

SOCIAL DARWINISM IN NAZI FAMILY AND INHERITANCE LAW

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Editor's Note

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If I can accept a divine Commandment, it's this one: "Thou shalt preserve the species."¹

~ Hitler, *Mein Kampf* (1925)

1. H.R. Trevor-Roper, *Introductory essay on The Mind of Adolf Hitler*, in ADOLF HITLER, *HITLER'S SECRET CONVERSATIONS, 1941-1944*, 116 (1953), n 32-33, 18; see also ADOLPH HITLER, *MEIN KAMPF* 605 (1939) (Signet Books 1925).

[T]he Germans were the higher race, destined for a glorious evolutionary future. For this reason it was essential that the Jews should be segregated, otherwise mixed marriages would take place. Were this to happen, all nature's efforts "to establish an evolutionary higher stage of being may thus be rendered futile."²

PROLOGUE

This article is a detailed and substantive analysis of a declassified Nazi report on German family and inheritance law compiled shortly after World War II by the American Office of Strategic Services Research & Analysis. Dated July 16, 1945, the document is titled, "Nazi Changes in the Field of Family and Inheritance Law" (R & A No. 3092).³ The report is divided into two sections: I. *The Law prior to 1933*; II. *The Law since 1933*. This division is significant for Adolph Hitler, who became the Chancellor of Germany on January 30, 1933, even though his Nazi Party did not possess a majority of the votes. In a previous article, *An American Weimar Republic*, I traced the history behind that torturous series of unfortunate events, which launched Hitler to power six and a half years before World War II:

Weimar in the 1920s lacked a conventional, broadly based conservative party. The DNVP was extreme, regressive and completely detached from its traditional political base as evident with the election of the moribund President Paul von Hindenburg and his lackey appointees – Chancellors Heinrich Brüening, Franz von Papen and General Kurt von Schleicher – until a no-confidence vote in the Reichstag in January 1933 forced a new coalition of leftist radicals (nationalists and communists) bringing to the forefront the only man with the charisma and authority to keep Germany together – the megalomaniac Adolf Hitler.⁴

2. ROBERT CLARK, *DARWIN: BEFORE AND AFTER* 115 (Paternoster Press 1958) (quoting HITLER, *supra* note 1, at 239-40).

3. OFFICE OF STRATEGIC SERVICES, RESEARCH & ANALYSIS BRANCH, R. & A. No. 3092, NAZI CHANGES IN THE FIELD OF FAMILY AND INHERITANCE LAW (July 16, 1945) [hereinafter NFIL DOCUMENT], available at http://library2.lawschool.cornell.edu/donovan/pdf/Batch_2_pdfs/Vol_VI_12_04.pdf.

4. Ellis Washington, *An American Weimar Republic*, WORLDNETDAILY.COM (June 25, 2011, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=315133> (regarding historical and economic comparisons between the Weimar Republic of 1920s Germany and America in the early 21st century).

Upon the death of the aged President Paul von Hindenburg in August 1934, Hitler quickly consolidated the chancellorship and presidential power. He declared himself Führer and Supreme Chancellor of all Germany, in which he assumed dictatorial powers over every aspect of German society, including executive, legislative and judicial authority over birth, death, marriage, family and inheritance laws. This gave Hitler the power to begin the extermination of democracy in Germany and to eradicate all vestiges of the Weimar Republic, which was condemned by Hitler and the Nazis as a weak and decadent government.

Before I begin my analysis of this document, it is important to give an historical overview and cite several presumptions the reader should consider to be true in order to describe my investigation of German family and inheritance law during the Weimar Republic and Nazi periods. The most telling evidence is the vast differences in treatment of German family and inheritance law by the German government, pre and post-Nazi periods. The latter was truly revolutionary, as demonstrated by the Enabling Acts of 1933 and the Nuremberg Laws of 1935, where Nazis were now able to legalize their virulent infusion of scientific racism, racialism, eugenics and Nietzsche's *übermensch* (superman) ideas, all under the philosophy of Social Darwinism, evolutionary theory and eugenics.⁵

5. The German historian Hans Mommsen wrote about the *Alte Kämpfer* (i.e., Old Fighters; those who joined the Nazi Party before 1930, and who tended to be the most ardent anti-Semites in the Party) that:

After the Nazi seizure of power, those groups in the NSDAP that originated in the extreme *völkisch* movement—including the vast majority of the *Alte Kämpfer*—did not become socially integrated. Many of them remained unemployed, while others failed to obtain posts commensurate with the services they believed they had rendered the movement. The social advancement that they had hoped for usually failed to materialize. This potential for protest was increasingly diverted into the sphere of Jewish policy. Many extremists in the NSDAP, influenced by envy and greed as well as by a feeling that they had been excluded from attractive positions within the higher civil service, grew even more determined to act decisively and independently in the “Jewish Question”. The pressures exerted by the militant wing of the party on the state apparatus were most effective when they were in harmony with the official ideology.

HANS MOMMSEN, “THE REALIZATION OF THE UNTHINKABLE: THE ‘FINAL SOLUTION OF THE JEWISH QUESTION’ IN THE THIRD REICH FROM THE NAZI HOLOCAUST PART 3 THE ‘FINAL SOLUTION’: THE IMPLEMENTATION OF MASS MURDER” VOL. 1 217-264, 222 (WESTPOINT: MECKLER, 1989) MICHAEL MARRUS ED.; Gesetz zur Behebung der Not von Volk und Reich (Ermächtigungsgesetz) [Law to Remove the Distress of the People and the Reich (Enabling Act)], Mar. 3, 1933, RGBl. I 1933 at 141, no. 25, reprinted in U.S. DEP’T OF STATE, DIV. OF EUROPEAN AFFAIRS, NATIONAL SOCIALISM.

Throughout this article I will follow and augment the ideas, research and writings of scholars like Youngson, Bergman, Shirer, Stein, Bloom and Wiker, among others. I will particularly focus on their shared thesis that Hitler and the Nazis purposely and systematically revolutionized German law to facilitate application of Social Darwinist policies like eugenics, natural selection and survival of the fittest, and systematically applied these diabolical ideas to every conceivable aspect of German society. These facts will become particularly evident for application and purposes of this paper in my analysis of German and Nazi laws on marriage, family and inheritance law.

HISTORICAL ANTECEDENTS

Writing a substantive apologetic article such as this piece against the existential and prevailing historical consensus, which extols Marx, Darwin and Nietzsche as the new Socrates, Plato and Aristotle, is not easy or readily accepted by my fellow academics in the field, particularly those on the Left. However, for posterity's sake, it must be done. Dr. Benjamin Wiker, in his excellent 2008 article for *Human Events*, set a brilliant intellectual foundation I wish to emulate in my analysis of Nazi family and inheritance law policy and their inseparable connections to evolution. Wiker wrote:

Many folks just don't like it when you trace a revered scientific icon to an icon of evil . . . Darwinism is responsible for a lot more destruction than the eugenic fantasies of the Third Reich. He [Darwin] can also claim substantial patrimony for the rantings of philosopher Friedrich Nietzsche that likewise inspired the intellectuals that surrounded and supported Hitler's scheme. Nietzsche is famous for declaring that "God is dead," and asserting in his infamous *Beyond Good and Evil*, that mere morality, like religion, is for cowering slaves. The future must belong to the real masters, proclaimed Nietzsche just before the horrors of the 20th century, to those who disregard moral limits, override distinctions between good and evil, and shedding charity for cruelty [and] impose their will on others for the sake of their own earthly

BASIC PRINCIPLES, THEIR APPLICATION BY THE NAZI PARTY'S FOREIGN ORGANIZATIONS AND THE USE OF GERMANS ABROAD FOR NAZI AIMS 217-18 (U.S. Gov't Printing Office 1943) (1933), available at http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=1496; see generally The Jewish Virtual Library, *The Nuremberg Laws*, http://isurvived.org/Frameset4References-2/-Nuremberg_Laws.html (last visited Oct. 5, 2011).

glory [T]he *übermensch*, the super-man, the new man, the master. Where did he come from? Darwin, at least in partial pedigree. Evolution means that human nature is malleable. It was produced by the struggle to survive, and that same struggle can push it upwards to something even greater. As Darwin makes clear in his *Descent of Man*, his very rejection of the belief that human nature is defined by God, allows for the possibility of creating a super-man from man, for “the fact of his having thus risen” by evolution to where he is, “instead of having been aboriginally placed there” by God, “may give him hopes for a still higher destiny in the distant future.”⁶

This brings my analysis to the contention held by many scholars who reject any arguments that associate Hitler, Nazism and the Holocaust to the ideas of venerated philosophers, particularly Darwin and Nietzsche, despite voluminous writings and extant statements by Nazis, respected German intellectuals, scientists and academics that repeatedly declare that Nazi ideology came primarily from the writings of Nietzsche. In particular, it derived from Nietzsche’s new aristocracy paradigm and will to power as well as Darwin’s natural selection and survival of the fittest, the ideas founded in his theory of evolution.

Undoubtedly, I will be accused by many on the Left of the false argument, *Reductio ad Hitlerum* or *argumentum ad Hitlerum*, (“reduction to Hitler” or “argument to Hitler”) which is a gratuitously ad hominem argument, and is an informal fallacy.⁷ I reject reductio ad Hitlerum as a fallacy of irrelevance because I scrupulously endeavor to avoid reaching a predetermined conclusion based solely on something or someone’s origin, as opposed to its

6. Benjamin Wiker, *Darwin, Nietzsche, and Hitler: Evolution of the Übermensch*, HUMAN EVENTS (May 13, 2008), <http://www.humanevents.com/article.php?id=26468>; see also, ELLIS WASHINGTON, THE NUREMBERG TRIALS: LAST TRAGEDY OF THE HOLOCAUST (U. Press Am. 2008) (based on Ellis Washington, *The Nuremberg Trials: The Death of the Rule of Law*, 49 LOY. L. REV. 471-518 (2003)); Ellis Washington, *Darwin’s Deadly Delusions*, WORLDNETDAILY.COM (Aug. 2, 2011, 1:00 AM), <http://www.wnd.com/index.php?pageId=71222> (quoting Darwin’s prophetic statement that his evolution theory would lead to tyranny and fascism in a future generation, “At some future period, not very distant as measured by centuries, the civilized races of man will almost certainly exterminate and replace throughout the world the savage races . . .”).

7. This popular phrase is a pun on *reductio ad absurdum*, and was coined by academic ethicist, Leo Strauss in 1953. See LEO STRAUSS, NATURAL RIGHT AND HISTORY 42-43 (Univ. Chi. Press 1999) (1953). Engaging in this fallacy is sometimes known as playing the Nazi card, by analogy to playing the race card. See *id.*; see generally Gary N. Curtis, *The Hitler Card*, FALLACY FILES, <http://www.fallacyfiles.org/adnazium.html> (last visited Oct. 5, 2011).

present meaning or context. My derivation of Nazi ideas from the philosophical and scientific works of Darwin and Nietzsche does not ignore the differences in the present state, or casually transfer the positive or negative admiration from the earlier acts during and before World War II. Therefore, I refuse any connection of my analysis to *reductio ad Hitlerum* or informal fallacy arguments for, as I will repeatedly demonstrate in this article, my ideas and suppositions stand on their own merits and on history.

Another claim of the informal fallacy is that a policy leads to or is the equal of a law promoted or enacted by the Nazis, Adolf Hitler and the Third Reich, and so “proves” that the original policy is detrimental. Critics will suggest that the logic of equating Nietzsche and Darwin to Hitler is one of guilt by association, a classic juxtaposition of correlation and causality. In other words, it is the supposition holding that every act by Hitler should not be repeated because it will clearly or eventually lead to genocide. The example follows this syllogism: “Hitler was a vegetarian, so vegetarianism is wrong” because it leads to mass murder.⁸ This sophism is frequently used to disrupt arguments because such comparisons are predisposed to distract and provoke resentment rather than to instruct or enlighten.

My analysis of Nazi family and inheritance law is not based on any informal fallacy or *Reductio ad Hitlerum* arguments, but on *veritas* (truth). Truth rooted in history is all I am interested in. Therefore, I would be remiss if I ignored the inseparable historical, philosophical and policy connections of Nazi policy to Social Darwinism and Nietzschean relativism and atheism, or attributed any extrinsic or historical connections to their venerated ideas to pure chance or coincidence. There are too many obvious and substantive connections between Nazi ideas regarding racial purity, de facto discrimination, and eugenics to these philosophers, leading German intellectuals, scientists, academics and numerous other important contemporaries to qualify as mere coincidence.

History is replete with criminals, controversial religious and political figures, regimes and atrocities other than those caused by Hitler, the Nazis and the Holocaust, which can and has been used against liberals, progressives, socialists and conservatives alike. For instance, we know that Hitler, including many in high leadership positions, loved the arts and the Nazis promoted many ideas which are not considered unethical such as painting, classical mu-

8. Curtis, *supra* note 7.

sic and owning dogs. The Nazis promoted anti-smoking, anti-abortion, pro-family and pro-environmental campaigns as well as discouraged fox hunting. Therefore, I do not make the argument that genocidal narcissists like Hitler and his Nazi leadership were bereft of any redeeming characteristics.⁹

9. Ellis Washington, *Art, music and the Wagnerian dilemma*, WORLDNETDAILY.COM (Nov. 27, 2010, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=233105> (examining the intentional fallacy of Hitler and the Nazi's passion for the music of Richard Wagner, Hitler's favorite composer, using Socratic dialectical reasoning). For example:

Socrates: We are gathered here today at my Symposium to discuss the venerated discipline of aesthetics and to seek to answer this question of the ages – Can immoral art be good? Or more pointedly, can an immoral person create good art?

Wimsatt & Beardsley: Yes, Socrates, philosophers call this paradox the intentional fallacy, which developed in the New Criticism School of the 1930s and was first used by us in a 1946 essay. A long-running debate in philosophy has centered around the question of whether art that is morally bad can itself be good (as art).

New Critics believe that an interpretation of a work should focus purely on its objective qualities; we should strictly disregard all external or extrinsic factors (biographical, historical, etc.) concerning the author of the work.

Leni Riefenstahl: The question of the intentional fallacy has tended to focus on controversial figures like Caravaggio, Van Gogh, Gauguin, Picasso, Andreas Serrano (“Pi- Christ” [1989]) or artists such as myself, for I was the German filmmaker for the Third Reich, the Nazi Party and for supreme chancellor of Germany, Adolf Hitler, whom I immortalized in such documentaries as “Triumph of the Will,” which chronicled the Nuremberg rallies, and “Olympia,” a documentary on the 1936 Berlin Olympics. I am profoundly ashamed of these movies now in light of Nazi atrocities and the human-rights genocide of the Holocaust, for my so-called art was exploited as Nazi propaganda. Nevertheless, many critics to this day consider my movies to be technically and artistically brilliant.

Socrates: To us, the ancient Greeks, the very idea of an intentional fallacy, the notion that one can separate art from beauty would have been readily dismissed, as for them the notions of beauty and moral goodness were inextricably linked, yet due largely to the modernist philosophy of relativism – the concept that points of view have no absolute truth or validity and have only relative, subjective values according to differences in perception and consideration – this question has proved more troublesome for the modern mind.

