Hoskin (2001)	36 nations	PSG	THR	2	(No)	Yes
Killias et al. (2001)	21 nations	SGR	THR, TRR, TAR, GHR, GRR, GAR	0	No	No
Sorenson and Berk (2001)	22 years, California	HGS	THR	0-3	(No)	Yes
Miller et al. (2002)	10 years, 50 states	PSG, PHG	THR	0-3	No	Yes
	10 years, 9 regions	SGR	THR	0-3	No	No
Cook and Ludwig (2003)	22 years, 50 states	PSG	BUR	1	(No)	Yes

Table 1. Macro-Level Studies of the Impact of Gun Levels on Crime Rates^a (continued)

Study	Sample	Gun Levels ^b	Measure of Rates ^c	Number of Control Variables ^d	Causal Order? ^e	Results ^f
Azrael et al. (2004)	49 states	PSG	THR	1	No	Yes
Moody and Marvell (2005)	17 years, c. 29 states	PSG	THR, TRR, TAR, TPR, BUR	6-10	(No)	No
Cook and Ludwig (2006)	20 years, 50 states	PSG	THR, GHR, NHR	4	(No)	Yes
	20 years, 200 countries	PSG	THR, GHR, NHR	4	(No)	Yes
Miller et al. (2007)	50 states	SGR	THR, GHR, NHR	5-6	No	Yes
Kovandzic et al. (2008)	1,456 counties	PSG	THR, GHR, NHR	10	Yes	No
Moody (2009)	27 years, 50 states	PSG	THR	3	(No)	No
	U.S., 59 years	PROD	THR	0	(No)	No

Notes for Table 1:

- a. Table covers only studies and findings where the dependent variable was a crime rate, as opposed to the fraction of crimes committed with guns, and where gun ownership levels were actually measured, rather than assumed. Studies that examined only gun violence rates (e.g. only gun homicides) were excluded (e.g., Murray 1975).
- b. Measures of Gun Level: CCW = concealed carry permits rate; FGA = Fatal gun accident rate; GILR = Gun owners license rate; GMR = Gun magazine subscription rates; GRR = Gun registrations rate; GUNSTOL = % of the dollar value of stolen property due to guns; HGS = handgun sales (retail); HLR = Hunting license rate; NPP = Number of handgun purchase permits; PGA = % aggravated assaults committed with guns; PGC = % homicides, aggravated assaults and robberies (combined together) committed with guns; PCS = same as PGC, but with suicides lumped in as well; PGH = % homicides committed with guns; PGR = % robberies committed with guns; PSG = % suicides committed with guns; PROD = Guns produced minus exports plus imports, U.S.; SGR = Survey measure, % households with gun(s); SHR = Survey measure, % households with handgun(s); SIR = Survey measure, % individuals with gun(s).
- c. Crime Rates: AAR = Aggravated assault rate; BUR = burglary rate; GAR = Gun aggravated assault rate; GHR = Gun homicide rate; GRR = Gun robbery rate; HAR = Homicide, assault and robbery index (factor score); ICR = Index crime rate; NHR = nongun homicide rate; RMR = Robbery murder rate; THR = Total homicide rate; TPR = Total rape rate; TRR = Total robbery rate; VCR = Violent crime rate.
- d. Number of significant control variables in the most complete crime rate equations, excluding “fixed effects” variables (dummy variables denoting area or time period) and lagged dependent variables.
- e. Did research use technically sound methods to establish the causal order between gun levels and crime rates? (No) means researchers took steps to address the issue, but used ineffective methods such as merely lagging the gun variable, or used models that were probably unidentified.
- f. Yes=Study found significant positive association between gun levels and violence; No=Study did not find such a link.
- g. Panel design, two waves.
- h. Five-item factor composed of PSG, PGH, PGR, PGA, and the percent of dollar value of stolen property due to stolen guns.

