

CITIZENS IN ARMS: THE SWISS EXPERIENCE

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I. INTRODUCTION: THE CULTURAL EXPERIENCE

Zurich, Switzerland's largest city, has two unique holidays: *Sechseläuten* (Spring festival) and *Knabenschiessen* (boys' shooting contest), which takes place on the second weekend of September every year.¹ Dating to the year 1657, today both boys and girls shoot in the *Knabenschiessen* with the *Sturmgeweher 90*—military assault rifle model 1990—and also play at such activities as bumper cars, albeit not at the same time.²

At the 2002 *Knabenschiessen*, 5,372 teenagers—more than a quarter of them girls—participated.³ The first place winner was crowned the “*Schützenkönig*”—the shooting king.⁴ (It is said that Switzerland has never had any kings other than shooting and wrestling kings.) The second place winner was the “*bestes Mädchen*,” the best girl.⁵ When the winners were announced, the two seventeen year-olds were swarmed by politicians wanting to shake their hands.⁶

At all major shooting matches in Switzerland, bicycles aplenty are parked outside. Inside the firing shelter, the competitors pay tips to twelve year-olds who keep score. The sixteen year-olds shoot rifles along with men and women of all ages. This author once attended a shooting match near Lucerne where the prizes—from rifles and silver cups to computers and bicycles—were on display at the local elementary school. You could see the children's art show while you were there.

1 See generally *Knabenschiessen*, at <http://www.knabenschiessen.ch> (last visited Dec. 11, 2003) (noting next *Knabenschiessen* dates of September 11-13, 2004). For a typical tourist brochure announcing such events, see *Local Holidays*, ZÜRICH NEWS, Apr. 26-May 9, 2003, at 38.

2 *Knabenschiessen*, *supra* note 1.

3 *Mit Kontaktlinsen zum Erfolg: Fabian Pianzola aus Dietikon wird neuer Schützenkönig* and *Die Besten am Knabenschiessen 2002*, NEUE ZÜRCHER ZEITUNG, Sept. 10, 2002, at Nr. 209, S. 41 [hereinafter *Mit Kontaktlinsen zum Erfolg*]. For this author's views on the implications of such traditions, see Stephen P. Halbrook, *Armed to the Teeth, and Free*, WALL ST. J. (Europe), June 3, 1999, available at <http://www.stephenhalbrook.com/wallstreet.html>; and Stephen P. Halbrook, *Where Kids and Guns Do Mix*, WALL ST. J., June 10, 1999, at A26, available at http://www.independent.org/tii/news/990610_Halbrook.html.

4 See *Mit Kontaktlinsen zum Erfolg*, *supra* note 3.

5 *Id.*

6 *Id.*

For quality of life, Zurich rates as the best city in the world, followed by Vancouver and Vienna.⁷ The best cities for personal safety are ranked as Luxembourg, Berne, Geneva, Helsinki, Singapore, and Zurich.⁸ The least safe cities in Western Europe are Milan, Athens, and Rome, while Washington, D.C., gets the worst safety rating in the United States.⁹ The worst cities worldwide, not surprisingly, are violence-prone areas in the underdeveloped world.¹⁰

Professor Marshall Clinard writes in *Cities With Little Crime*, “[e]ven in the largest Swiss cities crime is not a major problem. The incidence of criminal homicide and robbery is low, despite the fact that firearms are readily available in most households.”¹¹ The low crime rate is even more remarkable in that the criminal justice system is relatively lenient. As Clinard says, “The Swiss experience indicates the importance of factors other than gun control in violent crimes.”¹²

Among its population of 7.3 million (which includes 1.4 million foreigners, about twenty percent of the total population), Switzerland experiences an extremely low crime rate. Regarding willful homicide offenses, in 2001 there were 86 actual homicides and 89 attempted homicides, for a total of 175.¹³ The methods used for the homicides carried out or attempted were: firearms 47; cutting and stabbing weapons 51; and strangling 11.¹⁴ Unfortunately, the data regarding weapon types do not distinguish between actual and attempted homicides; nor is it indicated whether the firearms were legal or illegal.¹⁵ However, the data does indicate that foreigners

7 Jason Hopps, *Survey Ranks World's Best, Worst Places to Live* (Mar. 3, 2003), available at <http://news.bbc.co.uk/1/hi/world/europe/2815625.stm>.

8 *Id.*

9 *Id.*

10 *Id.*

11 MARSHALL B. CLINARD, *CITIES WITH LITTLE CRIME: THE CASE OF SWITZERLAND* 1 (1978).

12 *Id.* at 115.

13 2001 *Polizeiliche Kriminalstatistik* PKS, BUNDESAMT FÜR POLIZEI, Apr. 2002, at 1 [hereinafter *Polizeiliche Kriminalstatistik*].

14 *Id.*

15 *Id.*

committed a total of 96 of the 175 actual or attempted homicides.¹⁶

There were 5,768 simple and aggravated assaults, 2,615 of which were committed by foreigners.¹⁷ Some 43 were committed with firearms and 388 with edged weapons. Data concerning rapes do not specify weapon use.¹⁸ There were 2,256 robberies, 790 of them committed by foreigners.¹⁹ Weapons used included 321 firearms, 394 edged weapons, and 642 other methods.²⁰ The overall crime rate committed by foreigners stood at 49.7%.²¹ The Swiss call them “criminal tourists.” The above rates compare favorably with other European countries with very restrictive firearms laws.²² Estimating the number of firearms in Swiss households would be perilous.²³

Any consideration of Swiss firearms law must recognize that the people are free to come and go to shooting competitions throughout the country, and competitors are commonly seen with firearms on trains, buses, bicycles, and on foot. Assault rifles are hung on hat racks in restaurants and are carried on the shoulder on the sidewalk. While a rifle with a folding stock may be carried in a backpack—its telltale barrel with flash suppressor sticking out of the top—rifles are otherwise just carried without cases.

¹⁶ *Id.*

¹⁷ *Id.* at 2.

¹⁸ *Polizeiliche Kriminalstatistik*, *supra* note 13, at 16.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.* at Preface.

²² In 1994, the homicide rate in Switzerland was 1.32 per 100,000 in the population. Of those, 0.58 (44%) involved firearms. Compare this to Italy 2.25 (1.66 firearms), France 1.12 (0.44), and Germany 1.17 (0.22). The Swiss household gun-ownership rate is 27% excluding militia weapons. Contrast this with the household gun-ownership rates (at least for households willing to divulge gun ownership to a government-affiliated telephone pollster) of 16% for Italians, 23% for French, and 9% for Germans. See Dave Kopel, Stephen P. Halbrook & Carlo Stagnaro, *Swiss Mess: Homeland defense, the wrong way* (Oct. 30, 2001) [hereinafter *Swiss Mess*], at <http://www.nationalreview.com/kopel/kopel103001.shtml>.

²³ One conservative estimate (which appears inconsistent) is that 465,000 households have a military-issue weapon, that 350,000 firearms are kept by soldiers no longer on duty, and that another 500,000 guns are in civilian hands. See Helena Bachmann, *Safety in Numbers: Switzerland proves that guns and peace can mix*, TIME (Europe), May 13, 2002, available at <http://www.time.com/time/europe/magazine/2002/0513/guns/swiss.html>; Isobel Johnson, *infra* note 88, estimating similar numbers regarding gun ownership.

Furthermore, every village has a shooting range, but few have golf courses. Other than in winter, matches are held throughout the year at the local, cantonal, regional, and federal levels.²⁴ There are historical shooting festivals commemorating medieval victories against great armies.²⁵ Every year throughout the country, men shoot the *Obligatorisch*—obligatory shoot for all men in military service—and the *Feldschiessen*—literally “field shooting”—which is shot frequently at cornfields or cow pastures.²⁶ One sometimes hears a melody of cowbells and rifle fire. These are family affairs offering good food and drink and entertainment, and are important community events in which the politicians give speeches.²⁷

Once every five years is the *Eidgenössisches Schützenfest* or *Tir federal*—the federal shooting festival.²⁸ It was last held in the year 2000, when some 56,000 shooters fired 3.5 million cartridges over a three-week period.²⁹ (By comparison, the National Matches in the United States attract only 2,000-3,000 competitors.) There are special competitions for youth aged thirteen to fifteen, for Swiss living abroad, for the press, and for the military.³⁰ For the first time ever, a woman won the overall championship for the current service rifle.³¹

While precision bolt-action sport rifles are in use, most competitors use three service rifles: the *Karabiner 31* (K31 or bolt action carbine model 1931), *Sturmgewehr 57* (Stgw 57 or assault rifle model 1957), and the *Sturmgewehr 90* (Stgw 90 or assault

24 See Stephen P. Halbrook, *Swiss Schuetzenfest*, AM. RIFLEMAN, May 1993, at 46; Halbrook, *Switzerland's Feldschiessen*, GUN DIGEST, 1996, 50th Annual Edition, at 20 [hereinafter *Swiss Schuetzenfest*]; Halbrook, *An Armed Society*, AM. GUARDIAN, Jan. 1998, at 40 [hereinafter *An Armed Society*], available at <http://www.nraila.org/Issues/Articles/Read.aspx?ID=51> (June 11, 2001).

