

3-28-2005

Legal Lines in Shifting Sand: Immigration Law and Human Rights in the Wake of September 11

Daniel Kanstroom

Boston College Law School, kanstroo@bc.edu

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/lspf>

 Part of the [Civil Rights and Discrimination Commons](#), [Human Rights Law Commons](#), [Immigration Law Commons](#), [International Law Commons](#), [Religion Commons](#), and the [Securities Law Commons](#)

Recommended Citation

Daniel Kanstroom. "Legal Lines in Shifting Sand: Immigration Law and Human Rights in the Wake of September 11." *Boston College Third World Law Journal* 25, (2005): 1-12.

This Article is brought to you for free and open access by Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law School Faculty Papers by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

**LEGAL LINES IN SHIFTING SAND:
IMMIGRATION LAW AND HUMAN RIGHTS IN
THE WAKE OF SEPTEMBER 11TH**

Daniel Kanstroom*

Abstract: In March of 2004, a group of legal scholars gathered at Boston College Law School to examine the doctrinal implications of the events of September 11, 2001. Their task was to undertake serious rethinking of various existing categories and legal lines, especially those between citizens and noncitizens, war and peace, the civil and criminal systems, and the borders of U.S. territory. The hope was that through detailed thought and research, we would begin to understand the recent evolution of the rule of law—*across* lines and categories.

The conference yielded exciting results. Participants responded to the basic hypothesis that these entrenched historical matrices, these formal lines, are increasingly inadequate to address the complex issues raised by many current government practices in the campaign known as the “war on terror.”

Among the major issues considered were: the critical importance of government disclosure and preservation of the public’s right to know; the relevance of the certain habeas corpus practices used in the deportation system; racial profiling; the increasing convergence of immigration and criminal law since the September 11th attacks; the nature of judicial review of military detentions at Guantanamo Bay and elsewhere; and a comparative analysis of noncitizens’ rights in the U.S. and in the European Union. What has emerged is an outline for much future research and the seeds of a new, pragmatic legal approach to

* Clinical Professor and Director, Boston College Law School International Human Rights Program.

increasingly complex questions that is grounded in deep respect for human rights.

The truism that we never forget where we were and what we were doing at the time of world-shaking events can be misleading. My memory of the assassination of Dr. Martin Luther King, Jr., for example, is highly personal and more emotional than rational: my mother's tears, the seething, unfocused tension between children of different races in my urban school the next morning, and my teacher's well-intentioned but inept attempts to help us grasp how we as a society had succumbed to the terrible veto of violence.

I do, however, remember exactly where I was and what I was doing when the planes hit the buildings in New York. The details remain clear not only because I am now an adult, but also because for me the whole episode was marked by a poignant combination of tragedy, fear, and—astonishingly—a kind of epiphany.

I was teaching immigration law that semester at Boston College Law School. Two weeks before September 11, my class and I had read and discussed the several late nineteenth century cases that form the foundation of what is known as the "plenary power doctrine." We had struggled to conceptualize and articulate the limits of the government's power to control noncitizens' entry into and residence within the United States. Could it truly be, as the Supreme Court had once said in the infamous "*Chinese Exclusion Case*," that government policies in this realm are "conclusive upon the judiciary?"¹ What consequences might flow to us all if we accepted the proposition that the power of the government to "deport foreigners . . . is as absolute and unqualified as the right to prohibit and prevent their entrance into the country"²?

On September 11, 2001 we had suspended discussion of these deep legal and policy concerns for a special session on legal research techniques. We had set up an internet connection, and its images were projected onto a large screen. I walked into the classroom, completely oblivious to what had happened that morning, and

¹ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).

² *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

was confronted by the stunned and horrified faces of the early arrivals as they watched CNN. Then, huddled together, about a hundred of us watched: students, staff, and faculty. At first, our fears were rather specific and personal—we believed that as many as fifteen of our students were on those planes, flying from Boston to California for job interviews. I recall nervously scanning the empty seats in the room. Who was missing? Who had told me of a trip to California? Many of us began to worry about friends and family as well. I thought that my brother was probably near, if not in the heart of, the disaster—he worked very close to the World Trade Center. (I later learned that, amazingly, he had overslept that day and awoke in Brooklyn to see smoke rising over lower Manhattan.) Soon, however, we all realized that we were witnessing something much bigger than we had initially thought. The world, it seemed, had suddenly changed in ways that the mind and the heart struggled to grasp.

