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A PASSIVE COLLABORATION: BUREAUCRACY, LEGALITY, AND THE JEWS OF BRUSSELS, 1940–1944

*David Fraser**

I. INTRODUCTION

Leading historian Jean-Philippe Schreiber argues that there are still remarkable lacunae in the history of the Holocaust in Belgium. He writes that “[o]ne of the issues still to be thoroughly investigated for Belgium is the relations between Jews and non-Jews under the Occupation.”¹ The role played by local Belgian administrations and elected officials in implementing the initial German measures against the Jews of Belgium is one area in which study has only just begun.²

* Professor of Law and Social Theory, University of Nottingham School of Law. Much of the research for this paper was undertaken while I was a Charles H. Revson Foundation Fellow at the Center for Advanced Holocaust Studies, United States Holocaust Memorial Museum (USHMM), Washington D.C. My thanks to the Foundation and the Center, especially the Archives’ staff, without whose help and support this work would not have been completed. The Arts and Humanities Research Board’s (AHRB) Research Award (APN 16324) supported other research. I am also grateful to the AHRB for its long-term funding of my project on legality, resistance and collaboration in Occupied Belgium, of which this is a part. The Honorable Freddy Thielemans, Mayor of Brussels, kindly granted me access to the files from the Mayor’s Office for the years of German Occupation. I would also like to acknowledge the staff of the Archives of the City of Brussels, who offered friendly advice and assistance in my preliminary explorations of their holdings. An early version of this project was presented at the University of Warwick, Center for Social Theory. For comments and suggestions at several stages in the production of this article, my thanks to Daniel Bovy, Thierry Rozenblum, and Bernard Suchecky. Responsibility for the content is, as always, entirely my own, and unless otherwise noted, all translations were done by me.

1. Jean-Philippe Schreiber, *Belgium and the Jews Under Nazi Rule: Beyond the Myths*, in NAZI EUROPE AND THE FINAL SOLUTION 469 (David Bankier & Israel Gutman eds., 2003). See also Jean-Philippe Schreiber, *La Belgique et les Juifs sous l’Occupation nazie: L’histoire au-delà des mythes*, 4 LES CAHIERS DE LA MÉMOIRE CONTEMPORAINE 59 (2002).

2. See generally LIEVEN SAERENS, VREEMDELINGEN IN EEN WERELDSTAD: EEN GESCHIEDENIS VAN ANTWERPEN EN ZIJN JOODSE BEVOLKING (1880–1944) (2000) (describing the peculiar situation in Antwerp during this time period) (French-language translation forthcoming); Thierry Delplancq, *Des paroles et*

For the most part, Belgian historiography has focused on the wartime period and the Occupation generally, rather than on the specificities of anti-Jewish persecution. In most accounts, the question of Belgian participation in Nazi atrocities is subsumed under the broader rubric of collaboration and resistance.³ In this article, I want to elucidate one of the most vexing and fascinating, yet under-studied, areas of Belgian Holocaust history: the role played by the Belgian state and its legal apparatus in the exclusion of the Jews of Belgium. An assessment of the daily practices and discourses of administrators and elected officials in Brussels casts light on the clash between ideas of

des actes: L'administration Bruxelloise et le Registre des Juifs, 1940–1941, 12 CAHIERS D'HISTOIRE DU TEMPS PRESENT 141 (2003) (reporting the role of Belgian officials) [hereinafter Delplancq, *Des paroles et des actes*]; Thierry Delplancq, *1940–1942, une cité occupée et ses juifs: Quelques aspects heuristiques*, 3 CAHIERS DE LA MÉMOIRE CONTEMPORAINE 125 (2001) (describing the role of Belgian officials) [hereinafter Delplancq, *une cité occupée et ses juifs*]; Thierry Rozenblum, *Une cité si ardente: L'administration communale de Liège et la persécution des Juifs, 1940–1942*, 179 REVUE D'HISTOIRE DE LA SHOAH: LE MONDE JUIF 9 (2003) (in-depth, fascinating account of the fate of the Jews of Liège under the administration of Mayor Joseph Bologne). See also Godelieve Denhaene, *Les Juifs dans Certains Documents Communaux de Schaerbeek Pendant la Deuxième Guerre Mondiale*, 1 CAHIERS DE LA MÉMOIRE CONTEMPORAINE 133 (1999). Despite prolific scholarship in this area, Belgian historiography of the Holocaust continues to labor under many of the myths and lacunae identified by Schreiber, especially a reluctance to engage in thoughtful self-examination.

3. See, e.g., SYLVAIN BRACHFELD, *ILS ONT SURVÉCU: LE SAUVETAGE DES JUIFS EN BELGIQUE OCCUPÉE* (2001) (demonstrating that historical studies of the role of non-Jewish Belgians in the Holocaust focus primarily on rescue stories). Efforts at determining the Belgian role in the mechanisms of exclusion and death put in place by the German occupiers for the Final Solution in Belgium are only beginning. In this area, and in all others relating to the Holocaust in Belgium, the most obvious point of reference is Maxime Steinberg's monumental and seminal history of the Shoah. See generally MAXIME STEINBERG, *LA PERSÉCUTION DES JUIFS EN BELGIQUE, 1940–1945* (2004) [hereinafter STEINBERG, *LA PERSÉCUTION DES JUIFS*]; MAXIME STEINBERG, *L'ÉTOILE ET LE FUSIL: 1942 LES CENT JOURS DE LA DEPORTATION DES JUIFS DE BELGIQUE* (1984) [hereinafter STEINBERG, *1942 LES CENT JOURS*]; MAXIME STEINBERG, *L'ÉTOILE ET LE FUSIL: LA QUESTION JUIVE, 1940–1942* (1983) [hereinafter STEINBERG, *LA QUESTION JUIVE*]; MAXIME STEINBERG, *L'ÉTOILE ET LE FUSIL: LA TRAQUE DES JUIFS, 1942–1944* (1986) [hereinafter STEINBERG, *LA TRAQUE DES JUIFS*]. See also DAN MICHMAN, *BELGIUM AND THE HOLOCAUST: JEWS BELGIANS GERMANS* (1998); MAXIME STEINBERG, *UN PAYS OCCUPÉ ET SES JUIFS: BELGIQUE ENTRE FRANCE ET PAYS-BAS* (1998) [hereinafter STEINBERG, *UN PAYS OCCUPÉ ET SES JUIFS*].

citizenship, “Belgianness,” Constitutional duty,⁴ and the bureaucratic necessity of efficiently complying with German legal edicts. This examination provides a more nuanced understanding of Belgian historical reality, as well as a more insightful inspection of the institutional and political dynamics of modern governance, legality, and the Holocaust.

For a variety of reasons the question of local participation in Jewish persecution in Belgium has been ignored or downplayed in collaboration debates. It is morally and politically easier to blame the Germans and a few local fanatics for anti-Jewish acts than to engage in a careful and nuanced study of Belgian complicity. This complex psychosocial, historical, political, and, I argue below, legal matrix of “forgetting” in Belgium has led to the creation of a glorious tradition of resistance to the Occupier. I do not mean to suggest that resistance by Belgians was simply mythological. There was resistance and there were resisters to the Holocaust, non-Jewish and Jewish alike, just as there was collaboration and there were collaborators. Instead, I argue that the creation of a mythological legal structure of resistance to Nazi measures has obscured the mechanisms by which Belgians did share responsibility for the exclusion, persecution, and killing of Jews in Belgium.

The common Belgian resistance myth concludes that the occupying military forced local administrators to identify, register, and exclude “Jewish”⁵ individuals and businesses, and that these administrators resisted through delay and obfuscation by

4. See CONSTITUTION BELGE arts. 6, 14–16 (1924) (Article 6 guaranteed equality, while Articles 14, 15, and 16 established religious freedom.).

5. “Jewish” is used here as it is in the foreign-born, anti-Belgian taxonomical structure of Nazism. Throughout this article, I use the English “Hebrew” as an imperfect rendering of the French *Israélite*. In French, the difference between *Israélites*, who identify themselves as citizens of a national community who happen to practice a particular religion or share a specific heritage, and *Juifs*, who identify as a group in a religious or ethnic sense and are therefore not members of the national community, is clear. This distinction played a significant semiotic and practical role in the Belgian Holocaust; the difference between Belgian and foreign-born Jews was exploited by all sides in the complex arrangements of the bureaucracy of destruction. See generally David Fraser, *The Fragility of Law: Anti-Jewish Decrees, Constitutional Patriotism and Collaboration in Belgium 1940–1944*, 14 LAW & CRITIQUE 253 (2003) [hereinafter Fraser, *Fragility of Law*] (exploring this distinction).

relying on constitutional guarantees of equality and freedom of religion.⁶ For example, the post-war Belgian War Crimes Commission, outlining the first set of anti-Jewish decrees issued by the Germans,⁷ described the role played by municipal institutions in implementing anti-Jewish measures on Belgian soil as tactical obfuscation: “[A] number of municipal administrations systematically sabotaged the creation of a Register of Jews, under the pretext of overwork, lack of material or manpower. On this point, it is useful to note that the majority of Jews invited to register themselves obeyed. Forty-two thousand gave their names.”⁸

Official governmental records, detailing the role played by local officials in the administration of the preliminary phases of the Holocaust in Belgium, support this mythology. The records seem to indicate that, first, the Germans imposed the anti-Jewish measures on Belgian officials; second, Belgian officials responded to these directives with passive compliance, and occasionally, active resistance. The use of passive voice and non-accusatory grammatical construction, such as reflexive verbs, in these records reinforces the first two pillars of the myth structure by insinuating that Belgium did not register Jews; instead, the Jews registered themselves. According to the official legal texts (the historical memory of the Holocaust in Belgium), thousands of Jews who had fled pogroms in Poland and Russia, or who had left Germany after Hitler’s rise to power, declared themselves. This is the official story of the Holocaust in Bel-

6. U.N. INFO. ORG., *Persecution of the Jews, in* CONDITIONS IN OCCUPIED TERRITORIES 1 (1943). The Allied governments issued a report in 1943 praising the Belgian population for its lack of enthusiasm for, and resistance to, anti-Jewish measures imposed by the Germans. *Id.* at 3–4. The report notes: “[t]o the annoyance of the Nazis, these measures met with but little response from the Belgian population.” *Id.* at 4.

7. These anti-Jewish decrees were called “Verordnung” in German. I use the English terms “decrees” and “orders” instead of the German “Verordnung” or the French “Ordonnance.” Both terms convey that administrative decisions made by the Occupying Power had legislative force and effect.

8. COMMISSION DES CRIMES DE GUERRE, LES CRIMES DE GUERRE, COMMIS SOUS L’OCCUPATION DE LA BELGIQUE, 1940–1945: LA PERSECUTION ANTISEMITIQUE EN BELGIQUE 19 (1947) (“Ainsi, nombre d’administrations communales sabotèrent systématiquement l’établissement du registre des Juifs, sous prétexte de surcharge de travail, du manque de matériel ou de main d’œuvre. A cet égard, il est utile de noter que la plupart des Juifs invités à s’inscrire, s’exécutèrent. Quarante-deux mille donnèrent leur nom.”).

gium as told by the Belgian War Crimes Commission and the prosecutors at Nuremberg. This is the legal history of the Holocaust in Belgium.⁹

It is this somewhat bizarre historical category, “passive collaboration,” which I argue characterizes the myths about local participation in the persecution of Jews. And this passivity is a direct result of the interpretation of the limits of constitutional conduct by the highest legal authorities in the country. While dominant myths support the story of resistance and reluctant compliance by Belgian officials in implementing anti-Jewish orders, the records used to support these myths can also be interpreted another way.¹⁰ This article examines the ways in which these records support the theory that Belgian officials did, in fact, carry out the identification and registration of Jewish individuals and businesses. The records demonstrate, moreover, that these Belgians were not proponents of the New Order;¹¹ they were elected officials and civil servants who perceived themselves as patriotic Belgians. The question then, is how did loyal, patriotic Belgians, aware of the Belgian constitutional guarantees of equality and religious freedom, participate in the economic and physical exclusion of those identified as Jews?

Part of the answer lies in notions of citizenship and in the historical reality of the Belgian Jewish population in 1940. At that time, most of the Jews in Belgium were not Belgian citizens, but rather, immigrants from Eastern Europe, Poland, and Russia, and German refugees.¹² Protests based on the funda-

9. See Delplancq, *une cité occupée et ses juifs*, *supra* note 2, at 128.

10. Dan Michman, *Problematic National Identity, Outsiders and Persecution: Impact of the Gentile Population's Attitude in Belgium on the Fate of the Jews in 1940–1944*, in *NAZI EUROPE AND THE FINAL SOLUTION* 455, 464 (David Bankier & Israel Gutman eds., 2003) (Michman notes that “the implementation of the anti-Jewish measures—both the legal and the economic—could be carried out (even if only partially) by the Belgian bureaucracy.”).

11. The term “New Order” came to stand for the Nazis’ political conquest of Europe. See Joseph Goebbels, *The Coming Europe*, Address to Czechoslovakian Artists and Journalists (Sept. 11, 1940) (“Our well populated Reich and Italy will lead Europe. That will happen. There is no changing it. For you, this means that you are part of a large Reich that will give a new order to Europe.”), available at <http://www.calvin.edu/academic/cas/gpa/goeb31.htm>.

12. See Fraser, *Fragility of Law*, *supra* note 5, at 273–74. The topic of police operations in Belgium during the pre-war era, particularly those involving

mental constitutional guarantees of equality and religious freedom did not occur, with one notable exception: opposition to the Yellow Star Order, which made mandatory the wearing of the Yellow Star by all Belgian Jews.¹³ This failure is attributable, at least in part, to the legal framework established by Belgian authorities, in particular, the Permanent Council of Legislation and the Secretaries-General.¹⁴ The Permanent Council was a body established by Royal Decree and exercised purely advisory jurisdiction. Because it was made up of the highest ranking members of the judiciary and legal worlds, its real powers of

aliens (*police des étrangers*), offers fertile ground for further historical research.

13. See Rozenblum, *supra* note 2, at 31–32 (noting the protest by Mayor Bologne of Liège over the Yellow Star). Other types of protests, relating specifically to the creation or operation of Jewish schools and the use of Belgian police in arresting Jews, also took place. *Id.* The Yellow Star order led to other isolated acts of refusal and resistance by officials in Occupied Europe. See, e.g., DAVID FRASER, *THE JEWS OF THE CHANNEL ISLANDS AND THE RULE OF LAW 1940–1944: QUITE CONTRARY TO THE PRINCIPLES OF BRITISH JUSTICE* 119–43 (2000) (depicting the story of the Bailiff and Attorney-General of Jersey).

14. Vivian Grosswald Curran, *The Legalization of Racism in a Constitutional State: Democracy's Suicide in Vichy France*, 50 HASTINGS L.J. 1, 8 (1998) (national constitutions are not sterile texts, but documents that live in the hearts and minds of those who enforce them, those who apply them, and those who live under them). Discussions focusing on the implementation of anti-Jewish laws, such as the viewpoint provided by Thierry Delplancq in his recent article, *Des paroles et des actes*, *supra* note 2, overemphasize the unconstitutional nature of Brussels' implementation of anti-Jewish laws and downplay the importance of the Hague Convention (II) with Respect to the Land and Customs of War on Land (Hague Convention). See generally Hague Convention (II) with Respect to the Land and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803, 1 Bevans 247 (entered into force Sept. 4, 1900). Interpretation of the Hague Convention provided the overriding legal norm from June 1940 onward, governing relations between the Occupiers and the Secretaries-General and providing a template for the Conseil de Législation's interpretation of the Belgian Constitution. Delplancq is no doubt correct that a complete understanding of the attitude of Brussels' administration would involve a multi-factorial analysis. As a lawyer, however, I would insist that we never underestimate the legitimizing impact of a clearly established legal framework for persecution. See generally STEINBERG, *UN PAYS OCCUPÉ ET SES JUIFS*, *supra* note 3; Pim Griffioen & Ron Zeller, *La persécution des Juifs en Belgique et aux Pays-Bas pendant la Seconde Guerre mondiale: Une analyse comparative*, 5 CAHIERS D'HISTOIRE DU TEMPS PRESENT 73 (1998); Wolfgang Seibel, *The Strength of the Perpetrators—The Holocaust in Western Europe, 1940–1944*, 15 GOVERNANCE 211 (2002).

persuasion and authority far exceeded its formal consultative jurisdiction. The Secretaries-General were the senior, ranking civil servants in each government department, the equivalent of British Permanent Secretaries.