Ezra Pound: Socrates, I disagree, for artists themselves tend to be relatively indulgent, amongst whom the poet is fairly typical, and therefore good art, however “immoral,” is wholly a thing of virtue. Good art cannot be immoral. By good art I mean art that bears true witness.

Richard Wagner: Many consider me to be among the greatest composers ever to have lived. My enormous talent and enduring appeal is

Outside evolution, Darwin, eugenics, natural selection and survival of the fittest, and Nietzsche's will to power, relativism and aristocracy paradigm, any serious comparative analysis of marriage, family and inheritance laws under the Weimar Republic and Hitler's Nazi regime will be seriously flawed and incomplete without detailing where, why and how Nazi policy originated. Therefore, throughout my investigation of this original document, *Nazi Changes in the Field of Family and Inheritance Law*, I will be making repeated historical references to my own research and that of other scholars, of the indisputable connection that Charles Darwin, his theory of evolution and his cousin, Francis Galton,¹⁰ as well as the superman ideas Nietzsche had in purposely creating the virulently racist and genocidal policies of Hitler and the Nazi government. Specifically, how these theories are associated with laws relating to German family law, public policy and society.¹¹

scarcely in doubt as demonstrated by the constant procession of pilgrims to my shrine at Bayreuth, which bears witness to my creative genius.

Socrates: Wagner's views were even more repellent than his personality: intolerant, racist, virulently anti-Semitic, a keen advocate of racial cleansing who called for the expulsion of Jews from Germany. Yet Fate and Destiny would have their revenge, for almost 50 years to the day after Wagner's death a megalomaniac narcissist named Adolf Hitler would rise to power in Germany, launch World War II and the Holocaust and seek to unleash Wagner's rabid fascist and anti-Semitic ideas upon the world.

How much does any of this matter? Does our knowledge of Wagner's character, dispositions, beliefs and prejudices have any relevance to our understanding and appreciation of his music?"

Id. (quoting an excerpt).

10. Francis Galton, inspired by the evolutionary theory of his cousin, Charles Darwin, became the father of eugenics. See MICHAEL BULMER, FRANCIS GALTON: PIONEER OF HEREDITY AND BIOMETRY (2003).

11. The analysis in this paper is greatly indebted to the pioneering research on Nazi domestic and social policy by Dr. Bergman. See Jerry Bergman, *Darwinism and the Nazi Race Holocaust*, 13 J. CREATION 101 Nov. 1999, available at <http://www.temcat.com/L-4-Reference-Library/Creation/Darwinism-Nazi-Holocaust.pdf>; see also generally David L. Hull, *Uncle Sam Wants You*, 284 SCIENCE 1131 (1999) (reviewing MICHAEL RUSE, MYSTERY OF MYSTERIES: IS EVOLUTION A SOCIAL CONSTRUCTION? (1999)); W. Rowan, 'Charles Darwin', in ARCHITECTS OF MODERN THOUGHT 12 (1955); ROBERT YOUNGSON, SCIENTIFIC BLUNDERS: A BRIEF HISTORY OF HOW WRONG SCIENTISTS CAN SOMETIMES BE (1st ed. Carroll & Graf Publishers 1998); JOSEPH KEYSOR, HITLER, THE HOLOCAUST AND THE BIBLE (2010).

Following the conservative intellectual traditions of Aristotle, Tocqueville, Voegelin, C.S. Lewis and Belloc,¹² I will formulate my examination of Nazi family and inheritance law on first principles or metaphysics. With Hitler, the Nazis and their evil empire vanquished by the Allied Powers of America, Britain, France and Russia for 65 years now, historians have the liberty of hindsight in viewing those cataclysmic times. I have come to the growing realization that Hitler, who viewed himself as the great “scientific socialist” and the savior of humanity, and his Nazis were absolutely certain of the verity of Darwinian evolution.¹³ Throughout his life, Hitler believed that destiny and fate controlled his life and protected him from assassination. Hitler also believed that he was given a supreme mandate by the gods, the collective will of the German people and history to raise mankind up to the proper level of evolutionary development through eugenics and the scientific techniques of selectively breeding a superior race. This Herculean task would have been impossible to achieve without domestic policies designed to weed out all undesirable peoples – the Jews, Blacks, Gypsies, the elderly, Slavs, Poles, Jehovah Witnesses, Christians, homosexuals and the physical and mentally handicapped. Realizing their ideas would initially be rejected by the nations, Hitler passionately believed the world would one day thank him for making the world a better place by making the people genetically superior through the purification of the Aryan race.

Hitler scholar, Dr. Jerry Bergman, using a biblical metaphor, stated, “[i]f Darwinism is true, Hitler was our saviour and we have crucified him.”¹⁴ Presenting this dialectical syllogism that gets to the root of Hitler and the Nazis diabolical madness, Dr. Bergman

12. See Ellis Washington, *Aristotle: Father of political conservatism*, WORLDNETDAILY.COM (Aug. 14, 2010, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=191121>, at 1-3 (regarding the metaphysics of first principles in scholarly inquiry); see also Ellis Washington, *Prophet Alexis de Tocqueville*, WORLDNETDAILY.COM (Sep. 4, 2010, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=198865>; Ellis Washington, *C.S. Lewis and 'abolitionist' Obama*, WORLDNETDAILY.COM (Aug. 21, 2010, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=193765>; Ellis Washington, *Hilaire Belloc: The state of slaves*, WORLDNETDAILY.COM (Sep. 18, 2010 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=204641>. See Ellis Washington, *Barack Obama: Today's chief Gnostic*, WORLDNETDAILY.COM (Jul. 31, 2010, 1:00 AM), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=185717> (regarding the writings of Voegelin and the philosophy of metaphysics).

13. YOUNGSON, *supra* note 11.

14. Bergman, *supra* note 11, at 11.

notes, “[i]f Darwinism is not true, what Hitler attempted to do must be ranked with the most heinous crimes of history and Darwin as the father of one of the most destructive philosophies of history.”¹⁵

From Darwin we get evolution, survival of the fittest and natural selection.¹⁶ These biological commandments pushed nineteenth century academics and intellectuals in Germany as well as throughout Europe, to speculate and deduce that eugenics, or the application of Darwinism to society, or Social Darwinism, as the only logical path to take to rid society of those who hindered societal evolution.¹⁷ Thus, eliminate the inferior races, peoples, and nations, as well as all mentally and physically “unfit” people, who for too many millennia, stopped mankind from its inevitable progressive march to establish a humanist utopia on earth.¹⁸ These

15. *Id.*

16. George J. Stein, *Biological science and the roots of Nazism: The Promotion of racist doctrines in the name of science*, 76 AMERICAN SCIENTIST 50 (1988), available at <http://www.helsinki.fi/~pjojala/Stein2.htm>; E. TOBACH, ET AL., THE FOUR HORSEMEN: RACISM, SEXISM, MILITARISM, AND SOCIAL DARWINISM 99 (1974).

17. CLARK, *supra* note 2,108; *See generally* HITLER, *supra* note 1, at ch. 10; Kenneth M. Ludmerer, *Eugenics*, in MARC LAPPE, ENCYCLOPEDIA OF BIOETHICS 457 (Warren T. Reich ed., Simon & Schuster Macmillan 1995) (1978); ARTHUR KEITH, EVOLUTION AND ETHICS 229-30 (G.P. Putnam’s Sons 1947), available at <http://www.bearfabrique.org/Evolution08/evolution-and-ethics.html>.

18. *See* KEITH, *supra* note 17.

When Hitler came to power in the early 1930s, most intellectuals and professors in Germany personally and actively supported Hitler, or fell cowardly silent. The most courageous, including Albert Einstein and many other intellectuals, artists and writers all over Europe, meekly fled the country like frightened sheep. There was [little] German resistance to Hitler’s “occupation” of Germany [compared to] that in other occupied European countries with France, Belgium, and Holland being the most notable examples of resistance.

Ellis Washington, *Reply to Judge Richard A. Posner on the Inseparability of Law and Morality*, 3 RUTGERS J. LAW & RELIG. 1, 118 (2001).

Positive law had been established in Germany since the late nineteenth century and accepted by most of Germany’s most famous jurists[.] So when Hitler’s brand of fascism was established in his election as Chancellor of Germany in 1933, the law of the land was Positive law’s maxim: “He who is sovereign rules”, [*sic*] or as H. L. A. Hart summarized it, “The gunman situation writ large.” This utilitarian ideology fit nicely with Hitler’s totalitarian notions of Aryan supremacy and the inferiority of all non-Aryan races[.] Therefore, in his maniacal zeal, Hitler and his armies of the Third Reich saw no contradiction with taking whatever they wanted by force—All non-Aryan races (especially the Jews), were viewed by Hitler as vermin to be eradicated.

Id. at n.173.

policies could only be implemented once the Nazis totally reformed the laws controlling German marriage, family and society, which before the Nazis came to power in 1933, was under the authority of the Weimar Republic.

I will examine two important books which explore the extent that Nazism revolutionized family life in pre-World War II Germany: Lisa Pine's *Nazi Family Policy 1933-1945*¹⁹ and Richard Grunberger's *The 12 Year Reich: A Social History of Nazi Germany: 1933-1945*.²⁰ These books systematically detail the drastic reforms of the German family under the Nazis and make the historical connection of the Weimar Republic Period (1919-1933) to the Nazi Period (1933-45).²¹ They account the radical transformation of German social and cultural life in the Nazi state with respect to the family law, the role of women, children and society.²² The effects of Nazism on other aspects of German social life and on marriage, birth rates, the single parent, divorce, separation, custody, wills, inheritance and the Nuremberg Laws will also be covered in this article.

BIRTH RATES

The Weimar Republic Period of German history was a very turbulent, decadent and unremarkable time, where Germanic greatness was subjugated to the onerous dictates of the 1919 Treaty of Versailles. One of the most maddening aspects of this time for the Nazis was that they were alone in attempting to regain German supremacy. The Nazis solely willed the power to rebuild Germany's greatness and establish world hegemony through the building block of the family less than twenty years later.²³ These radical Nazi domestic policies would first be achieved by German citizens by rapidly increasing its declining birth rates. For example, in 1901 the annual average of births per thousand in Germany was 36 and by 1933 it was 14.7.²⁴ Through the Nazi policy of *Le-*

19. LISA PINE, *NAZI FAMILY POLICY, 1933 – 1945* (1999).

20. RICHARD GRUNBERGER, *THE 12 YEAR REICH: A SOCIAL HISTORY OF NAZI GERMANY: 1933-1945* (1971).

21. See *id.*; PINE, *supra* note 19.

22. See PINE, *supra* note 19; GRUNBERGER, *supra* note 20.

23. *Nazi Lebensborn Program: German birthrate*, HISTORICAL BOYS CLOTHING (Nov. 11, 2004, 2:22 AM), <http://histclo.com/essay/war/ww2/leb/leb-gbr.html>.

24. PINE, *supra* note 19, at 9.

bensborn, Hitler viewed a growing population with a high birth rate as a central requirement for victory on the battlefield.²⁵ This apprehension of low birth rates in the German population was evident before and during the “decadent” Weimar Republic Period. It propelled the Nazis to implement immediate and radical family planning actions that would affect every aspect of German society.

The Nazi rallying cry was “restoring the family to its rightful place.”²⁶ Paradoxically, Grunberger notes that regarding family relations, the Nazis proved “to be better protectors of family life by imposing harsh curbs on equality for women, abortion, homosexuality and (conspicuous) prostitution.”²⁷ The baby boom reflected “a biological vote of confidence in the regime,” according to Grunberger.²⁸ In 1934, the year after Hitler achieved absolute control of German society, the birth rate climbed to 18 per 1,000 and by 1939 it had reached 20.4.²⁹ The Nazis were quite innovative in using the power of the State to promote financial incentives for “pure” Germans to have large families, including marriage loans, child subsidies and family allowances.³⁰ This race to increase the size of the German population in the 1920s and 1930s, established by Nazi policy, changed the term “family” to officially be reserved for parents with four or more children.³¹

25. *Lebensborn* (Spring of Life), was a comprehensive and aggressive pro-family program started by Hitler’s Reichsführer Heinrich Himmler, the infamous leader of the SS (*Schutzstaffel* aka Stormtroopers) and Nazi police forces (SA—*Sturmabteilung*, aka. “Brownshirts”). The program provided assistance to unwed mothers in their last weeks of pregnancy who were specifically impregnated by SS or “other racially valuable” men. See GRUNBERGER, *supra* note 20, at 246; see also *Part I: Holocaust Background Information an Introduction*, HOLOCAUST SURVIVORS AND REMEMBRANCE PROJECT, <http://isurvived.org/TOC-I.html> (last visited Oct. 5, 2011) (detailing the Nazi policy in general); see also *The “Lebensborn,”* HOLOCAUST SURVIVORS AND REMEMBRANCE PROJECT, http://isurvived.org/Frameset_folder/-Lebensborn.html (last visited Oct. 5, 2011) (relating specifically to the Nazi policy of *Lebensborn*); Joshua Hammer, *Hitler’s Children: They were the offspring of a Nazi program to create a racially pure ‘Master Race.’ Behind the painful search to discover their roots.*, NEWSWEEK INT’L (Mar. 20, 2001), available at http://isurvived.org/Frameset_folder/-Lebensborn Project.html (explaining *Lebensborn* homes and the aftermath for the children created in its wake).

26. GRUNBERGER, *supra* note 20, at 234.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 235.

31. *Id.*

ROLE OF THE MOTHER

Under the Nazi regime the motherhood cult would replace society's typical version of the mother under traditional family law during the Weimar Period. On August 12, the birthday of Hitler's mother whom he mythologized, child-bearing mothers were awarded the Honour Cross of the German Mother: bronze for more than four children, silver for more than six, and gold for more than eight.³² Thus, fertile mothers were given the same honor as troops fighting on the front lines.³³ Emphasizing the fervor German society brought into the Nazi child boom, a popular wartime saying by German women was, "We have donated a child to the Führer."³⁴

The Nazi SS newspaper, *Schwarzes Korps*, advocated free childcare, egalitarian marriages regarding domestic duties and popularized these policies with media propaganda like photographs of non-typical German husbands pushing baby strollers and doing grocery shopping.³⁵ Although in the early 1930s, these role reversals were largely Nazi propaganda, as the German war machine ramped up and a worldwide conflict became inevitable, more real policies became actualized like "duty-year for girls" and wartime conscription of "maids" from occupied Europe.³⁶ Nazi family law policies, like those on birth control, included making the advertisement and exhibit of contraceptives illegal.³⁷ Additionally, all birth control clinics were shut down.³⁸ However, Hitler's famous anti-abortion stance was both cynical and utilitarian. It was cynical because, though he presided over a German baby boom in the 1930s and 1940s, he is attributed to the brutal murdering of over 18 million people by the end of World War II, including six million Jews. Of these murders, there were six million in Poland

32. GRUNBERGER, *supra* note 20, at 235-36. Hitler's mother was born on August 12, 1933. *Id.*

33. *Id.* at 236.