I remember standing before this group as the events unfolded, feeling compelled to say something—to try to sum up, or at least to frame somehow, what we were witnessing. I knew I was inadequate to the task, but nevertheless it was mine. The first thought that occurred to me has stayed with me ever since. I saw firefighters and police rushing into that huge inferno; medical emergency teams doing whatever they could; stunned government officials struggling to do something useful—all were uncertain of what they faced, and all were terrified, shocked, confused—but all were *doing their jobs*. I said to my students that for us—lawyers, law students, especially those who devote our lives to human rights and the rule of law—our time would come soon to do the same thing. We would have to rush into a new, uncertain, complex, potentially dangerous situation and we would have to do *our* job.

That job, most simply put, is to construct a system, a discourse, and a legitimate set of procedures to protect more than a thousand years of legal culture and human rights, while not, as the Supreme Court once put it, turning the Constitution into “a suicide pact.”³

It has become apparent that this job requires serious rethinking of various categories and legal lines. Before September 11, 2001, some legal categories were fairly unambiguous. U.S. citizens, for example, unquestionably had powerful procedural and substantive rights against executive detention. With the rare and controversial exception of the detention of citizens during declared wars, one

³ Kennedy v. Mendoza-Martinez, 372 U.S. 144, 159–160 (1963)

could have confidently said that the constitutionalized criminal justice system was the primary framework for analysis of such arrests and detentions.⁴ As the Supreme Court put it nearly half a century ago,

[W]e reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land.⁵

As to noncitizens, however, the rules have long been more complicated. After all, the Alien and Sedition Acts of 1798, which authorized the President to designate noncitizens for arrest, detention and removal without judicial process or oversight—were never tested at the Supreme Court. But it is also well-established that, if subjected to formal criminal process, noncitizens retain the same rights as citizens in that process.⁶ If, however, they are placed in deportation proceedings—possibly implicating arrest, detention, and the most severe and harsh of consequences—their rights are substantially diminished and subject to the flexible vicissitudes of procedural due process analysis. Moreover, if they happen to face U.S. government action outside the United States, the Supreme Court has deemed them to have essentially no constitutional rights at all.⁷ All this was, of course, doubly true for so-called “enemy aliens” in times of war.⁸

So, as a general matter, one could conceptualize the pre-September 11th rule of executive detention/enforcement law as a

4 Cf. *Hendricks v. Kansas*, 521 U.S. 346, 350138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997) (upholding Kansas’s Sexually Violent Predator Act, providing for civil commitment of those who, due to “mental abnormality” or “personality disorder” are likely to commit sexually predatory acts.)

5 *Reid v. Covert*, 354 U.S. 1, 5-6 (1957) (plurality opinion) (citations omitted).

6 *Wong Wing v. United States*, 163 U.S. 228 (1896).

7 *Chae Chan Ping v. United States*, *supra*.

8 See David Cole, *Enemy Aliens*, 54 *Stan. L. Rev.* 953 (2002); see also Daniel Kanstroom, *From the Reign of Terror to Reining in the Terrorists: Defining the Rights of Noncitizens in the Nation of Immigrants*, 9 *New England Journal Of International Law*, 47–108 (2003) [hereinafter: *Reigning in the Terrorists*].

matrix with four major interlocking dichotomies composed of eight basic variables and creating a rough continuum of rights:

| | |
|---|--------------------------------|
| peace-time/declared war | |
| inside territory/outside territory | |
| citizen/non-citizen | |
| criminal process/civil process | |
| more secure rights→ | more tenuous rights |
| | |

Although a far from perfect set of distinctions (and the relative weight of various factors always raised conceptual problems),⁹ it seemed a relatively stable one. The legal fallout from September 11, however, has necessitated serious rethinking of these lines and categories.¹⁰ At least five current trends are discernible, some of which precede 9/11, but all of which have accelerated since:

