

# A Stress Test for German Nationalism: Protective Custody in Alsace-Lorraine during the First World War\*

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On 15 December 1915, the 55-year-old veterinarian Paul Tempé from Colmar in Upper Alsace undertook the long journey to Berlin to receive treatment for rabies at the Robert Koch Institute. The day before his departure, Colmar police informed police headquarters in Berlin of Tempé's imminent arrival, adding that he was 'politically highly suspicious' and needed to be placed under close surveillance.<sup>1</sup> On 20 December, the Berlin police noted in a report that according to Tempé's landlady in Berlin, Helene Riebke, Tempé had behaved in a 'suspicious manner', spending 'all of his time out and about visiting the sights of Berlin'. Tempé had told Riebke that all his relatives lived in France and that 'the Germans would all become French one day'. The report went on to say that Riebke 'does not wish to host Tempé any longer, because he appears suspicious to her and also writes many letters'.<sup>2</sup> It concluded that Tempé might be a spy and was to be arrested immediately. Since there was no hard evidence and thus no grounds within normal criminal 'law'; 'procedure'? for carrying out such an arrest, the Berlin police took Tempé into 'protective custody' (*Schutzhaft*). Tempé was released on 7 January 1916 and returned to Colmar—only to be placed once more in protective custody there one month later. In March 1916, Tempé was expelled to the German interior, first to Schwerte and then on to Münster and Halle, where he stayed until his release in January 1919.

The case of Paul Tempé is typical of the multilayered identities found in many, if not most, inhabitants of early twentieth-century Alsace-Lorraine.<sup>3</sup> Tempé had been born in French Colmar in 1860, ten years prior to the Franco-Prussian war. Following the German annexation of Alsace-Lorraine in 1871, Tempé's father decided to move the family across the border to France, expecting Alsace-Lorraine to return to France within five years. When this did not happen, the family moved back to Colmar, accommodating to German rule. Paul Tempé studied veterinary medicine in Stuttgart and later settled down in Colmar. According to his own statement, which he made while detained in Halle in the German interior in April 1918, he got along well with German

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<sup>1</sup>Generallandesarchiv Karlsruhe (henceforth GLA Karlsruhe), 456 F9 390, Colmar police to Berlin police headquarters, 14 Dec. 1915. Unless otherwise noted, all translations are my own.

<sup>2</sup>GLA Karlsruhe, 456 F9 390, police report, 20 Dec. 1915, signed Mützlitz.

<sup>3</sup>See, among many others, A. Wahl and J.-C. Richez, *L'Alsace entre France et Allemagne, 1850–1950* (Paris, 1993), pp. 241–57; C. J. Fischer, *Alsace to the Alsatians? Visions and Divisions of Alsatian Regionalism, 1870–1939* (New York, 2010); F. Roth, *Alsace Lorraine: Histoire d'un pays perdu: De 1870 à nos jours* (Nancy, 2010); A. Carrol, *The Return of Alsace to France, 1918–1939* (Oxford, 2018), chap. 1.

public servants and army personnel. Tempé further stated that he had a son fighting in the German army and that as an amateur viticulturist selling his produce on the German market, he had an economic stake in German victory. Like many Alsatians and Lorrainers, he described himself as a non-political person with no strong sympathies for either France or Germany. For him, his arrest was the result of a ‘misunderstanding’.<sup>4</sup>

The German military authorities who ruled wartime Alsace-Lorraine under martial law saw the multilayered identities of the population as a threat to national unity in wartime.<sup>5</sup> They sought to handle national ambivalence by arresting and removing persons of doubtful national allegiance from the provinces. On 26 April 1915, Hans Gaede, the commander of the army detachment stationed in Upper Alsace, outlined the military’s rationale:

The struggle against activities amounting to high treason, anti-German utterances and attitudes, and foreign characteristics requires the permanent active and determined work and assistance of all military and civilian authorities. We need to emphasize the German idea more fiercely in Upper Alsace than elsewhere. The efforts of the Army High Command, which is responsible for the order and security of this territory, are driven by the fundamental principle that Upper Alsace is to be quickly cleansed of all unreliable elements.<sup>6</sup>