34. *Id.* "We have donated a child to the Führer," was a popular song, saying and statement of solidarity German women had with the Nazi Party particularly during the 1925-45. *Id.* A policy based on the idea that in order to regain German superiority and hegemony, the German people had to reproduce themselves on an unprecedented level and thus, it was believed to be a great honor for women to willingly sacrifice their male children on behalf of the Führer. LLOYD DEMAUSE, *THE EMOTIONAL LIFE OF NATIONS* 211 (Karnac 2002).

35. GRUNBERGER, *supra* note 20, at 237.

36. *Id.*

37. *Id.* at 238-39.

38. *Id.*

alone, including three million Polish Christians.³⁹ Nazi policy regarding family law was callously utilitarian because it only protected what the Nazis considered “pure, Aryan” German life. Therefore, according to Grunberger, abortions were termed “acts of sabotage against Germany’s racial future.”⁴⁰ All other people and ethnic groups outside the pure Aryan standard were considered expendable.⁴¹

THE FAMILY UNIT

Hitler soon found the young were more than compliant, zealous even, than older generations regarding the radicalization of family law under the Nazis, a fact which they quickly exploited. Under the doctrine of *the Informer*, parents became terrified that innocent family discussions could be distorted in public as treason against the Fatherland.⁴² In German society in the 1930s, *the Informer* doctrine particularly affected mother and son relationships.⁴³ This is demonstrated in the fanatical zeal of the Hitler

39. Edward Lucaire, *Poland's Holocaust: 6 Million Citizens Dead (3 Million Christians and 3 Million Jews)* (1997), available at <http://www.holocaustforgotten.com/Lucaire.htm>.

40. GRUNBERGER, *supra* note 20, at 239.

41. *Id.* at 238 (describing the sterilization laws for non-Aryans).

42. *Id.* at 240. ROBERT D'AGOSTINO, DARWINISM IN THE CLASSROOM: CRITIQUING ORTHODOXY AND SURVIVING IN THE CURRENT ENVIRONMENT 1-15, 2 (Vandeplas 2006). The inimical effects of social Darwinism in education system of America are comprehensive and have negatively affected family and religious structures in American culture. D'Agostino writes:

This is an extraordinary state of affairs if one considers the specific protection of religious speech in the Constitution and the bible influenced rejection of the religious basis of Western Civilization. If ideas have consequences, then the implicit rejection of religious basis Western, including American, culture encourages hostility towards religion as anti-modern and destructive. This leads to the notion explicit in the works of those generalizing Darwinism that physical nature is all there is, and since man is of nature alone his imperfections (such as moral judgments) can be corrected by correcting his educational experience or compensating for his social deprivations. Faced with this ideological current, criticism of Darwinian orthodoxy must be shorn of explicit or implicit religious argument. The objection that the courts, including the Supreme Court, are determinately ignorant of Western cultural history may well be true but it is an argument that has been lost. It is now ignored that much of what we call secular democratic principles has theocratic origins.

Id.

43. *Id.*

Youth and how they tragically became the last line of defense, particularly during the final days of the Third Reich. For instance, they were present in the decisive Battle of Berlin in April 1945, which put the death nail into the heart of Hitler's Third Reich.⁴⁴

Due to radicalization of traditional family relationships under the Nazi regime, additional pressures on families came from *Political widowhood*, a pre-war phenomenon that affected German women whose men were actively involved in the Nazi Party.⁴⁵ As a result of ever-increasing political obligations, their husbands were frequently absent from home.⁴⁶ The duplicity of this political widowhood policy was that while men were celebrated as good Nazis for placing the fatherland above even their own families, a woman was granted a divorce because her husband said that her membership of the National Socialist Association of Women was like belonging to a ladies' coffee circle.⁴⁷ Other onerous obstacles the Nazis used to both demand unquestioned fidelity to the party as well as denigrate the traditional notions of the Christian family included the removal of young people for long periods for military and labor service, such as Hitler Youth camps and the girls' duty-year, the widespread industrial employment of women, and the creation of work places from which employees could only come home on weekends.⁴⁸ These, and many other Nazi anti-family policies, skyrocketed juvenile crime and caused it to increase from 16,000 in 1933, to over 21,000 in 1940.⁴⁹

The degradation of family life is illustrated by the Nazi family law policy that routinely took children away from their parents' homes when the children reported the most trivial allegations about their parents.⁵⁰ Reasons as inconsequential as declaring that his or her parents did not provide a "politically reliable" environment, were sufficient to remove the child who claimed the problem.⁵¹ Furthermore, marriage and divorce increased radically dur-

44. Tilman Remme, *The Battle for Berlin in World War Two*, BBC.COM, (last updated Mar. 10, 2011) http://www.bbc.co.uk/history/worldwars/wwtwo/berlin_01.shtml (describing the Battle of Berlin).

45. GRUNBERGER, *supra* note 20, at 240.

46. *Id.* at 240-41.

47. *Id.* at 241.

48. *Id.*

49. *Id.*

50. GRUNBERGER, *supra* note 20, at 242.

51. *Id.*

ing the Third Reich.⁵² A form of no-fault divorce was instituted to facilitate the dissolution of mixed marriages (i.e. between Aryans and non-Aryans) and those between couples who held beliefs deemed not in accord with official Nazi policy.⁵³ Jews were the most conspicuous victims of Nazi family policy, though their population in Germany amounted to less than one percent.⁵⁴ New and frightening terms were coined by Nazi family planners to delineate their radical family views such as: “*Rekrutenmachen* (producing recruits) for sexual intercourse, *Gebärmaschinen* (childbearing machines) for procreative women and *bevölkerungspolitische Blindgänger* (ethnic duds) for barren women.”⁵⁵

THE SINGLE PARENT

The stigma previous generations of Germans had for unmarried mothers, including during the relatively liberal mores of the Weimar Republic period, was removed under the Nazi regime. Single parenthood obtained a new level of unprecedented financial support and encouragement from the State.⁵⁶ This was in line with its desire to increase the pure Aryan race population as quickly as possible. For example, *Lebensborn*, was a comprehensive and aggressive pro-family program started by Hitler’s Reichsführer Heinrich Himmler, the infamous leader of the SS⁵⁷ and Nazi police

52. *Id.* at 244. “[T]he divorce rate climbed more steeply during the peacetime years of Third Reich than either the marriage-rate or the birth-rate . . . [F]rom just over 42,000 divorces in 1932, the number mounted to over 50,000 in 1935 . . . and in 1939 shot up to well over 61,000.” *Id.*

53. *Id.*

54. See generally *id.* at 233-50; Holocaust Encyclopedia, *German Jewish Refugees: 1933-1939*, U.S. HOLOCAUST MEMORIAL MUSEUM <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005468> (last visited Oct. 5, 2011) (“In January 1933 there were some 523,000 Jews in Germany, representing less than 1 percent of the country’s total population. The Jewish population was predominantly urban and approximately one-third of German Jews lived in Berlin.”) *Id.*

55. GRUNBERGER, *supra* note 20, at 242.

56. *Id.* at 246.

57. SS is the abbreviation for the *Schutzstaffel*, a paramilitary group that was led and organized by Heinrich Himmler. See Robert Koehl, *The Character of the Nazi SS*, 34 J. OF MODERN HISTORY 275 (Sep. 1962). They initially served as body guards for German politicians and spies until 1929, when Himmler took control of them. *Id.* He developed them into “a kind of internal party police,” and utilized them to defeat political figures who opposed the Nazi ideology. *Id.* They aided Himmler to gain allegiance of the secret police, known as the Gestapo, and later the entire police system. *Id.*

forces. The program provided assistance to unwed mothers in their last weeks of pregnancy who were specifically impregnated by SS or “other racially valuable” men.⁵⁸ During the Nazi Period, family law was so controlled by the State by family planning, domestic policy and state welfare facilitated legitimizations.⁵⁹ It essentially functioned as an adoption agency to concerned party members.⁶⁰ Himmler’s motto reflected this Nazi worldview, “We only recommended genuinely valuable, racially pure men as *Zeugungshelfer*” (procreation helpers).⁶¹ Later, Himmler would emphasize the pivotal importance the Nazi State attributed to every newborn German baby, as cited in a notorious procreation order to the entire SS during the war, “Only he who leaves a child behind can die with equanimity.”⁶²

Prior to becoming the German Chancellor in January 1933, Hitler and the Nazis had an aggressive and relentless political propaganda campaign to win national support from German women by guaranteeing every German woman a husband.⁶³ As the war dawned, they expanded their promises to every German girl, that they too would receive a baby.⁶⁴ Notice that the promise to the German girls was a “baby,” not a “husband.” This followed existing family law policy under the Nazis, as exemplified in a 1944 report to the Ministry of Justice, where leaders of the German Girls’ League stated that “not every girl could expect to get a husband in [the] future, and that the girls should at least fulfill their task as German women and donate a child to the Führer.”⁶⁵

58. See GRUNBERGER, *supra* note 20, at 246.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 247.

63. See GRUNBERGER, *supra* note 20, at 248.

64. *Id.*

65. *Id.* at 248-49 (citing dispatch from the President of the Supreme Court to the Reich Ministry of Justice (Jul. 3, 1944) (on file with the Institut für Zeitgeschichte, Munich). Like in Germany in the 1930’s and 1940’s under the Nazis, Darwinism was used to propagandize young impressionable students in America, especially since the 1960’s. See D’AGOSTINO, *supra* note 42, at 1-2 (writing about the inimical influence of Darwinism on the Establishment Clause and against America’s youth via an aggressive propaganda campaign in the public schools system). “There is little doubt that public school officials are nowadays so fearful of any expression of religious feeling by students in their care due to their somewhat flawed understanding of current judicial decisions that they are convinced that when dealing with evolution only Darwinian orthodoxy may be taught” *Id.* “Based on an expansive, some might say evolutionary, reading of the Establish-

EFFECTS OF THE NAZI POLICY

The overall effect of the Nazi family policy revolution was threefold. First, the tremendous baby boom was so acute, especially from 1933 to 1945, causing twenty-three percent of all young Germans to be infected with venereal disease by 1945.⁶⁶ Second, the peacetime incidence of prostitution had quadrupled.⁶⁷ These facts are a sad commentary on the erosion of family life in the Third Reich. Lastly, just before the Nazis took power in Germany in 1932, there were 42,000 divorces.⁶⁸ By the eve of World War II, before the Nazis invaded Poland in September 1939, divorces in Germany had climbed to over 61,000.⁶⁹

Before I get into the direct analysis of the NFIL document on Nazi Changes in the Field of Family and Inheritance Law, I wish to consider the following questions, some which I have already examined. Why were the Nazis so concerned about families? What incentives were used to encourage large families? How were mothers particularly encouraged to produce large families? Why did divorce rates increase in the years of the Third Reich? What were two of the more tragic results on family life over the twelve years Hitler was in power? Finally, I will explore and explain the effects of the totalitarian policies of the Third Reich on family law and domestic life, including the many new restrictions under Nazi law prohibiting "inferior races" from leaving an inheritance to their loved ones.

THE NUREMBERG LAWS (1935)

The Nuremberg Laws (*Nürnberger Gesetze*) comprised a Nazi policy of virulent, anti-Semitic laws in Germany in the 1930s and

ment Clause, some advance an ideological agenda by arguing that questioning the central dogmas of Darwinian orthodoxy is bad science and an attempt to incorporate forbidden religious views into the public schools." *Id.* "If ideas have consequences, then the implicit rejection of the religious basis of Western, including American, culture encourages hostility towards religion as anti-modern and destructive. This leads to the notion explicit in the works of those generalizing Darwinism that physical nature is all there is, and since man is of nature alone his imperfections (such as moral judgments) can be corrected by correcting his educational experience or compensating for his social depravations." *Id.*

66. GRUNBERGER, *supra* note 20, at 249.

67. *Id.*

68. *Id.* at 244.

69. *Id.*

1940s. First presented at the annual Nuremberg Rally of the Nazi Party of 1935, these laws exemplified and solidified the new Nazi race-based policies advanced by Hitler's rise to power in January 1933.⁷⁰ Under the Nuremberg Laws, Nazism became an official ideology. Incorporating scientific racism and anti-Semitism, Nazism caused a rapid expansion in German legislation and domestic public policy aimed at discriminating, insulating and segregating Jews from the rest of German society. The ratification of the Nuremberg Laws identified who was Jewish, facilitating the Nazis ability to enforce laws obstructing Jews' fundamental rights in Germany. However, as a result of using a legal method to determine who is Jewish and thereby, defining family relationships in absolute scientific terms, the ambiguities gave some Jews the opportunity avoid some forms of prejudice.

The Nuremberg Laws categorized people with four German grandparents as "German or kindred blood," though people were classified as Jews if they descended from three or four Jewish grandparents.⁷¹ A *Mischling* was a person with one or two Jewish grandparents and was considered a cross breed of "mixed blood."⁷² These overtly discriminatory laws had the proscribed effect of disenfranchising the Jews of their former German citizenship as well as strictly prohibiting marriage between Jews and other Germans.⁷³ This aspect of the Nuremberg Laws became even more discriminatory, bureaucratic and policy-driven to me after a careful analysis of the NFIL.

The Nuremberg Laws also integrated a prohibition on sexual intercourse between people defined as "Jews" and non-Jewish Germans and banned "Jews" from taking part in German community life. These laws were, to large extent, a systematic and totalizing effort to return the Jews of twentieth century Germany back to the servile position that Jews had held before their emancipation in the late nineteenth century under the Kaiser.⁷⁴ The Nuremberg

70. See *The Nuremberg Laws*, *supra* note 5 (citing JEREMY NOAKES & GEOFFREY PRIDHAM, DOCUMENTS ON NAZISM, 1919-1945, 464-67 (1974)).

71. PINE, *supra* note 19, at 147-48.

72. *Id.* at 44.

73. *Id.*

74. MICHAEL BRENNER ET AL., JEWISH EMANCIPATION RECONSIDERED: THE FRENCH AND GERMAN MODELS 77-78 (Paul Mohr Verlag 2003); See generally, Holocaust Encyclopedia, *Translation: Nuremberg Race Laws*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <http://www.ushmm.org/wlc/en/article.php?ModuleId=10007903%201> (last visited on Oct. 5, 2011).

Laws were typical Nazi policy of the period. They were meant to forever surpass the German law that preceded it, whether under the Weimar Republic, the Kaiser, Bismarck, and all earlier periods of German history. The Nuremberg Laws were also designed to be comprehensive, totalizing and directed primarily at the Jewish population in Germany to deny them their fundamental rights enjoyed by "Aryan" German citizens.⁷⁵ For the purposes of this article, the excerpts from the Nuremberg Laws function as a forerunner to the document, *Nazi Changes in the Field of Family and Inheritance Law*.