25 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

26 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

27 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

28 See *Eidgenössisches Schützenfest*, NEUE ZÜRCHER ZEITUNG, June 23, 2000, at 14; *Dufaux König aller Könige*, NEUE ZÜRCHER ZEITUNG, July 17, 2000, at 40. On the 1995 federal match, see Stephen P. Halbrook, *The World's Largest Rifle Shooting Match: Switzerland 1995*, in THE 1996 PRECISION SHOOTING ANNUAL 91 (Dave Brennan ed., 1996).

29 *Eidgenössisches Schützenfest*, *supra* note 28.

30 *Id.*

31 *Id.*

rifle 90).³² The assault rifles are selective fire, meaning that they may be set for either fully automatic or semiautomatic fire.³³ At competitions, a device is installed so that they will fire only in the semiautomatic mode.³⁴ While all rifle competitions are shot at the considerable distance of 300 meters, the prone position is mostly used, with the kneeling position sometimes used.³⁵

Pistol competitions are shot at twenty-five and fifty meters.³⁶ The pistols in use include the Sport pistol in .22 rim-fire caliber and Olympic design, and 9mm military pistols, from the older Swiss Luger to the models 1949 and P75 service pistol—in its SIG 210 series configurations, which are the most accurate 9mm pistols in the world.

Since the founding of the Swiss Confederation in 1291, every man has been required to be armed and to serve in the militia army.³⁷ Today, every male when he turns twenty years old is issued a *Sturmgewehr 90* military rifle and required to keep it at home.³⁸ When one is no longer required to serve—typically at age forty-two—he may keep his rifle (converted from automatic to semi-automatic) or pistol (in the case of an officer or specialized unit).³⁹ Of the pervasive rifle in the pantry of the typical Swiss home, one observer quipped: “When the Swiss housewife cleans the closets, she takes her husband’s rifle and polishes that too. There may be shinier soldiers than the Swiss, but truly there are no shinier rifles than those of the Swiss.”⁴⁰

The formalities of Swiss firearms laws are foreshadowed by the above shooting culture and militia traditions. Even though they speak four different languages—German, French, Italian, and Romansh (a dialect of ancient Latin)—the crime rate is very low because the Swiss people share common values. This is in part because of, not in spite of, the high rate of firearm ownership.

32 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

33 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

34 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

35 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

36 See *Swiss Schuetzenfest*, *supra* note 24; and *An Armed Society*, *supra* note 24.

37 See, e.g., SWISS ARMY 2000 (BMP Translations AG trans., Josef Inauen ed., 1999).

38 *Id.*

39 *Id.*

40 George Mikes, *Das Gewehr in der Speisekammer*, in ANDREAS DOLLFUS & PAUL ROTHENHÄUSLER, SCHWEIZER SPLITTER & SPRÜCHE 56-57 (Rothenhäusler Verlag ed., 1998) (translated by author).

Switzerland is a confederation in which the federal government has strictly defined and limited powers and the cantons (like the states of the United States) have more general powers to legislate. Additionally, the citizens exercise direct democracy in the form of the initiative and the referendum. Under these institutions, citizens vote directly on many laws, rather than politicians deciding issues.

II. THE LEGAL EXPERIENCE

For centuries, the cantons had no restrictions on keeping and bearing arms, although every male was required to provide himself with arms for militia service.⁴¹ At the turn of the century before World War I, the American military sent observers to Switzerland in hopes of emulating the Swiss shooting culture.⁴²

By the latter part of the twentieth century, some cantons required licenses to carry pistols, imposed fees for acquisition of certain firearms (which could be evaded by buying guns in other cantons), and otherwise passed restrictions on paper—albeit never interfering with the ever present shooting matches.⁴³ In other cantons—indeed, those with the lowest crime rates—one did not need a police permit for carrying a pistol or buying a semi-automatic, look-alike Kalashnikov rifle, but only for obtaining a machine gun.⁴⁴ Silencers or noise suppressors were unrestricted.⁴⁵ Indeed, the Swiss federal government sold to civilian collectors all manner of military surplus, including anti-aircraft guns, cannon, and machine guns.⁴⁶

Handguns (pistols and revolvers), when bought from the gun dealer, needed a purchase permit in all cantons from about 1960 onward.⁴⁷ Berne was the last canton to require a purchase permit.⁴⁸

41 *See generally* RICHARD MUNDAY, *MOST ARMED AND FREE?* (1996).

42 *Id.*

43 *Id.*

44 *Id.*

45 *Id.*

46 *See* MUNDAY, *supra* note 41.

47 *Id.*

48 *Id.*

In 1996, the Swiss people voted to allow the federal government to legislate concerning firearms and to prohibit the cantons from regulating firearms. Some who favored more restrictions like other European countries saw this as a way to pass gun control laws at the federal level, while those who objected to restrictions in some cantons saw the law as a way to preempt cantonal regulation.⁴⁹

The result is the Federal Weapons Law of 1998.⁵⁰ It imposes certain restrictions, but leaves virtually untouched the ability of citizens to possess Swiss military firearms and to participate in competitions all over the country.⁵¹ The federal law became effective in 1999, and the highlights of the law and regulations follow.

The law's stated reason is to curtail inappropriate use of arms.⁵² It regulates import, export, manufacture, trade, and certain types of possession of firearms.⁵³ The right of buying, possessing, and carrying arms is guaranteed with certain restrictions.⁵⁴ It does not apply to the police or to the militia army, in which almost all adult males are members.⁵⁵

The law forbids fully automatic arms and certain semiautomatics "derived" (whatever that means) there from, but Swiss military "assault rifles" are excluded from this prohibition.⁵⁶ This exclusion makes the prohibition seem meaningless. Further, collectors may obtain special permits for

49 For his own small part, this author urged moderation under the saying "if it's not broke, don't fix it," based on the experiences in the United States with passage of legislation affecting only law-abiding citizens. Stephen P. Halbrook, *Die Fehler der Vereinigten Staaten Vermeiden*, NEUE ZÜRCHER ZEITUNG, Mar. 4, 1997, at 18.

50 Bundesgesetz über Waffen, Waffenzubehör und Munition (Waffengesetz, WG), June 20, 1997 (Swiss Confederation Federal Law over Weapons, Weapon Accessories and Ammunition) [hereinafter *Bundesgesetz über Waffen*], available at http://www.admin.ch/ch/d/sr/514_54/ (last visited Dec. 11, 2003). See also Stephen P. Halbrook, *Switzerland, Gun Laws*, in GUNS IN AMERICAN SOCIETY 569 (Gregg Lee Carter ed., 2002) (summarizing law) [hereinafter *Switzerland, Gun Laws*]; HANS WÜST, SCHWEIZER WAFFENRECHT (1999) (treatise on law).

51 For the following analysis, the author wishes to acknowledge the assistance of Hans Wüst, Switzerland's leading authority on firearms law, and Ferdinand Hediger, International Relations, ProTell.

52 Bundesgesetz über Waffen, *supra* note 50.

53 *Id.*

54 *Id.*

55 *Id.*

56 *Id.*

the “banned” arms, such as submachine guns and machine guns.⁵⁷

A permit to purchase a firearm from a licensed dealer is required for certain firearms (handguns and some semiautomatic rifles), excluding single shot and multi-barrel rifles, Swiss bolt action military rifles, target rifles, and hunting rifles.⁵⁸ Permits must be granted if the applicant is at least eighteen years old and has no disqualifying criminal record.⁵⁹ Authorities may not keep any registry of firearms owners.⁶⁰ Private persons may freely buy and sell firearms without restriction, provided they retain a written agreement and the seller believes that the purchaser is not criminally disqualified.⁶¹

Previously, only half the cantons required a permit to carry a handgun. The new federal law makes it mandatory.⁶² One must pass a test and prove a special need to qualify for a permit.⁶³ So far, the law is being applied restrictively.⁶⁴ Still, one can freely carry a handgun or assault rifle to a shooting range, and there is one in every village, nook, and cranny.⁶⁵ About 3,000 shooting ranges exist in Switzerland.⁶⁶ Whether large or small, these ranges typically have twenty-five and fifty-meter pistol targets along with 300-meter rifle targets.⁶⁷

A permit was already required for manufacture and dealing in firearms, but there are now more regulations. Storage requirements exist for both shops and individuals.⁶⁸ Again, one wonders whether the new law changes the culture that much. For instance, during the Cold War the Confederation required every house to include a bomb shelter, which typically provides safe storage for large collections of firearms and doubles as a

⁵⁷ Bundesgesetz über Waffen, *supra* note 50.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Bundesgesetz über Waffen, *supra* note 50.