The Belgian experience exemplifies the legitimizing functions law and legality can play by demonstrating how they permitted compliance with the German anti-Jewish measures. Thierry Rozenblum, in his path-breaking work on the history of the Jews in the city of Liège during the Occupation, highlights the ways in which local officials complied with the anti-Jewish laws.¹⁵ At the same time, Rozenblum underscores the undoubted historical reality of Liège as a major center of the Belgian resistance.¹⁶ Rozenblum begins his exhaustive study by asking:

[W]hy did the administration and Mayor of Liège so scrupulously execute the anti-Jewish decrees promulgated by the Occupier, without ever having denounced them as being clearly contrary to the Belgian Constitution, when at the same time they constantly invoked that very same Constitution to obstruct, sometimes successfully, any number of other measures commanded by the German authorities?¹⁷

The failure of officials in Brussels, like their counterparts in Liège, to invoke the Belgian Constitution (Constitution) in defense of compatriot Jews can be understood, albeit not exhaustively, by carefully studying the legal background of the passive collaboration phenomenon. The Constitution was, in large part

15. See generally Rozenblum, *supra* note 2 (describing treatment of Jews by local officials in Liège).

16. *Id.* (Local officials, including the Mayor, Joseph Bologne, did not hesitate to obstruct German demands, either through outright refusal or by legal argument. They invoked provisions of the Hague Convention in order to place legal and constitutional sticks in the wheels of German actions. The one area in which they failed to act in such a way was in the implementation of anti-Jewish laws.).

17. *Id.* at 10

([P]ourquoi l'administration communale liégeoise et son bourgmestre ont-ils si scrupuleusement exécuté les ordonnances antijuives promulguées par l'occupant, sans jamais dénoncer leur caractère foncièrement contraire à la Constitution belge, alors que dans le même temps ils ne cessaient d'invoquer cette même Constitution pour faire obstruction, parfois avec succès, à quantité de mesures ordonnées par les autorités allemandes?).

at least, rendered irrelevant to the implementation of anti-Jewish measures in Belgium by the operation of Belgian law itself. The Constitution was limited by a series of legally binding interpretations of its force and effect under German Occupation, such that Belgium's Jews became extra-legal subjects, ripe for administrative, but not aggressive, identification as un-Belgian. Thus, passive collaboration was lawful by the operation of the normative and legitimizing structures of the Belgian state and juridical apparatus under the Occupation.

Research into municipal records made during the Occupation of Belgium is beset with practical problems, making any exploration into the fundamental factual and ideological questions regarding the Holocaust all the more difficult. Many archives are closed and require special permission for access; the "hundred year rule" prevents scholars from identifying the subjects of many records from the Second World War; further, many files are incomplete or missing.¹⁸ Archival files from the Mayor's Office (*Cabinet de Bourgmestre*), pertaining to the Occupation years, are incomplete.¹⁹ Indeed, the file concerning the Register of Jews bears the following note from the 1970's: "The Register of Jews for Brussels has disappeared."²⁰

18. See Delplanq, *une cité occupée et ses juifs*, *supra* note 2, at 133–34.

19. See Inventaire No. 33, Cabinet du Bourgmestre, Archives de la Ville de Bruxelles [hereinafter AVB], at VIII (transcript on file with the Brooklyn Journal of International Law). Indeed, the Inventory summarizes the state of the holdings as follows:

The part of the holdings relating to the war 1940–1945 is much less interesting. The documents, especially the correspondence with the Occupying Power were found in a state of extreme disorder, which could only be remedied to a small degree. Moreover, it appears that many of the files have been destroyed or removed.

Id.

(La partie du fonds relative à la guerre 1940–1945 offre beaucoup moins d'intérêt. Les documents et surtout la correspondance avec l'autorité occupante ont été trouvés dans un désordre extrême, auquel il n'a été possible de remédier que dans une faible mesure. Il semble d'ailleurs que beaucoup de dossiers aient été détruits ou emportés.)

20. Dossier relating to the Register of Jews (*Dossier relative au registre des juifs*), Cabinet du Bourgmestre, AVB, File 866 bis Guerre 40–45 Direction de l'Etat Civil (transcript on file with the Brooklyn Journal of International Law). This does not mean there was no Register of Jews for Brussels. In Liège, several versions of the Register were created and transferred to various authorities during and after the war. See Rozenblum, *supra* note 2, at 20–29.

Many of the documents examined in this Article derive not from files and records held and maintained by the Mayor, but from copies maintained by Mr. Gries, the translator. Gries translated into German not only communications between the Mayor and German authorities, but also communications between the Germans and other city officials. Likewise, Gries translated those communications originating with the Occupiers into French prior to their distribution to appropriate departments or officials.²¹ Thus, many of the documents to which I refer here are carbon copies, not originals.²²

This article, then, is about bureaucratic action as embodied in the writings of the bureaucrats themselves, nothing more and nothing less. There are, of course, counter-narratives, subtleties of distinction and real stories behind the documents. For example, it may well be that in Brussels, as in other parts of Belgium, local authorities aided Jews by supplying them with “real false papers,” such as official birth certificates, nationality papers with non-Jewish origins, or food ration coupons under false identities for those Jews in hiding. These acts of resistance and rescue, however, will appear nowhere in official written communications between departments or with the German authorities.

A copy of the Register of Jews for Brussels is available at the USHMM; the Centre d'Etudes Guerres et Sociétés (CEGES), RG. 65.003 P, Reel 431; and the Jewish Museum of Belgium (Musée Juif de Belgique) in Brussels. I am grateful to Bernard Suchecky and Thierry Rozenblum for clarifying the history of the Register of Jews for me. In the immediate post-war period, Monsieur Warans of the Population Office of the City of Brussels provided a brief history of anti-Jewish measures and the City administration for the Office of the Registry of Births, Deaths and Marriages. On Nov. 9, 1944, Warans noted that the Ministry of the Interior requested that the Register of Jews be handed over to them; this was done on Nov. 30, 1944. Note sur les ordonnances concernant les Juifs, Cabinet du Bourgmestre, AVB, File 866 bis (Dec. 9, 1944) (on file with the Brooklyn Journal of International Law). City officials maintained two copies of the Register, one of which they kept from public scrutiny and safeguarded in case of the loss of the other. See Instruction concernant le registre des juifs (Nov. 15, 1940), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law).

21. Until the appointment of Mayor Coelst, almost all extant correspondence involving the municipal administration and its officials was in French.

22. As a lawyer, this troubles me. The files are, in fact, incomplete copies, so the analysis to which I subject the documents in this Article is inevitably incomplete.

Nonetheless, an analysis of these texts tells a story of Belgian acceptance, however reluctant, of the new subject, "the Jew," and exemplifies the fundamental importance of a legal framework for the operation of antisemitism. The belief in the legality of passive collaboration allowed Belgian officials to adopt the "hermeneutic of acceptance."²³

II. ESTABLISHING THE LEGAL FRAMEWORK OF ANTISEMITISM

A brief examination of the constitutional basis and governmental structure under which the City administration operated during the Nazi Occupation is helpful for understanding the bureaucratic and legal application of anti-Jewish laws in Brussels. Although local officials worked under arduous and sometimes dangerous wartime conditions, they were nevertheless operating within a functioning legal system; Belgian government and law continued to function during the Occupation.²⁴ Indeed, the German Occupation of Belgium from 1940 to 1944 was to a large extent both premised and dependent upon the continuation of Belgian governmental and legal structures.

After the defeat of the Belgian armed forces in the Blitzkrieg of May 1940, the elected government of Prime Minister Hubert Pierlot fled first to France, and then to London, where Pierlot established a government-in-exile. Despite certain difficult issues of continuation and succession of state governments in international law, the legitimate and internationally-recognized embodiment of the Belgian state was the Pierlot regime in London.²⁵ Unlike France, which continued to have a functioning state apparatus in Vichy, as well as a counter-claim to legiti-

23. Richard Weisberg, *Bondage, Freedom & the Constitution: The New Slavery Scholarship and its Impact on Law and Legal Historiography: Slavery and Legal Ethics: The Hermeneutic of Acceptance and the Discourse of the Grotesque*, 17 CARDOZO L. REV. 1875, 1875 (1996).

24. See Fraser, *Fragility of Law*, *supra* note 5, at 257 (noting that the Secretaries-General chose the lesser of two evils, opting to remain in Belgium as the Belgian government; Belgian pre-war legislation allowed them to take executive measures in emergency situations).

25. See generally François de Kerchove d'Exaerde, *Quelques Questions en Droit International Public Relatives à la Présence et l'Activité du Gouvernement Belge en Exil à Londres (Octobre 1940–Septembre 1944)*, 23 REVUE BELGE DU DROIT INTERNATIONAL 93 (1990).

macy in the form of DeGaulle's "Free French" in England,²⁶ the Belgian government, in the political and constitutional sense, was the government-in-exile in London.

At the same time, however, the Belgian King, the head of state, remained in Belgium and continued to play a governmental role during the Occupation.²⁷ More importantly, the bulk of judicial and civil service structures remained on Belgian soil and had ongoing interaction with the occupiers.²⁸ The Secretaries-General, the highest-ranking public servants from every governmental department, stayed in Belgium and carried out the day-to-day practical and constitutional operation of the country. As with King Leopold, the legitimate role and activities of the Secretaries-General during the Occupation remains controversial.²⁹

At the end of the period of the "phony war,"³⁰ the Belgian Parliament passed the "Law Relating to the Delegation of Powers during Wartime" (Delegation Law).³¹ Article Five provided that:

When, as a consequence of military operations, a judge or a civil servant, or a body of judges or of civil servants ... is unable to communicate with the appropriate superior authority, or if this authority has ceased its functions, he possesses, in

26. See, e.g., MAURICE FLORY, *LE STATUT INTERNATIONAL DES GOUVERNEMENTS REFUGIES ET LE CAS DE LA FRANCE LIBRE 1939-1945* (1952).

27. See generally JEAN STENGERS, *LEOPOLD III ET LE GOUVERNEMENT: LES DEUX POLITIQUES BELGES DE 1940* (1980).

28. The prosecuting authorities at the Nuremberg Trials summarized the relationship and governance structure: "This regime of the Secretaries General pleased the Germans, who adopted it." *THE TRIAL OF GERMAN MAJOR WAR CRIMINALS: PROCEEDINGS OF THE INTERNATIONAL MILITARY TRIBUNAL SITTING IN NUREMBERG, PART 6, FEB. 2-13, 1946* 37 (1946) [hereinafter *TRIAL OF GERMAN MAJOR WAR CRIMINALS*] (taken from official transcript).

29. See Fraser, *Fragility of Law*, *supra* note 5, at 257.

30. See PAUL-HENRI SPAAK, *THE CONTINUING BATTLE: MEMOIRS OF A EUROPEAN 1936-1966* 21-32 (Henry Fox trans., 1971) (referring to the period of time when German attack seemed imminent, during which Belgium claimed neutrality).

31. *Loi relative aux délégations de pouvoirs en temps de guerre*, *MONITEUR BELGE*, May 11, 1940, at 2860 (on file with the Brooklyn Journal of International Law) (All Belgian laws are passed in both French and Flemish; the French version is published in the *Moniteur Belge*, the Flemish version in the *Belgisch Staatsblad*. For the sake of brevity, I will limit myself to the French text and citation throughout this Article.).

cases of emergency and within the limits of his professional activity, all the powers of that authority.³²

Under the Delegation Law, the Secretaries-General subsequently found themselves with the de facto power to govern Belgium until the return of the Pierlot government.³³ After the fall of Belgium and the installation of the German Military Administration (GMA), however, the Secretaries-General were unsure of the extent of their authority.³⁴ Like all Belgians, the Secretaries-General bitterly remembered the brutality of the German Occupation during the First World War, and were reluctant to repeat that experience.³⁵ They wished, to the greatest extent possible, to maintain the continued functionality of Belgian legal institutions and government.³⁶ Since the Germans also wanted a fully functioning and efficient Belgian government administration to which to delegate or, more accurately, upon whom to impose,³⁷ the legal question of the nature and extent of the delegation envisaged under Article Five of the Delegation Law became one of central importance.

The Secretaries-General sought a legal opinion from two leading jurists, Joseph Pholien and Paul Tschoffen, concerning the nature and extent of their powers under the Delegation Law;³⁸ Pholien's and Tschoffen's response was central to the subsequent history of the anti-Jewish measures. The Secretaries-General inquired whether they possessed legislative power under the terms of the delegation contained in Article Five and, if

32. *Id.*

(Lorsque par l'effet des opérations militaires, un magistrat ou un fonctionnaire, un corps de magistrats ou de fonctionnaires ... est privé de toute communication avec l'autorité supérieure dont il dépend, ou si cette autorité a cessé ses fonctions, il exerce dans le cadre de son activité professionnelle et pour les cas d'urgence, toutes les attributions de cette autorité.).

33. *Id.*

34. *See id.*

35. Fraser, *Fragility of Law*, *supra* note 5, at 257.

36. *See id.*

37. *See* TRIAL OF GERMAN MAJOR WAR CRIMINALS, *supra* note 28, at 37.

38. *See* Consultation Letter from Joseph Pholien and Paul Tschoffen to Secretaries-General (June 6, 1940), reproduced in PIERRE LECLERCQ, L'EQUIVOQUE D'UNE LOI 62, 62-64 (1946) [hereinafter Letter from Pholien & Tschoffen, June 6, 1940].

they did not possess such powers, whether the German Occupiers could confer them.³⁹

The answer from Pholien and Tschoffen set out the juridical framework within which the Belgian government would operate for the next four years. First, they clearly established that the delegation in question took place only within “the limits of [the] professional activities” of the Secretaries-General, and thus, the sole authority that could be delegated was ministerial, not legislative.⁴⁰ While the Secretaries-General could not legislate, they could release “ministerial decrees” (*des arrêtés ministériels*).⁴¹ Second, Pholien and Tschoffen affirmed that under Article 43 of the Hague Convention, the occupying power was vested with legislative authority to maintain peace and order over the conquered territory, and that such power could not be delegated.⁴²

Based on this interpretation, the German Military Commander and the Secretaries-General signed an agreement formalizing their joint understanding of the operative legal framework of the Occupation.⁴³ In short, the Secretaries-General had a theoretically limited, but realistically quite extensive, power to enact measures having legal force in Belgium. They could not, however, be granted more extensive authority by the Germans, who retained legislative jurisdiction to enact

39. *See id.* *See generally* Francis Delpérée, *Joseph Pholien, juriste. Trois consultations et les Mémoires: Le pouvoir exécutif en temps de guerre*, in JOSEPH PHOLIEN: UN HOMME D'ÉTAT POUR UNE BELGIQUE EN CRISES 113 (Françoise Carton de Tournai & Gustaaf Janssens eds., 2003) (hagiography of Pholien).

40. *See generally* Letter from Pholien & Tschoffen, June 6, 1940, *supra* note 38; Delpérée, *supra* note 39.