The Laws for the Protection of German Blood and German Honour is the section of the Nuremberg Laws ratified by the Nazis at the rally in Nuremberg, on September 15, 1935. It pertains to preserving German racial purity, German families and the mandated extrication of all "inferior races" from the pure Aryan bloodline.⁷⁶ This section is based on the idea that the purity of German blood is essential to the further existence of the German people and inspired by the uncompromising determination to safeguard the future of the German nation. Thus, the Reichstag unanimously resolved upon the following law:

Article 1

1. Marriages between Jews and subjects of the state of German[y] or related blood are forbidden. Marriages nevertheless concluded are invalid, even if concluded abroad to circumvent this law.
2. Annulment proceedings can be initiated only by the state prosecutor.

Article 2

Extramarital relations between Jews and subjects of the state of German[y] or related blood are forbidden.

Article 3

Jews may not employ in their households female subjects of the state of German[y] or related blood who are under 45 years old.

Article 4

1. Jews are forbidden to fly the Reich or national flag or display Reich colors.

75. See WILLIAM L. SHIRER, *THE RISE AND FALL OF THE THIRD REICH* 290-91 (Pan Books Ltd. 1964) (1960).

76. *The Nuremberg Laws*, *supra* note 5.

2. They are, on the other hand, permitted to display the Jewish colors. The exercise of this right is protected by the state.

Article 5

1. Any person who violates the prohibition under Article 1 will be punished with a prison sentence.
2. A male who violates the prohibition under Article 2 will be punished with a jail term or a prison sentence.
3. Any person violating the provisions under Articles 3 or 4 will be punished with a jail term of up to one year and a fine, or with one or the other of these penalties.

Article 6

The Reich Minister of the Interior, in coordination with the Deputy of the Führer and the Reich Minister of Justice, will issue the legal and administrative regulations required to implement and complete this law.

Article 7

The law takes effect on the day following promulgation, except for Article 3, which goes into force on January 1, 1936.⁷⁷

I. THE LAW PRIOR TO 1933, THE WEIMAR PERIOD

One of the many paradoxes of the Nazi Period that is also exhibited in German family law policy is the claim that Hitler was trying to protect the German society from people deemed to be of an inferior race. It has been argued that Hitler's efforts to subject the Jewish population to the onerous Enabling Acts, Nuremberg Laws and later into concentration camps and gas chambers as part of the Final Solution, was less a policy of punishment and torture but, as Nazi apologists frequently articulated, was a protective buffer. His actions have been compared to the act of quarantining sick people in order to avert contamination of the rest of the population. According to writers like Haas, the Nazis assumed that "killing Jews and others was in fact a scientific and rational way of serving an objectively greater good."⁷⁸ Rudolf Hoess, in *The Nazi Commandant of Auschwitz*, stated, "such a struggle, legitimized by the latest scientific views, justifies the racists' conceptions of supe-

77. See Translation: *Nuremberg Race Laws*, *supra* note 74.

78. Bergman, *supra* note 11, at 10 (quoting Peter. J. Haas, *Nineteenth century science and the formation of Nazi policy*, J. OF THEOLOGY (1995)).

rior and inferior people and nations and validated the conflict between them.”⁷⁹ Under this popular concept, the Nazis sought to comprehensively put into action Darwin’s evolution theory on eugenics, survival of the fittest and natural selection into every conceivable aspect of German society, culture, law and public policy.

An underreported fact was that prior to the Nazi Period, mainstream German society, particularly the Weimar, Kaiser and Bismarck Periods, recognized the harm of Darwinism. For example, Nordenskiöld, declared the Prussian Minister of Education, even for a time in 1875 banned the teaching of Darwinism in public education: “... the Prussian Minister of Education sent round a circular strictly forbidding the schoolmasters in the country to have anything to do with Darwinism ... with a view to protecting schoolchildren from the dangers of the new doctrines.”⁸⁰

One would have to wonder in hindsight, absent Darwinian evolutionary theory, whether the Nazi Holocaust have still happened. Ernst Haeckel, a German scientist and professor of zoology and comparative anatomy, is at the heart of this debate and can be accredited as a part of the Social Darwinism movement in Germany during the 1900s. As a result of his extremely successful book and widely accepted ideology claiming natural selection, i.e. Aryan superiority, should organize all aspects of society and eliminate the inferior races standing in the way; the ban in schools may have had little effect.⁸¹ It sold over a half million copies in Germany alone by 1933, although much of the science behind it had already been disproven.⁸² Thus, “Darwinism might be prohibited in the schools, but the idea of evolution and its method penetrated everywhere”⁸³ It has been revealed that “members of the scientific and academic communities did very little to support the Weimar Republic, did very little to oppose the rise of Hitler and National Socialism, and in many cases lent their considerable prestige as scientists to the support of the ideas of the national socialist movement.”⁸⁴ Accordingly, it appears that had the ban on educat-

79. KARL A. SCHLEUNES, *THE TWISTED ROAD TO AUSCHWITZ*, 30, 32 (Univ. of Ill. Press, 1970); Bergman, *supra* note 11, at 10.

80. Bergman, *supra* note 11, at 10 (quoting ERIK NORDENSKIÖLD, *THE HISTORY OF BIOLOGY* 522 (1935)).

81. See Stein, *supra* note 16.

82. *Id.*

83. Bergman, *supra* note 20, at 10 (quoting NORDENSKIÖLD, *supra* note 80, at 522).

84. See Stein, *supra* note 16.

ing students on Darwinian theory remained in effect, it would not have had much impact on whether or not the Nazi holocaust occurred.

Philosophy professor and classist Allan Bloom, author of the modern-day prophecy “The Closing of the American Mind” (1987), foretold that intellectually decadent societies like Revolutionary France (1789-99), the Weimar Republic (1919-33) and America were ripe for demagogic radicals to fill the moral vacuum inside the souls of Europeans and Americans. On the intellectual, political and moral vacuity of the Weimar Republic, Bloom wrote:

But the Weimar Republic, so attractive in its left-wing version to Americans, also contained intelligent persons, who were attracted, at least in the beginning, to fascism, for reasons very like those motivating the Left ideologues, reflections on autonomy and value creation. Once one plunges into the abyss, there is no assurance whatsoever that equality, democracy or socialism will be found on the other side. At very best, self-determination is indeterminate. ... Both [Heidegger and Nietzsche] helped to constitute that ambiguous Weimar atmosphere in which liberals looked like simpletons and anything was possible for people who sang of the joy of the knife in cabarets.⁸⁵

The indissoluble connection between the weak government of the Weimar Republic paving the way to the radicalism of Hitler and the Nazis cannot be overstated in history, politics and culture. It is also evident throughout this analysis of the NFIL document where the authors in the U.S. Office of Strategic Services give a dispassionate synopsis of family and inheritance law during both the Weimar and Nazi periods in Germany. The paradox here, which isn't always readily conspicuous, is the fact that on the surface the bland, pro forma statutes contained in family and inheritance law during the Weimar period add little enlightenment when compared to the Nazi period absent a thorough explication of the cataclysmic history of Hitler and the Nazis and how their policies forever affected the course of world history.

FAMILY LAW

The NFIL document cites the important changes in family law prior to 1933 were made according to the Civil Code, *Bürgerliches Gesetzbuch*, (“B.G.B.”), which defined marriage as a “public insti-

85. ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 154 (1987).

tution, created and regulated by the state with regard to public policy.”⁸⁶ Prior to Nazi usurpation of power, boundaries of the German family law were relatively unremarkable, “individualistic” and “liberal” which only further obscured the diabolical and totalizing nature of Nazi policy upon German society. After each section I have noted either a verbatim excerpt or a summary of the original NFIL document with historical commentary from myself and other scholars regarding how Nazi law affected German family and inheritance laws.

INSTITUTIONAL PROBLEMS OF THE WEIMAR REPUBLIC

It is widely believed that the 1919 Weimar Constitution had several major institutional problems that made the eventual establishment of a dictatorship likely, but it is unknown whether a different constitution could have prevented the Third Reich.⁸⁷ However, the 1949 West German Constitution (the *Grundgesetz*) is generally “viewed as a strong response to these flaws.”⁸⁸ It was only at the eve of the Weimar Period in Germany during November of 1918, when the political parties began to have a position in forming a government.⁸⁹ Classist and philosopher Allan Bloom wrote of this transitional period in German history called the Weimar Republic in this manner:

But the Weimar Republic, so attractive in its left-wing version to Americans, also contained intelligent persons, who were attracted, at least in the beginning, to fascism, for reasons very like those motivating the Left ideologues, reflections on autonomy and value creation. Once one plunges into the abyss, there is no assurance whatsoever that equality, democracy or socialism will be found on the other side. At very best, self-determination is indeterminate. ... Both [Marx, Nietzsche and Heidegger] helped to constitute that ambiguous Weimar atmosphere in which liberals looked like simpletons and anything was possible for people who sang of the joy of the knife in cabarets.⁹⁰

86. NFIL DOCUMENT, *supra* note 3, at 1.

87. See *The Weimar Republic*, NEW WORLD ENCYCLOPEDIA, Sec. 6.2, http://www.newworldencyclopedia.org/entry/Weimar_Republic#Institutional_problems (last visited Oct. 5, 2011); see also SHIRER, *supra* note 75, at 84-85.

88. See *The Weimar Republic*, *supra* note 87, at Sec. 6.2.

89. See SHIRER, *supra* note 75, at 76-80.

90. See BLOOM, *supra* note 85.

This moral, intellectual and economic power gap between the old system and the Weimar Period, with their numerous institutional problems, would pave the way for a much more radical and totalitarian government under the Nazis just fifteen short years later.

The establishment of the *Reichspräsident*, commonly referred to as a *Ersatzkaiser* (“substitute emperor”), was an effort to replace the Kaiser with an equally strong institution designed to weaken party politics and perhaps unintentionally, increased the likelihood of dictatorial rule.⁹¹ Article 48 of the Constitution gave the President power to “take all necessary steps” if “public order and security are seriously disturbed or endangered.”⁹² While this clause was intended to apply under emergency conditions only, it was frequently used to issue decrees without even a vote of Parliament before 1933 and thus, made coordination or bringing into line, easier. The Nazis called this policy of voluntary cooperation, *Gleichschaltung*.⁹³

Prior to 1933 and the advent of the Nazi Period, German family law was governed by the Civil Code. On *Betrothal*, where mutual promises of marriage constituted an agreement described as *Verlobnis*, “...was subject to the ordinary rules as to obligatory agreements.”⁹⁴ Throughout this author’s analysis of family and inheritance law pre-Nazi Period, one is struck by the utter unremarkable nature of the topics. With the exceptions of bankruptcy or taxation, it is hard to imagine a legal subject matter being so

91. *The Weimar Republic*, *supra* note 87, at § 6.2. However, opposition was frequently not addressed by legislation at all. See IAN KERSHAW, HITLER 1889–1936: HUBRIS 465-68 (W.W. Norton & Co. Am. Ed.1999). The process of *Gleichschaltung* (the “coordination”) was often voluntary, or in any event not mandated by a formal decree. *Id.* at 469. Most other parties had dissolved before being officially banned. *Id.* at 468. By the time the formal decree banned the creation of new parties, there were none left except the NSDAP. *Id.*

[M]any organizations showed themselves only too willing to anticipate the process and to “coordinate” themselves in accordance with the expectations of the new era. By the autumn, the Nazi dictatorship . . . had been enormously strengthened. What is striking is not how much, but how little, Hitler needed to do to bring this about Hitler took remarkably few initiatives.

Id. at 469. As Kershaw notes after the passage of the Act, “Hitler was still far from wielding absolute power. But vital steps towards consolidating his dictatorship now followed in quick succession.” *Id.* at 468.

92. *The Weimar Republic*, *supra* note 87.

93. *Id.*

94. NFIL DOCUMENT, *supra* note 3, at 1.

boring. However, the leitmotiv of the Nazi Zeitgeist that hangs over the German people during the Weimar Period like the sword of Damocles makes these otherwise stolid, moribund pronouncements of bureaucrats so intriguing with the diametrical and evil opposite that we must now confront the Nazi Period. For example, during the Weimar Period, the German Civil Code held that betrothal was a mere moral obligation, as opposed to a legal one.⁹⁵ However, its breach gave rise to a cause of action for pecuniary damages, but the State would not interfere with the withdrawal or enforcement of any promises.⁹⁶

Regarding the *Conclusion of Marriage*, the German Civil Code stated:

The German rules recognized civil marriage exclusively. The marriage was affected by the declaration of the parties to be married to each other made before the competent registration official (*Strandesbeamter*) and in the presence of each other. . . . The marriage had to be preceded by a public notice (*Aufgebot*) to be effected in the prescribed manner and subject to previous presentation of certain prescribed documents In the majority of cases a religious marriage ceremony followed the civil marriage, but the celebration of a religious marriage ceremony by any clergyman or minister who had not satisfied himself of the fact that the civil marriage had taken place was a criminal offence. The rules of the Civil Code as to marriage were not, however, intended to interfere with the duties imposed by any religious denomination on its members (B.G.B. 1588).⁹⁷

Under the Civil Code the *Validity of Marriage* was divided into three classes: "(a) Fatal defects in the marriage ceremony; (b) Public severing impediments; [and] (c) Private severing impediments."⁹⁸ A public severing impediment such as incest or insanity, voided the marriage, and proceedings to invalidate the marriage were pursued by a public prosecutor.⁹⁹ Recall that Hitler was fearful that people would discover insanity ran throughout his family,¹⁰⁰ in addition to his non-Aryan Jewish genealogy. Particularly

95. *Id.* at 2.

96. *Id.*

97. *Id.* at 2-3.

