

# CASH OR CREDIT: THE UNITED STATES SHOULD REMOVE NAZI MEMORABILIA FROM CIRCULATION

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## I. INTRODUCTION

The year 2020 brings the seventy-fifth anniversary of the end of World War II. Millions of brave men and women fought with true valor and grit, and made the ultimate sacrifice for their countries. However, based upon the generalized notions of a nation’s fighting force, Americans were known for taking from the battlefield items that belonged to their fighting forces. As John Steinbeck famously stated, “[i]t is said, and with some truth, that while the Germans fought for world domination and the English for the defense of England, the Americans fight for souvenirs.”<sup>1</sup> During World War II, American soldiers (also known as “American GIs”) were notorious for taking “spoils” from the areas where they were advancing. Such spoils included Nazi flags, knives, pistols, helmets—their returns also included valuables like priceless paintings and museum artifacts. The United States defines *spoils of war* as “enemy movable property lawfully captured, seized, confiscated, or found which has become United States property in accordance with the laws of war.”<sup>2</sup> For this paper’s purpose, spoils or spoils of war will refer to items taken from World War II, including personal items such as knives, guns, flags and helmets.

Today, many American soldiers who fought in World War II are in an advanced age and dying. As these soldiers pass away, many of their family members do not want to keep these items and tend to sell or donate their war spoils.<sup>3</sup> With items like these on the market, combined with the rising number of Nazi support, concerns have

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<sup>1</sup> JOHN STEINBECK, *ONCE THERE WAS A WAR* 167 (Penguin Classics 1994).

<sup>2</sup> 50 U.S.C.A. §2204(4) (West 2020).

<sup>3</sup> Allie Conti, *Getting Rid of Nazi Memorabilia is Harder Than it Sounds*, VICE: ETHICS (Apr. 4, 2018), [https://www.vice.com/en\\_us/article/zmwqj9/getting-rid-of-nazi-memorabilia-is-harder-than-it-sounds](https://www.vice.com/en_us/article/zmwqj9/getting-rid-of-nazi-memorabilia-is-harder-than-it-sounds).

arisen from those sellers that these spoils of war are being bought by those with Nazi sentiments.<sup>4</sup>

This article will analyze possible ways on how to prevent the sale of Nazi personal items to those from Nazi sentiments. First, it will start by defining the scope of the Nazi spoils problem and why the rising interest in anti-Semitism exacerbates it. Second, it will discuss why preexisting international law regarding cultural property and an outright ban on the sale would not work regarding this issue. Third and fourth, this article will discuss the two most feasible solutions to prevent the sale of Nazi personal items: voluntary buyback programs and turning items in for a tax credit. The voluntary buyback programs would be reminiscent to those in place for guns. Offering to relinquish these items for a tax credit would operate like civil asset forfeiture, however unlike forfeiting property for nothing, it would operate in the form of giving compensation as a tax credit.

## II. AS INTEREST IN ANTI-SEMITISM RISES, THE AMOUNT OF NAZI PERSONAL ITEMS COULD BE IN THE MILLIONS.

It is impossible to discern the number of Nazi personal items taken from Nazi Germany. However, one can assume that they are quite numerous, as seen in museums and consumer market behavior. Museums, either overwhelmed with the number of Nazi memorabilia, or those in which they are not particularly interested in, do not want more Nazi personal items.<sup>5</sup> This issue is not limited to one state or region, as Nazi memorabilia is being found and sold nationwide.<sup>6</sup> Furthermore, while live auctions are commonplace, many auctions may also be found 24/7 on the internet.<sup>7</sup> The timing of the number of

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<sup>4</sup> For the purposes of this paper, the term “Nazi” will also include “Neo-Nazi.” Generally, Neo-Nazis are considered to be those who support Nazi sentiments which were not from Nazi Germany. The name covers a vast extent of different groups. See, *NEO-NAZI*, S. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/ideology/neo-nazi> (last accessed Oct. 25, 2020).

<sup>5</sup> Conti, *supra* note 3.