TABLE 2. The Percent of Suicides with Guns is Not a Valid Measure of Changes in Gun Prevalence

Correlations of Percent of Suicides with Guns, and General Social Surveys Measure of Household Gun Prevalence, Across the Years 1973-2006^{aa}

Region	Levels	Year-to-year Change ^b
New England	.452*	-.118
Middle Atlantic	.047	.249
East North Central	.381*	.061
West North Central	.117	.188
South Atlantic	.572**	.093
East South Central	.405*	.041
West South Central	.694**	-.214
Mountain	.117	-.049
Pacific	.252	-.021
U.S.	.359	-.073

* $.01 < p < .05$

** $p < .01$

Notes for Table 2:

a. There were 21 General Social Surveys conducted during this period, in 1973, 1974, 1976, 1977, 1980, 1982, 1984, 1985, 1987, 1988, 1989, 1990, 1991, 1993, 1994, 1996, 1998, 2000, 2002, 2004, and 2006. The GSS data on percent of households reporting guns (excluding those who refused or otherwise failed to answer the question) were computed using the facilities of the University of California at Berkeley Survey Documentation & Analysis website at <http://sda.berkeley.edu/cgi-bin/hsgda?harcsda+gss06>.



Data on the percent of suicides committed with guns were computed using the facilities on the CDC Wonder website at <http://wonder.cdc.gov/mortSQL.html>. Suicide data for 2006 were not yet available, so 2005 data were substituted.

b. Year-to-year changes in the percent of suicides committed with guns (PSG) in a given region were correlated with year-to-year changes in the percent of households reporting guns in the GSS. For example, the year-to-year change in PSG for New England in 1974 was $\text{PSG in 1974} - \text{PSG in 1973}$, divided by PSG in 1973 . Thus, this figure represents the proportional change in PSG from 1973 to 1974.





Factual Errors by Gun Control Organizations in the Public Debate

Howard Nemerov

Pro-gun control organizations frequently release reports and press releases, citing data which appears to support the idea that gun control benefits society and is politically popular. However, these publications often use partial datasets that, when taken in toto, reveal a different picture. Following are recent examples from three different organizations.

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Keywords: Violence Policy Center, Brady Campaign, National Rifle Association, Children's Defense Fund

I. VIOLENCE POLICY CENTER PROVES THAT MORE GUNS MEANS LESS VIOLENT CRIME, MURDER

On May 6, 2009, the Violence Policy Center (VPC) issued a press release entitled *States with Higher Gun Ownership and Weak Gun Laws Lead Nation in Gun Death*.¹ The press release included a list of 10 states highlighting what was said to be a link between “weak” gun laws and the total “gun death rate.” VPC also included a reference to the “household gun ownership” levels in each of these 10 states, underlining VPC’s claim that “strong” gun laws correlate with drastically reduced gun ownership rates. Therefore, VPC’s theory is that guns are a vital causative factor in the reported violent crime rates.

After the VPC thrice refused my requests for their gun ownership dataset, the conclusion was that the dataset either does not exist or is VPC’s extrapolation of a 2001 survey by the North Carolina State Center for Health Statistics.²



A. Skipping data leads to sampling error

However, such extrapolations create unreliable conclusions. The American Association for Public Opinion Research explains that “The margin of sampling error is the price you pay for not talking to everyone in your population group. It describes the range that the answer likely falls between if we had talked to everyone instead of just a sample.”³ The VPC reported data only on a “sample” of ten states, rather than on all 50 states. Cherry-picking 20% of the available data in a dataset makes it easier to select the data that “prove” a predetermined conclusion. The VPC press release as an excellent example of sampling error, as shown by the different results in the following two tables. Table 1 shows the “strong” vs. “weak” results in the VPC’s selection of 10 states. Table 2 shows the “strong” vs. “weak” results when all 50 states are counted.