41. *See* Letter from Pholien & Tschoffen, June 6, 1940, *supra* note 38. The nature and extent of the power to rule by way of these decrees would continue to vex not only the relations between the Germans and the Belgian governing authorities, but also the relations between these actors and the Belgian courts, which continued to insist that they had the authority to conduct judicial review of the decisions of the Secretaries-General. *See, e.g.*, Anthoine et Consorts [PASICRISIE BELGE] [Cour de cassation] (Apr. 7, 1941) (Belgium); Halleux et Consorts [PASICRISIE BELGE] [Cour de cassation] (Mar. 30, 1942) (Belgium); Procureur du Roi de Nivelles, C. Malarne et Jacques [PASICRISIE BELGE] [Cour de cassation] (Jan. 27, 1943); Verhulst [PASICRISIE BELGE] [Cour de cassation] (Dec. 20, 1943). *See* René Hanquet, *LES POUVOIRS DES SECRETAIRES GENERAUX PENDANT L'OCCUPATION* (1946).

42. *See* Letter from Pholien & Tschoffen, June 6, 1940, *supra* note 38.

43. *See* Le Protocole Allemand du 12 Juin 1940, in PIERRE LECLERCQ, *L'EQUIVOQUE D'UNE LOI 65* (1946).

measures having the same effect as Belgian law under the laws and customs of war.⁴⁴

In early October 1940, the GMA in Belgium decided to introduce measures regulating the legal status and rights of Jews.⁴⁵ On October 10, a meeting was held between the Secretary-General for the Interior, Jean Vossen, and General Harry von Craushaar, deputy head of the GMA, to discuss the practical implementation of the German decision to introduce anti-Jewish measures. Von Craushaar informed his interlocutor that the Germans wanted the Belgian authorities to impose an order excluding Jews from public employment, registering Jews and their property, making compulsory signage indicating that certain businesses were "Jewish," and forbidding all Jews who fled the country from returning.⁴⁶ If local authorities refused to take these steps under Belgian law, the GMA threatened to require Vossen to enforce the decree. If the Belgians still refused, the Germans would enforce the anti-Jewish measures themselves.⁴⁷

The Secretaries-General met the next day and, "after a brief exchange of views," asked Vossen to convey their unanimous opinion to the Germans.⁴⁸ On October 11, 1940, Vossen wrote to von Craushaar, outlining the legal position of the Belgian government: "[T]he Committee of Secretaries-General is of the opinion, after an in-depth examination, that it cannot, for constitutional reasons, take on the responsibility for the measures envisioned concerning the Jews."⁴⁹ This statement is followed by a rather detailed description of the Belgian Constitution's

44. TRIAL OF GERMAN MAJOR WAR CRIMINALS, *supra* note 28, at 37 ("At the order of the Germans this administrative power after a time became a real legislative power.").

45. See STEINBERG, LA QUESTION JUIVE, *supra* note 3, at 103–19.

46. Letter from Jean Vossen, Secretary-General for the Interior (Oct. 11, 1940), Archives Jean Vossen, CEGES, Microfilm 74, at 78 (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Vossen, Oct. 11, 1940].

47. Minutes, Meeting of the Secretaries-General (Oct. 11, 1940) (on file with the Brooklyn Journal of International Law).

48. *Id.* ("Après un bref échange de vues....").

49. Letter from Vossen, Oct. 11, 1940, *supra* note 46 ("[L]e Comité des Secrétaires Généraux estime, après un examen approfondi, qu'il ne peut assumer, pour des raisons d'ordre constitutionnel, la responsabilité des mesures envisagées à l'égard des juifs.").

guarantee of equality and an outline of Article 43 of the Hague Convention, which permitted the Occupying Power to legislate itself.⁵⁰ At first blush, this letter appears to demonstrate the beginnings of an administrative and governmental resistance to anti-Jewish measures based on a constitutional discourse of equality and the rule of law. However, a closer examination of the language and meaning of this letter undermines such a superficial analysis.

First, Vossen (and the Secretaries-General as a body) used the term *Juifs* and not *Israélites*. Use of the latter term might have emphasized their commitment to notions of Belgian citizenship and equality as broadly understood and applicable.⁵¹ Second, although Vossen and his colleagues said they could not, for constitutional reasons, assume the responsibility for anti-Jewish measures, the letter goes on to assert that Germany does have the jurisdiction, as a matter of international law, to enact such measures.⁵² The Secretaries-General could have stated that domestic Belgian law, the Constitution, as well as the Hague Convention, all prohibited such discriminatory acts. Instead, they based their refusal on purely domestic grounds and yielded without protest to a German claim of jurisdiction to identify, record, and exclude Jewish individuals and businesses.⁵³

Article 43 of the Hague Convention permits the Occupier to introduce legally binding measures “to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”⁵⁴ Therefore, the Secretaries-General could have asserted that the Hague Convention did not permit the legalized persecution of Jews because such persecution is not a matter of public safety or national security.⁵⁵ Instead, the Secretaries-General explic-

50. *Id.*

51. See generally Fraser, *Fragility of Law*, *supra* note 5 (concerning the linguistic differences between the terms *Israélites* and *Juifs*).

52. Letter from Vossen, Oct. 11, 1940, *supra* note 46.

53. *Id.*

54. Hague Convention (II) with Respect to the Land and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, July 29, 1899, Annex, art. 43, 32 Stat. 1803, 1 Bevans 247 (entered into force Sept. 4, 1900).

55. See *id.*

itly objected to Belgian anti-Jewish measures, not to anti-Jewish measures in general.⁵⁶ Under the Secretaries-General's interpretation of the Hague Convention, German anti-Jewish legal measures would have the full force and effect of Belgian law and all Belgian government agencies would be bound thereby, notwithstanding the fact that the Belgian Constitution prohibited discrimination based in race or religion.⁵⁷

Faced with the prospect that the Germans would introduce anti-Jewish laws themselves and "charge the Department concerned with the application of the decree," the President of the Committee stated that "under these conditions, the Belgian administration could not avoid complying with the enforcement of such a decree."⁵⁸ Thus, while the Secretaries-General could not accept legislative responsibility by promulgating a Belgian order, they could not avoid administrative responsibility for enforcing a German decree against the Jews. The juridical stage was set for the next series of legal positions and dispositions which would seal the fate of Belgian Jews and establish the lawful framework for a Belgian passive collaboration in enforcing anti-Jewish measures.

III. "THE DIRTY WORK"⁵⁹: THE CONSTITUTIONAL LEGITIMIZING OF ANTI-JEWISH LAW IN BELGIUM

The Brussels administration's involvement in the Holocaust began in earnest after the introduction of two explicitly anti-Jewish orders in 1940. However, full understanding of Belgian involvement in "the Jewish question" begins earlier, with the influx of Jews into Belgium, and the policing system for aliens (*Police des Étrangers*).⁶⁰

56. See Fraser, *Fragility of Law*, *supra* note 5, at 258.

57. See *id.* at 258–59.

58. Minutes, Meeting of the Secretaries-General (Oct. 25, 1940) (on file with the Brooklyn Journal of International Law) ("M. le Président fait observer que, dans ces conditions, l'administration belge ne peut se soustraire à la mise en pratique de l'ordonnance susdite.").

59. PIERRE STÉPHANY, 1940: 366 JOURS DE L'HISTOIRE DE BELGIQUE ET D'AILLEURS 337 (1990) ("And in implementing these measures, it had to be the Belgians who did the dirty work.") ("Et dans la mise en oeuvre de ces mesures, il aurait fallu que ce soient les Belges qui fassent le sale travail.").

60. See generally LES JUIFS EN BELGIQUE: DE L'IMMIGRATION AU GENOCIDE (Rudi van Doorslaer ed., 1994).

One piece of official correspondence serves as a harbinger of what would follow. On May 28, 1940, in the earliest days of the Occupation, the head of the Brussels public welfare agency wrote to the Mayor. According to this agency, two Germans sent by the Military Command visited their office to inform them that German citizens, including Austrians and Sudeten Germans, should henceforth be sent to the German social assistance office for medical care or other aid.⁶¹ Germans were to be treated and cared for by Germans and within the German Occupier's bureaucratic and administrative structure. This would not be particularly noteworthy, except for the imposed recognition by Belgian officials of the annexations of the Sudetenland and Austria. One key word, however, marks this document as the precursor for events that would follow in the autumn: Aryan. Only Aryan Germans were covered by the instruction given to the Brussels government.⁶²

Two interrelated points of bureaucratic inscriptive practice are worth noting. First, the Germans did not hesitate to contact City bureaucrats directly to enforce anti-Jewish practices. Here, it is difficult to tell whether the City employees were merely reporting the German instructions or were requesting advice from elected decision-makers. There was no specific request for instructions and the document is simply entitled a "note" for the Mayor. In other words, the document merely passes on information between government agencies and im-

61. Note pour Monsieur le Bourgmestre (May 28, 1940), Cabinet du Bourgmestre, AVB, File 937 (Commission d'assistance publique, 1940–1943) (on file with the Brooklyn Journal of International Law) [hereinafter Note pour Monsieur le Bourgmestre, May 28, 1940].

62. *Id.* German anti-Jewish legal norms were applied to Germans in Belgium in other circumstances as well. The War Damages Order, which regulated compensation for German citizens seeking to recover war-related losses, required a statement of Aryan background in the claim form and the production of proof of Aryan descent. See Verordnung über die Entschädigung deutscher Staatsangehöriger für Kriegssachschäden [Kriegssachschäden-Verordnung] [decree of 14 August 1940, Regulating the remuneration of German citizens for war damages to property], Question 1 F (Aug. 14, 1940), reprinted in VERORDNUNGSBLATT DES MILITÄRBEFEHLSHABER IN BELGIEN UND NORDFRANKREICH [Official Gazette of the Military Command in Belgium and north France] [hereinafter VERORDNUNGSBLATT] (Aug. 17, 1940).

plies, by silence, at least, that the welfare agency will comply with the German command.⁶³

Second, official correspondence of the Brussels administration replicates, without hesitation, the language of Nazi antisemitism. For example, "Aryan" is not a term recognized in the Belgian Constitution. One might plausibly argue that the administrators were doing nothing more than replicating language received from their German visitors, and were not adopting such terminology as their own. Even this, however, is the "hermeneutic of acceptance."⁶⁴ The discursive and epistemological universe of Nazi antisemitism became normalized within Belgian administrative practice.

At the end of October 1940, the Germans introduced the first set of orders that were explicitly anti-Jewish.⁶⁵ The first, called the "Jewish Decree" (*Jodenverordening*) offered a definition of the new legal subject, the "Jew," banned Jews who had left Belgium from returning, required the creation of a register of Jewish individuals, and made compulsory the identification and

63. See Note pour Monsieur le Bourgmestre, May 28, 1940, *supra* note 61. At this point in time, it is difficult to determine the nature of this document and others like it because the files held by the City of Brussels are incomplete and in disarray. The handwritten notation on this document indicates that it has been seen, but there appear to be no other documents dealing with the subject. Nonetheless, it is clear from this one inter-office communication that some officials, including the Mayor, were aware that the Occupying Powers were applying German anti-Jewish legal norms in Brussels and that Brussels officials were expected to comply with such norms. *Id.*

64. See generally Weisberg, *supra* note 23 (discussing the hermeneutic of acceptance).

65. Jews were also subjected to all general decrees introduced by the Germans. For example, the Occupiers introduced a law forbidding ritual slaughter of animals, a prohibition which targeted observant Jews without specifically naming them. See *Verordnung zur Vermeidung von Tierquälerei beim Schlachten von Tieren* [Decree Avoiding Unnecessary Suffering of Animals During Their Slaughter] (Oct. 23, 1940), reprinted in *VERORDNUNGSBLATT* (Oct. 25, 1940). In addition, those Jews who were non-citizens, including the vast majority of Jews present in Belgium at the time, were subject to regulations governing enemy property. See *Verordnung betreffend das feindliche Vermögen in den bestzten Gebieten der Nederlands, Belgiens, Luxemburgs und Frankreichs* [Decree concerning enemy properties in the occupied territories of the Netherlands, Belgium, Luxemburg and France] (May 23, 1940), reprinted in *VERORDNUNGSBLATT* (June 17, 1940).

declaration of all businesses defined as “Jewish.”⁶⁶ The second decree ordered the removal of public employees identified as “Jews” and forbade similarly defined individuals from practicing as lawyers, teaching in public schools and universities, or from holding management positions in newspapers or radio; Jews were to be removed from these functions by December 31, 1940.⁶⁷ This order also charged the Belgian government with ensuring that the instructions for the anti-Jewish provisions were given to all concerned agencies.⁶⁸

At their meeting on November 8, 1940, just after the decrees were published, the Secretaries-General discussed not whether they should award civil service pensions to government employees who would lose their jobs because they were Jews, but also the more basic question of how would they know if a public servant was Jewish.⁶⁹ The answer came from Secretary Vossen, who stated that “interested parties must make the declaration to the municipal administration. If they do not make this declaration, they will be liable for very severe penalties. As a result, all the administrations must, within the limit of their ju-

66. Verordening van 28 Oktober 1940, houdende maatregelen tegen de Joden (Jodenverordening) [Decree of 28 October 1940 concerning measures relating to Jews (First Jewish Decree)] (Oct. 28, 1940), *reprinted in* VERORDNUNGSBLATT (Nov. 5, 1940) [hereinafter Verordening van 28 Oktober 1940, houdende maatregelen tegen de Joden]. Section 3(1) provided that appropriate municipal officials would create and maintain a Register of Jews for all male individuals over the age of 15 identifiable as Jews. *Id.* § 3(1). This Register was to include an individual’s name, place and date of birth, address, profession, nationality and religion; it was also to include the same information for the individual’s wife, parents and grandparents. *Id.* Additionally, the files of foreign Jews were to indicate how long each had lived in Belgium, as well as the location of their previous home. *Id.* In the event of a Jew’s change of residence, section 3(3) obligated the municipal authority to forward the individual’s files to the appropriate officials in the Jew’s new abode. *Id.* § 3(4). Finally, section 3(4) required that the identity cards of registered Jews contain mention that the individual was listed in the Register of Jews. *Id.* § 3(4).

67. Verordnung über das Ausscheiden von Juden aus Aemtern und Stellungen [Decree of 28 October 1940 concerning the removal of Jews from their positions and employment (Second Jewish Decree)], *reprinted in* VERORDNUNGSBLATT (Nov. 5, 1940) [hereinafter Verordnung über das Ausscheiden von Juden aus Aemtern und Stellungen] (Jewish schools and religious education were exempted from the operation of section three.).

68. *Id.* § 4.

69. Minutes, Meeting of the Secretaries-General (Nov. 8, 1940) (on file with the Brooklyn Journal of International Law).

risdiction, consider what steps to take.”⁷⁰ Similarly, regarding pension benefits for dismissed employees, the Belgian government “invite[d] the Jewish employees concerned (by the measures) to request their retirement.”⁷¹

Two aspects of this correspondence are relevant in understanding the implementation of anti-Jewish laws by Belgian government actors, as well as the post-war construction of a passive collaboration paradigm. First, the correspondence uses the passive voice and French reflexive verb construction: Jews must present themselves and request their registration. This language effectively transforms the municipal employee who fills in the registration card into a mere transcriber of the will of the Jews themselves.⁷² Second, the Secretaries-General do not question whether they should implement the orders; they only discuss how they should be carried out. There is no “should” (*devraient*), only a compulsion, “must” (*doivent*). Thus, the die is cast for the highest Belgian officials. Later in November, when the Germans requested that the Secretaries-General create a model for the registration cards, the President of the Secretaries-General, Ernst de Bunswyck, informed his colleagues that he had already drafted a procedure for removing Jewish employees. He reiterated that Jewish employees would present themselves, thus, “[t]here was no need [] for local authorities to take steps for this registration.”⁷³

The themes repeat and reinforce. Jews must declare themselves. The use of the reflexive verb structure creates the image of the Secretaries-General as ethically, practically and legally

70. *Id.* (“[L]es intéressés doivent faire la déclaration à l’Administration communale. S’ils ne font pas cette déclaration, ils sont passibles des peines les plus sévères. En conséquence, les administrations devront, chacune dans la limite de leurs attributions, envisager quelles sont les mesures à prendre.”).

71. Minutes, Meeting of the Secretaries-General (Nov. 22, 1940) (on file with the Brooklyn Journal of International Law) (“d’inviter les agents juifs intéressés à demander leur mise à la retraite”).