<sup>6</sup> See *id.*; John Christie, *I Went to a Nazi Memorabilia Auction. Here's What I Saw*, WBUR (Jan. 30, 2019), <https://www.wbur.org/cognoscenti/2019/01/30/nazi-memorabilia-for-sale-john-christie>.

<sup>7</sup> See Conti, *supra* note 3; *Results for “nazi”*, LIVE AUCTIONEERS, <https://www.liveauctioneers.com/search?parameters=%7B%22keyword%22%3A%22nazi%22%2C%22sort%22%3A%22relevance%22%2C%22status%22%3A%22archive%22%2C%22page%22%3A1%7D> (last accessed Oct. 1, 2020). WARNING: The Author, nor the RUTGERS JOURNAL OF LAW AND RELIGION, Rutgers Law School, and Rutgers University, support the purchase of these items or the ideology with which they convey. This is meant to be

Nazi memorabilia available in-person and online has coincided with a more troubling social problem both here in the United States and abroad.

There has been a rise in anti-Semitic incidents and sentiments. The rise in anti-Semitic interest has caused worries amongst holders of war spoils that Nazis are collecting authentic Nazi German personal items like knives, guns, and flags for their idealist purposes and not historical value.<sup>8</sup> According to the Anti-Defamation League, the year 2017 had a fifty percent increase in anti-Semitic incidents compared to 2016, and that inflated number remained steady in 2018.<sup>9</sup> In 2019, there was a twelve percent increase in anti-Semitic incidents from the year 2018.<sup>10</sup> Anti-Semitic events include the shooting of the Tree of Life synagogue on October 27, 2018 where eleven Jewish people were murdered during morning services by a Neo-Nazi-influenced man named Robert G. Bowers.<sup>11</sup> With growing incidents of anti-Semitism, there is a growing fear amongst people who own Nazi personal items, particularly those wishing to dispose of them but are afraid to sell it to people who may hold Nazi sentiments. Therefore, there must be a solution that would ease the fears of those willing to offload their unwanted Nazi personal items.

### III. INTERNATIONAL CULTURAL PROPERTY CONCEPTS AND THE FIRST AMENDMENT MAKE IT IMPRACTICAL TO OUTRIGHT BAN AND COLLECT NAZI PERSONAL ITEMS

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used for academic purposes only in seeing how relatively easy it is to purchase these items.

<sup>8</sup> Conti, *supra* note 6.

<sup>9</sup> See *2017 Audit of Anti-Semitic Incidents*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/resources/reports/2017-audit-of-anti-semitic-incidents> (last visited Oct. 1, 2020); *Audit of Anti-Semitic Incidents: Year in Review 2018*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/audit2018> (last visited Oct. 1, 2020). According to the 2017 report, there were 1,986 incidents of anti-Semitism in the United States, which was a 57% increase from the year 2016 (and the largest increase since 1979). In 2018, the number was roughly the same at 1,879 incidents.

<sup>10</sup> See *Audit of Antisemitic Incidents 2019*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/audit2019> (last visited Oct. 1, 2020). According to the report, there were 2,107 antisemitic incidents in 2019 compared to 1,879 in 2018.

<sup>11</sup> See Erin Donaghue, *New FBI Data Shows Rise in Anti-Semitic Hate Crimes*, CBS NEWS (November 13, 2018), <https://www.cbsnews.com/news/fbi-hate-crimes-up-new-data-shows-rise-in-anti-semitic-hate-crimes/>; Rich Lord et. al., *A High School Dropout and Trucker, Robert Bowers Left Few Footprints — Except Online*, PITTSBURGH POST-GAZETTE (Oct. 29, 2018), <https://www.post-gazette.com/news/crime-courts/2018/10/29/Robert-Bowers-suspect-gunman-Pittsburgh-Tree-of-Life-synagogue-massacre-attack-federal-court/stories/201810290090>.