1. the use of the immigration control system for security and other government purposes that do not relate directly to immigration policy;¹¹
2. the convergence of the criminal justice and immigration control systems;¹²

⁹ See e.g., *Reid v. Covert*, 354 U.S. 1, 5 (1957) (court-martial jurisdiction may not extend to non-military spouses outside of the continental United States during times of peace); *Johnson v. Eisentrager*, 339 U.S. 763, 787–88 (1950) (German nationals, confined in the custody of the United States outside of U.S. territory following a conviction by a military commission have no right to a writ of *habeas corpus* to test the legality of their detention); *Korematsu v. United States*, 323 U.S. 214, 223 (1945); *Hirabayashi v. United States*, 320 U.S. 81, 92 (1943) (legislative and executive branch have the constitutional authority to impose military laws with criminal sanctions that require both citizens and non-citizens of Japanese ancestry to report to and remain confined in military areas); *Ex parte Quirin*, 317 U.S. 1, 2 (1942) (*per curiam*) (U.S. citizenship not an impediment to military trial of alleged Nazi saboteur); *Wong Wing*, 163 U.S. at 235–37 (holding that non-citizens subjected to criminal process retained the same rights as citizens).

¹⁰ See generally Daniel Kanstroom, *Criminalizing the Undocumented: Ironic Boundaries of the Post-September 11th "Pale of Law,"* 29 North Carolina Journal Of International Law and Commercial Regulation, 639–70 (2004) [hereinafter: *Criminalizing the Undocumented*]; Daniel Kanstroom, "Unlawful Combatants" in the United States: Drawing the Fine Line Between Law and War, Human Rights 30: no.1 (Winter 2003): 18–21 [hereinafter: *Unlawful Combatants*]

¹¹ See Kanstroom, *Reigning in the Terrorists*, *supra*.

¹² See Kanstroom, *Criminalizing the Undocumented*; see also, Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 Harv. L. Rev. 1890, 1890–1935 (2000).

3. the breakdown of the peace/declared war dichotomy in the amorphous “war on terror”;
4. the placement of great pressure on the legitimacy of the territorial line in situations ranging from humanitarian intervention to Iraq and detentions at Guantanamo Bay; and
5. the assertion of executive power against U.S. citizens such as Jose Padilla and Yaser Hamdi in ways that call many basic rights-claims into question.

In March of 2004, a group of leading scholars gathered at Boston College Law School to consider these and related questions. An impressive range of expertise was in attendance: from U.S. constitutional, immigration, and criminal law, to international human rights law and the developing law of the European Union. Presenters were invited to explore specific themes fitting within the broad rubric I have just sketched. Our hope was that through such detailed thought and research, we would begin to see and understand the most recent evolution of the rule of law —particularly *across* lines and categories.

The conference yielded remarkable and exciting results. Throughout the day, participants responded to this basic hypothesis: that these entrenched historical matrices, these formal lines, are increasingly inadequate to address the complex issues raised by many current government practices in the campaign known as the “war on terror.”

If that is correct, then what? I would advocate for less status-based categorization and a more basic human rights approach. This doctrinal method, of course, could be constructively combined with serious attention to structural constitutional analysis, as it was by the Second Circuit in its *Padilla* decision.¹³ But such structural analysis must also be informed by human rights discourse,¹⁴ specifically by a robust version of *habeas corpus* review that does not rely reflexively on distinctions such as that between law and discretion or that accepts a standard of review so deferential as to be functionally meaningless.

Other participants provided what amounts to a menu for future analysis of a vast array of fundamental issues that our legal system must reconcile in the years to come.

¹³ *Padilla v. Rumsfeld*, 352 F.3d 695 (2d Cir. 2003).

¹⁴ See Daniel Kanstroom, Brief for *Amici Curiae* Law Professors *Rumsfeld v. Padilla*, 352 F.3d 695 (2d Cir. 2003).