72. The use of the French verbs *s’exécuter* and *s’inscrire* in Belgium’s official presentation at the Nuremberg Trials semiotically illustrates that its officials were aware of their legal responsibility.

73. Minutes, Meeting of the Secretaries-General (Nov. 19, 1940) (on file with the Brooklyn Journal of International Law) (“Il rappelle que les personnes juives doivent faire elles-même [sic] leur déclaration à l’Administration communale, sous peine de se voir appliquer des sanctions les plus sévères. Il n’y a donc pas lieu pour les administrations de s’occuper de cette inscription.”).

divorced from the processes of identification and segregation of Jews. At the same time, however, interim Secretary-General Henri Charles Adam began drafting a series of instructions to municipalities throughout the country for the implementation of the registration process.⁷⁴ Gone, as quickly and quietly as it came, was Baron de Bunswyck's assertion that no steps needed to be taken by local government authorities because the Jews were responsible for registering themselves.

Although by November 1940 the Secretaries-General seemed to have accepted the inevitable fate of their Jewish colleagues, they did seek advisory opinions on the constitutional validity of legal measures promulgated by the Permanent Council before they reached any final decisions on the modalities of implementation.⁷⁵ In essence, the Permanent Council did nothing more than provide a more explicit legal basis for the position already adopted by the government well before the Council delivered its advice on November 21, 1940.⁷⁶

The first legal principle the Council discussed was the supremacy of the Belgian Constitution.⁷⁷ The Council noted, in its letter to the Secretaries-General, that the provisions of Articles six and fourteen, which guaranteed equality and religious freedom, and Article 100, which assured judicial independence, were the textual embodiment of the Belgian state structure.⁷⁸ According to the Council, the racial and religious exclusions found in the anti-Jewish orders clearly violated these constitu-

74. See Letter from Adam, Secretary-General, to Provincial Governors, Local Administration, Mayors & Councilors (Dec. 6, 1940) (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Adam to Provincial Governors, Dec. 6, 1940].

75. See, e.g., STEINBERG, UN PAYS OCCUPÉ ET SES JUIFS, *supra* note 3, at 46–51 (noting the importance played by the Permanent Council of Legislation in giving legitimacy to Belgian compliance with German anti-Jewish decrees).

76. Letter from R. Hayoit (de Termincourt), Secretary of the Permanent Council of Legislation, to the Secretary-General of Justice (Nov. 21, 1940), Archives Jean Vossen, CEGES, Microfilm 74 (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Permanent Council of Legislation, Nov. 21, 1940].

77. See *id.*

78. *Id.* These provisions “are the fundamental principles of our public law, situated as the very basis for our administrative and judicial organizations.” *Id.* (“sont des principes fondamentaux de notre droit public placés à la base même de notre organisation administrative et de notre organisation judiciaire.”).

tional principles. Therefore, as a matter of constitutional principle and criminal law, the Council concluded that “participation in these decrees clearly exceeds the legal power of the Secretaries-General and of all public servants, since it would constitute a breach of their oath of loyalty to the Constitution....”⁷⁹

This assertion could have served as the basis for a “jugular”—a constitutionally based refusal by the highest authorities to enforce the measures set out in the decrees.⁸⁰ After denouncing participation as contrary to the Belgian Constitution, however, the letter defines it in such a way as to provide a textual basis for passive collaboration. The Council wrote that “[t]he person in relation to whom, or against whom a measure is taken by the Occupying Power and who, under the compulsion on which the Authority bases its power, completes the material act imposed by the law, submits to the provision, he does not participate therein.”⁸¹ The result is that, as matter of law, submission to the legal compulsion which accompanies these decrees is not “participation,” and, therefore, not a violation of the Constitution.⁸²

The Permanent Council’s letter then expands and clarifies its position regarding compliant Belgian officials:

79. *Id.* (“[L]a participation à ces ordonnances excède manifestement le pouvoir légal de MM. les Secrétaires généraux et de tous les fonctionnaires, puisqu’elle constituerait la violation de leur serment d’obéissance à la Constitution....”).

80. See Fraser, *Fragility of Law*, *supra* note 5, at 263–67 (Indeed, Louis Braffort, President of the Brussels Bar, adopted this position during the Occupation. Invoking the Constitution, Braffort refused to hand over a list of names identifying his colleagues as Jews. When the Germans insisted that he provide them with the entire list of the Bar’s membership, he refused to comply by failing to compile a list of lawyers for that period.).

81. Letter from Permanent Council of Legislation, Nov. 21, 1940, *supra* note 76 (“Celui à l’égard de qui ou contre qui une mesure est prise par l’autorité occupante et qui, sous la contrainte sur laquelle s’appuie cette autorité, accomplit l’aote matériel qu’elle loi impose, subit la mesure, il n’y participe pas.”).

82. See, e.g., STEINBERG, LA PERSÉCUTION DES JUIFS, *supra* note 3; STEINBERG, 1942 LES CENT JOURS, *supra* note 3; STEINBERG, LA QUESTION JUIVE, *supra* note 3; STEINBERG, LA TRAQUE DES JUIFS, *supra* note 3; STEINBERG, UN PAYS OCCUPÉ ET SES JUIFS, *supra* note 3. As Steinberg so powerfully argues in his works, this theory makes the Belgian government the first and primary victim of Nazi antisemitism.

[T]he following are not acts of illegal participation: the submission of persons defined in § 1 of the 1st decree to the prohibitions and obligations imposed on them by §§ 2 and 3, paragraph 2, § 14 of the 1st decree and § 1 of the 2nd decree); submission to § 9 of the 1st decree; keeping a Register of Jews by municipal or local administrations as a result of the spontaneous declarations of interested parties (§ 3 of the 1st decree); the posting of signs by municipal authorities requested from them by interested parties pursuant to § 14 of this decree.⁸³

“Passive” submission to the Occupying Power was permissible and permitted, but “active” participation was still clearly in violation of the basic norms and fundamental principles of the Belgian constitutional state.⁸⁴ In addition to the theme of passive collaboration, the Permanent Council adopted the idea that the Register would be compiled on the basis of declarations of “in-

83. Letter from Permanent Council of Legislation, Nov. 21, 1940, *supra* note 76

(Ainsi, à l'estime du comité permanent, ne sont pas des actes de participation interdite: la soumission des personnes, désignées au § 1 de la 1ère ordonnance, aux interdictions et aux obligations qui leur sont imposées aux §§ 2 et 3, alinéa 2, § 14 de la 1ère ordonnance, § 1 de la 2 de ordonnance), la soumission au § 9 de la 1ère ordonnance, la tenue du registre des Juifs par les administrations communales ou les commissaires d'arrondissement sur les déclarations spontanément faites par les intéressés (§ 3 de la 1ère ordonnance), l'affichage par les administrations communales requis auprès d'elles par les intéressés, conformément au § 14 de cette ordonnance.).

84. *See id.* The Council distinctly prohibited active participation:

[A]ny initiative, all investigations or complementary steps, with the aim of ensuring the full efficacy of any of the provisions of the decrees by Belgian public servants is forbidden. The taking of such an initiative or such steps would mean no longer being compelled to submit to the enforcement of the decrees, but would be their promotion, and as a consequence would mean participating in the transformation of our public law.

Id.

(Par contre, toute initiative, toutes investigations ou mesures complémentaires, dans le but d'assurer la pleine efficacité de l'une ou l'autre disposition des ordonnances, est interdite aux fonctionnaires belges. Prendre une telle initiative ou une telle mesure, ce ne serait plus subir l'exécution des ordonnances, ce serait le promouvoir et, par conséquent, participer à la transformation de notre droit public.).

The Secretaries-General finalized the modalities of passive collaboration during their meetings on December 3 and 6, 1940.

terested parties,” and the signage for Jewish businesses would be “requested of them by the interested parties.”⁸⁵ To the Secretaries-General, the Permanent Council, and the post-war reconstructionists, passive collaboration was not unconstitutional or un-Belgian, but rather, faithful in its grammatical construction, rhetorical deployment, and practical implementation to the highest norms of public service and the constitutional rule of law.

The taxonomical question concerns collaboration and its concomitant mirror image, resistance, in Holocaust history. While the divisions between active believers in the New Order and those who took up arms against the German invaders are fairly unambiguous, passive collaboration is the “grey area [where] bystanders confront the risk of becoming accessories to the devil and turning into perpetrators.”⁸⁶

IV. THE DEVIL IS IN THE DETAILS

A micro-level examination of the implementation of the Jewish decrees in Belgium is helpful in understanding the role and self-characterization of Belgian officials.⁸⁷ This grey area of

85. *Id.* (“requis auprès d’elles par les intéressés”).

86. Zygmunt Bauman, *From Bystander to Actor*, 2 J. HUM. RTS. 137, 137 (2003).

87. See generally LUC HUYSE & STEVEN DHONDT, *LA REPRESSION DES COLLABORATIONS 1942–1952* (1993); Ganshof van der Meersch, *Réflexions sur la répression des crimes contre la sûreté extérieure de l’état belge*, 2 REVUE DE DROIT PENAL ET DE CRIMINOLOGIE 7 (1946–47); M. H. Bekaert, *Problèmes sociaux de l’incivisme*, 2 REVUE DE DROIT PENAL ET DE CRIMINOLOGIE 203 (1946–47). The construction of post-war repression reflected complex notions of, and conflicts over, Belgian identity and citizenship. French-speaking Belgians understood the necessity of punishing anti-Belgian Flemish collaborators and bemoaned the process of reconciliation and amnesty which followed. Meanwhile, the Flemish understanding of collaboration differed sharply from that of their Walloon fellow citizens, who seemed blind to their own history of collaboration. See generally *COLLABORATION, REPRESSION: UN PASSE QUI RESISTE* (José Gotovitch & Chantal Kesteloot eds., 2002). All parties, however, no matter how flawed their actions, shared the foundational notion that collaboration was illegal. For a more detailed discussion of the postwar trials, see Martin Conway, *Justice in Postwar Belgium: Popular Passions and Political Realities*, in *THE POLITICS OF RETRIBUTION IN EUROPE: WORLD WAR II AND ITS AFTERMATH* 133 (István Deák et al. eds., 2000); Luc Huyse, *The Criminal Justice System as a Political Actor in Regime Transitions: The Case of Belgium, 1944–50*, in *THE POLITICS OF RETRIBUTION IN EUROPE: WORLD WAR II AND ITS AFTERMATH* 157 (István Deák et al. eds., 2000).

obedience, compliance, and self-described passivity embodies the very dilemma of law and legality during the Holocaust.⁸⁸ From the earliest negotiations concerning the role of the Belgian state apparatus in applying anti-Jewish measures, Belgian collaboration was never “collaboration” in the legal sense. Nevertheless, Jewish persecution in Belgium was embedded in a complex matrix of law and legality; it was not a momentary rupture from the rule of law or a descent into unmitigated barbarity.⁸⁹ As the actions of Belgian officials demonstrate, the Holocaust in Belgium could not have happened without municipal officials registering, identifying and excluding the Jewish population of Brussels under the protective cover of a self-justifying legality.

A certain ambiguity in the process of registration and exclusion of Jews in Brussels has been used to characterize their actions as resistance. One example is the response to Secretary-General Adam’s letter in December 1940. When referring to the type of card to be used in the Register of Jews, Secretary-General Adam stated that “[t]he German Military Authority has decided that unless enforcement measures have already been taken, the system put into place by the towns of the Brussels area must be adopted in the whole country.”⁹⁰

The response from Brussels to Adam’s letter was vociferous. Georges Pêtre, Mayor of the municipality of Saint-Josse-ten-Noode, wrote to the Mayor of Brussels, Joseph Van de Meulebroeck, to protest the dangerous misunderstanding of the City’s position regarding implementation of the anti-Jewish orders.⁹¹

88. See generally DAVID FRASER, *LAW AFTER AUSCHWITZ: TOWARDS A JURISPRUDENCE OF THE HOLOCAUST* (forthcoming 2005).

89. See Fraser, *Fragility of Law*, *supra* note 5, at 258. The City of Brussels’ history with anti-Jewish laws illustrates both the legacy of collaboration and persecution in Belgium and the argument that law can be found at the core of the Holocaust. The Shoah was constituted in constitutional discourses and lawful practices and the Brussels example embodies this. See *id.*

90. Letter from Adam to Provincial Governors, Dec. 6, 1940, *supra* note 74 (“L’autorité militaire allemande décide qu’à moins que des mesures d’exécution aient été déjà prises, le système mis en pratique par les communes de l’agglomération bruxelloise doit être adopté dans tout le pays.”).

91. Letter from Georges Pêtre, Mayor of Saint-Josse-ten-Noode, to Van de Meulebroeck, Mayor of Brussels (Dec. 7, 1940), AVB, Guerre 40–45 (on file with the Brooklyn Journal of International Law).

Pêtre characterized the orders as blatantly unconstitutional.⁹² At its meeting on December 10, the regional Conference of Mayors discussed the issue and decided to write to Secretary-General Adam. Van de Meulebroeck, in his capacity as leader of the Conference of Mayors for the Brussels region, sent an angry reply to Adam, attacking the wording of the December 6 letter.⁹³ He wrote:

Without question, certain municipal employees have together drawn up a model card [*fiche*] for the eventuality of the application of the German decree ... but the Mayors, meeting together in Conference, have in no way adopted the model, nor have they taken a decision for its use in their area. On the contrary, taking into account that Paragraph 16 of the German decree of 28 October stipulates that "the head of the general military administration will decide the necessary provisions in order to carry out and to complete this decree," the Mayors decided to wait until the necessary provisions for the application of the decree of 28 October had been set out, to decide on their position. They have become aware of the publication of these provisions only by way of your aforementioned letter. They wish to underline that they will only apply these instructions because they are compelled and forced to do so.⁹⁴

92. *Id.*

93. See generally Delplancq, *Des paroles et des actes*, supra note 2 (discussing possible interpretations of the Mayor's response).

94. Letter from Van de Meulebroeck, Mayor of Brussels, to the Secretary-General of the Interior (Dec. 13, 1940), USHMM, RG. 65.003P, Reel 430 (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Van de Meulebroeck to Secretary-General, Dec. 13, 1940]

(Sans doute, certains employés communaux ont rédigé, de concert, une formule de fiche signalétique sous l'éventualité de la mise en application de l'ordonnance allemande..., mais les bourgmestres, réunis en conférence, n'ont nullement adopté ce projet, ni décidé son utilisation dans leur commune. Tout au contraire, constatant que le paragraphe 16 de l'ordonnance allemande du 28 octobre stipule que "le chef de l'administration générale militaire arrêtera les prescriptions nécessaires, afin d'exécuter et de compléter la présente ordonnance" ils ont décidé d'attendre que les prescriptions nécessaires afin d'exécuter l'ordonnance du 28 octobre soient édictées pour fixer leur attitude. Or, ils n'ont eu connaissance de la publication des prescriptions en question que par votre circulaire précitée. Ils tiennent à souligner qu'ils n'appliqueront ces instructions que contraints et forcés [sic].).

Although the Conference of Mayors objected to the rush to enforce the anti-Jewish orders, Van de Meulebroeck's letter points out that the authority and order for compliance came from both the Secretaries-General and the Germans, and that the City of Brussels was simply complying with hierarchical demands.⁹⁵ The Mayor asserted the official Brussels' position, seeking to position the City as a passive collaborator acting only under instruction and compulsion.⁹⁶ What is intriguing is that Pêtre's assertion, that the decrees violated the Belgian Constitution, disappeared in the interval between his letter to Van de Meulebroeck and the latter's response on behalf of all his colleagues several days later. What happened?

There is no doubt that the decrees violated any number of provisions guaranteeing equality and liberty under the Belgian Constitution; that was never the legal question facing either the Secretaries-General or the local officials. The legal framing of relevant inquiry, rather, was shifted from whether the anti-Jewish measures were constitutional to whether Belgian law limited their application. When did participation become participation punishable by law?