## A) CULTURAL PROPERTY TREATISES

While American GIs often took personal items during World War II, many nations engaged in stealing stolen cultural property like priceless works of art. There has been substantial historical scholarship done regarding stolen cultural property, including discussion on international efforts made by countries in an attempt to get those articles back.<sup>12</sup> The first international treaty which deals with cultural property is referred to as the Hague Convention of 1954, and their treaty defined “cultural property” as religious or secular items which could be movable or immovable which contain a tremendous cultural significance to the country which they are located in, and includes things like buildings or cultural centers.<sup>13</sup> The United States has also agreed to be members of other treaties or international statutes regarding stolen cultural property with similar definitions as the 1954 Hague Convention.<sup>14</sup>

These definitions make it impractical to prevent the sale of Nazi Germany personal items. Under international treaties, the definition of *culturally significant* items should cast doubt as to

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<sup>12</sup> See generally James E. Sherry, *U.S. Legal Mechanisms For The Repatriation Of Cultural Property: Evaluating Strategies For The Successful Recovery Of Claimed National Patrimony*, 37 GEO. WASH. INT'L L. REV. 511, 512-13 (2005) (examines the ways cultural property may be returned under international and American federal law, then provides an example in how it works); Christa L. Kirby, *Stolen Cultural Property: Available Museum Responses To An International Dilemma*, 104 DICK. L. REV. 729, 733-34 (2000) (discussing the conflicting national and international law on legitimate art transactions which may have multiple claims, stating there should be one international body of law to ease the confusion and that it should be on a case by case basis).

<sup>13</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, UNESCO, Article 1(a-c) (last visited Oct. 1, 2020), [http://portal.unesco.org/en/ev.php-URL\\_ID=13637&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html). Proper Name for the Hague Convention: Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954.

<sup>14</sup> Other treaties or statutes which the United States has agreed to be a member for stolen cultural property include the UNESCO agreement of 1970 regarding the return of stolen cultural property, the Convention on Cultural Property Implementation Act of 1983, and the National Stolen Property Act, initially passed in 1948 and last updated in 1994. Additionally, UNIDROIT passed the International Institute on the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects in 1995, which was an improvement upon the prior UNESCO Treaty of 1970; however, it was never signed by the United States. See Sherry, *supra* note 13, at 516-17 (citing <https://www.unidroit.org/instruments/cultural-property/1995-convention>).

whether these personal items are themselves culturally significant. Germany has banned the sale of Nazi-related items and sentiments on the internet.<sup>15</sup> Therefore, with Germany disavowing these items, international law is too impractical to prevent the sale of Nazi personal items.

B) THE FIRST AMENDMENT MAKES THE OUTRIGHT BAN ON THE SALE OF NAZI PERSONAL GOODS UNLIKELY TO BEAT A CONSTITUTIONAL CHALLENGE.

One possible way to prevent the sale of Nazi personal items would be to ban them. However, free speech concerns would most likely make it unconstitutional. There is a case that deals directly with a ban on the sale of Nazi personal items abroad being unenforceable in the United States. The case is *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme* (hereinafter “*Yahoo!*”). *Yahoo!* was held in April of 2000 when two French Jewish Student Organizations entitled La Ligue Contre Le Racisme et L'Antisemitisme (“LICRA”) and L'Union des Etudiants Juifs de France (“UEJF”) brought suit against in a French court against the American internet provider Yahoo! regarding some of the content on their French website, which included auctions of Nazi memorabilia and chatrooms for Nazi sympathizers.<sup>16</sup> France has a law that makes illegal the dissemination of Nazi propaganda or selling of Nazi goods online.<sup>17</sup> During the case, two separate orders from a French court, dated May 22, 2000 and November 20, 2000, ordered Yahoo! and Yahoo! France to take down their sales of Nazi memorabilia and relations to Nazi propaganda from their chat boards, first at a fine of 100,000 Euros per day and then on the second-order at a fine of 100,000 Francs per day.<sup>18</sup>

Following those orders, Yahoo! filed suit against LICRA and UEJF in the United States District Court for the Northern District of

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<sup>15</sup> The German law which makes this illegal is §86 of the German *STRAFGESETZBUCH* (PENAL CODE), which states that it is illegal for any person within Germany to make accessible to the public any propaganda material from a political party which has been made unconstitutional or illegal, which the Nazi party is. See *STRAFGESETZBUCH* (PENAL CODE), §86 (1-1) (last visited Oct. 1, 2020), [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p0877](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0877) (Ger.).