⁶³ *Id.*

⁶⁴ See *Switzerland, Gun Laws*, *supra* note 50, at 571.

⁶⁵ *Id.*

⁶⁶ Letter from Ferdinand Hediger, Secretary for International Relations, to Pro Tell (May 5, 2003) (on file with author).

⁶⁷ See, e.g., Halbrook, *Switzerland's Feldschiessen*, *supra* note 25, at 22-23.

⁶⁸ Bundesgesetz über Waffen, *supra* note 50.

wine cellar.⁶⁹ Thus, most Swiss already safely stored their firearms.

Criminal penalties within the law depend on one's intent.⁷⁰ Willfully committing an offence may be punished by incarceration for up to five years, but failure to comply from neglect or without intent may result in just a fine or even no punishment at all.⁷¹ Many law-abiding Swiss are so accustomed to possessing firearms that the future will test whether the law punishes good citizens for harmless paper violations.

The new federal law creates uniform rules, but is a double-edged sword. It disallows more restrictive approaches such as the former requirement in Geneva of a permit for an air gun.⁷² However, it imposes other restrictions that previously did not exist in half the cantons.⁷³ The Swiss are an extraordinarily peaceable people, particularly the extremely high proportion of the population who are firearm owners. The latter feel that they are losing traditional freedoms that are interconnected with the citizens' liberties and the Swiss Confederation's defense and independence.

III. POLITICAL CONSIDERATIONS

Restrictions on peaceable firearm possession and use are often opposed by three groups: members of the militia army, which is headed by the *Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport* (the Federal Department for Defense, Civil Defense, and Sport); the *Schweizer Schiesssportverband* (SSV or Swiss Shooting Federation), which is the umbrella organization for all the local shooting associations; and ProTell (named after William Tell, the archer of folklore), which promotes legislative and legal measures in support of a liberal firearms law. The allies of these groups are the political

69 See *Switzerland, Gun Laws*, *supra* note 50, at 571.

70 Bundesgesetz über Waffen, *supra* note 50.

71 *Id.*

72 *Id.*

73 See *id.*

parties that support free trade, federalism, and limited government.⁷⁴

Supporters of firearm restrictions tend to be socialists and various leftists, including those who wish to abolish the militia army, to strengthen the central government to be more like Germany, and to join the European Union.⁷⁵ Ironically, the Swiss Socialist Party was similarly pacifist when Adolf Hitler came to power.⁷⁶ However, the Swiss socialists eventually recognized the danger, and in 1942, when Switzerland was completely surrounded by the Axis dictatorships, the Socialist Party resolved, “the Swiss should never disarm, even in peacetime.”⁷⁷

Much of Europe today is peaceable, but danger emanates from the Balkans (the former Yugoslavia and Albania) not to mention the chaos erupting from the breakup of the Soviet Union and the rise of Islamic terrorism. Political terrorists and organized criminals are swamping Europe. The new Swiss federal weapons law is in part a reaction to this turmoil, in that it seeks to deny firearms acquisition by participants in these struggles. The future will tell whether these concerns will repress not just the traditional Swiss shooting sports and freedom to possess firearms, but also the 700-year old tradition of a militia composed of the people in arms.

On September 27, 2001—just days after Islamic extremists hijacked aircraft and attacked the United States—a crazed fifty-seven year-old man named Friedrich Leibacher wearing a “Polizei” jacket went on a rampage at a session of the government of the Canton of Zug, killing fourteen elected

74 See, e.g., Fritz Rudolf, *Zur Revision des Waffengesetzes and Pro Tell, Ergänzende Vernehmlassung*, SCHIESSEN SCHWEIZ, Nr. 43, Oct. 23, 2003, at 12-13 (detailing opposition of firearm owners’ associations to proposal to register firearms); *Eidgenössische Parlamentarier und Kandidaten haben das Wort*, SCHIESSEN SCHWEIZ, Nr. 41, Oct. 9, 2003, at 10 (explaining support for firearm owners by leaders of Schweizerische Volkspartei or SVP (Swiss People’s Party), and Freisinnig-Demokratische Partei der Schweiz or FDP (Free Democratic Party)).

75 See SOLLEN WIR DIE ARMEE ABSCHAFFEN? (Walter Schaufelberger ed., 1988).

76 See STEPHEN P. HALBROOK, TARGET SWITZERLAND: SWISS ARMED NEUTRALITY IN WORLD WAR II 29-30 (1998) [hereinafter TARGET SWITZERLAND].

77 ALFRED HOSTETTLER, *Ein vom Bund Aufgezwungener ‘Sport,’ in ARBEITERSCHIESSWESEN IN DER SCHWEIZ* 69 (1990).

officials and wounding fourteen.⁷⁸ He used a semiautomatic SIG PE 90 rifle—a target rifle, not an army rifle—and an explosive.⁷⁹

The murderer had never served in the militia army.⁸⁰ In 1970, he was sentenced to eighteen months in prison for sexual offenses against children, was investigated for various crimes in the 1980s, and threatened a bus driver with a revolver in 1998.⁸¹ Despite his past, Leibacher's criminal record was expunged and police approved him to buy firearms.⁸² He was known to be unstable, but had not been treated.⁸³ He even brought several frivolous charges against public officials, all of which were dismissed.⁸⁴

In the assembly where the killer ran amok, no one else had a firearm, and probably none would have qualified under the new law for a permit to carry a pistol for defense. Zug was not a canton where a permit to carry a handgun (*Waffentragschein*) was available.⁸⁵ Swiss historian Jürg Stüssi-Lauterburg, Ph.D., wrote to the author: “The mental climate of Zug was entirely peaceful. While I would—before the outrage—not have been surprised at all to learn that in the Uri or Ticino or the Grisons assembly there were members carrying arms, in Zug I would have been surprised indeed. This is exactly what the mad felon exploited, a state of mind. There are more parallels between the hideous September crimes than first meet the eyes!”⁸⁶

Similar killings had previously occurred in England, where virtually all firearms but sporting shotguns are banned.⁸⁷ These atrocities would soon occur in Germany and France, which also severely restrict firearms. In the same period, a Swiss nurse confessed to killing twenty-seven patients as acts of “mercy”—firearms were not used. Just days before the Zug massacre,

78 See *Swiss Mess*, *supra* note 22.

79 *Id.*

80 *Id.*

81 *Id.*

82 *Id.*

83 See *Swiss Mess*, *supra* note 22.

84 *Id.*

85 Letter from Jürg Stüssi-Lauterburg, Ph.D., to Stephen P. Halbrook (Oct. 2, 2001) (on file with author).

86 *Id.*

87 See JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (2002).

terrorists murdered over 3,000 people in the United States using box cutters and hijacked aircraft as weapons. Evil lurks in the world, and it uses many types of weapons.

Because the Swiss people are universally armed, they enjoy a low crime rate and avoided being pulled into the two World Wars, saving untold numbers of lives in the twentieth century alone. The horrific but isolated multiple slayings in Zug should not counsel any radical changes, and, if anything, should suggest reforms allowing law-abiding citizens to carry handguns for self-defense.

Revisions of the federal law proposed by the government in 2002 include stricter regulation of both commercial and private firearm sales (which would require police approval), a ban on sales through newspaper advertisements and the Internet, a prohibition on imitation and soft air guns, and a ban on baseball bats (!) and other dangerous objects in public places.⁸⁸ Social Democrats propose not allowing soldiers to retain their firearms when ending their active service.⁸⁹ Pacifists would not allow soldiers to keep their rifles at home, having failed in earlier years in proposed referenda to ban the militia army altogether.⁹⁰ Adoption of such proposals ranges from the problematic to the highly unlikely.

IV. EVALUATING A CRITIQUE OF THE SWISS EXPERIENCE

On the subject of crime and firearms law, the work of Martin Killias, a professor at the University of Lausanne and a reserve judge in Switzerland's Supreme Court, should be mentioned. Professor Killias' 1990 article, while predating the federal firearms law, contains arguments often repeated to show that the Swiss experience does not counter the premise that firearms cause crime.⁹¹ Killias set forth nine propositions, which were, and remain, contrary to reality:

⁸⁸ Isobel Johnson, *Government sets its sights on gun law* (Sept. 28, 2002), at <http://www.swissinfo.org/sen/swissinfo.html?siteSect=105&sid=1363061>; Swiss Info, *Metzler calls for tighter gun controls* (Sept. 21, 2003), at <http://www.swissinfo.org/sen/swissinfo.html?siteSect=105&sid=4263352>.

⁸⁹ Johnson, *supra* note 88.

