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)

> [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]

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]

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 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 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 music 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]

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 polices of Hitler and the Nazi government. Specifically, how these theories are associated with laws relating to German family law, public policy and society.[11]

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 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 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 Lebensborn, 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]

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, childbearing 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 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 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 during 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 SS[57] and Nazi police 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]

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 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, insolating 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 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.
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 superior 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 educating 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 classists 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 institution, 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]

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 Verloebnis, "…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 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 concerning were the strong and persistent rumors of his alleged Jewish grandfather, Leopold Frankenberger, 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]

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: congential 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 'dissolution 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 Bismark. 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 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 be eternally grateful for the improvement that his programs brought to humanity. [114]

Inheritance Law—The Weimar Period (1919-33)

NOTICE: The remainder of this document will be added shortly.