“Democracies,” it has been said, “die behind closed doors.”¹⁵ Thus, the article authored by Professor Mary-Rose Papandrea addresses a problem notable both for its complexity and high stakes. What exactly does the public have a “right to know” about the details of the war on terror? Professor Papandrea notes the government’s use of an array of “nontraditional methods” (a gentler term than I might have chosen) to “detain, process, and prosecute” individuals suspected of terrorist activities. And how relevant, if at all, is it that the administration has focused so zealously on noncitizens? Should we be reassured or alarmed by courts’ general deference to the Executive’s rather amorphous national security claims ?

Professor Papandrea wisely counsels courts to recall the interests in effective self-government that motivated the 1966 passage of the Freedom of Information Act (FOIA) and the judicial recognition of the First Amendment right of access in 1980.¹⁶ (To this I might add the symbolic point that the two dates frame the year of Watergate perfectly, seven years on each end.) In a wide-ranging and meticulous analysis, her contribution notes how the public’s knowledge of the Guantanamo detainees and “enemy combatants” has been both “one-sided” and “woefully inadequate to scrutinize government actions.”¹⁷ This is unsurprising if one recalls, as does Professor Papandrea, that the political process has historically been “impotent and incapable of forcing disclosures of information the government prefers to keep secret.”¹⁸

But information is only one element of the question of where to draw such vital legal lines. How closely should courts scrutinize the myriad of choices made by a government ostensibly pursuing its most important goal of basic national security? Here, articles by Professors Stephen Legomsky, Nancy Morawetz, and Theresa Miller are instructive. Professor Legomsky considers one extraordinarily controversial subject confronted in the “war on terror:” the legitimacy of ethnic and religious profiling. He focuses particularly on how profiling affects noncitizens, an undertaking complicated by the need to consider the citizen/noncitizen line, as well as to resolve more general questions of deference to the government in national security matters. His keen analysis of this problem begins with a useful definition of profiling: “specifically targeting individuals who possess identifiable

¹⁵ *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002).

¹⁶ Papandrea at 2.

¹⁷ *Id.*

¹⁸ *Id.*

attributes that are believed to bear positive statistical correlations to particular kinds of misconduct.”¹⁹ As Professor Legomsky notes, this definition may sound innocuous, but post 9/11 profiling has been used quite strenuously against one particular group: “people who appear to law enforcement officials to be of Arab descent or Muslim (or both.)” He details many of these practices as applied to noncitizens, ranging from intelligence-gathering and “voluntary interviews,” to detention, closed hearings and visa controls.²⁰ The question thus arises whether such practices are either sensible or legal. As to the former, Professor Legomsky is dubious, but judicious. He asserts that law enforcement profiling is justifiable only “when two conditions are met.” First the practice must be “rational.” And second, “any gains in the efficacy or efficiency of the inspection process must be balanced against the substantial harm of government-sponsored discrimination.”²¹ Professor Legomsky concludes that, although the rationality of such practices is contestable, “the more convincing arguments . . . are those that recognize that ‘rational’ does not mean ‘justifiable.’”²² He then meticulously considers the harms that flow from government-sponsored discrimination of this type.

Finally, he addresses a broader concern: the relationship between this practice and the requirements of international human rights law, particularly the Convention on the Elimination of all Forms of Racial Discrimination (the “Race Convention”).²³ This convention, ratified by the United States in 1994 (albeit with substantial reservations, understandings, and declarations) “reflects the world’s shared understandings that racial discrimination is wrong and that collective international efforts to eradicate it are essential.”²⁴ As Professor Legomsky notes, the focus of many government actions on noncitizens raises special problems in this setting. Despite this, he nevertheless concludes that the citizen/noncitizen line is not a perfect nor a bright one, and that it is quite possible that some of the U.S. intelligence-gathering strategies are “potentially vulnerable” to challenges under the Race Convention.²⁵

¹⁹ Legomsky at 1.

²⁰ Legomsky at 3–17.

²¹ Legomsky at 20.

²² Legomsky at 22.

²³ International Convention on the Elimination of all Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969.)

²⁴ Legomsky at 26.

²⁵ Legomsky at 36.