<sup>16</sup> *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1202 (9<sup>th</sup> Cir. 2006).

<sup>17</sup> The French version of the law may be found here: *Gayssot Act No. 615/1990 Against Any Racist, Anti-Semitic or Xenophobic Acts*, MELA PROJECT, <http://melaproject.org/node/192> (last visited Oct. 1, 2020).

<sup>18</sup> *Yahoo! Inc.*, 433 F.3d at 1203-04.

California in 2001 to get the orders deemed unenforceable under American law.<sup>19</sup> The District Court held that the French order which demanded Yahoo! take off any Nazi propaganda was invalid in the United States due to the First Amendment.<sup>20</sup> As the Court explained, their decision must be made under the laws and Constitution of the United States, and not that of France, so while France may hold Yahoo's actions to be illegal, it may not be constitutional under American Law.<sup>21</sup>

The Court's holding is significant because, under the First Amendment, American law will hold international judgments unenforceable if they violate a fundamental American right. Thus, while Yahoo! may be required in some way to cooperate with French authorities, it is invalid under American law to prevent Yahoo! from displaying Nazi memorabilia on their website.

#### IV. CREATING A VOLUNTARY BUYBACK PROGRAM SIMILAR TO THOSE REGARDING GUNS.

Finding a way to prevent the sale of Nazi personal items must both be practical and constitutional. The best option would be to have a buyback program. The program would look similar to those in place set up by state and local governments. In looking at possible ways to implement a buyback program, there are two possible choices: a mandatory program and a voluntary program. Mandatory gun buyback programs have been implemented in foreign countries, most notably in Australia and Great Britain.<sup>22</sup> In the United States, there have been voluntary gun buybacks implemented throughout the country. If one were to attempt to implement a mandatory buyback program here in the United States, there would be multiple challenges that would make it impractical and most likely strike down any plan. Therefore, there must be a voluntary program that incentivizes individuals to bring forth their Nazi personal items.

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<sup>19</sup> Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 169 F.Supp.2d 1181 (N.D. Cal. 2001).

<sup>20</sup> *Id.* at 1189.

<sup>21</sup> *Id.* at 1187.

<sup>22</sup> Zach Beauchamp, *Australia Confiscated 650,000 guns. Murders and Suicides Plummeted*, VOX (May 18, 2018), <https://www.vox.com/2015/8/27/9212725/australia-buyback>; Ashley Mata, *Kevlar(R) for the Innocent: Why Modeling Gun Regulation After Great Britain, Australia, and Switzerland Will Reduce the Rate of Mass Shootings in America*, 45 CAL. W. INT'L L.J. 169, 174 (2014); *Firearm Crime Statistics: England & Wales*, UK PARLIAMENT (June 27, 2018), <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7654>.

A. MANDATORY BUYBACK PROGRAMS WOULD FACE MULTIPLE CONSTITUTIONAL CHALLENGES WHICH WOULD MAKE IT IMPRACTICAL.

Mandatory gun buyback programs have been instituted around the world. Generally speaking, mandatory buyback programs featuring guns have been successful,<sup>23</sup> and led to a decrease in overall violence compared to the United States.<sup>24</sup> American scholars have studied the efficacy of mandatory gun buyback programs.<sup>25</sup> While it is true that mandatory buyback programs have seen a good amount of success, there legal hurdles to implementing a mandatory buyback here in the United States.

The first legal issue is regarding items like flags, watches, and other non-weapons. The mandatory buyback would probably run into the same First Amendment problems discussed previously. Second, an argument may be made that things like guns are not a First Amendment issue since they are weapons that can be regulated.

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<sup>23</sup> See Beauchamp, *supra* note 22; Mata, *supra* note 22; *Firearm Crime Statistics: England & Wales*, *supra* note 22. Australia, rather than confiscating the guns which they banned, offered to compensate the owners for turning their weapons over. During the mandatory buyback, Australia collected 643,726 firearms. The program has helped to attribute to having no mass shootings since 1996 with a decreased murder and suicide rate in Australia. In Great Britain, the incidents included in their research were shootings, robberies, and criminal damage. Great Britain, following the Gun Amendment Act of 1997, instituted a gun buyback program for handguns. The result was that the British police were able to recover over 162,000 handguns and 700 tons of ammunition.