⁹⁰ *Id.*

⁹¹ Martin Killias, *Gun Ownership and Violent Crime: The Swiss Experience in International Perspective*, 1 SECURITY J. 169 (1990). Killias' thesis was the subject of an unpublished

(1) Killias asserts: “All cantons require a permit for the purchase of a gun. In general, citizens without history of conviction or violence are eligible for such a permit, but police have considerable discretion in this area.”⁹² In fact, canton regulations requiring a permit applied only to handguns, not to rifles and shotguns.⁹³ Even under the new federal law, private transfers do not require a permit.⁹⁴ Obviously, no permit has ever been required for keeping one’s military-issue rifle and pistol at home.

(2) Killias claims: “Most cantons require a second permit to carry weapons outside one’s home. Such permits are given only to persons who are exceptionally exposed to serious risks i.e. such permits are hardly ever issued.”⁹⁵ In actuality, fifteen cantons required a carry permit while eleven cantons did not, and the latter did not have a higher crime rate.⁹⁶ While the new federal law requires a permit, it exempts transport to and from target ranges—something that one could be doing any time in Switzerland.

(3) Killias states: “Automatic weapons may be purchased only under extremely restrictive conditions.”⁹⁷ It is true that collectors are required to obtain permits in order to obtain submachine guns and machine guns, but the availability of automatic firearms bespeaks a liberal firearms law.

(4) Killias alleges, “Ammunition may be sold only to holders of a permit.”⁹⁸ This is simply untrue. Ammunition may be purchased at gun shops. Ammunition in military calibers may be purchased at subsidized prices at shooting ranges. Enormous quantities of military ammunition are expended at shooting matches, most of which are voluntary and at least one per year is

critique by Dr. Bruno Bürgel, Sept. 23, 1991, on which the above partially relies (on file with author).

92 Killias, *supra* note 91, at 170.

93 See Bürgel, *supra* note 91.

94 Bundesgesetz über Waffen, *supra* note 50.

95 Killias, *supra* note 91.

96 See Bürgel, *supra* note 91.

97 Killias, *supra* note 91.

98 *Id.*

compulsory for persons in service.⁹⁹ I have bought ammunition many times at shooting matches and no one ever asked to see a permit.

(5) Killias maintains, “When only private weapons are considered, gun ownership is not more widespread in Switzerland than in neighboring countries.”¹⁰⁰ Considering “only” private weapons misses the big picture: Switzerland is the only country where every male, on reaching age twenty, is issued an assault rifle and required to keep it at home. When he retires from service at age forty-two, the firearm belongs to him. Given that this arrangement dates at least to the Constitution of 1874,¹⁰¹ countless private military firearms are now in existence. Moreover, target pistols and rifles and other sporting arms are in widespread use by women and men, young and old, and are not subject to restrictions or prohibitions such as exist in Germany or England.

Professor Killias reflects about the above points: “These regulations may be less strict than those in other countries, but they are definitely not among the most liberal in Europe.”¹⁰² This statement was as incorrect then as it is now under the new federal firearms law. He referred to no country with more liberal regulations because there were and are none.

(6) Killias returns to his points: “The automatic army rifle is very heavy and far too long to be concealed under a coat or in a case. It offers some advantages in fighting light tanks, but it is definitely not suitable in holdups or violent crimes—except those that occur in a domestic setting.”¹⁰³ While the assault rifle model 1957 (Stgw 57) then in service was long (110 cm) and heavy, the model 1990 (Stgw 90) was already taking its place, and it is short (77 cm with stock folded) and light in weight. One would not want to fight a “light tank” with either. Killias blurs over the truly phenomenal aspect of entrusting every male citizen with selective-fire rifles.

99 See, e.g., *Die Schützenhäuser bleiben im Dorf*, NEUE ZÜRCHER ZEITUNG, Nov. 18-19, 2000, at 45 (discussing participation in matches at shooting range, including annual compulsory qualification); *Eidgenössisches Schützenfest*, *supra* note 28.

100 Killias, *supra* note 91.

101 See *infra* text accompanying footnote 125.

102 Killias, *supra* note 91.

103 *Id.* at 170, 172.

(7) Killias notes, “The ammunition the soldiers take home is in a sealed box. At every inspection (i.e. once a year, as a general rule), the seal is checked.”¹⁰⁴ The militia soldier has always been required to keep a minimum supply of ammunition at home in event of a mobilization or foreign attack. This ammunition is issued by the military, and the inspection is to ensure that the soldier is prepared. It seems rather trite to insinuate that one refrains from committing murder with the rifle because some day an officer will check the seal on the box of ammunition. At any rate, one is free to buy and store his own ammunition for personal use.

(8) Killias then asserts, “The ammunition for the automatic army rifle is not for sale in any arms shop.”¹⁰⁵ While the ordnance cartridges manufactured under the auspices of the military department are not sold at gun shops, they are freely sold at reduced prices at every shooting range, and no one searches the buyer’s bags to see if any is taken home. If one wishes to pay higher prices for ammunition at gun shops, the 5.56mm NATO (.223 Remington) cartridge can be used instead of the 5.6 Swiss cartridge in the Stgw 90 rifle, and the 7.5 Swiss cartridge manufactured by Norma of Sweden is available for the Stgw 57 rifle. Ammunition is freely available.

(9) Finally, Killias claims: “Only officers, senior non-commissioned officers, and a few specialists get handguns. Since these are designed for use over a relatively long distance (i.e. fifty meters and more), they are long and heavy and, therefore difficult to conceal. Significantly, the police use smaller and less heavy types of handguns. A military handgun is, therefore, of limited use in predatory crime.”¹⁰⁶ Swiss military pistols evolved from the Luger and the SIG 49 (in both 7.65mm and 9mm) to the SIG-Sauer Model 75 and P220 series 9mm pistols. These pistols are neither long nor heavy, and in shooting matches are shot at twenty-five and fifty meters. Various versions of the SIG 49, produced commercially as the SIG 210 series, are popular in competitions. It seems frivolous to suggest that Swiss who possess such pistols do not use them in “predatory crime” because the

104 *Id.* at 172.

105 *Id.*

106 *Id.*

pistols would have only a “limited use” for such purpose. The more likely answer is that ordinary Swiss people who own firearms are not criminals.

Professor Killias has continued to publish studies concerning firearms and violence, and has even conceded in a recent statistical study that, “no significant correlations [of gun levels] with total suicide or homicide rates were found.”¹⁰⁷ Nevertheless, the untenable arguments set forth in his 1990 article remain uncorrected.

V. A HISTORICAL PERSPECTIVE

The Swiss tradition of arms-bearing and a militia army should be put in historical perspective. The Swiss Confederation was founded in 1291 by men from three Cantons who swore mutual support and protection. In the ensuing historical epochs, smaller numbers of armed Swiss peasants defeated some of the most powerful armies of Europe.¹⁰⁸ The myth of William Tell entailed not just shooting the apple off his son’s head, but also of shooting the arrow through the tyrant’s heart.¹⁰⁹ The armed citizen who defends the freedom of his own family and his neighbors was, and remains, the hallmark of the Swiss experience.

Machiavelli, who actually traveled through the Swiss Cantons and observed their militias, noted in *The Prince* (1532) that “the Swiss are well armed and enjoy great freedom.”¹¹⁰ In *The Art of War* (1521), Machiavelli described the arms used by the Swiss as including pikes, broadswords, and the harquebus, a short matchlock shoulder arm.¹¹¹ He continued:

These arms and this sort of armour were invented and are still used by the Germans, particularly by the Swiss; since they

107 Martin Killias, John van Kesteren & Martin Rindlisbacher, *Guns, Violent Crime, and Suicide in 21 Countries*, 43 CAN. J. OF CRIMINOLOGY 429, 430 (2001).

108 See *Appendix: Account of the Struggles of Swisserland for Liberty*, in JOHN J. ZUBLY, THE LAW OF LIBERTY: A SERMON ON AMERICAN AFFAIRS 33 (1775). This book was an influential work at the inception of the American Revolution.

109 *Id.* at 36-37.

110 NICCOLÒ MACHIAVELLI, THE PRINCE 73 (L. Ricci trans., New American Library 1952) (1513).

111 NICCOLÒ MACHIAVELLI, THE ART OF WAR 46-47 (E. Farnsworth trans., Bobbs-Merrill 1965) (1520).

are poor, yet anxious to defend their liberties against the ambition of the German princes – who are rich and can afford to keep cavalry, which the poverty of the Swiss will not allow them to do – the Swiss are obliged to engage an enemy on foot, and therefore find it necessary to continue their ancient manner of fighting in order to make headway against the fury of the enemy’s cavalry. This necessity forces them still to use the pike, a weapon enabling them not only to hold the cavalry off, but also very often to break and defeat them¹¹²

Jean Bodin, the French absolutist, dwelt in *Six livres de la République* (1576) on the means for preventing commoners from wresting political control from the monarch. Besides suppression of oratory, “the most visual way to prevent sedition is to take away the subject’s arms.”¹¹³ The practice of wearing a sword in peacetime, Bodin wrote, “which by our laws, as also by the manners and customs of the Germans and Englishmen is not only lawful; but by the laws and decrees of the Swiss even necessarily commanded: the cause of an infinite number of murders, he which weareth a sword, a dagger, or a pistol.”¹¹⁴

No doubt, there was considerable violence in rustic Switzerland, but the armed character of the populace preserved democracy and served to prevent governmental violence against its own unarmed subjects. Bodin’s absolutist model failed to take account of the murders, on a massive scale, of subjects by rulers.