On the same day he wrote the letter of protest to the Secretary-General, Van de Meulebroeck posted the public notice to all Jews about the registration process.⁹⁷ The temporal coincidence of the two documents appears to undermine the mythological claim of passivity and compulsion. On November 12, one week after the publication of the decrees in the *Verordnungsblatt*, the Director of the Office of the Register of Births, Deaths, and Marriages wrote to the Conference of Mayors, raising for their consideration a series of practical legal questions relating to application of the decrees.⁹⁸

95. *Id.*

96. *Id.*

97. Ordre de Service No 1979, Ordonnance du 28-10-40 relative aux fonctions et activités exercées par les Juifs (Dec. 12, 1940), Cabinet du Bourgmestre, AVB (on file with the Brooklyn Journal of International Law) [hereinafter Ordre de Service No 1979, Dec. 12, 1940].

98. Rapport au Collège (Nov. 12, 1940), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law). Those questions were:

While the Conference of Mayors (Conference) may not have made a binding legislative or quasi-judicial decision regarding the Register of Jews, it was intimately involved in the construction of the bureaucratic process and mechanisms by which Belgian civil servants were to register the Jews of Brussels.⁹⁹ Records throughout Belgium demonstrate that many municipalities were well ahead of the Secretaries-General in putting into place a bureaucracy for identification and exclusion of Jews. In fact, a review of registration documents from municipalities other than Brussels shows that different forms were used

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1. What department will be charged with keeping the Register of Jews? Will it be the Police, Religious Affairs or the Registry of Births, Deaths and Marriages?
 2. Is it appropriate to invite Jews by public notice, to present themselves for registration to the office of the competent department?
 3. On the other hand, given that the decree in questions says in article 16 that the Head of the Military Administration will issue edicts containing the necessary rules for the application and completion of this decree, should we ask for complementary instructions from the German Authority?
 4. If need be, can the designated department call together delegates for the towns of greater Brussels in order to transmit to them any information compiled in order to ensure uniformity in applying the decree?

Id.

- 1° Quel service sera chargé de la tenue du registre des Juifs? Sera-ce la Police, les Cultes ou l'Etat civil?
- 2° Convient-il d'inviter les Juifs par affiche, à se présenter pour inscription au Bureau compétent?
- 3° Ou bien, étant donné que l'ordonnance dont il s'agit dit dans son article 16 que le Chef de l'administration militaire arrêtera les prescriptions nécessaires afin d'exécuter et de compléter la présente ordonnance, y a-t-il lieu de demander des instructions complémentaires à l'Autorité allemande?
- 4° Le cas échéant, le Service désigné pourra-t-il réunir les délégués des communes pour leur transmettre les renseignements recueillis afin d'arriver à l'uniformité d'application?).

99. See, e.g., Ordre de Service No 1979, Dec. 12, 1940, *supra* note 97. The Germans subsequently indicated that Brussels' bilingual registration formula was to be adopted by other municipalities unless registration had already begun. See Letter from Adam to Provincial Governors, Dec. 6, 1940, *supra* note 74.

throughout the country. This indicates, therefore, either an overt refusal to adopt the Brussels form, or more likely, as the Adam letter recognized, that steps to register Jews in various municipalities were already underway before the Permanent Council issued its verdict on the legal limits of local compliance.

By November 12 1940, the Conference had already taken steps to implement the registration process and did not feel compelled to await German instructions.¹⁰⁰ Six days later, the Conference met again to establish, in further detail, the way information concerning the Jews of Brussels would be entered into the Register. Eleven separate decisions concerning the registration process were taken at this meeting.¹⁰¹ The assembled Mayors decided that, as a matter of policy and practice, they would immediately put the decree into effect without involving themselves in its application. They would not “send away for a later date, Jews who present themselves for inclusion on the ad hoc register. The Administration has not at this time the task of determining who should be considered a Jew according to the decree.”¹⁰²

This declaration demonstrates the city’s willingness to comply with the impending deadline imposed by the order, even in

100. Note pour Monsieur le Bourgmestre (Nov. 21, 1940), USHMM, RG 65.003P, Reel 430 (on file with the Brooklyn Journal of International Law) [hereinafter Note pour Monsieur le Bourgmestre, Nov. 21, 1940]. The document states:

The Conference, in its meeting of 12 November, decided that the Register of Jews will be, as you know, kept by the Office of the Register of Births, Deaths and Marriages. The Conference was of the opinion that it was not necessary to request complementary instructions from the German Authority, and that the opening of the Register should take place in any event.

Id. (“Le Collège, en sa séance du 12 novembre, a décidé que le registre des Juifs sera, comme vous le savez, tenu par l’Etat civil. Il a estimé qu’il ne convenait pas de demander des instructions complémentaires à l’autorité allemande, mais qu’il y avait néanmoins lieu d’ouvrir le registre.”).

101. Conférence du 16 novembre 1940, relative à l’ordonnance en date du 28 octobre 1940 concernant les mesures contre les juifs, Cabinet du Bourgmestre, AVB, File 866 bis (Nov. 16, 1940) (on file with the Brooklyn Journal of International Law) [hereinafter Conférence du 16 novembre 1940].

102. *Id.* para. 1 (“Ne pas renvoyer à une date ultérieure les Juifs qui se présenteraient pour se faire inscrire sur le registre ad hoc. L’Administration n’a pas pour l’instant la mission d’établir qui doit être considéré comme Juif au sens de l’Ordonnance.”).

the absence of further instructions from the GMA or the Secretaries-General.¹⁰³ Without official guidelines as to which procedure and format to follow, Brussels enacted ad hoc measures in order to comply with the order:

[A]s a result, the inscription placed by the Municipal Population Office on the identity card must not allow it to be believed or to be asserted that the administration has classified someone as a Jew. It must appear clearly that it is the interested party who has come to declare himself.¹⁰⁴

Decisions made at the November 16 meeting also involved uniting into one register the records of Jews who “entered themselves” at the Municipal Records Office and those whose files were found in the Office of Aliens (*Bureau des Étrangers*).¹⁰⁵ To engage in such an endeavor, Belgian officials must have looked for religious indicia in the files of the Office of Aliens. Since the Belgian Constitution guaranteed republican citizenship, no one would have been entered in these files as a “Jew.” Some form of investigation for the improved efficacy of the decree was required. The assembled Mayors also decided to mark the records of individuals identified as Jewish with the letter “J” in the Municipal Registry of Births, Deaths and Marriages, as well as the Office of Aliens records.¹⁰⁶ Nowhere in the German decree is such a step required as a matter of law. Thus,

103. *Id.* paras. 3, 4, & 5. “For each Jew who presents himself and comes to declare himself, a provisional file card will be established. This file card will be completed later in the manner indicated by occupying authority. The Population Offices will take no other initiative.” *Id.* (“Pour tout Juif qui se présente et vient se déclarer, une fiche provisoire sera établie. Cette fiche sera complétée ultérieurement dans le sens qui nous sera indiqué par l’ordonnance de l’autorité occupants. Les bureaux de Population ne prendront pas d’autre initiative.”).

104. Note entitled “Ne pas inscrire simplement ‘Juif’” (Nov. 15, 1940), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law) (“[I]l résulte que l’inscription faite par les bureaux de la population sur la carte d’identité ne peut pas faire croire ni permettre de soutenir que l’administration a désigné quelqu’un comme juif. Il faut qu’apparaisse clairement que c’est l’intéressé qui est venu se déclarer.”). While § 4 of the Jewish order required the marking of the identity card of registered Jews, it sets out only that the registration itself be mentioned. *See* Verordening van 28 Oktober 1940, houdende maatregelen tegen de Joden, *supra* note 66.

105. Conférence du 16 novembre 1940, *supra* note 101, para. 6.

106. *Id.* para. 8.

the highest elected officials in the Brussels region undertook this measure without instructions from the GMA or the Secretaries-General.

All of this decision-making seems to have occurred in an atmosphere of urgency and with a desire to efficiently establish the registration machinery:

As a result, since the declarations must be made before 30 November ... one of our civil servants telephoned the Ministry of the Interior, in order to learn if any decision or instructions were to be given. The response was negative. Today, however, it would appear that that Department has decided to take an interest in the question because M. Warans, head of the Population Department, was requested to send a copy of the model card which was designed by your Departments and adopted by the delegates of the various towns of the region, at a meeting at the City Hall last Saturday, presided over by Councilor Verhaeghe de Naeyer.¹⁰⁷

At some point after this flurry of activity, however, the Mayors of the Brussels region had a change of heart. At their November 21 meeting, they decided to await further instructions from the Occupying Authority before making any definitive de-

107. Note pour Monsieur le Bourgmestre, Nov. 21, 1940, *supra* note 100

(En conséquence, comme les déclarations doivent être faites avant le 30 novembre...un fonctionnaire de notre Administration a téléphoné au Ministère de l'Intérieur, afin de savoir si une décision quelconque ou des directives allaient être données. La réponse a été négative. Aujourd'hui cependant, il semblerait que le dit Département a décidé de s'intéresser à la question, car, M. Warans, Chef de la Population, a été prié de faire parvenir le modèle de feuille qui a été établi par vos Services et adopté par les délégués de toutes les communes de l'agglomération, réunis à l'Hôtel de Ville samedi dernier sous la présidence de M. l'Echevin Verhaeghe de Naeyer.).

Verhaeghe de Naeyer presided over the meeting on Nov. 16, 1940; the Council reached eleven decisions regarding the practical implementation of the anti-Jewish decree. Conférence du 16 novembre 1940, *supra* note 101. Additionally, Germans contacted various municipal authorities to ensure that the processes of registration and signage for Jewish businesses were proceeding according to plan. See Letter from Houtart, Governor of Brabant, to the Secretary-General for the Interior (Nov. 28, 1940), Archives Houtart, CEGES, Microfilm 79 (on file with the Brooklyn Journal of International Law). Stadtkämmer Kahn, the Occupation official in charge of relations with the City of Brussels, was informed in late November of 1940, before the Dec. 6 letter and the Dec. 13 protest, that the register was ready. *Id.*

cisions. Indeed, instead of entering Jews in an ad hoc register, the Mayors decided to grant any Jew presenting himself for registration a note indicating that he had done so, but could not be registered because no instructions had been received from the Occupying Authorities.¹⁰⁸ There can be little doubt that this backtracking by the Conference of Mayors coincided with the constitutional opinion of the Permanent Council.

This is the "legal" reason informing the letter of protest sent by Van de Meulebroeck on December 13, 1940. Once the constitutionally-recognized taxonomy of participation was established, it became evident to elected officials that there would be, at the very least, serious doubts regarding their decision-making process. By their own records, it appears that administrative officials set up their own administrative structures and arrangements for the registration process without referring any further questions to the Germans. If so, their actions arguably violated not only their oaths of office, but their legal obligations as elected officials.¹⁰⁹

108. Séance de la Conférence des Bourgmestres de l'Agglomération Bruxelloise du 21 Novembre 1940, 66me séance, Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law) [hereinafter Séance de la Conférence des Bourgmestres, Nov. 21, 1940] ("Provisoirement, on pourrait donner acte aux juifs de ce qu'ils se sont présentés et que, faute d'instructions, ils n'ont pas encore pu être inscrits."). See also Note pour Monsieur l'Echevin Coelst: Registre des Juifs from the Director of the Office of the Registry of Births, Deaths and Marriages (Nov. 21, 1940) (on file with the Brooklyn Journal of International Law); Handwritten note *replying to* Note pour Monsieur l'Echevin Coelst: Registre des Juifs from the Director of the Office of the Registry of Births, Deaths and Marriages (on file with the Brooklyn Journal of International Law).

109. I am not suggesting that compliance and resignation were the universal reality. In January 1942, the Office of the Secretary-General of the Interior informed local officials that the Germans were unhappy with their response to the Jewish registration requirement; certain municipalities had failed to send information to the Security Police. Brussels officials made internal inquiries and informed the Secretary-General that the City of Brussels had complied with the obligations imposed by the order. See Letter from Croonenberghs (Jan. 22, 1942), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law); Letter from Joostens to Coelst (Jan. 26, 1942), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law); Letter from Coelst to Romsée (Jan. 27, 1942), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law). Municipal compliance to, and resistance against, the Jewish registration requirement is one area of Belgian history in need of clarification.

Two aspects of this correspondence are relevant to the mythology of resistance. First, employees directly responsible to the Mayor, not just “certain municipal employees” as Van de Meulebroeck asserted in his December 13 letter, constructed the standardized form for the registration of Jews.¹¹⁰ Second, the November 21 memo to Van de Meulebroeck demonstrates the early legal conceptualization of Jews as active parties. Questioned during post-war investigations about possible illegal collaboration by government officials during the Occupation, the Mayor of Brussels stated for the legal and historical record that:

As far as my own case is concerned, I consented to the opening of the Register on which Jews had to enter their names pursuant to the decree, because I considered that they had the choice of registering themselves or not. They had this choice of complying or not complying with the decree. I had received requests from several Jews wishing to register themselves in order to be in compliance. Only one Jew wrote me a protest letter.¹¹¹

What does seem clear, however, is that Brussels was not a hotbed of resistance.

110. See Letter from Van de Meulebroeck to Secretary-General, Dec. 13, 1940, *supra* note 94. Other records establish that the Mayors were ready, willing and able to proceed with an ad hoc registration form using provisional documentation. Careful discussions ensued about how best to process registration, i.e., the stamping of each Jew’s identity cards so that it would appear that registration had occurred at the behest of the Jews themselves. See Séance de la Conférence des Bourgmestres, Nov. 21, 1940, *supra* note 108.

111. Interrogation of Van de Meulebroeck before Emile Janson (Jan. 3, 1945), Archives Houtart, CEGES, Microfilm 79 (on file with the Brooklyn Journal of International Law)

(En ce qui me concerne, j’ai consenti à ouvrir le registre sur lequel les juifs devaient s’inscrire aux termes de l’ordonnance, parce que j’ai considéré qu’ils avaient la faculté de s’y inscrire ou de ne pas s’y inscrire. Ils conservaient donc la faculté de se soumettre ou de ne pas se soumettre à l’ordonnance. J’avais reçu des demandes de certains juifs qui désiraient s’inscrire pour se mettre en règle. Un seul juif m’a écrit une lettre de protestation.).

Here, Van de Meulebroeck uses small grammatical distinctions to demonstrate his passive collaboration in the registration of the Jews of Brussels. When explaining his “consent” to the opening of the Register of Jews, Van de Meulebroeck uses the past perfect tense *j’ai consenti*; when attributing active agency to Jews, however, he employs the pluperfect *j’avais reçu*. See *id.*

Two patterns of bureaucratic self-legitimizing are apparent. On the one hand, it appears that Belgian officials engaged in repeated preparation and decision-making regarding the Register of Jews. On the other, there is a consistent semiotic construction of the process as one in which Jews actively participated and bureaucrats of Brussels simply concretized their wishes to be identified for the German Occupiers. After the November 21 letter from the Permanent Council, many of the preparatory acts were put on hold pending instructions from the Germans but, interestingly, the construction of passivity continued in official documents.¹¹²

V. THE SECOND ORDER AND JEWISH EMPLOYEES IN THE CITY OF BRUSSELS

The ambit of bureaucratic involvement extended beyond the registration of individuals and businesses. The second order of October 28, 1940, banned Jews from public service and from certain professions, including the law.¹¹³ Section four of the order placed the responsibility for the enforcement of the provisions excluding Jews on the relevant offices of the public administration. On January 3, 1941, the National Institute for Radio Broadcasting asked the officer in charge of public records in the First District of Brussels to supply him with the birth certificates of six named employees “in order to permit me to comply with the enforcement of the present legislation concerning Jews....”¹¹⁴

This letter, written by a municipal employee, carries a handwritten annotation, “Aryan origin” (*origine aryenne*).¹¹⁵ It is not

112. Letter from Permanent Council of Legislation, Nov. 21, 1940, *supra* note 76. Van de Meulebroeck's letter and post-war testimony may have been an attempt to “salt” the judicial files by creating an official correspondence between the Brussels' officials and the Secretaries-General demonstrating the officials' non-compliance with the German order and their status as “passive collaborators” under Belgian law.