<sup>24</sup> See *Firearm Crime Statistics*, *supra* note 23; *Gun Violence Statistics*, GIFFORD L. CTR., <https://lawcenter.giffords.org/facts/gun-violence-statistics/> (last accessed Oct. 1, 2020). In total in the year 2017 there were 6,375 reported gun crimes in Great Britain, including all gun-related offenses. To compare, in the United States there are on average 12,380 gun-related homicides alone.

<sup>25</sup> See Denise Cartalano, *Check "Mate": Australia's Gun Law Reform Presents the United States with the Challenge to Safeguard Their Citizens from Mass Shootings*, 41 NOVA L. REV. 139, 179-80 (2017) (arguing through law and surveys that the United States should adopt at least the Australian requirement of a universal background check law); Daniel Burley, *The Ban Down Under: United States Should Adopt Australian-Style Gun Regulations to Curb Rising Rate of Elderly Suicides*, 26 ELDER L.J. 149, 152 (2018) (arguing that programs to lower the number of available guns like those implemented in Australia, like gun buyback programs, would curb the number of senior suicides); Ashley Mata, *Kevlar(R) for the Innocent: Why Modeling Gun Regulation after Great Britain, Australia, and Switzerland Will Reduce the Rate of Mass Shootings in America*, 45 CAL. W. INT'L L.J. 169, 174 (2014) (arguing that the United States should implement more stringent gun control measures like those in "Australia, Great Britain, Switzerland, and the 1994 United States Violent Crime Control Act").

Nevertheless, it would run into problems that people have in American law have argued for other gun issues: that the mandatory buyback provisions for guns would violate the Second Amendment under the United States Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008).<sup>26</sup> In *Heller*, a special police officer was arrested for violating a D.C. law which made having an unregistered firearm illegal, while D.C. also banned the registration of handguns.<sup>27</sup> In challenging the constitutionality of the suit, the question was whether or not the D.C. law banning the registration of firearms was unconstitutional under the Second Amendment. The Court, in an opinion written by Justice Scalia, did not say that the Second Amendment was completely free from regulation, but did expand upon the Second Amendment's protections.<sup>28</sup> The Court ruled the District of Columbia's gun law unconstitutional.<sup>29</sup> Therefore, the Court's decision in *Heller* would make a mandatory buyback of weapons, even if they are spoils of war, open to a Second Amendment challenge. Considering the First Amendment with the Second Amendment, it would be difficult to survive a legal challenge for a mandatory buyback program.

B) THE OPTIONAL BUYBACK PROGRAM IS MORE LIKELY TO WITHSTAND A CONSTITUTIONAL CHALLENGE AND GIVE THOSE WITH FEAR A SENSE OF EASE IN SELLING THEIR SPOILS.

Gun buyback programs in the United States started in the 1970s, with the programs being voluntary and on a state or local level. However, the methods which were used by local police departments to buy back weapons have varied, with some police departments using compensation such as cash while others have used gift cards.<sup>30</sup> In the

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<sup>26</sup> See, Jonathan Weg, *We Don't Come From a Land Down Under: How Adopting Australia's Gun Laws Would Violate the Second Amendment of the U.S. Constitution*, 24 CARDOZO J. INT'L & COMP. L. 657, 664 (2016) (arguing that the Australian gun laws would present a Second Amendment constitutional issue and that the United States should instead adopt the Canadian gun law system).

<sup>27</sup> *District of Columbia v. Heller*, 554 U.S. 570, 575-76 (2008).

<sup>28</sup> *Id.* at 626-27.

<sup>29</sup> *Heller*, 554 U.S. at 636.