Lack of evidence often required the military authorities to circumvent conventional legal procedures. In such cases, they made use of protective custody, which permitted military personnel and police to arrest and detain suspect civilians without evidence or trial if they presented a danger to public safety.<sup>7</sup> In the German interior, protective custody primarily affected Spartacists, Social Democrats and other political enemies—Rosa Luxemburg is perhaps the most prominent victim of this form of detention. In large towns such as Berlin, the authorities also increasingly targeted persons at the margins of society, such as the homeless, prostitutes or common criminals.<sup>8</sup> In marked contrast to the German interior, however, in Alsace-Lorraine police and military authorities used protective custody chiefly to combat what they saw as a nationalist threat to the German war effort, namely anti-German agitation.<sup>9</sup> In this borderland setting,

<sup>4</sup>See Tempé’s appeal against his continued imprisonment, GLA Karlsruhe, 456 F9 390, 12 Apr. 1918.

<sup>5</sup>The term used to describe the nature of the military administration was ‘state of siege’ (*Belagerungszustand*).

<sup>6</sup>GLA Karlsruhe, 456 F3 97, memorandum written by Hans Gaede, 26 Apr. 1915.

<sup>7</sup>‘Protective custody’ has its roots in the Prussian Law for the Protection of Personal Freedom of 12 Feb. 1850, which, in the spirit of the 1848 revolution, actually sought to limit the power of police and military authorities. See R. J. Evans, ‘Literaturbericht: Polizei, Politik und Gesellschaft in Deutschland 1700–1933’, *Geschichte und Gesellschaft*, 22, 4 (1996), pp. 609–28, here p. 618; D. Glorius, *Im Kampf mit dem Verbrechen: die Entwicklung der Berliner Kriminalpolizei von 1811 bis 1925. Eine rechtshistorische Betrachtung* (Berlin, 2016), pp. 152–6. For the original text of the law of 12 Feb. 1850 see ‘Gesetz zum Schutze der persönlichen Freiheit. Vom 12. Februar 1850’, in *Gesetz-Sammlung für die Königlichen Preussischen Staaten* (Berlin, 1850), pp. 45–8, available online at <http://www.verfassungen.de/preussen/gesetzpersfreiheit50.htm>.

<sup>8</sup>See A. Keil and M. Stibbe, ‘Ein Laboratorium des Ausnahmezustands: Schutzhaft während des Ersten Weltkriegs und in den Anfangsjahren der Weimarer Republik—Preußen und Bayern 1914 bis 1923’, *Vierteljahrshefte für Zeitgeschichte*, 68, 4 (2020), pp. 535–73, <https://doi.org/10.1515/vfzg-2020-0035>.

<sup>9</sup>Members of the Danish and Polish minorities in the northern and eastern border regions were also affected by arrests during the war, see J. Boysen, ‘Kriegserfahrung als nationale Identitätsstifterin? Ethnische Polen und Dänen als preußische Soldaten’, in O. Übergger (ed.), *Minderheiten-Soldaten: Ethnizität und Identität in den Armeen des Ersten Weltkriegs* (Paderborn, 2018), pp. 69–83, here p. 81. Yet in the absence of more in-depth studies of this issue, it is difficult to make systematic comparisons to the situation in Alsace-Lorraine. More fruitful comparisons can be made to the situation in Austria-Hungary, where military authorities engaged in similar campaigns of mass arrests of ‘nationally suspect’ civilians in the border zones with Italy, Serbia and Russia. See L. Cole, ‘Questions of Nationalization in the Habsburg Monarchy’, in N. Wouters and L. van Ypersele (eds), *Nations, Identities and the First World War: Shifting Loyalties to the Fatherland* (London, 2018), pp. 115–34, here pp. 120, 127–8 and the literature cited therein.

protective custody became a tool with which military authorities sought to shape national attitudes and enforce national loyalty. In this location arbitrary measures against the civilian population flourished, undermining the rule of law. For many Alsatians and Lorrainers, but also for liberal and left-wing critics of ‘Prussian militarism’ across Germany, protective custody would become the symbol of a repressive military regime that attempted to impose loyalty and discipline on a recalcitrant population.