Table 1: Firearms and Non-Firearms Death Rates, in the 10 VPC States*							
	Total		Homicide		Suicide		Violent Violent Crime ⁴
	Gun	Non-gun	Gun	Non-gun	Gun	Non-gun	
V P C “Strong” states	4.09	44.91	1.94	1.55	2.03	5.99	334.4
V P C “Weak” states	17.12	63.09	6.95	2.82	9.19	5.78	564.9
Percent Difference	318.9	40.5	257.7	81.9	352.7	-3.4	69.0

* Because states have unique criminal justice systems, each is considered an equal entity, and therefore averaging is used, with each state equally weighted.

By using 20% of the entire dataset in Table 1, VPC makes its point that “weak” gun laws correlate with higher rates of total firearms death—more than four times as much—and higher rates of homicides using firearms (more than triple). Also, “weak” gun law states have over 4.5 times higher firearms suicide rates. Violent crime

rates support VPC’s allegation as well: “weak” gun laws correlate with more crime.

B. Bait and switch

While VPC cites alleged household gun ownership rates in its press release, VPC excludes these values in their full table.⁵ VPC also excludes the District of Columbia, which likely still has the lowest gun ownership due to its 1976-2008 ban on handguns and the possession of a functional long gun in the home.⁶ D.C. possesses a higher rate of “gun death” than any state (22.89), according to the latest data (2006) from the Centers for Disease Control (CDC), the same source that VPC cited in their report.⁷

One attribute that VPC’s “weak” states have in common is that they are all right-to-carry (RTC) states, where law-abiding citizens have a broad right to carry concealed handguns, whereas four of their five “strong” gun law states are not RTC.⁸ VPC confirms this criterion in its press release: “The VPC defined states with “weak” gun laws as those that add little or nothing to federal restrictions *and have permissive concealed carry laws allowing civilians to carry concealed handguns.*”⁹ (Emphasis added)

Since VPC is unwilling or unable to share its gun ownership research, RTC status defines the data selection in Table 2.

	Total		Homicide		Suicide		Violent Crime
	Gun	Non-gun	Gun	Non-gun	Gun	Non-gun	
Non-RTC states (VPC “Strong”)	8.40	45.86	4.53	2.02	3.56	5.47	513.52
RTC states (VPC “Weak”)	11.90	57.21	3.64	1.88	7.73	6.06	403.63
Percent Difference	41.6	24.8	-19.8	-6.8	116.9	10.8	-27.2



Examining the entire dataset, VPC's "weak" gun law states (defined by RTC) still have higher rates of total firearms death (41.6% more), but not the 4+ times difference shown in Table 1. RTC states also have higher rates of non-firearms death (24.8%)—again, less than in Table 1—indicating that there are other factors besides guns which cause these mortality figures. Firearms suicide rates are over double the rates in VPC's "strong" states (non-RTC), but whereas the difference was 4.5 times higher in VPC's select states, here it is only 10.8% more. Comparison of both tables underscores VPC's significant sampling error.

C. VPC's Achilles heel

When it comes to homicide and overall violent crime, Table 2 contradicts the VPC premise. Where "weak" states had much higher murder and violent crime rates in Table 1, the full dataset shows that "weak" (RTC) states are safer: 19.8% lower firearms homicide and 6.8% lower non-firearms homicide rates. Moreover, RTC states averaged 27.2% lower violent crime rates, according to 2006 FBI Uniform Crime data.

Suicide rates drive the difference between "gun death" in VPC's "strong" and "weak" gun law states, but since "weak" states also have higher rates of non-gun suicide, VPC would seem to have the choice of acknowledging that there are other causative factors besides gun availability, or that if more guns cause more suicides, then more guns also cause less homicide and violent crime. As it stands right now, VPC's own data and causation criteria tend to suggest that more guns in the hands of law-abiding citizens correlates with less homicide and other violent crime.

II. THE BRADY CAMPAIGN'S TAKE ON THE 2008 ELECTIONS

In the recent publication, *Guns & the 2008 Elections: Common Sense Gun Laws Won, the NRA Lost, & What It Means*, the Brady Campaign to Prevent Gun Violence declared that the 2008 federal elections were a victory for gun control:

The 2008 elections demonstrated – not for the first time – that voters support candidates who favor strong gun laws and reject the gun lobby's extremist agenda.¹⁰



What is undeniable is that the NRA [National Rifle Association] could not sway the presidential election – or the nomination battles, or races in the Senate, House...¹¹

To determine the validity of Brady's claims, election results from the House of Representatives will be examined here because the large number of election contests (435) provides extensive data on the 2008 electorate.