<sup>30</sup> While this article will focus on the gun buybacks in Boston, Milwaukee, and Baltimore, other jurisdictions have also developed gun buyback programs like California and New Jersey. See Lacey Wallace, *Could a Weapons Buyback Program Solve Violence in America?*, NEWSWEEK (Aug. 5, 2019), <https://www.newsweek.com/gun-buyback-america-australia-1452635>; Bay City News, *Buyback Event Saturday for Oakland Residents to Turn in Firearms for Cash*, ABC7 NEWS (Dec. 12, 2014), <https://abc7news.com/news/buyback-event-saturday-for-residents-to-turn-in-firearms-for-cash/434806/>; Kevin Shea, *New Jersey's 3 Gun*



beginning, when local governments began voluntary buyback programs, the goal of lowering gun violence failed, at least by statistical measures. As time has moved on, the process has seemed to have more success as governments have changed their collection and compensation methods.

The first gun buyback program in the United States was in 1974 in Baltimore, Maryland.<sup>31</sup> The collection offered \$50 cash for a weapon, and the police department collected 13,500 guns over a two-month period.<sup>32</sup> In other cities like Boston and Milwaukee, the voluntary gun buyback programs did not see a drop off in violence, and some have suggested it was due to the collection of mostly non-handguns, which are the number one gun used in homicides and suicides.<sup>33</sup> With that theory in mind, the Boston police department in 2006 offered gift cards only for handguns (and nothing for other weapons), and the result was a lowering the number of homicides and suicides in the city for four years.<sup>34</sup> Therefore, in targeting a voluntary buyback program, there should be larger incentives on items which statistically cause more harm.

Regarding spoils of war, the best way to implement a buyback program would be to offer gift cards in exchange for spoils. More should be offered for spoils like pistols and knives. Additionally, since it is a voluntary rather than involuntary program, the constitutional issues which arise from the mandatory buyback programs should not be an issue.

Therefore, in looking at the two possible gun buyback solutions, the voluntary buyback program is more likely to be within constitutional limits and still have an effect. Although the mandatory buyback program would most likely be more effective, the mandatory buyback would face similar First Amendment claims as an outright ban, plus additional Second Amendment concerns arising from the mandatory selling of weapons. Additionally, people who worried about selling their spoils of war to Neo-Nazis would be able to sell their items to a source who would then dispose of them rather than re-sell them to Neo-Nazis.

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*Buybacks: What You Need to Know*, NJ.COM, [https://www.nj.com/mercer/2017/07/njs\\_3\\_gun\\_buybacks\\_heres\\_what\\_you\\_need\\_to\\_know.html](https://www.nj.com/mercer/2017/07/njs_3_gun_buybacks_heres_what_you_need_to_know.html) (last accessed Oct. 1, 2020).

<sup>31</sup> Wallace, *supra* note 30.

<sup>32</sup> *Id.*

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

<sup>34</sup> People were offered \$200 worth of gift cards for giving in their handguns. Wallace, *supra* note 30.

#### V. FORFEITING NAZI PERSONAL ITEMS FOR A PERSONAL TAX CREDIT

The second method of removing Nazi personal items from circulation, in essence, resembles civil asset forfeiture. However, there is one large difference between civil asset forfeiture and this system: rather than having the property seized by law enforcement, the property owner would voluntarily surrender it to the government authorities and receive compensation in the form of a tax credit. In determining the type of system envisioned, one must understand what civil asset forfeiture is and how it works. Then, in determining the type of system envisioned, it would involve how one may forfeit their Nazi personal items. Finally, the section will discuss why we should use income tax credits as the tax credit needed for the program.

The Department of Justice describes civil asset forfeiture as “an *in rem* (against the property) action brought in court against the property. The property is the defendant[,] and no criminal charge against the owner is necessary.”<sup>35</sup> The United States defines the type of property that may be forfeited is any property, “real or personal,” which was used in violation of a variety of federal crimes.<sup>36</sup> The next question is when civil asset forfeiture may take place. According to the United States Code, “[w]hen a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.”<sup>37</sup> Therefore, under the United States Code, the United States may seize assets pursuant to a violation of law, and the United States Congress has not designated another method of collection, then it would be moved in a civil action. The civil action would be against the property itself, not its owner.