98. *Id.*

99. NFIL DOCUMENT, *supra* note 3, at 4, n. 1.

100. See Stephen Castle, *Hitler's mentally ill relative sent to gas chamber*, THE INDEPENDENT (Jan. 19, 2005), <http://www.independent.co.uk/news/world/europe/hitlers-mentally-ill-relative-was-sent-to-gas-chamber-487261.html>.

concerning were the strong and persistent rumors of his alleged Jewish grandfather, Leopold Frankenger, the son of a Graz Jewish family Hitler's mother once worked for.¹⁰¹ Hitler went to great lengths to hide this embarrassing history that would have ruined his career.¹⁰² To cover his possible Jewish genealogy and Semitic origins, Hitler had the Nazis destroy the Austrian village of Dollersheim, his ancestral birthplace, as well as the surrounding villages, and turn it into an artillery range.¹⁰³

101. Hitler's nephew, William Patrick Hitler, "sent a blackmail letter to his uncle Adolf, basically saying: If you don't give me a better job and treat me a little bit better, I'll go public with the speculation within the family that Hitler himself had a Jewish grandfather." Interview by Paula Zahn with David Gardener, *Author Talks about 'The Last of the Hitlers,'* CNN (Feb. 6, 2002), <http://archives.cnn.com/2002/SHOWBIZ/books/02/05/last.hitlers.cnn.a/>; see also GEORGE VICTOR, *HITLER: THE PATHOLOGY OF EVIL* 13 (Pontomac Books Ed., 2007) (1998). Hitler reportedly said, "These people must not be allowed to find out who I am. They must not know where I came from and who my family is." *Id.*

102. VICTOR, *supra* note 101.

103. ROBERT GEORGE LEESON WAITE, *THE PSYCHOPATHIC GOD* 130 (1993). However, scholars like Ian Kershaw give little credence to this enduring genealogical anomaly and dismissed the Frankenger story as a smear by Hitler's enemies, noting that 'all Jews' had been expelled from Graz and were not allowed to return until the 1860s (well after Hitler's father was born in 1837. KERSHAW *supra* note 91, at 3, 8. Hitler's father, Alois Hitler, was an illegitimate child of Maria Anna Schicklgruber, so his paternity was not listed on his birth certificate; he bore his mother's surname. *Id.* at 3. In 1842, Johann Georg Hiedler married Maria and in 1876 Alois testified before a notary and three witnesses that Johann was his father. *Id.* at 3, 5. Despite this testimony, Alois' paternity has been the subject of controversy. *Id.* at 5. After receiving a "blackmail letter" from Hitler's nephew, William Patrick Hitler, threatening to reveal embarrassing information about Hitler's family tree, Nazi Party lawyer Hans Frank investigated, and, in his memoirs, claimed to have uncovered letters revealing that Alois' mother was employed as a housekeeper for a Jewish family in Graz and that the family's 19-year-old son, Leopold Frankenger, fathered Alois. *Id.* at 8-9. No evidence had, at that time, ever been produced to support Frank's claim, and Frank himself said Hitler's full Aryan blood was obvious. *Id.* at 8. Frank's claims were widely believed in the 1950s, but are now doubted by historians. *Id.*

From another perspective recent DNA tests on Hitler's relatives definitively show not only a Jewish genealogy but also, a definitive North African strain. See *Adolph Hitler had Jewish, African ancestors show DNA tests*, INDO-ASIAN NEWS SERVICE, (Aug. 24, 2010), <http://www.ndtv.com/article/world/adolf-hitler-had-jewish-african-ancestors-show-dna-tests-46844>.

The DNA tests threw up a startling result. It revealed a form of the Y-chromosome that is rare in Germany and the rest of Western Europe, but common among Jewish and North African groups. Experts now think that Hitler had migrant relatives who settled in his homeland. [Jean-Paul] Mulders, [the journalist who started the investigation], said both the test samples had a form of genetic material known as Haplogroup

GERMAN CIVIL CODE: PRIVATE SEVERING IMPEDIMENTS

A private severing impediment, such as lack of consent from parents or guardians of minors, a marriage of people too closely related or by fraud, would make the marriage voidable via a suit initiated by the affected spouse.¹⁰⁴ The sections on the validity of marriage “indicate that the law did not interfere with the private interests of the parties to a marriage except for their own protection as, for instance, in the case of fraud or duress or in the case of the violation of generally approved principles of ethics and morals.”¹⁰⁵ For example, according to the NFIL document, a severing impediment would immediately affect an engagement if the engaged suffered from one of the following diseases described in section 1 of the Statute for the Prevention of Hereditary Diseases: congenital imbecility (*angeborener Schwachsinn*); schizophrenia (*Schizophrenie*); manic depressive psychosis (*zirkulaerem [manisch-depressivem] Irresein*); hereditary epilepsy (*erbliche Fallsucht*). All of these severing impediments fall under the *Statute for the Protection of the German Blood and the German Honor* and are in line with the Nazi ideas and ideals of marriage law expressed in National Socialist ideology and propaganda. These amendments to the Weimar laws for marriage were viewed as necessary interferences with the private rights and the freedom of the citizens if the interest of the state or as it was usually called, ‘the community of the German people,’ was involved.

The central precepts of the NFIL document on Divorce and Judicial Separation provided: “The possibility of obtaining a divorce did not become universal in Germany before 1876. In many parts of Germany and in Austria the only relief which a petitioner belonging to the Roman Catholic Church was able to obtain in respect of any matrimonial offense was ‘perpetual separation.’ The latter concept was made statutory under the new name of ‘dissolu-

E1b1b, proving an “irrefutable link” to the Nazi leader. It is most commonly found in the Berbers of Morocco, in Algeria, Libya and Tunisia, as well as among Ashkenazi and Sephardic Jews. “One can from this postulate that Hitler was related to people whom he despised,” the Belgian journalist was quoted as saying. Ronny Decorte, a genetic specialist in Belgium, said: “Hitler would not have been pleased about this. Race and blood was central in the world of the Nazis. Hitler’s concern over his descent was not unjustified. He was apparently not ‘pure’ or ‘Aryan.’”

Id.

104. NFIL DOCUMENT, *supra* note 3, at 4, n. 2

105. *Id.* at 6.

tion of the conjugal community' (*Aufhebung der ehelichen gemeinschaft*) after the introduction of the German Civil Code in 1900."¹⁰⁶

In addition to the legendary classical composer, Richard Wagner, one of the great heroes of Hitler and the Nazis during the nineteenth century, was the progressive reformer and German leader, Otto von Bismarck. He was the first to implement a welfare state on a national scale, using as a pretext, the prevailing scapegoat of his day, anti-Catholic bigotry. In a recent essay I wrote of this period:

Regardless of whether you realize it or not, you, your parents, your grandparents, your great grandparents and beyond were all born into a socialist revolution, a Kulturkampf, if you will (literally, "culture struggle"). Otto von Bismarck, prime minister of Prussia (a hero of Hitler and the Nazis) originated the welfare state in German policies from 1871 to 1878 and established a radical secularization policy as a pretext to destroy the influence of the Roman Catholic Church on society. These diabolical ideas and anti-intellectual values of state socialism started in Germany and spread throughout Europe, America and the world.¹⁰⁷

Therefore, the liberalization or secularization of German morality had begun in earnest as far back as 50 years before the Nazi era. Returning to the Weimar Period, the absolute grounds for annulment were: (a) Adultery, bigamy, and sodomy (B.G.B. §1565); (b) Attempts against the petitioner's life (B.G.B. §1566); (c) Willful desertion (B.G.B. §1567).¹⁰⁸ The relative grounds were: (a) Any facts by which the marital relation, owing to any grave breach of marital duty or dishonorable or immoral conduct on the respondent's part, was disturbed to such an extent that the petitioner could not be expected to continue the marriage (B.G.B. §1568).¹⁰⁹

106. NFIL DOCUMENT, *supra* note 3, at 6-7.

107. Ellis Washington, *The Molech paradigm, Part 2*, WORLD NET DAILY (Mar. 19, 2011), <http://www.wnd.com/index.php?fa=PAGE.view&pageId=276749#ixzz1T9Y7xdHS> (last visited Jan. 20, 2012). Wagner's anti-Semitic and fervently nationalistic writings are thought to have had a quasi-religious effect on Hitler. His theories of racial purity were partly drawn from Wagner. According to Wagner: "*The Volk* has always been the essence of all the individuals who constituted a commonality. In the beginning, it was the family and the races; then the races united through linguistic equality as a nation." *Hitler and Wagner*, THE TELEGRAPH (Jul. 25, 2011, 1:32 PM), <http://www.telegraph.co.uk/culture/music/classicalmusic/8659814/Hitler-and-Wagner.html> (last visited Oct. 9, 2011).

108. NFIL DOCUMENT, *supra* note 3, at 7.

109. *Id.*

Ironically, these sections did not vary markedly from the Nazi Period. Hitler and the Nazis had a revolution to begin and a world war to win. They needed both weapons and warriors to fight and be willing to die for their glorious Third Reich.

Insanity was a relative ground for annulment only when it had continued for more than three years during the marriage and was a type so severe that it was believed the intellectual community between the spouses had ceased, with no hope of its reestablishment.¹¹⁰ Insanity was medically viewed as an incurable congenital condition, inherited from one or both parents and was scrupulously sought for, exposed and ruthlessly dealt with by the Nazi state, even in Hitler's own family where insanity appeared in his family background.¹¹¹

On the *Legal Status of Children born of void Marriages*, the NFIL document states:

Any child of a voidable marriage, which otherwise satisfied the requirements of legitimacy, was deemed legitimate, unless the relative nullity of the marriage was known to both spouses at the time of such marriage. But the child was illegitimate if the marriage was void owing to some defect in form, and the marriage had not been recorded in the marriage register (citation omitted).¹¹²

Once again an otherwise unremarkable statute on German family law during the Nazi Period has sinister historical undertones. Beginning under the infamous Nuremberg statutes of 1935, the Jews, labeled subhumans, became essentially nonbeings.¹¹³ Clearly, a marriage or child with one or both individuals being Jewish was not considered legitimate. Noticeably, Nazi policy regarding family law was not based on concerns of morality, religion or even legitimacy. Rather, the Nazi obsession to prevent Aryans from breeding with non-Aryans was the main issue and what eventually resulted in the "final solution." Once the inferior races were exterminated, Hitler believed that future generations would

110. *Id.*

111. SHIRER, *supra* note 75, at 131-32 (discussing Hitler's alleged love affair with his niece, Geli Raubal, who subsequently committed suicide in 1929).

112. NFIL DOCUMENT, *supra* note 3, at 8-9.

113. JOHN WHITEHEAD, *THE STEALING OF AMERICA* 15 (CROSSWAY BOOKS 1983).

be eternally grateful for the improvement that his programs brought to humanity.¹¹⁴

INHERITANCE LAW—THE WEIMAR PERIOD (1919-33)

The Weimar Republic, the government that controlled Germany from the armistice of World War I to the rise of Adolf Hitler in the 1920s and early 1930s, lacked a conventional, broadly based conservative party. The German National People's Party (DNVP) was extreme, regressive and completely detached from its traditional political base, demonstrated by the election of the moribund President Paul von Hindenburg and his lackey appointees – Chancellors Heinrich Brüning, Franz von Papen and General Kurt von Schleicher.¹¹⁵ This was until January of 1933, when a no-confidence vote in the Reichstag forced a new coalition of leftist radicals (nationalists and communists) whom would soon bring to the forefront the only man with the charisma and authority to keep Germany together – the megalomaniac Adolf Hitler.¹¹⁶

Part II of the Law prior to 1933 concerns *The Law of Inheritance* (Book V of the German Civil Code). Here the NFIL document states: “The rule is that the statutory heir succeeds, except insofar as he is displaced by any disposition of the deceased intended to become operative on his death.”¹¹⁷ Lacking a testamentary or contract disposition, the statutory heirs were the kindred of the deceased and ordered by a system of classes, “each known as a *Parentel*: the first class consisted of the issue of the deceased, the second of his parents and their issue, the third of his grandparents and their respective issue . . .”¹¹⁸

Throughout this section on wills, the laws of inheritance follow, in many respects, the conventional laws of prior periods in German history, even dating back to the ancient continental legal system or the so-called civil law (or civilian law). Civil law is a legal system by Roman law, the general aspects of which are that laws

114. See Bergman, *supra* note 11, at 7. Regarding this Darwinian evolutionary zeitgeist which exists throughout family law statutes. During the Nazi Period the traditional de jure (legal, official) de facto (legal, unofficial) dichotomy would be eradicated and all German laws became de jure.

115. WILLIAM YOUNG, GERMAN DIPLOMATIC RELATIONS 1871-1945: THE WILHEMSTRASSE AND THE FORMULATION OF FOREIGN POLICY 180-81 (2006).

116. *Id.*

117. NFIL document, *supra* note 3, at 11.

118. *Id.*

are written into a collection, codified, and unlike common law, are not interpreted by judges. Principally, it is the collection of legal ideas and systems ultimately derivative of the Code of Justinian, but strongly influenced by Germanic, ecclesiastical, feudal and local practices, as well as doctrinal strains such as natural law, codification, legislative and legal positivism.¹¹⁹

The NFIL document states:

According to the Germanic law the right to take the estate belonged to the natural heirs, and it was only gradually and through the influence of the clergy that a person was allowed to take a certain portion away from the heir. But modern German law entirely discarded the right of any person to be appointed as heir of another person

Every instrument containing a testamentary disposition (*letztwillige Verfügung*) was called a will. No such disposition was valid unless the prescribed formalities as to the execution of the will had been observed (citation omitted).¹²⁰

Regarding holographic wills, the NFIL documents indicates, “[a] holograph will (*eigenhandiges Testament*) was a document containing a direction of any kind intended to be operative on the writer’s death, written and signed by the testator, and indicating its date and the name of the place at which it was written.”¹²¹ In contrast, publicly declared wills were “[e]xecuted in a public form [that] had to be declared before a judge or a notary public. . .”¹²² Similarly, “[a] contract of inheritance was made by a declaration before a judge or notary public, both parties being present at the same time. In other respects the formalities are the same as those in the case of a publicly declared testamentary disposition (citation omitted).”¹²³

Throughout the Weimar Republic Period (1919-33), it was conventional thinking that a law did not have to conform to the constitution, provided two-thirds of parliament ratified such a law, also required to amend the constitution (*verfassungsdurchbrechende Gesetze*).¹²⁴ Hitler and the Nazis sought to preserve and

119. CHARLES ARNOLD BAKER, *THE COMPANION TO BRITISH HISTORY* 308 (Routledge 2001) (1997).

120. NFIL DOCUMENT, *supra* note 3, at 13.

121. *Id.*

122. *Id.* at 15.

123. *Id.* at 13.

124. *See The Weimar Republic, supra* note 87.

exploit Machiavellian extremes via the Enabling Act of 1933, which gave Hitler dictatorial powers in Germany.¹²⁵ Though the Act formally gave legislative powers to the government as a whole, these powers were only exercised by Hitler.¹²⁶ Joseph Goebbels wrote shortly after the passage of the Enabling Act: “The authority of the Führer has now been wholly established. Votes are no longer taken. The Führer decides. All this is going much faster than we had dared to hope.”¹²⁷ In a historical sense, it would appear that the Weimar Republic gave Hitler and the Nazi Party the rope to hang themselves.

The General Law of 1949, which is the modern German constitution, sought to remedy this institutional anomaly by explicitly changing its wording and forbidding the elimination of the basic rights or the federal structure of the Republic.¹²⁸ During the Weimar Period, the application of proportional representation allowed many parties to have representation in the *Reichstag*.¹²⁹ Under this European-style Parliamentary system, many small parties were thus formed and some extremist (like communists, nationalists, and anarchists groups) gained political alliances within the system.¹³⁰ Despite being elected by majority vote, the Reichstag of the monarchy was similarly composed of many small groups.¹³¹

The Weimar Republic did not fall due to the fractured parties, but rather to the political unity of the communists, anarchists and

125. *Id.*

126. *Id.*

127. See MARTIN COLLIER, FROM KAISER TO FUHRER: GERMANY, 1900-45 131 (2009): Hitler believed that with the Centre Party members’ votes, he would get the necessary two-thirds majority. He negotiated with the Centre Party’s chairman, Ludwig Kaas, a Catholic priest, finalizing an agreement by March 22, 1933. Kaas agreed to support the Act in exchange for assurances of the Centre Party’s continued existence, the protection of Catholics’ civil and religious liberties, religious schools and the retention of civil servants affiliated with the Centre Party. It has also been suggested that some members of the SPD were intimidated by the presence of the Nazi SA throughout the proceedings. Regarding Goebbels remarks on the Enabling Acts, see *March 23rd, 1933: Law to Remedy the Distress of the People and the Nation*, THIRD REICH NEWS (Feb. 27, 2008) <http://learnhistory.org.uk/y12/index.php?blog=2&title=march-23rd-1933-law-to-remedy-the-distre&more=1&c=1&tb=1&pb=1> (last visited Dec, 28, 2011).