Brady was pleased that over 90% of their endorsed House candidates won.¹² Indeed, Brady-endorsed candidates had a 91.3% winning percentage, besting the 86.6% for NRA-endorsed candidates.¹³ How Brady produced these results is an interesting story.

A. The Numbers Behind the Numbers

One way to improve a winning percentage is to reduce risk. Overall, Brady endorsed House candidates in 34 states; the NRA endorsed candidates in 45 states (32.3% more). Moreover, Brady endorsed 172 candidates, compared to the NRA's 254 (47.7% more).

Brady reduced risk further by concentrating their endorsements in states that historically are pro-gun control. Eight states contained 64.5% of Brady's congressional endorsements (111 out of 172). Seven of these states are in the top 10 on Brady's *2008 Scorecard*, which grades states on how many gun control laws they have enacted.¹⁴ While Brady's national average score in 2008 was 17.7, the states containing 64.5% of Brady's 2008 endorsements averaged 45.0.¹⁵ (Scores on a 100 scale, with 0 worst and 100 best.)

By taking fewer risks, Brady improved their chances of posting wins in the states where they endorsed candidates. Nevertheless, this is a mixed outcome, because the NRA won in more states: NRA-endorsed candidates posted wins in 42 of 45 states; Brady won in 34 of 34.

But the Brady winning percentage is overshadowed by the fact that their wins are more top-heavy, concentrating in a few states with anti-gun environments: 63.7% of all Brady-endorsed winners came from the eight gun-control-friendly states referenced above. Brady's top two states (California and New York) comprised 32.0% of all Brady-endorsed House candidates and 33.1% of all Brady

winners. By comparison, the top 8 NRA states comprise 48.4% (less than half) of all NRA-endorsed House candidates and 48.2% of all NRA-endorsed winners. The NRA's top two states (Texas and California) comprised 19.3% of all NRA-endorsed candidates and 20.9% of NRA's winners. The NRA endorsed candidates in all of Brady's favored states except for Massachusetts, which had the highest percentage of uncontested House races: a story in itself which will be discussed later.

Brady			National Rifle Association		
State	Brady Score ¹⁶	Number Endorsed	State	Brady Score	Number Endorsed
California	79	31	Texas	9	25
New York	51	24	California	79	24
Florida	6	11	Florida	6	17
Illinois	28	11	Ohio	13	14
Massachusetts	54	10	Pennsylvania	26	14
New Jersey	63	10	Michigan	22	9
Pennsylvania	26	8	Georgia	7	10
Maryland	53	6	Virginia	18	9
Average Score	45.0			22.5	

While 64.5%, of Brady endorsements were concentrated in 8 states, the comparable figure for the NRA (65.7% of NRA endorsements) was 14 states. The top 5 Brady states comprised 50.6% of their total endorsements, and 51.0% of their total winning endorsements. It took 9 states to constitute 50% of the total NRA endorsements (51.6%) and endorsed winners (52.7%).

It should be noted that California is rated #1 in Brady's report card, indicating that it best fits the Brady agenda by enacting the most restrictive gun ownership laws in the country, yet the NRA

nevertheless took the risk of endorsing their second-largest number of candidates there.

All of the 16 states with no Brady-endorsed House candidates are historically pro-gun-rights and are graded poorly by the Brady Campaign (see Table 4). By going head-to-head in states that had previously been relatively receptive to Brady's gun control agenda, the NRA took more risks, and the greater risks resulted in a lower overall winning percentage. Conversely, Brady reduced risk by staying out of a large number of "anti-gun control" states; Brady thus garnered a high overall winning percentage in the 2008 House election cycle.