The program foreseen by the author is simple: the owner of the Nazi personal item surrenders the property to the governmental authorities who seize the property in civil asset forfeiture. The amount of the tax credit per item would vary based upon what is being surrendered. For example, a knife may receive a considerable credit than a pin, and a helmet may receive a larger credit than the

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<sup>35</sup> *Types of Federal Forfeiture*, UNITED STATES DEP’T OF JUST., <https://www.justice.gov/afp/types-federal-forfeiture> (last accessed October 25, 2020).

<sup>36</sup> 18 U.S.C.A. § 981 (West 2020). There are many federal offenses that have been determined to come under the umbrella of this section, like “a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.” *Id.* § 981(a)(1)(A).

<sup>37</sup> 28 U.S.C.A. § 2461(a) (West 2020).

knife. Then, in consideration of the items a person can bring in, government authorities tally the amount—which would be a tax credit—and the former owner receives a paper or other instrument, which then states the amount of credit they receive for their items.

This system does face an appealing challenge: on what form of tax would the forfeiter receive the tax credit? For example, a large amount of tax Americans pay is property taxes. Nearly twelve percent of our entire tax revenue as a nation comes from property taxes.<sup>38</sup> Property taxes are often collected by state and local governments.<sup>39</sup> One site refers to how our property tax dollars are spent as the following: “Schools,” “Safety,” “Spaces,” “Streets,” and “Sanitation.”<sup>40</sup> Would people be willing to risk seeing a deduction in collecting these taxes to see Nazi personal items taken off of the street? The answer will most likely be no. The best solution would be to offer tax credits on their income. Many Americans, particularly the lower-income individuals, pay income taxes, even if it may be a low percentage of their income.<sup>41</sup> Therefore, it would push people to pay a lower percentage of their income tax while assuring them their most basic government functions remain untouched.

#### VI. CONCLUSION

In conclusion, the United States has a growing issue of Nazi personal items. As American GIs die, the Nazi personal items taken from the battlefield are being left to families who may not feel connected to the items as they once did. Their families are looking to dispose of these items. In their attempts to berid of these Nazi personal items, some owners fear that they are going into the hands of those who support Nazi ideology. Since museums are either inundated with these items or do not want them, and there is an

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<sup>38</sup> *How do US Taxes Compare Internationally?*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/how-do-us-taxes-compare-internationally> (last accessed Oct. 25, 2020).

<sup>39</sup> *Id.*

<sup>40</sup> *Where Do My Property Taxes Go?*, GUARANTEED RATE, <https://www.rate.com/resources/where-do-my-property-taxes-go> (last accessed Oct. 25, 2020).

<sup>41</sup> Erica York, *New IRS Distributional Data on the Federal Individual Income Tax*, TAX FOUND. (Oct. 17, 2019), <https://taxfoundation.org/average-federal-income-tax-rates-2017/#:~:text=According%20to%20this%20data%2C%20in,average%20rate%20of%2011.4%20percent>. In the article, the average percentage the bottom 99% of Americans was 11.4%, with some individuals paying as low as 4% of their income to income tax.

increased fear that the market is freeing up those with Nazi sympathies to buy them.

In looking at possible solutions, using stolen cultural items and an outright ban on Nazi personal items would not be practical. Stolen cultural property, like priceless art pieces from World War II, is not a solution because the definition of stolen cultural property tenuously fits these Nazi personal items, and there has to be motivation for the country of origin to attempt to collect these items. Germany is not interested in collecting upon them. For an outright ban, while countries like France and Germany have outright banned Nazi items, First and Second Amendment issues preclude that from working here in the United States.

The two best options would be a voluntary buyback program like that used for guns in the United States or a tax credit for forfeiting their items. While a mandatory buyback would not work for the same First and Second Amendment concerns, a voluntary buyback program would provide ease for those seeking to properly dispose of these items while not infringing upon any Constitutional right. The same goes for the tax credit, in essence, civil asset forfeiture with benefits, and the tax credit would be for the individual's income tax.

Now, more than ever, we must not let the great sacrifice of American GIs be in vain and should prevent any person with Nazi sentiments from obtaining items, not for their historical value but personal ones.