128. See *The Weimar Republic*, *supra* note 87 (examining the “Institutional Problems” section).

129. *Id.*

130. *Id.*

131. *Id.*

national socialists.¹³² There were repeated socialist uprisings and massive hyperinflation, which eventually forced France and Belgium to send troops to annex the Ruhr industrial region of Germany in 1923.¹³³ The Wall Street Crash of October 1929 and the Great Depression that followed virtually destroyed the Weimar Republic.¹³⁴ The Crash had a terrible impact on the American economy, but its negative effects also damaged the German economy.¹³⁵ America could no longer lend money to Germany and in addition to the extreme inflation, factories were being forced to close and millions of Germans were losing their jobs.¹³⁶ Even so, the modern German Bundestag, perhaps remembering some of the darker chapters of its recent history, had implemented a five percent threshold limit for any political party to gain parliamentary representation.¹³⁷

In summary, Germany family and inheritance law during the Weimar Period was generally liberal, utilitarian, pragmatic, and mildly purged of most overtly religious encumbrances. It was also egalitarian among men, women, and children and in general, un-

132. JOHN CHILD ET AL., UNDERSTANDING HISTORY 62 (1993).

133. *Id.*

134. *Id.* at 70.

135. *Id.* In a recent essay on the Weimar Republic I wrote: "The Weimar Republic, so infamous for its cultural experimentation and bohemian values, also alienated many traditionalists. Hitler and the Nazis repeatedly exploited these social divisions. The Old Guard also underestimated the ambitious Hitler. It was an astonishing miscalculation. They realized too late that it was the Nazis who used them. There is a wise saying that "In troubled times, the fearful and naïve are always drawn toward charismatic radicals." A paralyzing fear of Bolshevism dominated both the old and the new elites during the Weimar period." Ellis Washington, *An American Weimar Republic*, WORLDNETDAILY.COM (June 25, 2011, 1:00 AM), <http://www.wnd.com/index.php?pageId=315133> (last visited Oct. 10, 2011) (regarding historical parallels between the intellectual and economic decadence of the Weimar Republic leading inexorably to the radical racism of Hitler's Third Reich). In *THE ROAD TO SERFDOM*, F.A. Hayek explains the way countries travel the road from democracy to dictatorship:

It is important to remember that, for some time before 1933, Germany had reached a stage in which it had, in effect, had to be governed dictatorially. ... Hitler did not have to destroy democracy; he merely took advantage of the decay of democracy and at the critical moment obtained the support of many to whom, though they detested Hitler, he yet seemed the only man strong enough to get things done.

F.A. HAYEK, *THE ROAD TO SERFDOM* 108 (Bruce Caldwell ed., Univ. Chi. Press 2007) (1944).

136. *The Weimar Republic*, *supra* note 87.

137. *Id.*

remarkable. All that would drastically change when Hitler and the Nazis came to power on January 30, 1933.

II. GERMAN FAMILY LAW—THE NAZI PERIOD: 1933-45

Nazism and its attendant diabolical effects upon family and inheritance law were not created in a vacuum. In many respected and leading German biologists, scientists, intellectuals and academics from the 1880s and early 1900s greatly influenced Nazi racist ideology.¹³⁸ One enduring *leitmotiv*, uncovered in the academic writings of the period, is that Darwin's ideas on evolution theory and related publications had a profound and enduring influence upon formulating Nazi race policies and family law. Hitler assumed that the human gene pool could be enhanced by employing selective breeding techniques like farmers use to breed better-quality cattle strains.¹³⁹ In the development of their racial policies, the Nazis relied greatly upon Darwinism for justification. For example, Darwin determined that "bad blood" was able to contaminate a whole gene line, polluting all future offspring.¹⁴⁰ Moreover, many esteemed biologists and academics agreed with this finding.¹⁴¹ They actively campaigned for genetic purity, by way of compulsory sterilization laws (popularized first in Britain and America decades before the Nazis).¹⁴² These laws were "designed to prevent those with defective or 'inferior' genes from contaminating the Aryan gene pool. Later, when the 'genetically inferior' were also judged as 'useless dredges,' massive killings became justified.

138. Regarding the inexorable connection between Darwinian evolution, Nazism, and anti-Semitism, Bergman wrote:

"Darwinism not only influenced the Nazi attitude toward Jews, but other cultural and ethnic groups as well. Even mental patients were included later, in part because it was then believed that heredity had a major influence on mental illness (or they possibly had some Jewish or other non-Aryan blood in them), and consequently had to be destroyed. Poliakov notes that many intellectuals in the early 1900s accepted *telegony*, the idea that 'bad blood' would *contaminate a race line forever*, or that '*bad blood drives out good, just as bad money displaces good money.*' Only extermination would permanently eliminate inferior genetic lines, and thereby further evolution.

Bergman, *supra* note 11, at 7 (citing LEON POLIAKOV, *THE ARYAN MYTH* 282 (E. Howard trans., 1974)).

139. Bergman, *supra* note 11, at 1.

140. *Id.* at 7.

141. *Id.*

142. *Id.*

The groups judged inferior were gradually expanded to include a wide variety of races and national groups.”¹⁴³ Eventually, it encompassed weak aged people, epileptics, both severe and mild mental defectives, deaf-mutes and people with certain terminal illnesses.¹⁴⁴ Consequently, a fundamental policy of Hitler’s government was the development and implementation of policies intended to preserve the “superior race” (Germans) and protect them from the “inferior races” (Jews and others). This necessitated, at a minimum, the State mandated law prohibiting “inferior races” from associating in any way with those deemed superior, in order to reduce contamination of the latter’s gene pool. The “superior race” philosophy was based on the theory of group inferiority or group inequality within each species, a major supposition and condition of Darwin’s “survival of the fittest” theory, a phrase that Spencer, an ardent devotee of evolutionary theory and proponent of Social Darwinism, first coined.¹⁴⁵ History has clearly demon-

143. *Id.*

144. *Id.* On the social Darwinian speculations and hereditary arguments of race purity by getting rid of polluted or “bad blood”, Irish playwright and British citizen progressive intellectual George Bernard Shaw along with many early twentieth century progressive agreed with the policies of Mussolini, Hitler and Stalin. Jonah Goldberg writes of Shaw: “*Shaw idolized Stalin, Hitler and Mussolini as the world’s great “progressive” leaders because they “did things,” unlike the leaders of those “putrefying corpses” called parliamentary democracies.*” JONAH GOLDBERG, LIBERAL FASCISM: THE HISTORY OF THE AMERICAN LEFT, FROM MUSSOLINI TO THE POLITICS OF CHANGE 134 (2007); *see also*, Ellis Washington, *The Liberal-Fascist Axis*, WORLD NET DAILY (May 29, 2010), <http://www.wnd.com/2010/05/159717/> (last visited Jan 21, 2012):

Twenty-five years before Hitler built his first gas chambers to exterminate the Jews, the progressive prophet of death George Bernard Shaw prophesied in a lecture to the Eugenics Education Society on March 4, 1910: “We should find ourselves committed to killing a great many people whom we now leave living, and to leave living a great many people whom we at present kill. We should have to get rid of all ideas about capital punishment. ... *A part of eugenic politics would finally land us in an extensive use of the lethal [gas] chamber.* A great many people would have to be put out of existence simply because it wastes other people’s time to look after them.”

In 1934, just one year after Hitler came to power, Shaw said: “If they are not fit to live, kill them in a decent human way.” The Nazis heard Shaw’s plea of *Lebensunwertes Leben* and used the diabolical gas Zyklon B to effect their evil madness upon the Jews and against civilization.

Id.

145. HERBERT SPENCER, 1 PRINCIPLES OF BIOLOGY 444-445 (1864). Spencer further wrote: “This survival of the fittest, which I have here sought to express in

strated that these diabolical ideas of Social Darwinism are connected to Hitler's Final Solution, the genocide of approximately six million Jews and four million other people who belonged to what German scientists judged as "inferior races."

HITLER'S EUGENIC GOALS

What was referred to as "scientific race theory" in the halls of German academics, the cafes of Cologne, Berlin and Leipzig, on the back pages of articles in their local newspapers, and discussed during dinner among family members in the 1880s, would lead to a comprehensive and totalizing implementation of German geopolitics, domestic public policy, culture and society in just 50 years. Scientific racism is the use of science, or ostensibly scientific findings and method to investigate differences among the human races.¹⁴⁶ Regardless of method differences, no amount of historicism, revisionist history, or consensus socialist opinion can ignore or cover up this key period of German history, spanning roughly 1870-1930. These six decades were the golden age of historical context, Social Darwinism, eugenics, moral relativism and scientific racism, leading directly to the rise of the Nazi Party and Hitler's nihilist racialism.¹⁴⁷ When Hitler ascended to power from 1925-33, such radical ideas were not only over 50 years old, but stamped with the imprimatur of "science" by the Weimar Republic and preceding generations, dating back to the great German Chancellor and hero of the Nazis, Otto von Bismarck (1815-98).¹⁴⁸

Thus, only a relatively small intellectual leap from the Bis-

mechanical terms, is that which Mr. Darwin has called 'natural selection,' or the preservation of favoured races in the struggle for life." *Id.*

146. ELAZAR BARKAN, *THE RETREAT OF SCIENTIFIC RACISM: CHANGING CONCEPTS OF RACE IN BRITAIN AND THE UNITED STATES BETWEEN THE WORLD WARS* 24 (1993) (explaining that scientific developments helped legitimize racism and sanction the belief in European and American racial superiority); *ROUTLEDGE ENCYCLOPEDIA OF PHILOSOPHY: QUESTIONS TO SOCIOBIOLOGY* 18 (1998) ("Its exponents [*sc. of scientific racism*] tended to equate race with species and claimed that it constituted a scientific explanation of human history."); TER ELLINGSON, *THE MYTH OF THE NOBLE SAVAGE* 151 (2001) ("In scientific racism, the racism was never very scientific; nor, it could at least be argued, was whatever met the qualifications of actual science ever very racist."); PAUL A. ERICKSON, LIAM D. MURPHY, *A HISTORY OF ANTHROPOLOGICAL THEORY* 152 (3rd ed., U. Toronto Press 2008) ("Scientific racism: Improper or incorrect science that actively or passively supports racism").

147. BARKAN, *supra* note 146, at 24-25.

148. *Id.*; see also Stein, *supra* note 16.

marckian and Weimar Periods of German history is necessary to imagine statutes regarding family relationships and the disposition of one's estate, being revised, modified and edited under the Nazi worldview to be tools for Final Solution. While they may look benign, it is comprehensible that they were altered to help wipe Jews off the face of the Earth. How? By, for example, making it illegal for Jews to marry German citizens or to inherit or legally bequeath their personal property to other Jews¹⁴⁹. The Nazis had repeatedly demonstrated an irrational, bloodlust contempt of the Jews throughout the NFIL document and against Jewish vested interests whom tragically, in documents like the Enabling Statutes of 1933 and the Nuremberg Laws of 1935, had, with the bureaucratic stroke of a pen, found themselves citizens without a country and with a shrinking number of legally enforceable rights.¹⁵⁰

It was Thomas Jefferson's Declaration of Independence which famously cited the egalitarian principle that "All men [people] are created equal."¹⁵¹ Although this idea of the Enlightenment Age presently dominates Western ideology, outside America, most nations and cultures do not heed to this principle.¹⁵² Social Darwin-

149. See, e.g. NFIL DOCUMENT, *supra* note 3, at 32 (describing how in 1939, a statute was enacted that made all Jews "stateless." Thus, prohibiting them from inheriting anything from a German citizen).

150. Bergman, *supra* note 11, at 1. Bergman, in his opening paragraph, eloquently cites the galling narrative of how the Nazis used scientific racism by respected German scientists, philosophers and intellectuals of the early 1900s to create a generation the Final Solution and Jewish genocide. *Id.*

Leading Nazis, and early 1900 influential German biologists, revealed in their writings that Darwin's theory and publications had a major influence upon Nazi race policies. Hitler believed that the human gene pool could be improved by using selective breeding similar to how farmers breed superior cattle strains. In the formulation of their racial policies, Hitler's government relied heavily upon Darwinism, especially the elaborations by Spencer and Haeckel. As a result, a central policy of Hitler's administration was the development and implementation of policies designed to protect the 'superior race.' This required at the very least preventing the 'inferior races' from mixing with those judged superior, in order to reduce contamination of the latter's gene pool. The 'superior race' belief was based on the theory of group inequality within each species, a major presumption and requirement of Darwin's original 'survival of the fittest' theory. This philosophy culminated in the 'final solution', the extermination of approximately six million Jews and four million other people who belonged to what German scientists judged as 'inferior races'.

Id.

151. *Declaration of Independence* [¶ 1] (1776).

152. Bergman, *supra* note 11, at 1.

ism and the eugenics movement have been the primary impetus in opposition to Jefferson's egalitarian and it is most evident and primitive in Darwin's 'survival of the fittest' philosophy.¹⁵³ Bergman highlighted the fact that the theory of selective breeding could be found in literature old as Plato's *Republic*.¹⁵⁴ However, "[t]he most important was the theory of evolution, for Francis Galton's ideas on eugenics — and it was he who created the term 'eugenics' — were a direct logical outgrowth of the scientific doctrine elaborated by his cousin, Charles Darwin."¹⁵⁵

Social Darwinism explicitly permeated, influenced and controlled every aspect of Nazi governmental policy. An examination of existing documents, such as the NFIL Document, that were produced during the Nazi movement demonstrates this.¹⁵⁶ While the Third Reich instituted racism through public policies, the German universities were establishing it in academia.¹⁵⁷ Racial science was even being offered as a doctorate by 1936.¹⁵⁸

Regarding German family law since 1933, and the major innovations in the Law with respect to Family Law, the NFIL documents cite six statutes and an addendum.¹⁵⁹ The documents include: (a) Statute against Abuses with regard to Marriage and Adoption; (b) Statute for the Prevention of Hereditary Diseases; (c) Statute for the Protection of the German Blood and the German Honor; (d) Statute for the Preservation of the Health of the German people; (e) Statute Affecting certain Changes in the Provisions of the Family Law and modifying the Legal Status of Stateless Persons; and (f) Statute for the Unification of the Law of Marriage and Divorce in Austria and the German Reich, and the amendments thereto.¹⁶⁰ Each of these Nazi "innovations" entailed throughout the NFIL document were saturated with the ideas of Social Darwinism, scientific racism, and racialist assumptions based on evolutionary and Nazi Aryan supremacist theories.¹⁶¹

153. Stein, *supra* note 16; CLARK, *supra* note 2.

154. Bergman, *supra* note 11, at 1.

155. *Id.* (quoting LUDMERER, *supra* note 17).