Table 4: States with no Brady endorsements

State	Brady Score ¹⁷
Alabama	15
Alaska	4
Arkansas	6
Idaho	6
Louisiana	2
Montana	8
Nebraska	10
New Hampshire	11
New Mexico	6
North Dakota	4
Oklahoma	2
South Dakota	6
Utah	4
Vermont	9
West Virginia	4
Wyoming	9
Average Brady Score	6.6

Notably, 27 of Brady's winning House candidates had uncontested elections (15.7% of all Brady-endorsed candidates) versus 24 uncontested, NRA-endorsed candidates (9.4% of all NRA



endorsements). While it is understandable to support loyal advocates, Brady's overall winning percentage is inflated by the relatively large number of races in which its endorsed candidate did not face a major party opponent (nearly one in six Brady endorsees versus less than 1 in 10 for the NRA).

As in baseball, statistics are interesting, but most of them do not count in the standings. The bottom line of the House races is how many seats were claimed: There were a total of 220 NRA-endorsed winners (50.6% of all winners), compared to 157 for Brady (36.1%).¹⁸

These numbers indicate that Brady lost the 2008 House elections.

B. What were the real election issues?

Of the 25 congressional races where a Brady-endorsed candidate went up against a NRA-endorsed candidate, Brady won 13. A 52.0% winning percent—about what one would expect from a coin toss—does not support claims that this election was a mandate for gun control, especially since all the head-to-head Brady winners were Democrat, and party affiliation had a significant impact on election results. Depending upon how much voter dissatisfaction on other issues impacted this election, Brady's slight edge here may actually indicate a lack of voter support for their agenda, because voters prioritized issues like the continued Iraq involvement, and considered the economic downturn a result of Republican policy, voting trends that began with the 2006 election when Democrats retook Congress.

In the national House races, the Cable News Network (CNN) exit polls showed that 93% of all voters thought economic conditions were "not so good" or "poor," and 81% worried the economic crisis would hurt their families.¹⁹ Overall, 62% disapproved of the war in Iraq, and 63% considered the economy the most important issue with Iraq a distant second at 10%; gun control didn't make the CNN list of voters' important issues. Only 28% thought Bush was doing a good job.²⁰

The Brady Campaign endorsed 167 Democrats out of 172 total endorsees (97.1%). Considering that House Democrats had a 58.9% winning percentage, and that Democrat candidates graded "A" by the NRA had an 86.2% winning percentage, it is impossible to find any evidence that Brady's 52% head-to-head winning percentage in-





dicates a mandate on gun control. It appears more likely that Brady simply benefited by riding the coattails of the Democrat victory.

C. Data Versus Relevance

Brady attempts to make the case that because states with assumedly above-average gun ownership rates voted for Obama, America supports gun control:

In state after state, even in red states with high rates of gun ownership, results in the Presidential race proved that support for common sense gun laws can win votes, and is not politically lethal.²¹

It is true that some states with relatively high rates of gun ownership voted for Obama. Does this prove that Obama's support for gun control is something that "can win votes"? Not necessarily.

The U.S. Census Bureau estimates that as of July 1, 2007, there were over 27 million Blacks of voting age,²² and nearly 185 million Whites.²³ Nationally, there were 227.7 million Americans of voting age.²⁴ This means that of all possible voters, 12.0% were Black and 81.2% were White.

Brady notes that Georgia has a 40.3% gun ownership rate but that Obama made a "strong showing."²⁵ In Georgia, CNN exit poll data showed that 98% of Black voters chose Obama, while 23% of Whites did.²⁶ In Georgia, the percent of Black voters is about 30.0%, well above the national average.²⁷

Brady notes that North Carolina, with its "41.3%" gun ownership rate, voted for Obama. North Carolina has an estimated 21.7% Black voter population²⁸—again above the national average—and CNN reported that, in North Carolina, 95% of all Black voters selected Obama, while 35% of Whites did.²⁹ Therefore, an above-average Black voter demographic produced good results for the first Black major party presidential nominee.