At its western border, Germany faced the political competition of France, which had declared the return of the ‘lost provinces’ its only public war aim.<sup>10</sup> In arresting and expelling allegedly pro-German Alsatian civilians, the French authorities in the small strip of Alsatian territory they held throughout the war partly mirrored the actions of their German counterparts. French policy and propaganda was primarily aimed, however, at courting Alsatians and Lorrainers and encouraging them to enlist in the French army, become French citizens and enjoy full rights and liberties within the French state. Many Alsatians and Lorrainers therefore perceived France as a attractive alternative to an increasingly repressive German military regime.<sup>11</sup> What hung in the balance for Imperial Germany, therefore, was not just the survival of the monarchy or social peace, but the territorial integrity of the country. Ensuring the loyalty and patriotism of the inhabitants of this borderland became a veritable stress test for German nationalism and the bond it was able to create between the state and the people.

It was a challenge the German state ultimately proved unable to meet. By the end of 1914, the military authorities realized they were failing to generate broad patriotic support for the war. For the majority of the local population, all they were able to achieve was superficial compliance, while the legitimacy of German rule eroded.<sup>12</sup> As the military focussed on suppressing ‘anti-German behaviour’, it charged the political and social frictions that gripped the rest of the country with nationalist meaning. From August and September 1918, as will be outlined in section three below, large parts of the local population began openly challenging German rule, and when French troops finally entered the region a few months later, they were greeted by cheering crowds.<sup>13</sup>

<sup>10</sup> On French war aims see P. Renouvin, ‘Les buts de guerre du gouvernement français, 1914–1918’, *Revue Historique*, 235 (1966), pp. 1–38; G.-H. Soutou, ‘La France et les Marches de l’Est, 1914–1919’, *Revue Historique*, 260 (1978), pp. 341–88; D. Stevenson, *French War Aims against Germany, 1914–1919* (Oxford, 1982); G.-H. Soutou, *L’or et le sang: Les buts de guerre économiques de la Première Guerre mondiale* (Paris, 1989), pp. 170–89; M. Heffernan, ‘History, Geography and the French National Space: The Question of Alsace-Lorraine, 1914–18’, *Space & Polity*, 5, 1 (2001), pp. 27–48.

<sup>11</sup> On French wartime policy towards Alsatians and Lorrainers see P. Smith, ‘The Kiss of France: The Republic and the Alsatians during the First World War’, in P. Panayi (ed.), *Minorities in Wartime: National and Racial Groupings in Europe, North America and Australia during the Two World Wars* (Oxford, 1993), pp. 27–49; J.-C. Farcy, *Les camps de concentration français de la première guerre mondiale (1914–1920)* (Paris, 1995), pp. 51–62; C. J. Fischer, ‘Of Occupied Territories and Lost Provinces: German and Entente Propaganda in the West during World War I’, in T. Paddock (ed.), *A Call to Arms: Propaganda, Public Opinion, and Newspapers in the Great War* (Westport, CT, 2004), pp. 199–221; J.-N. Grandhomme, ‘Réfugiés en Vaucluse’, in J.-N. Grandhomme (ed.), *Boches ou tricolores: Les Alsaciens-Lorrains dans la Grande Guerre* (Strasbourg, 2008), pp. 163–78.

<sup>12</sup> See the report by Johann von Dallwitz, the emperor’s representative (*Statthalter*) for Alsace-Lorraine, on general developments in Alsace-Lorraine from August 1914 to the end of 1915, Bundesarchiv Berlin, Alte Reichskanzlei (henceforth BAArch), R43, 168a, 4 Feb. 1916.

<sup>13</sup> Although there were important regional differences and much of the enthusiasm was an expression of relief that the war had ended, most scholars agree that large parts of the population sincerely welcomed the arrival of French troops. See J. Rossé, M. Stürmel, A. Bleicher, F. Deiber, and J. Keppe, *Das Elsass von 1870–1932*, vol. 1: *Politische Geschichte* (Colmar, 1936), pp. 505–12; C. Baechler, *Les Alsaciens et le grand tournant de 1918*

Scholars have explained the resentment that German policy caused in wartime Alsace-Lorraine by referring to the repressive military regime, the Francophile tendencies of the local population and the failure of German 'statecraft' (*Staatskunst*), with military hardliners blocking more liberal policy options.<sup>14</sup> These are certainly important factors. They do not, however, explain exactly why and how German rule became discredited. Military repression and the hardships of war affected other parts of Germany and other warring states too, causing social unrest and strikes but rarely national opposition. Overtly Francophile political movements, in turn, had become a small minority by 1914, and most people had accommodated to German rule.<sup>15</sup> And it is doubtful whether mere tactical support of an autonomous Alsace-Lorraine by the German government would have imbued German rule with new legitimacy.<sup>16</sup> As will be discussed below, moderation of repressive measures from December 1916 and a more lenient policy in the final months of the war only had the effect of weakening German control over the region.