156. Stein, *supra* note 16.

157. *Id.*

158. *Id.*

159. NFIL DOCUMENT, *supra* note 3, at 16-17.

160. *Id.*

161. *See, e.g. id.* at 19 (forbidding the marriage of any people who have different 'class' of blood and expressly, marriage between Jews and German citizens).

As outlined previously in the Nuremberg Laws, Hitler and the Nazis' primary objective for the German family and German society was to prevent Aryans from breeding with non-Aryans, a fanatical concern that eventually resulted in the Final Solution. However, the Nazis also enacted the following family and inheritance law statutes control and prejudice the Jews in other ways. For example, they implemented a statute concerning the Inheritance of Farms (*Reichserbhofgesetz*, *Reichsgesetzblatt Seite*), which expressly forbid Jews to own farms.¹⁶² This is line with the Nazi cult of the organic and their mythological idea of the German farmer as being the most "Germanic" vocation.¹⁶³ The Nazi's also created the Statute Imposing Certain Limitations on the Right of Inheritance because Conduct against the Interest of the German People, effectively barring anyone who lost citizenship from the right of inheritance.¹⁶⁴ Since anyone "politically undesirable" was in danger of losing citizenship, this was powerful Nazi propaganda.¹⁶⁵ It was thought up by Goebbels and Julius Streicher, the infamous editor of *Der Sturmer*, the notorious anti-Semitic propaganda newspaper that became the Bible of Hitler's genocide chine against the Jews.¹⁶⁶ Similarly, under the Nazis, provisions of the Statute Affecting the Creation and Revocation of Testamentary Dispositions and Contracts of Inheritance, were drastically changed.¹⁶⁷ In contrast to those in the Weimar Period, the Nazi altered provisions overtly discriminate against the Jews in a *de jure* (legal) sense and to in a *de facto* (unofficial) sense work to legally steal over 90 percent of Jewish wealth by scrupulously preventing German Jews from bequeathing their money to their family or heirs nor taking it out of the country.¹⁶⁸

The deviations of prior Family Law consist of eleven divisions, the first being *Betrothal*—The Statute for the Preservation of the Health of the German People and the Statute for the Unification of the Law of Marriage and Divorce in Austria and the German Reich

162. *Id.* at 34.

163. *Id.*

164. *Id.* at 32.

165. NFIL DOCUMENT, *supra* note 3, at 32; WHY DIDN'T THE PRESS SHOUT?: AMERICAN AND INTERNATIONAL JOURNALISM DURING THE HOLOCAUST 302-05 (Robert Moses Shapiro ed., 2003).

166. Why didn't the press shout?, *supra* note 165, at 302-05.

167. NFIL DOCUMENT, *supra* note 3, at 17.

168. *Id.*; WASHINGTON, *supra* note 6, at 123-25.

(hereinafter called Marriage Law).¹⁶⁹ Section four of the Marriage Law declares a marriage between a German citizen of German or racially related blood and a person of non-German and not racially related (*artfremd*) blood not permissible, creating a new public severing impediment.¹⁷⁰ Section one explicitly forbids a marriage between Jews and citizens of German or racially related blood.¹⁷¹ Such a marriage is void, even if it is concluded in a foreign country.¹⁷²

Section five of the Marriage Law establishes another public severing impediment:

(a) when a betrothed person has a contagious disease which might affect the health of the other betrothed or of the issue of both; (b) When a betrothed person is afflicted with a mental disease or with a type of insanity which would render such a marriage undesirable from the point of view of the interest of the German people; (c) The Statute for the Prevention of Hereditary Diseases: congenital imbecility; schizophrenia; manic depressive psychosis; hereditary epilepsy; Huntington's chorea; congenital amaurosis; congenital deafness; congenital malformation (German omitted).¹⁷³

On Nazi marriage policy, the NFIL document further states: "So is the violation of section five of the Marriage Law according to section four of the Statute for the Preservation of the Health of the German People."¹⁷⁴ Section six and seven of the Marriage Law provide that a "marriage cannot be concluded between relatives by blood in the direct line, nor between brothers and sisters of full blood or halfblood, nor between relatives by marriage in the direct line."¹⁷⁵ However, Hitler was deeply in love with one woman, his cousin, Geli Raubal, whom he eventually wanted to marry but like Hitler's other love, Eva Braun, Geli allegedly committed suicide.¹⁷⁶ Similarly, subsequent research of Hitler's genealogy revealed a

169. NFIL DOCUMENT, *supra* note 3, at 18.

170. *Id.*

171. *Id.*

172. *Id.* at 18-19

173. *Id.* at 19-20.

174. NFIL DOCUMENT, *supra* note 3, at 20

175. NFIL DOCUMENT, *supra* note 3, at 20.

176. SHIRER, *supra* note 75, at 131-32 (describing Hitler's alleged love affair with his niece, Geli Raubal, who subsequently committed suicide in 1929).

family member who was mentally ill and was later gassed to death at an insane asylum.¹⁷⁷

Nazi family law was very clinical where Darwinism's "survival of the fittest," positive law and naturalism was involved. For example, section twenty-three of the Marriage Law states: "a marriage is void when the wife's only reason for the conclusion of the marriage was to acquire the family name of the husband or to acquire his nationality without the intention of both spouses to live together in conjugal community."¹⁷⁸ Similarly, children born of a marriage void under Sections 4 and 5 (when one or both partners are non-German, not racially related to German blood, or suffer from diseases discussed above under Section 5), are illegitimate no matter what.¹⁷⁹ On the other hand, children born from marriages void for some other reason are legitimate, if at the time of the marriage, the parents did not know the marriage was void.¹⁸⁰

The sections relating to divorce were significantly altered and numerous provisions were repealed.¹⁸¹ Notably, a provision providing a spouse with the right to divorce if his or her spouse was guilty of engaging in sodomy, in violation of the Criminal Code, was repealed.¹⁸² The NFIL document explains, "it is characteristic of the National Socialist regime that [this] section [citation omitted] has been dropped, because [it pertained to the section] of the Criminal Code [that] punished sodomy. It is generally known that many leading Nazi leaders and members of the party were guilty of this crime."¹⁸³ The most infamous, of course, were the hundreds of thousands of elite SA (*Sturmabteilung*) or Brownshirts, Hitler's private security force and led by Ernst Rohm, also known as Stormtroopers.¹⁸⁴ On the Night of Long Knives (June 30, 1934),

177. ANGELA LAMBERT, *THE LOST LIFE OF EVA BRAUN* 85 n.38 (2006).

178. NFIL DOCUMENT, *supra* note 3, at 20

179. *Id.* at 23.

180. *Id.*

181. *Id.*

182. *Id.* at 23-24.

183. *Id.*

184. LOTHAR MACHTAN, *THE HIDDEN HITLER* 110-11 (John Brownjohn trans., 2001). The following passage the article highlighted references and analyzes a piece allegedly written by Rohm:

Perhaps the best historical reference in which Rohm dealt with his homosexual proclivities is supplied by an article published in 1932, 'National Socialism and Inversion', which, if not written by him, must at least have been instigated by him. Its anonymous author went so far as to make the – never disavowed – assertion that he was expressing 'not just a personal view, but the opinion [that prevails all the way] up to the

Hitler used the homosexuality of Rohm and other well-known SA leaders as a pretext to get rid the SA, who were growing in power.¹⁸⁵ He also absorbed the core of the SA into Himmler's SS (*Schutzstaffel*), who Hitler considered his most fanatical and devoted followers and are known to have committed some of the most egregious crimes of World War II.¹⁸⁶

Despite Hitler and the Nazi's genocidal tactics, they ironically had laws against an "illegal abortion."¹⁸⁷ They enacted a new provision allowing a spouse to petition for divorce if the other spouse willfully refuses to permit conception or brings about an illegal abortion.¹⁸⁸ However, they liberalized and facilitated one's ability to obtain a divorce by rewording the previous law to provide grounds for divorce "if there is any grave breach of marital duty or of dishonest or immoral conduct."¹⁸⁹ The NFIL document explains that after 1933, the German Courts interpreted this provision according to National Socialist ideas.¹⁹⁰ Similarly, another section "gives either spouse the right to petition for divorce if the other spouse is suffering from a contagious or loathsome disease which cannot be cured within a fore[-]seeable time. No similar provision

Fuhrer'. The gist of the article was that what really mattered was to do one's duty as a soldier and comrade. Anyone who did that should be allowed a free hand in private, so long as he concealed his activities from the public gaze.

If that was the moral aspect of the matter, so to speak, what of the personal aspect? 'I fancy I'm homosexual,' Rohm confided to his friend Heimsoth in 1929,

["]but I didn't really 'discover' it until 1924. I can recall a series of homosexual feelings and acts extending back into my childhood, but I've also had relations with plenty of women. Never with any great pleasure, though. I also caught three doses of the clap, which I later saw as nature's punishment for unnatural intercourse. I now detest all women, especially those who pursue me with their love – and there are quite a number of them, more's the pity.["]

Rohm is reputed to have had a fiancée before the war, but the liaison was evidently of brief duration. He then entered the exclusively male society of the trenches and the Freikorps, in which he had no need to disguise his homoerotic preferences. We do not know with whom Rohm 'really discovered' his homosexuality in 1924, and the date may also be . . .

Id.

185. *Id.* at 214-19.

186. NFIL DOCUMENT, *supra* note 3, at 24.

187. *Id.*

188. *Id.*

189. *Id.* at 25.

190. *Id.*

existed in the Civil Code.”¹⁹¹ The next section allowing a spouse to petition for divorce if the other becomes prematurely sterile after the marriage was concluded is quite typical of the Nazi philosophy as well.¹⁹² Moreover, the sterile spouse cannot ask for a divorce and neither spouse can if they have a healthy child born in wedlock or an adopted healthy one.”¹⁹³ This section of the NFIL document on Nazi policy regarding marriage law appears to be a systematic effort to enact radical eugenic and evolution theory. In particular, it seems to inject Darwin’s survival of the fittest philosophy into German society with the intent to weed out all “undesirables.” The Nazis were so zealous about purifying German blood; they even encouraged Germans married to Jews to get a divorce.¹⁹⁴ In the famous words of the Bavarian cabinet minister, Hans Schemm: “National Socialism is politically applied biology.”¹⁹⁵

One of the many ironies and paradoxes of Nazi family law is the fact that if Hitler was not the Fürher, he would not have been able to comply with the most rudimentary aspects of Nazi family law. For example, according to Dr. Henry A. Murray, who was given the task of understanding Hitler’s psychological makeup by the Allied forces, found that Hitler was generally known to be asexual with pronounced homosexual tendencies.¹⁹⁶ Dr. Murray

191. *Id.*

192. NFIL DOCUMENT, *supra* note 3, at 25.

193. *Id.*

194. Beginning already in June 1933, with a law requiring candidates for the civil service to prove the German identity of their marriage partner, the regime took numerous steps to encourage Germans who had married Jews to get a divorce, and abandon Jewish family members. NATHAN STOLZFUS, RESISTANCE OF THE HEART: INTERNMARRIAGE AND THE ROSENSTRASSE PROTEST IN NAZI GERMANY 312 (W.W. Norton 1996) (quoting Ursula Buttner, *Introduction* to ROBERT BRENDEL, DIE NOT DER JUDEN TEILEN 7, 20 (HAMBURG 1988). Many of the laws were concerned with blocking careers of Germans married to Jews. STOLZFUS, *supra* note 194, at fn.64 (citing Buttner, *supra* note 194, at 20).

195. UTE DEICHMANN, BIOLOGISTS UNDER HITLER 86 (Thomas Dunlap trans., President & Fellows of Harv. Coll. 1996) (1992).

196. HENRY A. MURRAY, *Detailed Analysis of Hitler’s Personality*, in ANALYSIS OF THE PERSONALITY OF ADOLPH HITLER: 197 (1943), available at http://library2.lawschool.cornell.edu/donovan/pdf/Batch_15/Vol_XC.pdf. Another Nazi, Rauschnig, reported that Hitler has had at least three male lovers. Moreover, Murray states that he frequently had nightmares about being attacked by a male, used numerous metaphors referring being stabbed or attacked in the rear, had female tendencies, identified with his mother, and was at points, expressed exaggerated submissiveness. All of these characteristics indicate a likelihood of homosexuality. *Id.* at 200-205. <http://www.nizkor.org/hweb/people/h/hitler-adolf/>

also noted that he had an unconscious need for punishment as a result of repressing his submissive traits.¹⁹⁷ This caused Hitler to alternate consciously over-striving to assert superiority with repressing homosexuality.¹⁹⁸ Murray claims that Hitler was impotent as well.¹⁹⁹

Many biographers attribute his impotency to the dangerous amount of drugs Hitler took daily for decades under the direction of his personal physicians, Dr. Theodor Morell and Dr. Karl Brandt, due to numerous congenital illnesses like sterility, depression, syphilis, paranoia, Parkinson's disease, fits of rage, psychosis and later in his life, dementia and increased paranoia.²⁰⁰ So much of Hitler's preoccupation with Aryan supremacy and the "superior race" was hypocritical and based on defense mechanisms and psychosis displacement and psychological projection. Paradoxically, Hitler was perhaps one of the more physically poor specimens of the Aryan ideal in the German leadership.²⁰¹ On this point, British historian Paul Johnson, in his book, "Modern Times," wrote this passage regarding Hitler's chronically poor health and the medically questionable care he received from his two primary physicians, Morell and Brandt: "Professor Morell, a smart Berlin doctor, gave him sulfanilamide and glandular injections; he took glucose, hormones, anti-depressant pills. One of his doctors, Karl Brandt, said that he aged 'four or five years every year.' His hair went grey, but his capacity for work remained impressive to the end."²⁰²

The next sections of the NFIL document present Nazi policy regarding alimony, custody of infant children, separation and adoption issues.²⁰³ They demonstrate the comprehensive nature of the Nazi *weltanschauung*, or worldview, by being virtually totalizing in breadth and affecting every conceivable aspect of family life.

oss-papers/text/oss-profile0508.htmlhttp://www.nizkor.org/hweb/people/h/hitler-adolf/oss-papers/text/oss-profile-05-08.html

197. HENRY MURRAY, *With Predictions of His Future Behavior and Suggestions For Dealing With Him Now and After Germany's Surrender*, in ANALYSIS OF THE PERSONALITY OF ADOLPH HITLER: 18-19 (1943) available at http://library2.lawschool.cornell.edu/donovan/pdf/Batch_15/Vol_XC.pdf.

198. *Id.*

199. *Id.*

200. See Theo. L. Dorpat, M.D., *An Evaluation of "The Analysis of the Personality of Adolph Hitler" Written by Dr. Henry A. Murray in 1943*, 11 RUTGERS J. L. & RELIGION 495, 496-99 (2010).