Brady notes certain other states with above-average gun ownership rates that voted for Obama: Maine, Michigan, Minnesota, New Hampshire, Oregon, Pennsylvania, Vermont, Washington, and Wisconsin. However, Brady fails to note that all these states voted for Democrat candidate John Kerry in 2004—9 of only 19 states to





do so; so their underlying pro-Democratic tilt probably influenced the 2008 election outcome.³⁰

D. The Brady Campaign to define ‘common sense gun laws’

For many years, the Brady Campaign has released an annual “report card,” grading each state on its level of “sensible” gun laws. States with higher grades (e.g. “A”) were considered more “sensible,” according to Brady; states graded “F” were apparently, according to Brady, more dangerous to live in.³¹ The earliest Brady report card available on the Internet is from 2001.

In 2001, the North Carolina State Center for Health Statistics, as part of their Behavioral Risk Factor Surveillance System (BRFSS), asked respondents from all over the country the following question: “Are any firearms now kept in or around your home? Include those kept in a garage, outdoor storage area, car, truck, or other motor vehicle.”³²

I collated the results from this survey with Brady’s 2001 grades. After sorting by gun ownership levels, states were divided into quintiles by percent household gun ownership: under 20% gun ownership rates (7 states); 20-30% (6 states); 30-40% (13 states); 40-50% (15 states); and over 50% ownership rates (10 states). Table 5 shows a clear correlation between low levels of gun ownership and higher Brady grades: The first quintile of states, incidentally with the lowest levels of gun ownership (average 12.1%), was rated well by Brady, averaging a grade of B+. Quintile 2 averaged a Brady grade of B-, and quintiles 3-5 had average grades of D+, D+, and D-, respectively. This indicates that Brady’s definition of “sensible” gun laws are those which lead to much lower levels of citizen gun ownership.

However, there is another correlation which demands attention. Each year, the Federal Bureau of Investigation releases their annual *Uniform Crime Report*, reporting on major violent and property crimes committed around the country. Included in their crime tabulations is *Table 4 - Index of Crime by Region, Geographic Division, and State*, which compares the current year’s crime rates to the previous year’s. Because the report for a given year also includes data for the previous year, the FBI can update the previous year’s data, accounting for corrections and late entries from participating law enforcement



agencies. Accordingly, the most complete data for 2001 are found in *Table 4* of the 2002 *Uniform Crime Report*.³³

Brady’s favorite group—with the B+ average grade—had an average violent crime rate of 554.4 in 2001. (All rate values equal incidents per 100,000 population.) Violent crime levels rose for quintile 2 (601.6; Brady grade B-) and then dropped sharply in quintiles 3-5: 444.1, 410.7, and 319.6 (Brady grades of D+, D+, and D-).³⁴ Murder rates followed an even clearer negative trend: Quintile 1 (Brady’s best-graded states) had a murder rate of 8.7; quintile 5 had a rate of 4.2.

Table 5: Percent Gun Ownership versus Brady Grade, Violent Crime and Murder Rates

Quintile	Brady Grade	Pct Gun Ownership	Violent Crime Rate	Murder Rate
1	B+	12.1	554.4	8.7
2	B-	23.8	601.6	5.3
3	D+	35.5	444.1	5.2
4	D+	42.8	410.7	4.9
5	D-	55.6	319.6	4.2

Not only do Brady’s highest-rated states have low levels of gun ownership, but they have higher levels of violent crime and murder. States considered lax by Brady have relatively lower levels of violent crime and murder, and much higher rates of gun ownership.