This article uses hitherto unused archival evidence to re-examine the erosion of the legitimacy of German rule in Alsace-Lorraine during the First World War. It argues that protective custody played a crucial role in transforming the relationship between rulers and ruled into one of mutual fear and distrust. Military authorities expected unconditional and unambiguous national devotion to the German war effort without offering much in return, such as full constitutional equality for the region after the war. Quite the contrary, with press censorship and the de facto closure of the regional parliament (the *Landtag*), the German government suppressed any discussion of the future political status of the region, while policymakers were busy making secret plans for partitioning the provinces or at least extending martial law for several years past the end of the war.<sup>17</sup> Many military commanders stationed in the borderland were afraid of an

(Strasbourg, 1972), pp. 141–3; Wahl and Richez, *L'Alsace entre France et Allemagne*, pp. 251–2; Fischer, *Alsace to the Alsatiens?*, p. 121.

<sup>14</sup>See Part II, '1914–1918' in Rossé et al., *Das Elsass*; C. Baechler, 'L'Alsace entre la guerre et la paix: Recherches sur l'opinion publique (1917–1918)', (PhD Thesis, Strasbourg University, 1969), pp. 65, 437; S. Fisch, 'Das Elsass im deutschen Kaiserreich (1870/71–1918)', in M. Erbe (ed.), *Das Elsass: historische Landschaft im Wandel der Zeiten* (Stuttgart, 2002), pp. 123–46; A. Kramer, 'Wackes at War: Alsace-Lorraine and the Failure of German National Mobilization, 1914–1918', in J. Horne (ed.), *State, Society and Mobilization in Europe during the First World War* (Cambridge, 2002), pp. 105–21. On German policy in Alsace-Lorraine as a failure of 'statecraft', see G. Ritter, *The Sword and the Scepter: The Problem of Militarism in Germany*, vol. 4: *The Reign of German Militarism and the Disaster of 1918*, trans. H. Norden (Coral Gables, 1973; first published in German in 1968 as *Staatskunst und Kriegshandwerk: das Problem des 'Militarismus' in Deutschland*, vol. 4: *Die Herrschaft des deutschen Militarismus und die Katastrophe von 1918*), pp. 129–44.

<sup>15</sup>This decline in overt opposition to German rule is indicated by national election results before the war, where German national parties became well-established from the 1890s. See H. J. Hiery, *Reichstagswahlen im Reichsland: ein Beitrag zur Landesgeschichte von Elsaß-Lothringen und zur Wahlgeschichte des Deutschen Reiches, 1871–1918* (Düsseldorf, 1986). On the successes of German policies in Alsace-Lorraine see also D. A. Harvey, *Constructing Class and Nationality in Alsace, 1830–1945* (Dekalb, 2001), p. 87; S. C. Preibusch, *Verfassungsentwicklungen im Reichsland Elsass-Lothringen 1871–1918: Integration durch Verfassungsrecht?* (Berlin, 2006), p. 602; J.-N. Grandhomme, 'Introduction: Les Alsaciens-Lorrains dans la Première Guerre Mondiale', in Grandhomme, *Boches ou tricolores*, pp. 19–33, here p. 21; Roth, *Alsace Lorraine*, p. 114.

<sup>16</sup>Cf. Ritter, *The Sword and the Scepter*, p. 138, who argues that such support of autonomy constituted a 'real political opportunity for Germany'.