113. Verordnung über das Ausscheiden von Juden aus Aemtern und Stellungen, *supra* note 67, § 1 (“Direktoren und Schriftleiter in Presse und Radiofunkunternehmen....”).

114. Letter from Brussels' Civil Officer, First District (Jan. 3, 1941), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law) (“Pour me permettre de me conformer à l'application de la législation actuelle concernant les juifs....”).

115. *Id.*

possible to determine if that notation refers to the results of the search of the birth records or if it simply makes reference to a topic for administrative filing purposes. Regardless, the notation represents the adoption of the racial language of Nazism by employees of the City of Brussels as a matter of bureaucratic routine.

There were, of course, grey areas of legal application for Belgian authorities. One of the most vexing areas for local bureaucrats arose from the interaction between registration under the first anti-Jewish order and the second order targeting Jewish employees. How, for example, could one who believed he was not a Jew have proven it?¹¹⁶ In addition to the technical legal question of how to prove one's non-Jewish origins, two subsidiary questions also arose.¹¹⁷ First, to whom did one make this proof and, second, how did one who successfully established non-Jewish status obtain removal from the list of registered Jews?

In Belgium, Jews were defined and registered in late 1940 and early 1941 under the legal regime established by German decrees and "administered" by the Belgian state apparatus in accordance with the norms of acceptable participation set out in the opinion of the Permanent Council.¹¹⁸ The orders are silent as to any notion of jurisdiction, and provide no guidance for establishing administrative mechanisms to deal with cases of le-

116. See Verordening van 28 Oktober 1940, houdende maatregelen tegen de Joden, *supra* note 66. The order, in defining "Jew" as a legal category, provided that anyone with three Jewish grandparents was a Jew. *Id.* § 1(1). The second order stated that when there was doubt about an individual's Jewish origins, that individual would be treated as a Jew until the question could be determined definitively. Verordnung über das Ausscheiden von Juden aus Aemtern und Stellungen, *supra* note 67, § 2(2).

117. I am aware that this is precisely the type of unethical question that Richard Weisberg labels the "hermeneutic of acceptance" and which he finds repugnant. I do not disagree, but feel obliged to explain and examine these issues because they did arise. See generally Weisberg, *supra* note 23.

118. Letter from Permanent Council of Legislation, Nov. 21, 1940, *supra* note 76. In France, a complex bureaucratic system under the jurisdiction of the General Commission for Jewish Questions (Commissariat Général aux Questions Juives) was established under French law. The General Commission conducted investigations and issued certificates attesting that certain individuals were not Jewish. The French system could operate as it did because its anti-Jewish laws were pieces of domestic legislation. See RICHARD WEISBERG, *VICHY LAW AND THE HOLOCAUST IN FRANCE 2* (1996).

gally problematic Jewishness. This was the result of the GMA's deliberate decision in Brussels. On January 28, 1941, German officials in Belgium explained their position to their Parisian colleagues as follows:

The above definitions have been left out of the Jewish decree of the Military Command in Belgium and the North of France, because they are not relevant to the implementation of the Belgian Jewish orders, and because, in the interest of facilitating their implementation by Belgian authorities, every unnecessary complication of the "definition of Jewishness" should be avoided.¹¹⁹

By the second week of January 1941, the question of who was a Jew and what to do about it was now firmly part of the bureaucratic reality in Brussels.¹²⁰ While section four of the first Jewish order permitted any person, upon a simple request, to consult the Register of Jews, the various municipalities in Brussels soon found themselves with not just a line of visitors wishing to see the Register, but with a multitude of individuals seeking the Belgian equivalent of a French "certificate of non-registration" (*certificat de non-appartenance*). Arguably, any measures by municipal employees to determine someone's status would be active implementation of the orders and would constitute illegal participation.¹²¹ The lack of definition became

119. Jahresbericht-Mai 1940/1941, des Militärbefehlshabers, in Belgien und Nordfrankreich, Judenverordnungen und deren Ausführung, CEGES (on file with the Brooklyn Journal of International Law) ("Die vorstehenden Bestimmungen wurden in der Judenverordnung des Militärbefehlshabers in Belgien und Nordfrankreich weggelassen, weil sie für die Durchführung der für Belgien im Frage kommenden Judenmassnahmen nicht aktuell sind und weil im Interesse der Erleichterung des Vollzuge durch die belgischen Behörden jede überflüssige Komplizierung des Judenbegriffe vermieden werden sollte.").

120. See, e.g., Letter from OFK 672 (Sept. 22, 1941) (on file with the Brooklyn Journal of International Law) (Issues arose as to how to remove, according to legal norms, a stamp JUIF-JOOD, placed in error on the documents of an individual whose father had been "mistakenly" entered in the Jewish Register.); Letter from the Aliens Office to OFK (Feb. 1942), Police, AVB, Guerre 40-45, File 791.94 (on file with the Brooklyn Journal of International Law) (regarding K. and the exact legal definition of Jew). See also Rozenblum, *supra* note 2, at 28 (discussing the removal of individuals from the Register of Jews in Liège).

121. See Letter from Permanent Council of Legislation, Nov. 21, 1940, *supra* note 76. Indeed, the Brussels' Population Bureau specifically decided that if it

increasingly problematic as employers began requesting certificates of non-registration before making hiring decisions.¹²²

The first reaction to this problem was ad hoc. In early January 1941, the newly appointed medical inspector for the schools of Brussels requested a certificate of non-registration in order to take up his new post and conform to the anti-Jewish decrees. The Office of Births, Deaths and Marriages responded that no such certifications existed but, nevertheless, informed the school department that the doctor had not requested entry on the Register of Jews.¹²³ Here, again, is an example of city offi-

was to maintain the fiction of “passive collaboration” it could not respond to inquiries about who was required to register as a Jew. *See id.*

122. Letter to the Secretary-General of the Interior (Jan. 10, 1941), USHMM, RG.65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law). The Directors explained:

But since the coming into effect of the order individuals and especially notaries, lawyers and bailiffs have requested certificates of registration or non-registration in the Register of Jews. At the same time, certain public bodies demand that every request for employment be accompanied by a certificate of non-registration in the Register of Jews. This demand is apparently based on the interpretation of the 2nd order furnished in your circular of 6 December 1940 which states on page 4, “whenever new nominations occur, proof must be given by way of an official document that the candidate is not a Jew under the order.”

Id.

(Mais depuis la mise en vigueur de l’ordonnance . . . des particuliers et surtout des notaires, des avocats et des huissiers sollicitent des attestations d’inscription ou de non-inscription au registre des Juifs. Par ailleurs, certaines administrations publiques exigent que toute demande d’admission à un emploi soit accompagnée d’un certificat de non-inscription au registre des Juifs. Cette exigence est apparemment fondée sur l’interprétation de la 2e ordonnance, fournie par votre circulaire du 6 décembre 1940 où il est dit à la page 4: “lors des nouvelles nominations, la preuve doit être apportée par document authentique que le candidat n’est pas Juif au sens de l’ordonnance.”).

123. Letter from the Office of Births, Deaths and Marriages to R. Catteau (Jan. 16, 1941), USHMM, RG 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law). The next day, a similar letter was sent from the same office to M. De Tollenaere of the City Secretariat, informing him that Jean Robert Leemans, who was seeking employment in the Parks and Gardens Department of the city, had not demanded his inscription in the Register of Jews. Letter from the Office of Births, Deaths and Marriages to M. De Tollenaere (Jan. 17, 1941), USHMM, RG 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law).

cials taking the initiative to implement anti-Jewish orders. In this case they do so even while waiting for instructions from their legal superiors. At best, this is bureaucratic routine, the administrative classification of inhabitants of Brussels as “Jews” and “non-Jews.” At worst, this is an instance of steps taken to protect the new category of Belgians, the concomitant counterpart of the “Jew,” the legally recognized “non-Jew.”¹²⁴

The use of ad hoc confirmation for each new employee could not continue, however, if the rule of law and orderly bureaucratic routine were to be followed. City officials asked that a mechanism for dealing with such requests be established. The Conference of Mayors and the Permanent Council decided that in order to undertake the recruitment of personnel in a reasonable and orderly fashion, they would specifically “[a]uthorize the Office of Births, Deaths and Marriages to deliver declarations attesting that interested parties had not requested their entry into the Register of Jews.”¹²⁵

This authorization goes beyond mere passive application of anti-Jewish measures. Brussels, through its highest governmental office, created the very means for compliance when the law was itself silent. Declarations confirming that Belgian citizens seeking employment in public agencies of the Belgian state were not Jews became part of the legal, documentary discourse of the City of Brussels.¹²⁶

124. See generally David Fraser, *Law Before Auschwitz: Aryan and Jew in the Nazi Rechtsstaat*, in THINKING THROUGH THE BODY OF THE LAW 63 (Pheng Cheah et al. eds., 1996).

125. Extrait du Registre aux Délibérations du Collège des Bourgmestres et Echevins (Jan. 24, 1941), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law) (“Autoriser la Direction de l’Etat civil à délivrer des déclarations attestant que les intéressés n’ont pas requis leur inscription au registre des JUIFS.”).

126. See *id.* The declarations stated that the individuals in question “had not requested their entry into the Register of Jews;” they did not state that the individuals were non-Jews, nor did they use the phrase created by French bureaucrats and law and state that the individuals “did not belong to the Jewish race.” See *id.* Thus, city officials did not directly classify anyone as a Jew or non-Jew; they simply reported a bureaucratically recorded fact. See *id.* The province of Brabant appears to have adopted a somewhat more complex procedure. Brabant province offered anyone seeking to establish non-Jewish status a written deposition stating that section one of the first anti-Jewish order (the definitional provisions) did not apply to them. This type of procedure seems to more clearly implicate the administration in a decision-making

On December 6, 1940, the Ministry of Labor wrote to city officials informing them of their obligation to gather information concerning Jewish employees, including their names, places and dates of birth, and the nationality of their parents and grandparents.¹²⁷ The Belgian government did not ask whether an employee was “registered” as a Jew, but rather, asked him to identify himself and his ancestors according to criteria established under the Nazi legal order. The line between passive collaboration and participation became very fine indeed.

In February and March of 1941, at the request of the GMA, the governmental hierarchy swung into action to determine the success of the effort to remove Jews from Belgian civil service.¹²⁸ The Brussels Archive contains an extensive set of documents recording the number of municipal employees who were removed from their jobs because they were identified as Jews. For example, thirteen employees of the Municipal Welfare Agency were removed, and in the Office of Births, Deaths and Marriages, the agency charged with ensuring the successful completion of the registration process, Mr. Joostens was able to report a “nil return.”¹²⁹ In total, twenty-two employees of the City of Brussels were dismissed because they were identified as Jews.¹³⁰ Although this is a record of compliance and not resis-

or classificatory process. See Archives Houtart, CEGES, MIC 79, sample document (on file with the Brooklyn Journal of International Law).

127. Letter from R. Vandeveld, Directeur des Affaires Administratives (Dec. 6, 1940), Secrétariat, Juifs, Personnel Enseignant, AVB (with attachments) (on file with the Brooklyn Journal of International Law).

128. Note from Putyzens (Feb. 28, 1941), Secrétariat, Juifs, AVB (on file with the Brooklyn Journal of International Law).

129. Memorandum to the City Secretary's office (Mar. 4, 1941), Secrétariat, Juifs, AVB (on file with the Brooklyn Journal of International Law). In addition, the litigation department informed the City Secretary that Miss B., a lawyer, stopped work on Dec. 31, 1941. Note Instructing Chiefs to Count the Number of Jews (Mar. 3, 1941), Secrétariat, Juifs, AVB (on file with the Brooklyn Journal of International Law). A journalist, Mr. C., who had been hired as a temporary employee by the Municipal Food Service left the same day. One worker in the Police Department was let go, and five employees in the Public Education Department lost their jobs because they were Jews. See Urgent Letter from the Police Chief (Mar. 4, 1941), Secrétariat, Juifs, AVB (on file with the Brooklyn Journal of International Law).

130. Letter from Van Durme to the Governor of Brabant (Mar. 18, 1941), Secrétariat, AVB, Guerre 40–45 (on file with the Brooklyn Journal of International Law). See Liste des agents temporaires employes a la confection du

tance, it is prudent to note that the record regarding dismissals is incomplete.¹³¹ At this stage, however, there is little evidence at all that the City did anything other than comply fully with the letter and spirit of the German order.¹³²

VI. COMMUNICATING, INFORMING, AND DECIDING: PASSIVE COLLABORATION 1941–1944

After the orders of 1940, the Germans continued to seek full compliance with their anti-Jewish orders and the municipality continued to comply with German instructions. In May 1941, for example, the Mayor transmitted a list of all German Jewish men, including their names and addresses.¹³³

In June 1941, as new anti-Jewish measures began to have a direct economic impact on Jewish families, municipalities were faced with the issue of Jews moving into their area.¹³⁴ The issue was exacerbated by the exile of Jews from Antwerp; the Germans forced them to move to the Province of Limburg.¹³⁵ Several Antwerp Jews obtained permission from the Military Commander in Hasselt to move again, this time to Brussels, but only on the condition that they provide written authorization from the Mayor of the Brussels to local officials in the area to which they wished to relocate. The order imposing the obliga-

registre des Juifs (Dec. 28, 1943), Secrétariat, Juifs, AVB (on file with the Brooklyn Journal of International Law).

131. See Delplancq, *Des paroles et des actes*, *supra* note 2, at 174.

132. Ordre de Service No. 1979, Dec. 12, 1940, *supra* note 97; Letter from A. Buez, Ministry of Education, to the Head of Public Education, Brussels (Jan. 9, 1941), Secrétariat, AVB, Guerre 40–45, Personnel Enseignant (on file with the Brooklyn Journal of International Law); Letter from Tits, Director of Public Education, to City Secretary (Jan. 11, 1941), Secrétariat, AVB, Guerre 40–45 (on file with the Brooklyn Journal of International Law). Tits' letter does contain a typewritten annotation by Catteau indicating that there may be certain reasons to temper both the harshness of the order and a strict application of Belgian law. Technically, the employees were not fired because they were Jews; instead, they were made redundant. *Id.*

133. Letter from Hauptmann Döring, Ortskommandantur to the Mayor and handwritten annotation (May 13, 1941), Cabinet du Bourgmestre, AVB, File 884 (on file with the Brooklyn Journal of International Law).

134. Neufassung: Verordnung über wirtschaftliche Massnahmen gegen Juden (Dritte Judenverordnung) [Decree of 31 May 1940 concerning economic measures against the Jews (Third Jewish Order)] (May 31, 1940), *reprinted in* VERORDNUNGSBLATT (June 10, 1941).

135. See STEINBERG, UN PAYS OCCUPÉ ET SES JUIFS, *supra* note 3, at 52–54.

tion to create the Register of Jews and to transfer the appropriate records to the new locality of registered Jews, who subsequently moved, did not, however, include any mention of such an authorization. Once again, the silence of the law and the practical exigencies of the system of Occupation posed a legal and practical dilemma for local authorities.¹³⁶

At the same time, city officials continued to receive specific instructions from their Belgian superiors and the Germans. For example, all identity cards of registered Jews now had to carry the bilingual stamp, in red ink, "JUIF-JOOD."¹³⁷ The list of registered Jews, including those who had neglected to have their cards stamped, was to be forwarded directly to the German Security Police (*Sicherheitspolizei*).¹³⁸ City officials began, at some level, to distance themselves from the process of marking Jews by insisting that no posters announcing the stamping requirement be issued or displayed. Instead, they relied on Secretary-General Romsée's circular, in which he stated that the new process would be announced by notice in the press. The circular did not state that the city could not proceed by way of public notices themselves but, in this instance, no innovation or self-motivated actions were forthcoming; city officials would simply prepare themselves for any Jew who chose to comply.¹³⁹

The Office of Births, Deaths and Marriages, however, in order to proceed with stamping identity cards and constructing a list with special markings indicating which registered Jews had chosen to have their cards stamped, borrowed five employees from the Public Procurement Agency and maintained temporary employees from their own service to assist in the task.¹⁴⁰

136. Letter from the Director of the Population Office to Putzeys, Secretary of Brussels (June 27, 1941), Cabinet du Bourgmestre, AVB, File 866 bis (on file with the Brooklyn Journal of International Law).