E. Does gun prevalence affect murder rates?

Brady makes much of the relationship between guns and crime, particularly firearms deaths. Brady President Paul Helmke stated: “Our weak or non-existent gun laws contribute to the thousands of senseless gun deaths and injuries in this country that occur each year.”³⁵

The above statement contradicts 2006 CDC data noted in Section I, and the 2001 CDC data confirms it: States with the highest

gun ownership levels have the lowest total homicide rates, and both the lowest firearms and non-firearms homicide rates (see Table 6).³⁶

Pct Gun Ownership	Firearm Homicide Rate	Non-firearm Homicide Rate	Total Homicide Rate
0-20	5.09	5.82	10.91
20-30	3.99	2.30	6.29
30-40	3.51	2.26	5.77
40-50	3.58	2.04	5.63
Over 50	3.22	1.90	5.12

Most importantly: Not only do states with the lowest gun ownership average the highest homicide rate, but *their non-firearms homicide rate is higher than the total homicide rate for states with the highest gun ownership.*

The Brady Campaign claims that concealed carry laws are not “sensible.” For example, in May 2007, the Brady Campaign published a report entitled *No Gun Left Behind: The Gun Lobby’s Campaign to Push Guns Into Colleges and Schools.* Their allegation was that getting a concealed carry license is too easy and therefore a threat to public safety:

Over the last decade, the gun lobby has pushed hard in all 50 states to permit the carrying of concealed weapons by nearly everyone except convicted felons. These “shall-issue” carrying concealed weapons (CCW) laws require state authorities to issue CCW licenses to virtually anyone who applies, regardless of whether the applicant can demonstrate a need to carry a gun. As a result, millions of Americans are now licensed to carry concealed handguns in public.³⁷

But when 2001 CDC data is correlated with RTC status, the results are the same as those found in the 2006 dataset in Part I.B.,

above: Not only do RTC states have lower firearms homicide rates, they have lower non-firearms homicide rates as well. (See Table 7).

Table 7: Right-to-Carry versus Percent Gun Ownership, CDC Homicide Rates				
	Pct Gun Ownership	Firearm Homicide Rate	Non-firearm Homicide Rate	Total Homicide Rate
Non-RTC	26.8	4.00	3.40	7.40
RTC	43.0	3.60	2.15	5.75
Percent Difference	60.4	-10.0	-36.7	-22.3

According to Helmke’s criteria (lower rates of homicide), this means that the most “sensible” gun laws are those which place the most guns in the hands of law-abiding citizens. This would suggest that the Second Amendment is the most sensible gun law ever written.

III. THE CHILDREN’S DEFENSE FUND

Women, particularly mothers, sometimes express anxiety over keeping a gun in the home. They have heard reports that firearms in the home are more likely to kill a family member than to kill a criminal attacker, or have seen a news report of a child who shot himself, or another child, because an irresponsible adult left a gun lying around. How safe are children in relation to firearms?

Gun control organizations often cite child fatality data, an emotionally arresting approach which helps promote the idea that if guns were banned, children’s lives would be saved. Sometimes, to produce a more emotionally shocking statistic, organizations include older teens in the calculations, producing startling numbers which imply that eight children die each day because “gun lovers” only care about their firearms. For example, a recent report by the Children’s Defense Fund (CDF) leads with: “Firearm Deaths Among Children and Teens Increase for the First Time Since 1994: 3,006 in 2005.”³⁸ The CDF cites data from the Centers for Disease Control’s (CDC)



fatal injury reports, but examining the CDC data *in toto* reveals a different picture.

First, it is important to define the term “child.” Oxford English Dictionary defines “childhood” as: “the time from birth to puberty.”³⁹ Oxford defines “puberty” as: “The period during which adolescents reach sexual maturity and become capable of reproduction...”⁴⁰ In terms of age, there seems to be general agreement that this ability to procreate occurs by the age of 15.⁴¹

In 2005, the total firearms death rate for CDF’s “children and teens” was 3.70 (all rates defined as incidents per 100,000 population). However, the rate for those age 18-19 was 18.56, and the rate for those age 15-17 was 8.50. For true children (age 0-14) the rate was 1.31; 404 children were killed by firearms in 2005 (including homicide, accident, suicide), an average of just over one per day.⁴²