The Swiss system of militia and democracy were well known to English republicans in the seventeenth and eighteenth centuries.¹¹⁵ Andrew Fletcher, in *A Discourse of Government with Relation to Militias* (1698), advocated “well-regulated militias” to defend the country.¹¹⁶ Fletcher wrote:

The Swisses at this day are the freest, happiest, and the people of all Europe who can best defend themselves, because they have the best militia . . . And I cannot see why arms

¹¹² *Id.*

¹¹³ JEAN BODIN, *THE SIX BOOKS OF A COMMONWEALE* 542 (R. Knolles trans., G. Bishop ed., 1906).

¹¹⁴ *Id.*

¹¹⁵ Jürg Stüssi-Lauterburg, *The Swiss Military System and Neutrality in the Seventeenth Century as Seen by Contemporary Europe*, 2 *WAR & SOC’Y* 19 (1984); JÜRIG STÜSSI, *DAS SCHWEIZER MILITÄRWESEN DES 17. JAHRHUNDERTS IN AUSLÄNDISCHER SICHT* (1982).

¹¹⁶ ANDREW FLETCHER, *POLITICAL WORKS* 22-23 (John Robertson ed., Cambridge 1997) (1749).

should be denied to any man who is not a slave, since they are the only true badges of liberty¹¹⁷

Abraham Stanyan's *Account of Switzerland* (1714) described, "a well regulated Militia, in Opposition to a standing Army of mercenary Troops, that may overturn a Government at Pleasure."¹¹⁸ He portrayed the Bern militia as consisting of "the whole Body of the People, from sixteen to sixty," explaining:

Every Man that is listed, provides himself with Arms at his own Expence; and the Regiments are all armed in an uniforme manner, after the newest Fashion; for which Purpose, there is an Officer called a *Commissioner of Arms*, whose Business it is, to inspect their Arms and Mounting, to take Care they be conformable to the Standard, and to punish such as fail in those Particulars.¹¹⁹

The Swiss experience figured prominently in the American Revolution and afterwards in American constitution building.¹²⁰ In his *Defence of the Constitutions* (1787), a survey of ancient and modern republics and other political models, John Adams divided the Swiss cantons—regardless of whether they were "democratical" or "aristocratical"—as having two institutions of direct democracy: the right to bear arms and the right to vote on laws. Bern had a democratic militia system: "There is no standing army, but every male of sixteen is enrolled in the militia, and obligated to provide himself a uniform, a musket, powder, and ball; and no peasant is allowed to marry, without producing his arms and uniform. The arms are inspected every year, and the men exercised."¹²¹

Switzerland was overrun during the Napoleonic epoch, to the great dismay of the Americans, who saw her as the "Sister Republic"—a democracy in an otherwise despotic Europe.¹²²

117 *Id.*

118 ABRAHAM STANYAN, AN ACCOUNT OF SWITZERLAND 101 (1714).

119 *Id.* at 193-94.

120 See Stephen P. Halbrook, *The Swiss Influence on the American Constitution*, in *DIE SCHWEIZ IM VISIER* (2000), at 30.

121 JOHN ADAMS, 1 A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA 38-39 (1787).

122 See Stephen P. Halbrook, *European History of 1799 as Seen from the U.S.A.*, in *SUWOROW IN DER SCHWEIZ: ACTES DU COLLOQUE SUWOROV DU BICENTENAIRE 1799-1999* at 162 (2001).

This was the only successful invasion in the history of the Confederation, which quickly regained her martial prowess. Instrumental in this process was the founding of the *Schweizerischer Schützenverein* (SSV, or Swiss Shooting Federation) in 1824. Article I of its constitution stated:

To draw another bond around the hearts of our citizens, to increase the strength of the fatherland through unity and closer connections, and at the same time to contribute, according to the capacity of each of our members, to the promotion and perfection of the art of sharpshooting, an art beautiful in itself and of the highest importance for the defence of the confederation.¹²³

The threat from Germany following the Franco-Prussian War pushed the Swiss to unify the armed forces in the federal system. The Federal Constitution of 1874 provided that military instruction, armament, and equipment were in the federal domain.¹²⁴ Article 18 provided: “Every Swiss is liable to military service.”¹²⁵ Rather than the citizen providing his own arms, as was the tradition, it further provided that “servicemen shall receive their first equipment, clothing, and arms without payment. The weapon shall remain in the hands of the soldier, subject to conditions to be determined by Federal legislation.”¹²⁶ Even when no longer liable for service, the soldier would keep his arms.¹²⁷

From the turn of the century until the Great War, the Americans were intensely interested in the Swiss militia and marksmanship culture. In a 1905 study, U.S. Army Captain T.B. Mott contrasted the low standards of the militias of America and England with those of the Swiss.¹²⁸ The law encouraged cadet corps aged eleven to sixteen and preparatory military corps aged

¹²³ ROBERT C. BROOKS, CIVIC TRAINING IN SWITZERLAND: A STUDY OF DEMOCRATIC LIFE 365 (1930).

¹²⁴ BV, CST., COST. FED., Article 18, in THE FEDERAL CONSTITUTION OF SWITZERLAND 17 (Christopher Hughes trans., Clarendon Press 1954).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ HANS RUDOLF KURZ, HISTOIRE DE L'ARMÉE SUISSE 36-37 (1985).

¹²⁸ *The Officers Training Corps of Great Britain, The Australian System of National Defense, The Swiss System of National Defense*, S. Doc., No. 63-796, at 141-49 (1915).

sixteen to twenty to acquire marksmanship skills.¹²⁹ “The little boys are supplied with a safe and serviceable light gun and the big ones with the regulation musket; Army officers teach them to drill and shoot and public ranges are given them to practice on.”¹³⁰ Mott added, “Shooting clubs in Switzerland take the place of our baseball teams.”¹³¹ He explained: “In 1904 there were 3656 shooting clubs under Federal control or encouragement, with a membership of 218,815. . . . The total population of Switzerland is only about 3.5 millions. If shooting clubs existed in similar proportion in the United States the membership would attain nearly 5 millions.”¹³²

Furthermore, noted Mott, in 1904 the Swiss Army shot almost three million cartridges, and the shooting clubs fired over twenty-one million cartridges with the military rifle.¹³³ While American customs encouraged just the best shots to participate in competitions, the Swiss system induced the greatest number to shoot. Mott described a competition at Fribourg, with large tents for eating and drinking, holiday dress, and speeches and processions.¹³⁴

The advantage of the shooting festivals was that “nearly the whole population interests itself in shooting and can shoot.”¹³⁵ Mott found objectionable the restriction of all matches to 300 meters and the kneeling position, and “the evil attendant upon all such assemblages of the people, drinking and carousing and the spending of money during sometimes a whole week.”¹³⁶ Actually, the party atmosphere may have ensured the survival of the militia system: perhaps the suppression of the “drinking and carousing” which characterized the early American militia musters was a reason for the degeneration of the American militia system.¹³⁷

129 *Id.*

130 *Id.*

131 *Id.*

132 *Id.*

133 *The Officers Training Corps of Great Britain, The Australian System of National Defense, The Swiss System of National Defense*, S. Doc., No. 63-796, at 141-49 (1915).

134 *Id.* at 145, 148.

135 *Id.*

136 *Id.* at 149.

137 See H. Telfer Mook, *Training Day in New England*, 11 NEW ENG. Q. 675 (1938).

General George W. Wingate, President of the New York Public Schools Athletic League and a founder of the National Rifle Association, notes in *Why School Boys Should Be Taught to Shoot* (1907): “Switzerland has no regular army, but depends for her defence on her riflemen. Though poor, she spends annually large amounts in developing them, both in and out of the schools.”¹³⁸ He repeats Captain Mott’s above statistics, noting that Switzerland’s population was less than that of New York City.¹³⁹ In an afterward to Wingate’s book, President Teddy Roosevelt congratulates the New York schoolboy who was the best shot of the year and added that, in time of war, “it is a prime necessity that the volunteer should already know how to shoot if he is to be of value as a soldier.”¹⁴⁰

VI. THE SWISS AND WORLD WAR II

The United States would soon end its traditional neutrality in the Great War, but Switzerland maintained her neutrality. Nevertheless, this was, and remains, an armed neutrality, calculated to dissuade attack from powerful neighbors by making invasion too costly in blood. When Hitler came to power in 1933, Switzerland saw the threat and immediately began strengthening her defenses.