201. *See id.*

202. PAUL JOHNSON, MODERN TIMES 412 (1983).

203. NFIL DOCUMENT, *supra* note 3, at 28.

For example, the Nazis changed the law to require the Guardian Court to determine which spouse receives custody of the infant child.²⁰⁴ Moreover, the decision is based solely on what the Court considers is in the best interest of the child.²⁰⁵ The Nazi policy regarding custody and guardianship is de jure (i.e., official Nazi race-based policy) predicated on the fact that all the parties in question are full German citizens with no discernable Jewish blood that would taint the pure German or Aryan bloodstream. With the advent of the racist Nuremberg Laws against the Jews, family law and inheritance laws, in addition to all German laws, were expressly and explicitly written to discriminate, alienate and eventually eradicate the Jew.

The Nazi's modifications of the adoption provisions were important because they enhanced the court's ability to prevent an adoption without legitimate justification.²⁰⁶ The significant new provision states, "the court is now entitled to refuse the confirmation [of an adoption] (a) there is reasonable doubt that the adoption will establish a genuine family relationship, or (b) if important considerations form the point of view of the family of the adopted child or the public interest make the contemplated adoption undesirable."²⁰⁷ Additionally, another provision declares: "[c]onfirmation [of an adoption] could be refused only if some legal requirement of the adoption had not been complied with."²⁰⁸

The next sections of the NFIL document involve "legitimation" and dowry issues. Section 10 is titled: *Declaration of Legitimation*—"An illegitimate child could, upon the application of the father, be declared legitimate by order of the public authority (citation omitted).²⁰⁹ It did not affect the validity of the declaration of legitimization, if the applicant was not the father of the child."²¹⁰ In regards to a daughter's right to a dowry, the provision states: "The father is bound to furnish to a daughter on her marriage a reasonable dowry for the establishment of a home, insofar as he is in a position to do so, having regard to his other obligations (cita-

204. *Id.*

205. *Id.* at 28.

206. *Id.* 30

207. *Id.*

208. NFIL DOCUMENT, *supra* note 3, at 31.

209. *Id.*

210. *Id.*

tion omitted).²¹¹ The father could refuse to furnish the dowry if the daughter married without the necessary parental approval.²¹²

Note that these sections of the NFIL document have been revised from the Weimar period of family law to aggressively use the power of the State to favor procreation of German offspring. Moreover, they appear as an attempt to remove prior social or religious stigmas about how children were conceived. The result of all the Nazi family laws indicate that they were designed to procreate the German race as quickly as possible and protect the Fatherland in Europe and America, while concurrently and systematically eradicating all peoples who do not fit the Aryan idea of the superior race; this burden fell hardest upon German Jews.

The last section of the NFIL document presents the laws of inheritance.²¹³ Regarding the right of the accrual of the inheritance, under Nazi law has been changed in several respects.²¹⁴

A person who has lost his citizenship by order of the government cannot inherit from a German citizen. According to statute of 14 July 1933 every person could be denationalized who was considered an enemy of the German people. Practically everybody who was politically undesirable was in danger of losing his citizenship, and, indeed, the German Government published almost weekly a list of names of people who had been deprived of their citizenship. In 1939 a statute declared all Jews to be stateless; consequently no Jew could any longer inherit from a German citizen.²¹⁵

This law was an elaboration of the anti-Semitic Nuremberg Laws of 1935. This law had the inimical effect of making German Jewish people citizens without a state and without the legal right to own land, own a house or business, work in most vocations, or marry a German citizen.²¹⁶

The German Civil Code about the right of a descendant who was not included in the testamentary disposition to demand his compulsory portion (one half of the statutory portion) was modified by adding Statute Imposing Certain Limitations of the Right of Inheritance because of Conduct against the Interest of the German

211. *Id.*

212. *Id.* at 31-32.

213. *Id.* at 32.

214. NFIL DOCUMENT, *supra* note 3, at 32.

215. *Id.*

216. *Id.* at 33.

People.²¹⁷ The new law provides: “A testator may now deprive a descendant of his compulsory portion if he should have married after 16 September 1935 a person who is considered Jewish according to the Statute for the Protection of the German Blood and the German Honor.”²¹⁸

A rather bizarre section of the NFIL document notes the high value, a virtual Romanticization the Nazis placed on the vocation of farming. “The purpose of the law on Farm Inheritance is to maintain the old German tradition with respect to farms and farmers. Nazis mythologized farmers and considered them as the fountain (“blood – fountain”) from which the life of the German people flows... Only a German citizen can be a farmer according to this law [section 12 *Erbhof* Law].”²¹⁹ On this point, one author explains:

Hitler was influenced above all by the theories of the nineteenth-century social Darwinist school, whose conception of man as biological material was bound up with impulses towards a planned society. He was convinced that the race was disintegrating, deteriorating through faulty breeding as a result of a liberally tinged promiscuity that was vitiating the nation’s blood. And this led to the establishment of a catalogue of ‘positive’ curative measures: racial hygiene, eugenic choice of marriage partners, the breeding of human beings by the methods of selection on the one hand and extirpation on the other.²²⁰

This fits perfectly with the totalizing worldview (*weltanschauung*) of Hitler’s ideas and ideals of Nazism and Aryan supremacy and how such racialism would permeate every conceivable aspect of German family life and society. These radical Nazi ideas about the Germans needing to restore organic purity by reconnecting with nature are what writer Jonah Goldberg ubiquitously referred to as “The Nazi Cult of the Organic.”²²¹ Environmentalism, vegetarianism, animal rights and public health were merely different parts of the Nazi obsession with the organic order that dominated the German fascist mind then and the liberal fascist mind today.²²² Hitler repeatedly asserted that there “is no gap

217. *Id.*

218. *Id.* at 33-44.

219. *Id.* at 34-35.

220. JOACHIM C. FEST, *THE FACE OF THE THIRD REICH* 99 (1970).

221. GOLDBERG, *supra* note 144, at 384-87.

222. *Id.* at 386-87.

between the organic and inorganic worlds.”²²³ All of this is based on the “Wrong Turn” myth – that during the ancient past the German people took a wrong turn by accepting Christianity, bourgeois morality, logocentrism and forsaking occult paganism, the latter which Hitler and the Nazis viewed as being more organic, holistic and a more authentic way of life.²²⁴

NFIL document reveals that the making and revocation of wills provisions were amended as well.²²⁵ It altered the holographic will provision insisting on the testator sign the instrument with his full name by replacing it with the provision the instrument just must leave no doubt about the testator’s identity.²²⁶ However, it added the required that a judge had to be attended by a registrar or by two witnesses when superintending the making of a will.²²⁷ Additionally, the following persons were barred from serving as a witness: (1) a minor; (2) a person declared to have been deprived of civil rights for the time which the deprivation had been ordered; (3) a person who under the provisions of the Criminal Code is incapable of being called as a witness under oath; (4) an employee of the judge [citation omitted]; (5) a person who is insane, imbecile, deaf, blind, or dumb, or incapable of writing; (6) a person who does not know the German language.²²⁸

After examining the family and inheritance laws during the Nazi period, it is clear the devil is indeed in the details which connect Nazi family and inheritance law to the ideas of Darwinian evolution, eugenic choice of marriage partners, Nietzsche’s aristocracy paradigm and will to power. I suspect scholars shall explore other philosophical and historical connections of Nazism in future generations.

EPILOGUE

Hitler and the Nazis were absolutely certain that Darwinian evolution was true and that Hitler viewed himself as the great “scientific socialist,” the modern savior of humanity.²²⁹ The implementation of radical Nazi family policies to purify the German

223. *Id.* at 389.

224. *Id.* at 385.

225. NFIL DOCUMENT, *supra* note 3, at 35-37.

226. *Id.* at 36.

227. *Id.* at 37.

228. *Id.* at 37-38.

229. Bergman, *supra* note 11, at 11.

people was not merely a policy of the State, but a supreme necessity to save the Aryan race from the inferior races of the mongrel hordes. As Bergman wrote, “if Darwinism is true, Hitler was our savior and we have crucified him.”²³⁰ Conversely, “if Darwinism is not true, then what Hitler conspired to achieve must be ranked with the most atrocious crimes of history and Darwin as the father of one of the most vicious philosophies of history.”²³¹ Darwin himself essentially prophesied the rise of a Hitler sixty years before he came to power when he wrote in the *Descent of Man*: “At some future period, not very distant as measured by centuries, the civilized races of man will almost certainly exterminate and replace throughout the world the savage races.”²³² Whether by “savages,” Darwin was thinking of the Jews is, at this point, almost academic because we have a voluminous amount of history connecting Darwinian evolution to Hitler’s National Socialism and the Holocaust.

Regardless of Darwin’s intent, the policy-level application of Darwinism to society, called eugenics, “in terms of its consequences, [it] must qualify as one of the greatest scientific blunders of all time.”²³³ Modern science disputes the racial and breeding theories of eugenics that Hitler relied on to justify his horrific deeds.²³⁴ However, it led to the murder of six million people, a world war, and one of the darkest times in modern history.

This brings us to the inevitable, but inescapable conclusion so eloquently outlined in the writings of Dr. Benjamin Wiker.²³⁵ The Nazi’s radical and comprehensive reorganization of German society from 1933-45 was nothing short of a revolution.²³⁶ It was as if Hitler and the Nazis followed the *tabula rasa* theory that man is born into the world as a “blank slate” and wiped 1,000 years of German history completely clean. Upon this new and smooth granite tablet forged in blood a new way (The Third Reich), a New Man (*ubermensch*) and a “new aristocracy,” as Nietzsche called it.²³⁷ A new evolutionary destiny using eugenics, radical family planning policies, and Social Darwinism theory to lent pseudo-scientific cre-

230. *Id.*

231. *Id.*

232. CHARLES DARWIN, *THE DESCENT OF MAN* 193 (1871).

233. Bergman, *supra* note 11, at 12 (quoting Youngson, *supra* note 11).

234. BARKAN, *supra* note 145, at 24.

235. See, e.g. Wiker, *supra* note 6.

236. See BENJAMIN WIKER, *10 BOOKS THAT SCREWED UP THE WORLD: AND 5 OTHERS THAT DIDN'T HELP* 145-48 (2008).

237. Wiker, *supra* note 6.

dence to the Nazi's genocidal madness against the Jews and perverted social policies of Aryan supremacy and German hegemony, directly leading to the Holocaust and carnage of World War II.²³⁸

Wiker asks this Socratic dialectical question: "So how do you go up? On the evolutionary ladder, the same way you got there -- by conflict, where those with superior traits extinguish those with inferior traits. As Darwin made clear, human evolution takes place by conflict and conquering, even the evolution of moral traits like fidelity and courage."²³⁹ Moreover, after the fall of Hitler's Third Reich, the Social Darwinism worldview only got stronger and widespread; even in America.²⁴⁰ For example, America's iconic Marxist historian, Richard Hofstadter's, in his popular book, *The Age of Reform* (1948), was a consensus analysis of the populism movement in the 1890s, the Progressive Era of the early 20th century, and the New Deal in the 1930s.²⁴¹ Hofstadter's main purpose for writing this work is not to retell an extensive history of the three movements, but to analyze the common beliefs of the reform groups in our modern perspective, in order to elucidate many distortions.²⁴² This opus exemplifies the ideas of the venerated historian Charles Beard, Hofstadter's major influence, whose work is dominated by leftist historical revisionism, Social Darwinism, a Marxist zeitgeist and enduring anti-Christian and anti-American bias.²⁴³ On Beard's materialistic model of class conflict Hofstadter would later write: "Beard was really the exciting influence on me," particularly the social-conflict model of U.S. history that stressed the struggle between competing economic groups (primarily farmers, Southern slavers, Northern industrialists and the workers) and minimized abstract political theories that were not yet actualized or translated into policy.²⁴⁴

Wiker continues on this survival of the fittest *leitmotiv*, which was so central to the Nazi idea of German and Aryan supremacy and Jewish inferiority and like the primitive tribes of antiquity,

238. *Id.*

239. Wiker, *supra* note 6, at 1.

240. See MAURICE R. BERUBE, AMERICAN SCHOOL REFORM: PROGRESSIVE, EQUITY, AND EXCELLENCE MOVEMENTS, 1883-1993 9-11 (1994).

241. RICHARD HOFSTADTER, THE AGE OF REFORM (Random House Digital, Inc. 2011) (1948).

242. *Id.*

243. See BERUBE, *supra* note 239.

244. RICHARD HOFSTADTER, SOCIAL DARWINISM IN AMERICAN THOUGHT xi (1992).

could only be eradicated by the stronger tribe vanquishing the weaker tribes:

When two tribes of primeval man, living in the same country, came into competition, if the one tribe included...a greater number of courageous, sympathetic, and faithful members, who were always ready to warn each other of danger, to aid and defend each other, this tribe would without doubt succeed best and conquer the other. Let it be borne in mind how all-important, in the never-ceasing wars of savages, fidelity and courage must be.²⁴⁵

Similarly, Nietzsche's theories mirrored Darwin's evolution theory, albeit with a sharper edge:

Let us admit to ourselves . . . how every higher culture on earth so far has begun. Human beings whose nature was still natural, barbarians in every terrible sense of the word, men of prey who were still in possession of unbroken strength of will and lust for power, hurled themselves upon weaker, more civilized, more peaceful races²⁴⁶

In sum, Nazi family and inheritance policy was the apotheosis of Nietzsche's aristocracy paradigm and will to power and Darwin's natural selection and survival of the fittest. This is why Wiker called Nietzsche "a more savage, but also more spiritualized form of Darwinism."²⁴⁷ More savage, because Nietzsche dares to take his radical ideas places where Darwin is silent.²⁴⁸ Thus, the seemingly innocuous words about reviving policy changes in society, family and inheritance law with ruthless efficiency is actually the savage destruction of one tribe by another, like the destruction of one species by another; that eliminates the weak and carries forth the new-found powers of the strong.²⁴⁹ The strong dominating the weak, the superior race imposing its collective will over the inferior race in reality is Hitler and the Nazi's legacy in revolutionizing all of German society and culture, including family and inheritance law. May we heed the ubiquitous words of philosopher

245. Wiker, *supra* note 6 (quoting DARWIN, *supra* note 232, at 113).

246. WOLFGANG MÜLLER-LAUTER, NIETZSCHE: HIS PHILOSOPHY OF CONTRADICTIONS AND THE CONTRADICTIONS OF HIS PHILOSOPHY 33-34 (U. Ill. Press 1999) (quoting and phrasing Nietzsche's ideas of Darwinian evolution).

247. Wiker, *supra* note 6.

248. *Id.*

249. *Id.*

George Santayana, "*Those who cannot remember the past are condemned to repeat it.*"²⁵⁰ May civilized humanity learn not to repeat the diabolical history of Hitler and the Nazis' terrible scientific experiments of combining Darwinian evolution, eugenics and scientific racism with Nietzsche's superman, aristocracy paradigm and the will to power, which led to the Final Solution, the Holocaust and their gargantuan perversions of German society and culture, including family and inheritance law.

250. GEORGE SANTAYANA, *THE LIFE OF REASON; OR, THE PHASES OF HUMAN PROGRESS: INTRODUCTION AND REASON IN COMMON SENSE* 284 (C. Scribner's Sons 2008) (1917).