The U.S. Health and Human Services estimates that in 2005, 1,460 children died as a result of abuse and neglect (4 each day, 1.96 per 100,000 population); 76.6% of that total were younger than four years old. Infant boys (younger than 1 year) had the highest fatality rate at 17.3, followed by infant girls at 14.5; 79.4% of the perpetrators were parents.⁴³ Nevertheless, CDF’s *Programs* page includes no child abuse/neglect initiative, even though over three times as many children were killed by abuse/neglect than by firearms.⁴⁴

There were 230 child firearm homicides in 2005, but there were 1,022 total child homicides. This means that 77.5% of all child homicides occurred without using a gun. Meanwhile, children were the victims of 87.1% of all drowning homicides, 88.1% of all poisoning homicides, and 66.7% of all suffocation homicides, simply because they were physically less able to fend off an attacker. If the intent is there, a gun is not required to kill a child.

Gun control advocates often claim that more guns equates with more violence. For example, in response to a proposed concealed handgun carry law in Wisconsin in 2005, Milwaukee Mayor Tom Barrett said: “It is a recipe for disaster to have a proliferation of guns in the central city.”⁴⁵ If this claim is true, then more guns should correlate with more violent crime. Regarding child firearms mortality, there should be some link between gun prevalence and child murder.



Looking at total fatal injuries (homicide, suicide, accident) between 1994 and 2005 (see Table 9), CDC data shows that the overall rate for ages 15+ (non-children) rose 4.6%, but it fell 26.6% for children (ages 0-14).⁴⁶

Overall homicide rates (murder by any means, e.g. firearms, strangulation, poison) for ages 15+ fell faster than for ages 0-14 (-35.6% to -28.2%), but firearms homicide rates fell faster for children: -53.0%, compared to -38.0% for ages 15+. This variance shows that while non-children became somewhat safer from homicide in general, children became much safer from firearms homicide.

Table 9: Mortality Rate Trends, 1994-2005 (in Percent)

Injury Type/ Demographic	All Causes	Firearms
Homicide/Child	-28.2	-53.0
Homicide/Non-Child (age 15+)	-35.6	-38.0
Accidental/Child	-28.1	-61.4
Accidental/ Non-Child	+20.2	-46.8
Suicide/Child	-19.6	-57.5
Suicide/ Non-Child	-8.3	-20.5
All Fatal Injury/Child	-26.6	-55.9
All Fatal Injury/Non-Child	+4.6	-29.7

This variance is due to the following facts. The most disturbing trends occurred in other, non-firearms homicide categories: Children experienced a 51.1% increase in the intentional drowning rate, a 120.0% increase in poisoning homicides, and 90.3% increase in the “struck by/against” rate (e.g. beaten to organ failure, thrown against a wall, blunt force trauma to head). These data show how easy it is to murder children, and may indicate that persons who might kill children already find it difficult to access a gun, due to existing laws.



Overall suicide rates for non-children fell 8.3%, but child suicide rates dropped 19.6%. Firearms suicide rates for non-children dropped 20.5%, but child firearms suicide rates dropped 57.5%. Children became far safer from suicide than did non-children.

The overall accidental death rate for non-children increased 20.2%, but the rate for children fell 28.1%. Meanwhile, the non-child accidental firearms death rate fell 46.8%, and the rate for children fell 61.4%. People in general, and children in particular, became safer from accidental shooting deaths.

Looking at some non-firearms causes of accidental death, the accidental falling death rate increased 71.7% for non-children, but it decreased 41.8% for children. Children saw a 34.5% increase in accidental suffocation, and non-children also saw a rate increase of 24.5%. The accidental poisoning death rate increased 131.2% for non-children, but it fell 18.2% for children. Accidental death patterns for children and non-children were very different, except that accidental firearms deaths declined sharply for both groups.

Significantly, the Bureau of Alcohol, Tobacco, Firearms and Explosives reports: Over 60 million firearms were sold between 1994 and 2005, including over 25.5 million handguns.⁴⁷ At the same time, the U.S. population—especially children—became safer from firearms-related death. Accordingly, the theory that more guns leads to more deaths, or to more deaths of children, appears to be contradicted by the data.

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