Henri Guisan, who would be Commander-in-Chief of the Swiss armed forces in World War II, described the Swiss shooting culture in a 1939 work as follows:

While traveling around Switzerland on Sundays, everywhere one hears gunfire, but a peaceful gunfire: this is the Swiss practicing their favorite sport, their national sport. They are doing their obligatory shooting, or practicing for the regional, Cantonal or federal shooting festivals, as their ancestors did it with the musket, the harquebus or the crossbow. Everywhere, one meets urbanites and country people, rifle to the shoulder, causing foreigners to exclaim: “You are having a revolution!”¹⁴¹

138 GEN. GEORGE W. WINGATE, *WHY SCHOOL BOYS SHOULD BE TAUGHT TO SHOOT* 6-7 (1907).

139 *Id.*

140 *Id.* at 13.

141 HENRI GUISAN, *NOTRE PEUPLE ET SON ARMÉE* 26 (Polyg. ed., 1939).

Today's Japanese tourists must think exactly that. At any rate, Guisan added about the armed citizen:

Enter into any of our farms: one finds there as many rifles as men. There is a saying: 'Every Swiss enters the world with a rifle!' The rifle, outward symbol of the dignity of the citizen, of the confidence that the state places in him, is hung on the wall next to the arms of ancient times, shooting prizes, and family portraits.¹⁴²

As an aside, Guisan's comment is the equivalent of Charlton Heston, former president of the American National Rifle Association, raising an antique Kentucky long rifle in his hand and exhorting, "From my cold dead hands!"¹⁴³

The federal Schützenfest, which remains today the largest rifle competition in the world, was held in Luzern in June 1939 in conjunction with the world championships of the *Union Internationale de Tir* (UIT).¹⁴⁴ Swiss Federal President Philipp Etter spoke at the event, stressing that something far more serious than sport was the purpose of their activity. Demonstrating the connection between national defense and the armed citizen, he said:

There is probably no other country that, like Switzerland, gives the soldier his weapon to keep in the home. The Swiss always has his rifle at hand. It belongs to the furnishings of his home. . . . That corresponds to ancient Swiss tradition. As the citizen with his sword steps into the ring in the cantons which have the *Landsgemeinde* [direct democracy], so the Swiss soldier lives in constant companionship with his rifle. He knows what that means. With this rifle, he is liable every hour, if the country calls, to defend his hearth, his home, his family, his birthplace. The weapon is to him a pledge and sign of honor and freedom. The Swiss does not part with his rifle.¹⁴⁵

This was subsequently reflected in orders rendered by General Guisan when the Swiss mobilized following Hitler's launching of

142 *Id.* at 28.

143 See Stephen P. Halbrook, *Der freie Bürger und sein Recht, eine Waffe zu Tragen*, SCHWEIZERZEIT, Feb. 21, 2003, at 5.

144 SCHWEIZERISCHE SCHÜTZENZEITUNG, June 22, 1939, at 1.

145 *Id.*

World War II on September 1, 1939.¹⁴⁶ Operations Order No. 2 described critical positions that must be held, and thus, that the soldiers must “continue resistance up to the last cartridge, even if they find themselves completely alone.”¹⁴⁷ This was the opposite of the policies of those European countries that either would surrender to Hitler with the command that the troops would not resist or would surrender after a short fight.¹⁴⁸

After Denmark and Norway fell in April 1940, the Federal Council and General Guisan issued orders for universal resistance against attack: “All soldiers and others with them are aggressively to attack parachutists, airborne infantry and saboteurs. Where no officers and noncommissioned officers are present, each soldier acts under exertion of all powers of his own initiative.”¹⁴⁹ The command for the individual to act on his own initiative has been characterized as an ancient and deeply rooted Swiss resistance law that, in Europe at that time, placed a unique confidence by the political and military leadership onto the ordinary man.¹⁵⁰

The order continued that under no condition would any surrender be forthcoming, and any pretence of surrender must be ignored:

If by radio, leaflets or other media any information is transmitted doubting the will of the Federal Council or of the Army High Command to resist an attacker, this information must be regarded as lies of enemy propaganda. Our country will resist aggression with all means in its power and to the bitter end.¹⁵¹

The German Minister in Bern, Otto Köcher, reported to the Foreign Ministry in Berlin that the above order “for mobilization in case of a surprise attack . . . is addressed not only to the

146 Operationsbefehl Nr. 2, A.H.Q., Oct. 4, 1939, in TAGESBEFEHLE DES GENERALS, 1939-1945 (Eidg. Militärbibliothek, n.d.).

147 *Id.*

148 See TARGET SWITZERLAND, *supra* note 76, at 66-67, 91-93, 104, 109-11.

149 *Militär-Amtsblatt* 82-83 (Eidgenössischen Militärdepartements 1940).

150 EDGAR BONJOUR, GESCHICHTE DER SCHWEIZERISCHEN NEUTRALITÄT 70 (Helbing & Lichtenhahn 1976). See also WILLI GAUTSCHI, GENERAL HENRI GUIBAN: DIE SCHWEIZERISCHE ARMEEFÜHRUNG IM ZWEITEN WELTKRIEG 180 (Neue Zürcher Zeitung 1989).

151 *Id.*

soldiers, but to the entire population.”¹⁵² The Swiss press, he added, was advocating replacement of the Hague Convention on land warfare with “a Swiss national statute on land warfare, which would legally oppose total war with total defence in which the civilian population would be obliged to take part.”¹⁵³ In the militia, the German minister noted, junior officers had organized themselves so that if, “in an invasion, a commanding officer show signs of giving way before overwhelming enemy forces, these officers have mutually pledged themselves to shoot such a commander on the spot.”¹⁵⁴

Before long the French forces were crumbling before the German blitzkrieg. Guisan now issued a further order:

Everywhere, where the order is to hold, it is the duty of conscience of each fighter, even if he depends on himself alone, to fight at his assigned position. Infantrymen, if overtaken or surrounded, fight in their position until no more ammunition exists. Then cold steel is next As long as a man has another cartridge or hand weapons to use, he does not yield.¹⁵⁵

With the collapse of France, Switzerland was then surrounded by the Axis powers and could be attacked from any side. The militia army built its defenses in the Reduit, the redoubt in the rugged Alps, where mountains were tunneled out like Swiss cheese to hide fortifications.¹⁵⁶ The German Luftwaffe and Panzers could not operate here, and the Wehrmacht infantry could be devastated by snipers behind every rock.¹⁵⁷

Boys and old men in every village were organized into *Ortswehren* (Local Defence). Those without their own rifles were issued obsolete military rifles; those without an old uniform were simply issued the Swiss armband, hopefully to be protected

152 JON KIMCHE, *SPYING FOR PEACE: GENERAL GUIBAN AND SWISS NEUTRALITY* 30-31 (Weidenfeld & Nicolson 1961). See also OSKAR FELIX FRITSCHI, *GEISTIGE LANDESVERTEIDIGUNG WÄHREND DES ZWEITEN WELTKRIEGES 186-87* (Fabag & Druckerei 1971).

153 *Id.*

154 *Id.*

155 See GAUTSCHI, *supra* note 151, at 183.

156 See TARGET SWITZERLAND, *supra* note 76, at 112-13.

157 See *Secret Passages: Episode 5* (History Channel broadcast, 2002) (commentary of Stephen P. Halbrook).

against treatment as “*Franktireure*” (lone snipers).¹⁵⁸ Official recognition of essentially the people at large as members of the armed forces, it was hoped, would give them status under international law, if captured, as prisoners of war rather than as partisans liable to immediate execution.

In their invasion plans for Switzerland, the Nazis acknowledged that the Swiss were good marksman and that the cost of attack in blood would be high—unlike the easier conquests of the other European countries, whose governments had restricted firearm ownership and certainly did not hand out a rifle for every young man to keep at home. Nazi invasion plans against Switzerland in August 1940 were prepared by Captain Otto Wilhelm von Menges of the German General Staff to the Army High Command, the *Oberkommando des Heeres* (OKH). The plans were divided into two parts: “*Der Deutsche Angriff gegen die Schweiz*” (the German attack against Switzerland) and “*Der Italienische Angriff*” (the Italian attack).¹⁵⁹ Menges commented on the Swiss army: “A functionally organized and quickly mobilized armed force. . . . The individual soldier is a tough fighter and a good sharpshooter. The mountain troops are said to be better than those of their southern neighbour.”