137. Letter from Romsée, Secretary-General, to Commissioners, Mayors, and Governors (July 29, 1941), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law).

138. *Id.*

139. Letter from Joostens to Verhaeghe de Naeyer (Aug. 5, 1941), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law).

140. Letter from Joostens to the College (Aug. 12, 1941), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law); Letter from the College to Dienststelle des Sicherheitspolizei (Aug. 29, 1941),

Contact with the German Security Police continued in the fall of 1941. Romsée informed the Mayors that, in the future, information compiled under the Jewish orders relating to the change of address of registered Jews was to be sent to the headquarters of the Secret Police.¹⁴¹ At the same time, this information took on ever more sinister overtones as the Germans decreed that Jews were henceforth forbidden from moving anywhere other than the four cities of Antwerp, Brussels, Charleroi and Liège.¹⁴²

During the same period, the various municipalities of greater Brussels were compiling their own lists of municipal government employees who were identified, or had "identified themselves," as Jews. Mayor Coelst forwarded that information to the German authorities on October 24, 1941.¹⁴³ Later, in the autumn of 1941, German authorities in Belgium introduced an order stripping Jews outside of Germany of their German citizenship.¹⁴⁴ The Brussels Administration had already handed over, at the request of the German *Ortskommandantur*, a list of German Jewish men figuring in the Register of Jews.¹⁴⁵ The new Reich provision quite naturally led the local German authorities to seek all information from the Belgian administration concerning "former" German Jews. While waiting for other

USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law).

141. Letter from Romsée, Secretary-General, to Commissioners, Mayors, and Governors (Sept. 23, 1941), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law).

142. Verordnung über Aufenthaltsbeschränkungen für Juden [Order of 29 August 1941 limiting the free circulation of Jews] (Aug. 29, 1941), reprinted in VERORDNUNGSBLATT (Sept. 5, 1941).

143. Letter from Oesterhelt, Oberfeldkommandantur, to Coelst (Oct. 15, 1941), and reply from Coelst (Oct. 24, 1941), Cabinet du Bourgmestre, AVB, File 845 (on file with the Brooklyn Journal of International Law) (Correspondance avec l'autorité allemande).

144. 11th Order Concerning the Imperial German Nationality Law (Nov. 25, 1941) (local application of Germany's 11th regulation depriving Jews of their citizenship). For a discussion of this measure's role in the German anti-Jewish legal order in Belgium and in other jurisdictions, see generally David Fraser, *This is Not Like any Other Legal Question: A Brief History of Nazi Law Before U.K. and U.S. Courts*, 19 CONN. J. INT'L L. 59 (2003).

145. Letter from Döring to the Mayor (May 13, 1941), Cabinet du Bourgmestre, AVB, File 884 (on file with the Brooklyn Journal of International Law). The list of names and addresses was due May 15, 1941; it was delivered May 16, 1941 at 11:00 a.m. There seems to be little evidence of obfuscation or delay here. *See id.*

departments to decide how they would deal with their obligations under the order, the Office of Births, Deaths and Marriages decided to take a position on how to deal with requests to marry and for travel documents by newly stateless Jews.¹⁴⁶

As they bemoaned the absence of an official attestation by the German authorities on how to deal with the loss of citizenship by “former” German Jews, the officials of the Passport Office and the Registry of Births, Deaths and Marriages were quick to underline the distinction between measures that involved them as Belgian bureaucrats doing their legal jobs and activities undertaken by the Germans for German purposes. Thus, Belgian bureaucrats were perfectly willing to use the Register of Jews for their own domestic purposes, but would not be bound by the prescriptions of the 11th Order, which was viewed as a purely

146. Perte de la Nationalité Allemande par les Juifs Séjournant à l'Etranger (Nov. 25, 1941), USHMM, RG. 65.003 P, Reel 430 (on file with the Brooklyn Journal of International Law). The Brussels officials revealed:

In order to cover ourselves, we have demanded that the parties of German origin concerned produce:

1. an extract from the Register of Jews
2. an extract from the Population Register(s) as required.

Without a doubt, the real guarantee would be found in the production of a document originating with the German Authority itself stating that the person in question has lost German nationality through the application of the November decree.

It does not appear that for the present at least it is possible to obtain such a declaration.

Id.

(Pour nous couvrir, nous avons exigé la production par les intéressés d'origine allemande:

1. d'un extrait du registre des juifs
2. d'un extrait du ou des registres de population, selon le cas.

Sans doute la véritable garantie serait trouvée dans la production d'une pièce émanant de l'autorité allemande elle-même et constatant que l'intéressé a perdu la nationalité allemande par l'application de l'ordonnance de novembre.

Il ne semble pas qu'actuellement tout au moins il soit possible d'obtenir pareille attestation.

German measure.¹⁴⁷ This distinction, between the powers of the Occupiers under their own domestic laws and the jurisdiction and practices of local officials under Belgian law, was consistent with the idea of a Belgian state apparatus distinct from the German Occupiers. Yet, at the same time, it must be noted that the Brussels officials established their own ad hoc system of recordkeeping and official documentation concerning stateless former German Jews and their marriage and travel documents.

Although the 11th Order did not mandate specific action by the Belgian government, the Germans insisted that the Conference of Mayors ensure proper notation on population registers, the Register of Jews itself, identity cards and other documents serving as valid identification; they also insisted on the withdrawal of all other documents such as nationalization papers, passports, and identity cards dealing with German nationality.¹⁴⁸

The effect of the 11th Order in Belgium continued to trouble local officials. They insisted that they lacked jurisdiction over substantive definitional issues under the Regulation, and that the sole German power was to issue documents required by individuals. The Secretary-General of the Interior, for example, inquired as to whether the Alien Police would enter a Mr.

147. *Id.* For Brussels officials, their power to act was not determined by the actions of the Security Police.

[I]t is when it is a question of executory measures to be taken by the Reich that it is established that the dossier of the party in question must contain as a basic document a declaration from the Security Services. This text can not bind us when it is a matter of delivering a passport, or of marriage....

Id.

([C]'est à l'occasion de mesures d'exécution à prendre par le Reich qu'il est prévu que le dossier de l'intéressé doit contenir comme pièce de base une attestation des Services de la Sûreté. Ce texte ne peut nous lier pour la question de délivrance de passeport, de mariage....).

148. Letter from Richter to Mayor Coelst as Chair of the Conference of Mayors (Aug. 18, 1942), Cabinet du Bourgmestre, AVB, File 844 (on file with the Brooklyn Journal of International Law). The demand for compliance derived from the office charged with the "administration" of property, more precisely defined as the Aryanization office. The principal effect of the 11th Order was to expropriate the property of expatriate German Jews. Here, Brussels provides Aryanization officials all of the information necessary to identify those individuals whose property could be taken from them. *See id.*

Wilhelm Loeb in their records as a stateless person pursuant to his loss of German citizenship.¹⁴⁹ The Police representative, Mr. Standaert, replied that the question was beyond the jurisdiction of the Belgian authorities and that Mr. Loeb should address himself to the appropriate German authorities.¹⁵⁰ However, the Police also stated that once Loeb was in possession of an appropriate document identifying him as someone who had lost his citizenship, he could be entered into the Belgian files as a stateless person.¹⁵¹

VII. THE YELLOW STAR ORDER AND THE LEGALIZED EXCLUSION OF THE JEWS

On May 27, 1942, the German Military Command for Belgium and Northern France introduced the so-called Yellow Star Order.¹⁵² All Jews over the age of six were forbidden to appear in public without wearing the “Jewish Star.”¹⁵³ The second order relating to the Star was passed the same day and stated, in section four, that Jews bound by the obligation to wear the Star

149. Letter from Monsieur Standaert, Alien Police, to the Secretary-General of the Interior (Mar. 3, 1942), USHMM, Reel 430 (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Standaert to Secretary-General, Mar. 3, 1942]. On Oct. 7, 1942, the Population Bureau for the suburb of Ixelles compiled a supplementary list of German Jews and included Benjamine Billa, who had registered himself as a stateless person. Liste Complémentaire de Juives allemandes (Oct. 7, 1942), USHMM, RG. 68.001 M, Reel 50 (on file with the Brooklyn Journal of International Law). Belgian officials not only complied with the letter of German law, but with its spirit. For example, Billa was not even a German Jew under German law; Ixelles municipal officials, however, classified him as a German Jew, in part because that is what the Germans themselves wanted. *See id.*

150. Letter from Standaert to Secretary-General, Mar. 3, 1942, *supra* note 149.

151. *Id.*

152. Verordnung über die Kennzeichnung der Juden [order of 27 May 1942 establishing a distinctive marking for Jews] (May 27, 1942), *reprinted in* VERORDNUNGSBLATT (June 1, 1942) [hereinafter Verordnung über die Kennzeichnung der Juden].

153. *See* STEINBERG, UN PAYS OCCUPÉ ET SES JUIFS, *supra* note 3, at 84. The star was six-pointed, made of yellow cloth with black markings, palm-size, and contained the letter “J.” Verordnung über die Kennzeichnung der Juden, *supra* note 152, § 1(1). It had to be conspicuous and sewed permanently on the left side of the breast. *Id.* § 1(2).

had to obtain them from the same municipal authorities where they were registered.¹⁵⁴

The Mayor of Brussels, after meeting with his colleagues from the various towns and municipalities of the region, wrote to the Germans on behalf of the Conference of Mayors on June 4, 1942.¹⁵⁵ This letter was a radical departure for the City of Brussels from its previous stance of implementing anti-Jewish decrees. Mayor Coelst wrote in part:

It is not incumbent upon us to discuss with you the expediency of this measure taken against the Hebrews, but we do have the duty to inform you that you can not demand our collaboration in its enforcement.

A large number of Jews are Belgians, and we cannot resolve to associate ourselves with a prohibition which damages the dignity of every man, whoever he may be.

This prejudice is all the more grave as it carries with it, for those who are subjected thereto, a prohibition against wearing the insignia of our national honors systems.

We are convinced that you will recognize the legitimate nature of our feelings...¹⁵⁶

154. Verordnung zur Durchführung der Verordnung über die Kennzeichnung der Juden [Order of 27 May 1942 taken for the application of the order establishing a distinctive marking for Jews] (May 27, 1942), reprinted in VERORDNUNGSBLATT (June 1, 1942).

155. Letter to Dr. Gentzke (June 4, 1942), Cabinet du Bourgmestre, AVB, File 846 (on file with the Brooklyn Journal of International Law).

156. *Id.*

(Il ne nous appartient pas de discuter avec vous de l'opportunité de la mesure prise contre les Israélites, mais nous avons le devoir de vous faire connaître que vous ne pouvez exiger de nous une collaboration à son exécution.

Un grand nombre de Juifs sont Belges, et nous ne pouvons nous résoudre à nous associer à une prescription qui porte une atteinte aussi directe à la dignité de tout homme, quel qu'il soit.

Cette atteinte est d'autant plus grave qu'elle implique pour ceux qu'elle frappe l'interdiction de porter les insignes de nos ordres nationaux.

Nous sommes convaincus que vous reconnaîtrez la légitimité de nos sentiments....).

The letter from the Conference is a key document in the history and myth of Brussels and its Jews under the Occupation. On the surface, it is a refusal grounded in ideas of basic human dignity (“a prohibition which damages the dignity of every man”).¹⁵⁷ It is an act of resistance wherein the City of Brussels categorically refused to implement, or play any role in implementing, this particular anti-Jewish order.¹⁵⁸ Indeed, after meeting with a delegation of the Conference on the following day, the German authorities yielded to the Belgian refusal and undertook the distribution of the Stars themselves. The Germans asked only that a notice be posted in the place where the Register of Jews was held, informing Jews of the time and place distribution of the Stars.¹⁵⁹

However, an undated document from the Mayor’s Office, entitled “Number of Stars of David,” lists the number of Stars by locality, from 6,500 for Brussels down to twelve for Ganshoren.¹⁶⁰ It would seem that Belgium made preparations for compliance even when making its principled protest. Interestingly, this letter uses the French term, *Israélites*, which I render imperfectly as “Hebrews,” instead of the term *Juifs*, although they did return to the latter in the next sentence. This is not, I believe, a slip of the pen or typewriter, but rather an attempt to distinguish the Nazi policy of identifying Jews from the Belgian concept of not identifying Hebrews. The term *Israélites* carries with it Belgian understandings of equality and dignity inherent in the Constitution. At some level, the Mayors

157. *Id.*

158. *See id.* *See also* Letter from Van Glabbeke, head of the Mayor’s Office, to Joseph Bologne of Liège, Cabinet du Bourgmestre, AVB, File 866 (on file with the Brooklyn Journal of International Law) (communicating refusal to collaborate in enforcement of the anti-Jewish decrees). After keeping a close eye on the developments in Brussels, the Mayor of Liège also refused to implement the order. *See* Rozenblum, *supra* note 2, at 31–32.

159. Letter from Dr. Gentzke to the Mayor of Brussels (June 8, 1942), Cabinet du Bourgmestre, AVB, File 866 (on file with the Brooklyn Journal of International Law) [hereinafter Letter from Gentzke, June 8, 1942].

160. Ordonnance 27.5.42 établissant une marque distinctive pour les Juifs (May 27, 1942), AVB, Police, Guerre 40–45, File 791.94 (on file with the Brooklyn Journal of International Law).

considered the distinction between Belgian and foreign Jews to be of some importance.¹⁶¹

It is also certain that the process of implementing the Yellow Star Order was not entirely outside the practice of municipal officials in Brussels. The German request, to place notices in the offices where the Register of Jews was kept, passed through the various municipalities with some haste. The contents of the letter from Dr. Gentzke to Mayor Coelst, received at five fifteen in the afternoon on June 8, 1942, were communicated the next morning by telephone to all municipalities represented at the Conference.¹⁶² Given that the distribution was to begin on June 9 and that the letter itself was marked urgent and hand-delivered to Mayor Coelst's office, a certain degree of compliance is apparent in the shared haste of the series of telephone calls from the Mayor's office.¹⁶³ Furthermore, the police of Brussels assured the Germans of their presence at the offices of the Association of Jews in Belgium (AJB) every day the Stars were to be distributed.¹⁶⁴

Finally, correspondence in the Mayor's files demonstrates that Jewish citizens attempted to get exemptions from the obligation of wearing the Star. Section one of the second order on the implementation of the Yellow Star permitted requests for exemption for those who were Jewish husbands living in mixed marriages in which there were non-Jewish children, and for Jewish wives in childless mixed marriages.¹⁶⁵ In at least one case, Mayor Coelst intervened in favour of an eighty-year-old woman whose late husband had connections with the Belgian Royal family and who had been a local Mayor. She had refused

161. Fraser, *Fragility of Law*, *supra* note 5, at 273 ("The history of the Holocaust in Belgium ... is informed by the operative and operating distinction between 'Belgian' Jews and foreign Jews. Of the 55,671 Jews registered in Belgium under the anti-Jewish decrees, 3,680 were Belgian citizens.").

162. Letter from Gentzke, June 8, 1942, *supra* note 159 (handwritten annotation).

163. *See id.*

164. Report from Girty (June 12, 1942), AVB, Police, Guerre 40-45, File 791.94 (on file with the Brooklyn Journal of International Law).