<sup>17</sup>During the war, the *Landtag* held annual sessions on technical and administrative matters, while political discussions were prohibited. See Preibusch, *Verfassungsentwicklungen*, pp. 569–78. On censorship see Baechler, 'L'Alsace entre la guerre et la paix', pp. 99–119; F. Roth, *Le temps des journaux: Presse et cultures nationales en Lorraine mosellane 1860–1940* (Metz, 1983). On German plans for the future of Alsace-Lorraine see Preibusch, *Verfassungsentwicklungen*, pp. 519–68.

allegedly treacherous population and considered themselves in ‘enemy territory’.<sup>18</sup> In their eyes, protective custody was an indispensable tool to create military and national security. Local inhabitants, in turn, feared arbitrary arrest and expulsion and lamented the increasing legal insecurity and suppression of their civil liberties. While some came to publicly display French symbols, insulted the kaiser or sang the Marseillaise to express their discontent, others opportunistically denounced allegedly Francophile neighbours to the police to settle personal scores and present themselves as patriotic citizens. In all of these cases, the actions of the population revolved around doubts about national loyalty, confirming and further fuelling the fears of the military authorities. The resulting dynamic of mutual fear and distrust between the rulers and the population drove a wedge between them, eroded the authority and legitimacy of the state and worked to discredit German rule months before the fighting on the Western Front had come to an end.<sup>19</sup>

Given the importance of protective custody for German political and legal culture from the 1848 revolution right up to the Nazi era—with important ramifications in the German government’s response to the threat of terrorism in the late 1970s and again in the wake of the ‘war on terror’ in the early 2000s—the dearth of studies of the phenomenon is surprising.<sup>20</sup> The Italian philosopher Giorgio Agamben is one of the few who has drawn attention to the long tradition of protective custody in German history and its connection to a state of exception declared by the government to suppress personal liberties and circumvent the rule of law.<sup>21</sup> With regard to the First World War, historians have only very recently begun to examine protective custody more closely. Focusing

<sup>18</sup>See e.g. P. Husser, *Un instituteur alsacien: Entre France et Allemagne: Journal de 1914–1951*, trans. L. Leininger (Paris, 1989), pp. 40–1, diary entry of 31 Aug. 1914. Husser was a teacher from Mulhouse, who, like many others, was at first supportive of the German war effort, then expressed surprise at the treatment of Alsace as ‘enemy territory’ and finally came to reject German rule.

<sup>19</sup>In a recent article on Upper Silesia after the First World War, Brendan Karch has identified a similar ‘feedback loop’, in this case between ‘nationalist activists and instrumentally minded Upper Silesians’ who ‘drove each other toward further retrenchment’: see B. Karch, ‘Instrumental Nationalism in Upper Silesia’, in M. van Ginderachter and J. Fox (eds), *National Indifference and the History of Nationalism in Modern Europe* (London, 2019), pp. 180–203, here pp. 182–3.

<sup>20</sup>Most authors have focussed on protective custody in the Nazi era, but even here, there are few book-length studies. See the unpublished dissertation by D. Scheffler, ‘Schutzhaft im Nationalsozialismus (1933 bis 1945): die Bürokratie des Reichssicherheitshauptamtes und die Verfolgung des politischen Gegners’ (PhD Thesis, Free University Berlin, 1998) and recently the volume edited by J. Wisskirchen, *Verlorene Freiheit: nationalsozialistische Schutzhaft 1933/34 im heutigen Rhein-Erft-Kreis* (Berlin, 2019). Among the few more general works are C. Schudnagies, *Der Kriegs- oder Belagerungszustand im Deutschen Reich während des Ersten Weltkrieges: eine Studie zur Entwicklung und Handhabung des deutschen Ausnahmestandsrechts bis 1918* (Frankfurt/Main, 1994) and E. R. Huber, *Deutsche Verfassungsgeschichte seit 1789*, vol. 5: *Weltkrieg, Revolution und Reichserneuerung 1914–1919* (2nd edn, Stuttgart, 1992), pp. 53–4. Several studies briefly address the reverberations of and discussions surrounding protective custody in the context of terrorism in the late 1970s and the early 2000s. On the former period see U. Berlit and H. Dreier, ‘Die legislative Auseinandersetzung mit dem Terrorismus’, in F. Sack and H. Steinert (eds), *Protest und Reaktion* (Opladen, 1984), pp. 227–318, here pp. 295–99; H. Vinke and G. Witt, *Die Anti-Terror-Debatten im Parlament: Protokolle 1974–1978* (Reinbek, 1978); W. S. Heinz, ‘Germany: State Responses to Terrorist Challenges and Human Rights’, in A. Brysk and G. Shafir (eds), *National Insecurity and Human Rights: Democracies Debate Counterterrorism* (Berkeley, 2007), pp. 157–76, here pp. 161–7; on the latter period see Heinz, ‘Germany’, pp. 167–74.