The blitzkrieg plans against Switzerland continued to be developed. General Franz Halder of the OKH High Command of the Army, General Staff, Army Headquarters, on August 26, noted in his directive to Army Group C, which would be the attacking force: “Switzerland is determined to resist any invasion by exerting all its strength.”¹⁶⁰

Another invasion plan was presented by General Staff Major Bobo Zimmermann to *Armeeoberkommando 1* (OAK 1, the High Command of the First Army) entitled “*Studie über einen Aufmarsch gegen die Schweiz aus dem Raume der 1. Armee*” (Study Over a Deployment Against Switzerland from the Zone of the First

158 *Vor vierzig Jahren: Aufstellung der Ortswehren*, DER FOURIER, June 1980, at 211, 212.

159 BA/MA RH 2/465 (“BA/MA” refers to Bundesarchiv/Militärarchiv, Freiburg am Breisgau, Deutschland, and the letter/number combinations are archive document numbers). See also KLAUS URNER, DIE SCHWEIZ MUSS NOCH GESCHLUCKT WERDEN! 164 (1997).

160 BA/MA RH 2/465, Fiche 3, Row 3, Geheime Kommandosache, Oberkommando des Heeres, Aug. 26, 1940.

Army).¹⁶¹ The plan noted that not all Swiss forces were mobilized, but added: “There is no doubt that the entire Swiss army will be under arms in these days of tension. We should therefore expect to face the entire Swiss army.”¹⁶² After analyzing specific Swiss units that the Wehrmacht would encounter, Zimmermann wrote:

There is no doubt that the Swiss army has *fighting power and spirit*, especially regarding the defence of the country. The army makes good use of the particularities of the territory and is very skilled in guerrilla warfare. The Swiss army also has considerable technical skills. We would therefore run into *tough resistance*, but would probably not have to expect any attacks.¹⁶³

Fortunately for the Swiss, Hitler faced distractions elsewhere in the Battle of Britain, the operations in Greece and Yugoslavia, and most of all Operation Barbarossa—the attack on the Soviet Union. Yet the Nazi hierarchy kept an eye on the irritating Alpine democracy and continued to plan subversion and attack.¹⁶⁴

The intelligence report *Kleine Orientierungsheft Schweiz* (Concise Reference Work Switzerland) was issued in 1942 and again in 1944 by the Division for Foreign Armies in the West of the German Army’s General Staff.¹⁶⁵ It posed the following evaluation of the Swiss Army’s fighting qualities:

The Swiss militia system allows for all of the men fit for duty to be registered at relatively low cost. It serves to maintain the soldierly spirit of the Swiss people and allows it to set up an army that for such a small country is very strong, appropriately organized, and quickly employable.

Swiss soldiers love their country, are hardy and tough. They shoot well and take great care of their arms, equipment,

161 BA/MA RH 20-1/368, Nr. 001, Rows 2-3, Armeeeoberkommando 1; Studie über einen Aufmarsch gegen die Schweiz aus dem Raume der 1. Armee, Oct. 4, 1940.

162 *Id.*

163 *Id.* (emphasis added).

164 See TARGET SWITZERLAND, *supra* note 76, at 150-51.

165 *Kleine Orientierungsheft Schweiz*, OBERKOMMANDO DES HEERES (Generalstab des Heeres, [Army General Staff], Abteilung Führer Heere West [Section Army Command West]), Anlage 8, Dec. 1944, at 45 [hereinafter *Kleine Orientierungsheft Schweiz*]; BA/MA DV-RH/402. See also Dr. Walter Schaufelberger, *Das ‘Kleine Orientierungsheft Schweiz,’* NEUE ZÜRCHER ZEITUNG, May 21, 1977, Nr. 177 (summarizing the report).

uniforms, horses and pack animals. In particular the German-speaking Swiss and the soldiers from the Alps should be good fighters. . . .

So far there has been no doubt that both the government and the people are determined to defend Swiss neutrality against any and all attackers with armed means.¹⁶⁶

The report included an analysis of the Swiss military leadership, describing General Guisan as “[I]ntelligent, very cautious. Behind his overt correctness stands his sympathy with the Western powers.”¹⁶⁷ Corps Commander Herbert Constan—the highest-ranking Jewish officer in the Swiss military—was described as “*Sehr tüchtig. Nicht-Arier. Deutschfeindlich.*” (“Very capable. Non-Aryan. Enemy of Germany.”) As Constan illustrates, Swiss Jews served just like every other Swiss male: every Jewish man was issued a rifle and stood ready to defend the country.

As noted above, virtually the entire male population able to lift a rifle was considered a resource for resistance. In a 1943 message, Federal Councilor Karl Kobelt, head of the Military Department, encouraged every person to join an official defense organization to be protected by international law:

Every Swiss who is able to fight and shoot can participate in the struggle for our country. But in order not to be regarded as *heckenschuetze* [outlaw sniper], he must join an official military organization, the military service, *Ortswehr* [local defense], or *Luftschutz* [anti-aircraft defence] and be subject to their rules .

. . .

The significance of the *Ortswehr* has grown more and more by reason of the war experience. Now it has quite a number of rifles distributed over the whole country, and readiness for shooting any time heightens our safety against surprise attack.¹⁶⁸

Of course, had a Nazi invasion come, it would have been uncertain whether the Germans would have treated civilians with armbands as prisoners of war or simply shot them.

166 *Id.*

167 *Kleine Orientierungsheft Schweiz*, *supra* note 166.

168 SCHWEIZERISCHE SCHÜTZENZEITUNG, Jan. 1943, at 127-28.

An invasion plan drafted in late 1943 by SS General Hermann Böhme and intended for execution in summer 1944 was rendered impossible by D-Day.¹⁶⁹ He warned:

The fighting spirit of Swiss soldiers is very high, and we will have to equate it approximately to that of the Finns. . . . The unconditional patriotism of the Swiss is beyond doubt. Despite the militia system, the shooting instruction is better than, for example, in the former Austrian Federal army with 18 months term of service.

The Swiss had studied closely—and gained confidence from—the resistance tiny Finland put up against invasion by the Soviet Union, Nazi Germany's erstwhile ally. In the Winter War of 1939-40, the Finnish army, only half as numerous as that of Switzerland, held out for almost three and a half months against overwhelming Soviet forces.¹⁷⁰ The Finns had only 100 airplanes and 60 obsolete tanks, but like the Swiss, they had few equals in rifle marksmanship.¹⁷¹ Russian paratroopers were shot in the air, and those missed were shot when they landed on the ground.¹⁷²

Finnish sharpshooters killed or wounded astonishing numbers of Russian troops; in one battle merely three Finns died, as against one-thousand Russians.¹⁷³ A single Finn, Simo Häyhä, who previously had won numerous marksmanship trophies, is said to have killed over 500 Russian soldiers.¹⁷⁴ Overall, one million Russians perished in the invasion, versus just 25,000 Finns, according to Nikita Khrushchev.¹⁷⁵ Thus, even after suing for peace, the Finns managed to keep most of their territory.

As was with the Finns, marksmanship was a national obsession for the Swiss. The Germans were well aware of the risks posed by sharpshooters. At the Nürnberg war crimes trials, U.S.

169 See TARGET SWITZERLAND, *supra* note 76, at 194-99. The source document for the following is Ernst Uhlmann, *Angriffspläne gegen die Schweiz*, ALLGEMEINE SCHWEIZERISCHE MILITÄRZEITUNG, Dec. 1949, at 841-49.

170 WERNER RINGS, *SCHWEIZ IN KRIEG*, 1933-1945, at 162 (1974).

171 *Id.*

172 Ernst Frei, *Erlebter Aktiendienst 1939-1945: Auszüge aus dem Tagebuch eines Angehörigen der Fliegertruppen 40* (1998).

173 ELOISE ENGLE & LAURI PAANANEN, *THE WINTER WAR: THE SOVIET ATTACK ON FINLAND 1939-1940* at 113 (1973).

174 *Id.* at 136.

175 *Id.* at 142-43.

prosecutor Thomas J. Dodd—later the senator who would sponsor the federal Gun Control Act of 1968—examined the defendant Baldur von Schirach, the first Hitler Youth Leader, about prewar military training among German youth.¹⁷⁶ The following exchange occurred:

von Schirach: Switzerland gave her young men a much more intensive rifle training than we did and so did many other countries.

Mr. Dodd: Yes, I know.

von Schirach: I do not deny that our young men were trained in shooting.

Mr. Dodd: I hope you're not comparing yourself to Switzerland, either.

von Schirach: No.¹⁷⁷

Indeed not. While von Schirach was suggesting that pre-war Germany was not militaristic simply because it trained young men to shoot, he obviously could not compare shooting programs within the Third Reich with those of the Swiss democracy. The Nazis would never have handed out rifles to every nineteen-year-old male to take home.