165. *See, e.g.*, Letter from Coelst to Dr. Callies, Stadtkommissär for Brussels (June 19, 1942), Cabinet du Bourgmestre, AVB, File 845 (on file with the Brooklyn Journal of International Law).

to leave her house out of fear and embarrassment if she had to wear the Star.¹⁶⁶

As the German Occupiers expanded the exclusion of Jews from Belgian society, they continued to call upon Brussels officials to assist in the implementation of the steps leading towards the Final Solution. The December 1, 1941, the Jewish Education Decree set up a system of distinct Jewish schools, thus excluding Jewish students from the public education system.¹⁶⁷ Under section three of the decree, the Ministry of Public Education was given overall jurisdiction, while local education officials in the towns and cities of Belgium were called upon to implement the exclusion of Jewish students.

In Brussels, the Mayor had already been asked to supervise the census of all Jewish students in public secondary schools and to contact private educational institutions to obtain the relevant information from them.¹⁶⁸ Three weeks later, all but one of the towns in the City of Brussels had completed the census of Jewish students and had sent reports to the German authorities.¹⁶⁹ At this stage, the municipal authorities continued to operate with the bureaucratic efficiency with which they had completed the other tasks of compiling and distributing information about Jewish residents. There was no delay, there was

166. *Id.* The Widow W. was born in the United States and belonged to a very honourable family. Her husband had connections to the Belgian Royal Family and elected officials. At some level, therefore, we might read this letter as an intervention on behalf of a “good Jew,” an *Israélite*, not a *Juif*. This interpretation would make the Mayor’s intervention on her behalf consistent with the views he adopted in his “letter of protest” only a few days earlier. Once more, narrow and restrictive understandings of citizenship and “Belgianness” may be at play here. *Id.* In a similar case, the Mayor of Brussels, Mr. Grauls, intervened on behalf of a Mr. B. because B. was a man of upstanding reputation and was well-known in the right circles, particularly those related to Belgium’s colony in the Congo. See Letter from Grauls and related correspondence (Nov. 9, 1942), Cabinet du Bourgmestre, AVB, File 946 (on file with the Brooklyn Journal of International Law).

167. Verordnung über das jüdische Schulwesen [Decree of 1 December 1941] (Dec. 1, 1941), §§ 1, 2, reprinted in VERORDNUNGSBLATT (Dec. 2, 1941).

168. Ecoliers juifs dans les Ecoles moyennes (Feb. 4, 1941) (on file with the Brooklyn Journal of International Law).

169. Ecoliers juifs dans les Ecoles moyennes (Feb. 22, 1941), Cabinet du Bourgmestre, AVB, File 884 (on file with the Brooklyn Journal of International Law).

no refusal, there were no protests—there was “participation” without collaboration.

In April 1942, about the same time as the Yellow Star Order was raising serious doubts about Belgian complicity, the AJB had difficulty obtaining buildings and other facilities for the establishment of Jewish primary schools.¹⁷⁰ German officials demanded assistance from Brussels in finding space. Mayor Coelst replied, in the name of the Conference of Mayors, that local administrations were unable to comply with the demands for space for primary schools. He wrote:

We must tell you that the assistance which until now has been given to the Hebrews by local governments for the creation of kindergartens has resulted in numerous expressions of satisfaction.

A large number of the children who attend these schools are Belgians, and many among them are unhappy. On this ground, they deserve our concern. Please rest assured that we have done, and will continue to do, everything possible to alleviate the harshness of the measures taken against them.

But it is important that you also know that what we have done for the kindergartens we cannot do for the other types of schools.¹⁷¹

170. Letter from Löffler (Apr. 21, 1942), Cabinet du Bourgmestre, AVB, File 845 (on file with the Brooklyn Journal of International Law). *See generally* LES CURATEURS DU GHETTO: L'ASSOCIATION DES JUIFS EN BELGIQUE SOUS L'OCCUPATION NAZIE (Jean-Philippe Schreiber & Rudi Van Doorslaer eds., 2004). The order on Jewish education granted sole jurisdiction over Jewish education to the AJB. Created by another order a week earlier, the AJB was the Jewish umbrella organization established as a “Judenrat” in Belgium. *Verordnung über die Errichtung einer Vereinigung der Juden in Belgien* [Decree of 25 November 1941 creating an Association of Jews in Belgium] (Nov. 25, 1941), *reprinted in* VERORDNUNGSBLATT (Dec. 2, 1941). The role of the AJB is a complex and fascinating one, but beyond the scope of this article.

171. Letter to Dr. Callies from Coelst (May 30, 1942) (on file with the Brooklyn Journal of International Law) [hereinafter Letter to Dr. Callies from Coelst, May 30, 1942]

(Nous tenons à vous dire que l'aide apportée jusqu'à ce jour par les administrations communales aux Israélites pour la création d'écoles gardiennes nous a valu de leur part de nombreux témoignages de satisfaction.

Un grand nombre d'enfants qui fréquentent ces écoles sont belges, beaucoup d'entre eux sont malheureux. A ce titre ils méritent notre

Mayor Coelst invokes the term *Israélites* because many of the children are Belgians and “[o]n this ground they deserve our concern.”¹⁷² In the context of administrative compliance, it appears that something had changed. It may be that city officials were shocked because they saw, as they may not have seen through the simple act of registration, the real human suffering imposed by Nazi antisemitic laws. It may also be that the suffering of Belgians (*Israélites*) shocked them.¹⁷³

Finally, we come to the concluding remarks in Mayor Coelst’s letter which again render the stance taken by the Conference morally and legally ambiguous. The last paragraph indicates that what had been done for one type of educational establishment could not be done for primary schools.¹⁷⁴ The French construction here is pertinent. The Mayor wrote that they would not be able to do what they had done previously.¹⁷⁵ The French verbs Coelst used, however, create the impression of a refusal, subject to some qualification. Coelst says *nous ne pourrons le réaliser* which translates into “we will not be able to accomplish what we have done for the other schools.”¹⁷⁶ This reads less as a protest grounded in principle than as a complaint that the resources are not available to give practical effect to the desired outcome.¹⁷⁷

sollicitude. Soyez convaincu que nous fait et que nous continuerons à faire tout ce qui est possible pour atténuer la rigueur des mesures prises contre eux.

Mais il importe que vous sachiez que ce que nous avons fait en faveur des écoles gardiennes nous ne pourrons pas le réaliser pour les autres établissements scolaires envisagés.).

172. *Id.*

173. Other factors are important here. We know that city administrations did not hesitate to assist in establishing separate Jewish schools. Therefore, this protest, if that is what it is, did not result from an ethical awareness that the separation of Jewish children was wrong, but from the realization that the practice of separation carries with it certain cruel consequences. This is the distinction between the hermeneutics of rejection and acceptance. See generally Weisberg, *supra* note 23.

174. Letter to Dr. Callies from Coelst, May 30, 1942, *supra* note 171.

175. *Id.*

176. *Id.* (“[N]ous ne pourrons pas le réaliser pour les autres établissements scolaires envisagés.”).

177. Neither by definition, nor by the exclusion of all other possibilities, is this the real, or only, reason for non-compliance. The post-war construction of local resistance placed a strong emphasis on the use of obfuscation and ex-

How are we to understand resistance in the Belgian context and in the context of Belgian municipal administrators? Against whom and against what were they protesting? The Belgian administration was willing to set aside some facilities for the exclusive use of the AJB but would not, or could not, provide more. They had already provided lists of Jewish pupils in February 1941, but when asked to provide the same information to the Department of Public Education, Mayor Coelst offered the Conference's regrets that they could not provide such information.¹⁷⁸ Here, the city and its officials seem to be taking a firm stance, whatever the grounds, in refusing to hand over any more facilities for the creation of Jewish schools pursuant to the German decrees.

In response to Belgian protest, the GMA finessed the situation. The Germans acknowledged the letters from Mayor Coelst and declared that the legal obligations for Jewish education were henceforth matters between the City and the AJB, upon whom the decree placed the burden to establish separate Jewish schools.¹⁷⁹ The problem was now uniquely Belgian, which compelled the Belgian Jewish organization to comply with the German order. In such a situation, the Conference of Mayors was informed that the municipalities had decided to assist the Jews to the greatest extent possible.¹⁸⁰

Around the same time, that the city responded to demands for separate Jewish schools, the Mayors refused to allow local police to help in arrests for compulsory labour. In addition, the Conference issued a formal protest concerning deportations for "military labour" outside Belgium. Here, the Conference of Mayors intervened in an unambiguous fashion. After expressing their profound emotion at hearing stories of compulsory de-

cuses concerning lack of resources as defining elements of the refusals to implement anti-Jewish laws. Thus, the use of the verbs *pouvoir* and *réaliser* in this context may simply be a way of obscuring the real reasons for non-compliance.

178. Letter to Principal Inspector Janssen (June 26, 1942), Cabinet du Bourgmestre, AVB, File 866 (on file with the Brooklyn Journal of International Law).

179. Letter from Coelst to the Conference (July 6, 1942), Cabinet du Bourgmestre, AVB, File 845 (on file with the Brooklyn Journal of International Law).

180. Conference of Mayors (July 9, 1942), Cabinet du Bourgmestre, AVB, File 866 (on file with the Brooklyn Journal of International Law).

portations, the Conference requested that the Secretaries-General intervene with the Germans in order to bring a halt to the deportations. They invoked, for the first time in any official correspondence, the limitations imposed on the Germans by the provisions of the Hague Convention.¹⁸¹

VIII. BUREAUCRATIC ROUTINE, ADMINISTRATION, AND JEWISH PROPERTY IN BRUSSELS

While the city was charged with ensuring compliance with the signage regulations for restaurants, cafes and bars (section fourteen of the Jewish Order), the vast majority of actions and legal measures involving Jewish businesses, their registration, and administration were left in the hands of the Germans.¹⁸² This did not mean, however, that the city administration was completely insulated from dealing with aspects of the Aryanization process. For example, municipal officials had to deal with the provision of utility services such as gas, electricity and water for Jewish businesses.

In August 1943, for example, the accounts department of the City Gas and Electricity Board wrote to the German administrator, Karl Schneider, concerning premises owned by Mr. C., a Jew. The German administrator had sought the deposit paid by C. to the Gas and Electricity Board as an “Aryanized” Jewish asset. City officials insisted that because the account had been opened by Mr. C., and he had not cancelled his subscription, they could not release the funds. This is, in the mythology of Belgian resistance, administrative recalcitrance under the guise of strict obedience to legal obligations. The letter went on to ask, however, for permission to seal the meters, and assumed that once this technical procedure was completed, the Board would be free to disburse the funds in question to the Nazi bank account.¹⁸³

181. Letter to Secretary-General Nyns (July 3, 1942), *and* reply from Nyns (July 9, 1942), Cabinet du Bourgmestre, AVB, File 947 (on file with the Brooklyn Journal of International Law).

182. *See generally* COMMISSION D’ETUDE SUR LE SORT DES BIENS DES MEMBRES DE LA COMMUNAUTE JUIVE DE BELGIQUE SPOLES OU DELAISSES PENDANT LA GUERRE 1940–1945, FINAL REPORT (2001).

183. Letter to Schneider (Aug. 14, 1943), Cabinet du Bourgmestre, AVB, File 851 (on file with the Brooklyn Journal of International Law). *See also* Letter re: Mr. G (July 24, 1943), Cabinet du Bourgmestre, AVB, File 851 (on

Finally, it is worth briefly mentioning that the Brussels police also participated in the processes of Aryanization. In the autumn of 1941, for example, the police of the District of Saint-Gilles mounted a special surveillance operation at the open-air market on Boulevard Jamar following reports that the requirement that Jewish businesses carry a sign pursuant to the order was not being respected. The report to the German *Ortskommandantur* indicated that the problem was caused by the wind blowing merchandise about, momentarily covering the Jewish Undertaking signs.¹⁸⁴ The next year, the Brussels police were charged with delivering liquidation notices to Jewish businesses and obtaining signed receipts of notification. The order from the Chief of Police, Van Autgaerden, also carried a specific indication that, should service be impossible because the business had changed address, the notices were to be returned to headquarters so that they could be served by the police authorities in the appropriate district.¹⁸⁵

Once more, the historical construction of Brussels officials as resistant to any active role in the implementation of anti-Jewish orders should be questioned. The Permanent Council specifically forbade any investigations or similar measures meant to ensure a more perfect compliance with the decrees. Yet, in each case, the Brussels Police conducted inquiries and surveillance, and provided further information in order to enable more complete adherence to measures aimed at Brussels' Jews. The line between passive collaboration and participation appears to have been crossed even by the police force that, throughout the Occupation and afterwards, portrayed itself as

file with the Brooklyn Journal of International Law). A similar letter concerning Widow G. was also sent to the Administrator. The Board informed him that 252.75 BEF had been deducted from the account for consumption until May 31, 1943, when the account was closed. Upon receiving written confirmation from Widow G., the monies would be handed over to him. In the meantime, the remainder of 447.25 BEF would be held for the Administrator. See Letter of Aug. 28, 1943, Cabinet du Bourgmestre, AVB, File 851 (on file with the Brooklyn Journal of International Law).

184. Report (Sept. 8, 1941), AVB, Police, Guerre 40–45, File 791.94 (on file with the Brooklyn Journal of International Law).

185. Entreprises juives—Remise d'ordre de liquidation, Bulletin d'informations (Apr. 9, 1942), AVB, Police, Guerre 40–45, File 791.94 (on file with the Brooklyn Journal of International Law).

loyal to the Belgian Constitution and to its legal duties thereunder.¹⁸⁶

IX. CONCLUSION

What characterizes the City of Brussels and its agents with regard to the “Jewish question” is both passive collaboration and participation. Yet, what is truly important here are two interrelated phenomena found in different contexts throughout occupied Europe. Brussels officials, as well as the Secretaries-General, operated in a system in which law continued to exist, in which the Belgian Constitution still had effect and in which the powers of the Occupier were, in theory, limited by the terms of the Hague Convention. Yet, there was no principled protest about the registration and marking of Jewish cafes and restaurants. There was no invocation of constitutional and international law principles when Jewish property was expropriated or when schools were segregated.¹⁸⁷

The second phenomenon is the hermeneutic of acceptance. Once Belgians accepted the lawfulness and legitimacy of registration, identification, exclusion, separation, and expropriation, principled objection was almost impossible. From the very beginning, the terms “Jews” and “Aryans” appeared in official documents and daily administrative practice. It is at this level of stark bureaucratic routine that we can begin to see what happened in Brussels and elsewhere in Belgium. The “Jewish question” became a new administrative category and emerged in everyday practices to which the bureaucracy adjusted itself without a second thought.

This bureaucratic routinization, which characterized much of the history of the fate and treatment of the Jews of Brussels throughout the Occupation, is exemplified by the use of the Star of David by certain parts of the bureaucracy in their internal system of documentation and filing. Brussels officials did object, based on humanitarian concerns, to the very idea of marking Jews with the Yellow Star. Yet, several documents from the Mayor’s Office found in the City Archives include the ✡ mark,

186. *See id.*

187. *See Curran, supra* note 14, at 9–10.

sometimes alone, sometimes with the letter “J” inside, marking the documents as ones dealing with “Jews.”¹⁸⁸

The ✧ indicates, both literally and figuratively, that Jews, or matters pertaining to Jews, became a separate matter of bureaucratic, legally justified categorization. The constitutional equality of all Belgians was replaced in daily practice by a common, accepted and understood discourse of exclusion. At a very practical level of bureaucratic compliance, the ✧ marks the new Nazi legal category of the “Jew” as part of the routine in the Office of the Mayor of Brussels. The road to Auschwitz to no small extent begins at the point at which a file can be marked by a patriotic and loyal Belgian civil servant or municipal employee with a ✧. This is the mundane reality of the concrete material practices of the Brussels bureaucracy. Participation is this semiotic participation in the world-view of Nazi taxonomy. Collaboration in Brussels is written ✧.

188. Although I cannot be absolutely certain, it appears that the marking with the ✧ was contemporaneous with the document itself. The documents so marked are found in the files of the Mayor’s office, which do not deal explicitly or exclusively with the “Jewish question.” Instead, they are on copies of letters to the German authorities contained in general correspondence files.