The connection between Professor Legomsky's analysis and the work of Professors Nancy Morawetz and Theresa Miller is intriguing. Initially, little seems more arcane than the *habeas corpus* jurisprudence of the Federal District Court for the Western District of Louisiana. And yet, Professor Morawetz demonstrates powerfully how this doctrinal black hole has tremendous significance to the thousands of noncitizens whose cases—and persons—are transferred to the remote Oakdale Federal Detention Facility. Indeed, the issue of detention site selection proved critical to the Supreme Court's disposition of the case of U.S. citizen Jose Padilla.²⁶ The Court's "seemingly technical ruling," that Padilla's lawyers had incorrectly filed a *habeas* petition in New York instead of South Carolina where he was held, is actually of "enormous importance," asserts Professor Morawetz.²⁷ In a fascinating and meticulous study of the rather bizarre practices of the Louisiana court in cases involving noncitizens, Professor Morawetz artfully transcends the citizen/noncitizen line and highlights "the grave dangers of extending the rule of *Padilla* beyond that case and into any situation in which the government has the power to choose the situs of detention."²⁸ Perhaps most significantly for purposes of future litigation, she emphasizes that the locus of habeas actions is an issue unrelated to subject matter jurisdiction, and the standard should be "relaxed where it would reward abuse by the government or otherwise fail to provide fair access to the writ."²⁹ Otherwise, the power that has developed in immigration cases—the power to "move noncitizens to a law-free zone"—could extend much further.³⁰ Ultimately, as Professor Morawetz points out, the experience of the noncitizens in Oakdale should "serve as a sober reminder of the degree to which substantive protection from illegal government action depends not just on substantive judicial rulings, but also on . . . procedural rules that will determine whether courts ever reach the merits of a case . . ."³¹ Little in our post 9/11 jobs as legal professionals could be of greater import.

26 *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004.)

27 Morawetz at 2.

28 Morawetz at 3.

29 Morawetz at 3.

30 Morawetz at 5. This is not to say that this power is not already a serious problem in its own right. Among other problems, Oakdale detainees are subject to deportation prior to the adjudication of their cases. *Id.* at 18.

31 Morawetz at 21.

Professor Theresa Miller examines the doctrinal line between criminal punishment and immigration law. She notes the powerful convergence of “get tough” policies in the criminal justice realm, the 1996 changes to U.S. immigration, and the post-September 11 regime. This connection—one to which I have devoted much attention as well—leads to the recognition that “the interaction of the two systems produced outcomes that were unprecedented, and even unintentional at times, in their harshness.”³² Professor Miller moves from this point to examine three major theoretical responses to the convergence between immigration and criminal law and finally to a most fruitful discussion of how “the new penology” blurs historical distinctions among “illegal aliens,” “criminal aliens” and “terrorists.”³³ Her wide-ranging article closes with a series of questions, perhaps the most poignant of which is: “To what extent is the nation made more secure when its alien population is subjected to harsh, criminally punitive sanctions for relatively minor criminal or immigration transgressions?”³⁴ As she notes with understatement, the bare contours of these questions are yet undefined, let alone any clear answers to them.

Noncitizens in Oakdale face a court that, according to Professor Morawetz, “views itself as largely without power.”³⁵ Historically, the territorial line has served as a classic justification for this phenomenon of impotence, a fact undoubtedly informing the government’s decision to detain noncitizens at the U.S. naval bases at Guantanamo instead of, say, lower Manhattan. Professor David Martin, a leading scholar of both immigration and human rights law, considers the numerous issues raised by the case of *Rasul v. Bush*,³⁶ which held that U.S. courts have jurisdiction over habeas claims from Guantanamo. Using aspects of the companion case to *Rasul*, *Hamdi v. Rumsfeld*,³⁷ Professor Martin assumes the complicated task of sketching out a specific method for the consideration of future challenges to detention in similar settings. In so doing, he does not rely on prior fixed categories such as citizenship or territory, but carefully considers instead the aspects of rights, pragmatism, and judicial legitimacy implicated by various approaches. He describes his essay

³² Miller at 3.

³³ Miller at 6.

³⁴ Miller at 45 (last page?).

³⁵ Morawetz at 21.

³⁶ 124 S. Ct. 2686 (2004).