In fact, from the day Hitler seized power it was Nazi domestic policy to seize firearms from enemies of all stripes—first the left, then the democrats, and then the Jews. The Nazis made good use of the 1928 firearms law passed by social democrats in the Weimar Republic. Prewar Nazi gun control culminated in *Reichskristallnacht*—the Night of the Broken Glass, the 1938 pogrom against Germany's Jews—which was a massive search-and-seizure operation to seize firearms from Jews.¹⁷⁸ The day after the attacks, German newspapers published the notice “Weapons Ban for Jews” as follows: “The SS Reichsführer and Chief of the German police [Himmler] has issued the following Order: ‘Persons who, according to the Nürnberg law are

¹⁷⁶ Testimony of Baldur von Schirach, 14 *Nuremberg Trial Proceedings* 470 (May 24, 1946), available at <http://www.yale.edu/lawweb/avalon/imt/proc/05-24-46.htm> (last visited Dec. 11, 2003).

¹⁷⁷ *Id.*

¹⁷⁸ See Stephen P. Halbrook, *Nazi Firearms Law and the Disarming of the German Jews*, 17 *ARIZ. J. INT'L & COMP. L.* 483 (2000), available at <http://www.stephenhalbrook.com/article-nazilaw.pdf>; Stephen P. Halbrook, *Das Nazi-Waffengesetz und die Entwaffnung der deutschen Juden*, 12 *ALLGEMEINE SCHWEIZERISCHE MILITÄRZEITSCHRIFT* 8 (2001).

regarded as Jews, are forbidden to possess any weapons. Violators will be transferred to a concentration camp and imprisoned for a period up to 20 years.”¹⁷⁹

When the blitzkrieg struck, the Wehrmacht immediately posted signs threatening the death penalty for failure to turn in all firearms within 24 hours.¹⁸⁰ A 1941 decree in occupied Poland provided:

The death penalty or, in less serious cases, imprisonment shall be imposed on any Pole or Jew . . . [i]f he is in unlawful possession of firearms . . . or if he has credible information that a Pole or a Jew is in unlawful possession of such objects, and fails to notify the authorities forthwith.¹⁸¹

Executing firearm owners was a routine task. A 1941 Warsaw newspaper randomly picked up by a wood stove a couple of years ago included the following report, which appeared daily in newspapers, with different names, in every occupied country:

Three Death Penalties for Prohibited Arms Possession

A special German court in Zamosc [near Krakow] sentenced to death 19 year-old Franciszek Pokrywka of Powieki, 27 year-old Iwan Zilnyk and 35 year-old Pawe Huzar, both of Uazów, for prohibited possession of firearms as well as for violating the duty to report possession of firearms.

Pokrywka had an automatic pistol with six cartridges and, despite the universally-known order about surrendering the arms, he did not give it up. Sometime later he sold the pistol to Zilnyk, who a few days after that offered the firearm for sale to Huzar, who, though he did not buy it, still failed to fulfil his duty to report it to the proper authorities.

The above-mentioned death sentences have already been carried out.¹⁸²

Hitler himself declared in 1942, “The most foolish mistake we could possibly make would be to allow the subject races to possess arms. History shows that all conquerors who have

179 *Reine Waffen iue Juden*, DER ANGRIF, Nov. 10, 1938, at 7.

180 *E.g., Le Matin* (Paris), June 27, 1940, at 1.

181 *Reichsgesetzblatt I*, 759 (Dec. 4, 1941), quoted in *Federal Firearms Legislation: Hearing Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 90th Cong. 488 (1968).

182 NOWY KURJER WARSZAWSKI, Jan. 22, 1941, at 1 (New Warsaw Courier).

allowed their subject races to carry arms have prepared their own downfall by so doing.”¹⁸³

The reports of the *Einsatzgruppen*, Nazi killing squads, which exterminated two million Jews and others in the East, make clear the significance of being or not being armed. As Raul Hilberg observes, “The killers were well armed The victims were unarmed.”¹⁸⁴ Six *Einsatzgruppen* of a few hundred members each and divided into *Einsatzkommandos* operated in Poland and Russia.¹⁸⁵ Their tasks included arrest of the politically unreliable, confiscation of weapons, and extermination.¹⁸⁶ For instance, *Einsatzgruppe C* reported in September 1941 that its operations included, “above all, the fight against all partisan activities, beginning with the well-organized bands and the individual snipers down to the systematic rumour mongers.”¹⁸⁷ Typical executions were that of a Jewish woman “for being found without a Jewish badge and for refusing to move into the ghetto” and another woman “for sniping.” Extensive partisan activity by armed Jews was reported.¹⁸⁸

The heroic Warsaw ghetto uprising of 1943 demonstrated that even a few Jews with arms in their hands could effectively resist. Simha Rotem, a member of the Jewish Fighting Organization (*Zydowska Organizacja Bojowa*, or *ZOB*), described the situation:

I and my comrades in the *ZOB* were determined to fight, but we had almost no weapons, except for a few scattered pistols In other places, where there were weapons, there was shooting, which amazed the Germans. A few of them were killed and their weapons were taken as loot, which apparently was decisive in the struggle. Three days later, the *aktsia* [deportations] ceased. The sudden change in their plans resulted from our unforeseen resistance.¹⁸⁹

183 HITLER'S SECRET CONVERSATIONS 403 (Norman Cameron & R. H. Stevens trans., Signet Books ed. 1961).

184 RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS 297, 318, 341 (1985).

185 THE EINSATZGRUPPEN REPORTS ii (Yitzhak Arad et al. eds., 1989).

186 *Id.*

187 *Id.* at 117, 128.

188 *Id.* at 233, 257-58, 306, 352-53, 368.

189 SIMHA ROTEM (KAZIK), MEMOIRS OF A WARSAW GHETTO FIGHTER AND THE PAST WITHIN ME 118-19 (1994).

ZOB members obtained more pistols and some grenades by the time of the April 19 *aktsia*.¹⁹⁰ Rotem recalled that, despite the Germans' heavy arms, after an SS unit was ambushed: "I saw and I didn't believe: German soldiers screaming in panicky flight, leaving their wounded behind My comrades were also shooting and firing at them. We weren't marksmen but we did hit some."¹⁹¹

Dozens of Germans were killed while partisan losses were few. In the first three days not a single Jew was taken out of the buildings. Finally, the Germans resorted to cannon and aerial bombings to reduce the ghetto to rubble. On the tenth day, the ghetto was burned down. Many escaped through the sewers and into the forests. There they continued the struggle in cooperation with non-Jewish partisans. Joseph Goebbels' May 1 diary entry reflects:

The only noteworthy item is the exceedingly serious fights in Warsaw between the police and even a part of our Wehrmacht on the one hand and the rebellious Jews on the other. The Jews have actually succeeded in making a defensive position of the Ghetto. Heavy engagements are being fought there It shows what is to be expected of the Jews when they are in possession of arms.¹⁹²

Of course, the only sizable population of European Jews in possession of arms was in Switzerland. The Wannsee Protocol, the 1942 plan for the "final solution of the Jewish question," listed Switzerland's 18,000 Jews among the eleven million to be eradicated.¹⁹³ In addition, Switzerland provided refuge for large numbers of foreign Jews. An American periodical pointed out at war's end that Switzerland provided "temporary shelter during the war for 35,000 Jews. (If we had made a comparable effort, we should have taken in 1,225,000, since our population is 35 times

190 *Id.*

191 *Id.* at 25, 32-34.

192 THE GOEBBELS DIARIES: 1942-1943 at 350-51 (Louis P. Lochner ed., 1948).

193 *Wannsee Protocol* (Jan. 20, 1942) (describing the number of European Jews to be eradicated in each country), available at <http://www.lib.byu.edu/~rdh/eurodocs/germ/wanneng.html> (last visited Dec. 11, 2003).

that of Switzerland; actually, we did not take as many as Switzerland.)”¹⁹⁴

But the Holocaust did not come to Switzerland, in no small part because every man was a potential sniper against any and all invaders, and official policy was that any announcement of surrender would be considered enemy propaganda. Allen Dulles, head of America’s OSS spy network operating against Germany from his base in Bern, wrote: “At the peak of its mobilization Switzerland had 850,000 men under arms or standing in reserve, a fifth of the total population. . . . That Switzerland did not have to fight was thanks to its will to resist and its large investment of men and equipment in its own defense. The cost to Germany of an invasion of Switzerland would certainly have been very high.”¹⁹⁵

VII. CONCLUSION

Any discussion of the value or lack thereof of an armed civilian population must consider the abnormal as well as the normal times. As the World II experience dramatically illustrates, governmental policies which disarm civilians in peacetime leave them subject to predatory occupation forces in wartime. While other factors also account in part for Switzerland’s good fortune in avoiding both world wars, this avoidance would have been impossible without her tradition of armed neutrality. And if this tradition of arming every citizen dissuades foreign aggressors, it by no means encourages crime in peacetime.

¹⁹⁴ Carl J. Friedrich, *As Switzerland Sees It*, ATLANTIC MONTHLY, Dec. 1946, at 108, 109.

¹⁹⁵ ALLEN DULLES, THE SECRET SURRENDER 27-28 (1966).