³⁷ 124 S. Ct. 2633 (2004).

as “an effort to bolster an emerging and workable middle ground.”³⁸ Although he concedes that his suggested method—in which primary factfinding would be done by military tribunals—might “disappoint some,” Professor Martin notes that it offers several rather powerful and underappreciated advantages, of which the most significant is possibly the enhancement of judicial review to consider *de novo* the validity of tribunal procedures and even the substantive standards for who is “an enemy combatant.”

Professor Martin begins with a careful consideration of the previous dominant precedent in the field, the Court’s 1950 decision in *Johnson v. Eisentrager*.³⁹ He artfully analyzes *Rasul v. Bush*⁴⁰ and draws on “signals” from *Hamdi v. Rumsfeld*⁴¹ to “use the judicial instrument carefully and cleverly, in order to maximize the chances that persons wrongfully detained can secure prompt release—while still making ample allowance for the real demands of military effectiveness.” His focus on Part IV of Justice Jackson’s opinion in *Eisentrager* cleverly blends aspects of the three cases’ reasoning into one coherent theoretical whole. Among the most impressive features of Professor Martin’s work is his comprehensive analysis of military/government/security concerns as well as the protection of human rights. After disaggregating the various rights claims that have been made, he appraises the role of courts in each domain.⁴² His conclusions are, he acknowledges, paradoxical. By means of analogies from immigration law, he suggests—contrary to the stance of most human rights advocates—that *deferential* standards of review “give rise to a salutary form of acoustic separation that actually winds up bolstering a delicate but indispensable balance when the strongest of governmental needs comes into conflict with the most elemental individual liberty claims.”⁴³ Whether one agrees with this ultimate conclusion or not, Professor Martin has crafted a most impressive recipe for future food for thought.

As we grapple with the complexities of the questions posed by each of these fine essays, we might do well to look beyond the United States for useful approaches to similar problems. French professor of law, Sophie Robin-Olivier, thus considers the operation of

38 Martin at 3.

39 339 U.S. 763 (1950).

40 124 S. Ct. 2686 (2004).

41 124 S. Ct. 2633 (2004).

42 Martin at 27–28.

43 Martin at 36.

the citizen/noncitizen line in the European Union's counterterrorism efforts. Though noting "a general deterioration in the situation of immigrants on both sides of the Atlantic," Professor Robin-Olivier concludes that the lives of noncitizens in Europe have not changed as dramatically as have those of noncitizens in "the nation of immigrants."⁴⁴ To account for this divergence, she identifies the shared competence of the EU and its constituent Member States over both the fight against terrorism and immigration policies. Although European measures "ostensibly designed to fight terrorism . . . have pointedly targeted noncitizens," Professor Robin-Olivier writes that aspects of the EU legal system, especially its robust and specific protections of human rights, may "limit or counterbalance the impact of anti-terrorism measures on noncitizens."⁴⁵ Such protections include measures that go far beyond the rights system existing in the United States, including, for example, acceptance of the legal argument that the "decision to expel . . ." may constitute an "interference with the right to respect for family life" required by European human rights law.⁴⁶ Professor Robin-Olivier also notes a report issued by the Parliamentary Assembly of the Council of Europe that concluded that U.S. practices at Guantanamo Bay would not pass muster under European standards.⁴⁷ Moreover, she considers the weight given in Europe to the principle of "nondiscrimination." She strikes her most optimistic note in the final section of her essay, which considers the emerging idea of European citizenship and reflects on the potential for its universalist aspirations to broaden acceptance of principles of equality and fundamental rights.

Hannah Arendt once described the period immediately preceding the Second World War as a time when, "the very phrase 'human rights' became for all concerned—victims, persecutors, and onlookers alike—the evidence of hopeless idealism or fumbling feeble-minded hypocrisy."⁴⁸ The meticulous care taken by the authors of these essays, and by other presenters and attendees of this symposium, offers powerful support for a more optimistic view in this era.

44 Robin-Olivier at 1.

45 Robin-Olivier at 3.

46 Robin-Olivier at 6.

47 Robin-Olivier at 8.

48 Hannah Arendt, *The Origins of Totalitarianism* 269 (1966).