<sup>21</sup>See G. Agamben, *Means without End: Notes on Politics* (Minneapolis, 2000), pp. 37–8. It is important to note that the Nazi regime used protective custody without ever declaring a state of exception, leading Agamben to argue that from 1933, the state of exception had indeed ‘become the rule’ (p. 38, italics removed).

on Prussia and Bavaria, Matthew Stibbe and André Keil argue that police and military authorities used protective custody or similar forms of detention not only to suppress political enemies but also for the ‘moral policing’ of German society—arresting homeless persons, prostitutes, homosexuals, Sinti and Roma and other allegedly ‘shady characters’ of the ‘urban scum’ (*Großstadtgesindel*).<sup>22</sup> In the case of Alsace-Lorraine, historians commonly mention protective custody in passing as a crucial feature of the repressive German wartime regime, but have thus far not studied the issue in a more systematic fashion.<sup>23</sup>

This article seeks to fill this gap by examining the purpose, scope and effects of protective custody in Alsace-Lorraine. The first section provides a brief historical background to German rule in the region and highlights the growing tensions between military authorities and civilian administrators immediately preceding the war. The second section demonstrates how protective custody, although limited in terms of the overall number of prisoners, created a pervading sense of legal insecurity in the population and gave rise to a perception of arbitrary military rule. In the final, third section, the article examines the mounting opposition to protective custody in the German Reichstag, culminating in the Law on Protective Custody of 4 December 1916. As will be seen, this law significantly reduced the number of detainees and new arrests in Alsace-Lorraine. Yet instead of restoring the legitimacy of German rule, half-hearted attempts at moderating repressive measures and the loosening of military control backfired—they only encouraged the increasingly open expression of popular discontent with German rule.

## I. Controlling the Borderland

During the forty-seven years that the German Empire held Alsace-Lorraine, it pursued two ostensibly contradictory aims: to assert tight Imperial control over the newly acquired territories, on the one hand, and to make them an integral and equal part of the nation, on the other. Consequently, German policy oscillated between repressing dissent and granting citizens more rights. From 1871 to the Boulanger crisis in the late 1880s, when protest against German rule was strongest, local authorities predominantly sought to quell opposition. Notably, they applied §10 of the Law on the Administration of Alsace-Lorraine—the so-called *Diktaturparagraph*—to expel troublesome French citizens.<sup>24</sup> In 1888, in an attempt to fortify the border with France and keep French citizens out, Bismarck introduced passport checks and required visitors to obtain a visa to enter the province.<sup>25</sup> Several countervailing measures gradually reduced legal insecurity and

<sup>22</sup>Keil and Stibbe, ‘Ein Laboratorium des Ausnahmezustandes’.

<sup>23</sup>See the short passages on protective custody in Rossé et al., *Das Elsass*, vol. 1, pp. 241–8; Baechler, ‘L’Alsace entre la guerre et la paix’, pp. 58–65; Preibusch, *Verfassungsentwicklungen*, p. 581; Grandhomme, ‘Introduction’, p. 25; Roth, *Alsace Lorraine*, p. 133; Fischer, *Alsace to the Alsatians?*, p. 109; J.-N. Grandhomme and F. Grandhomme, *Les Alsaciens-Lorrains dans la Grande Guerre* (Strasbourg, 2013), p. 257.

<sup>24</sup>See M. P. Fitzpatrick, *Purging the Empire: Mass Expulsions in Germany, 1871–1914* (Oxford, 2015), pp. 211–12. For the legal text see ‘Gesetz, betreffend die Einrichtung der Verwaltung’, dated 30 Dec. 1871, *Gesetzblatt für Elsaß-Lothringen* (Berlin, 1872), pp. 49–56.

<sup>25</sup>See Fisch, ‘Das Elsass im deutschen Kaiserreich’, p. 131; F. Roth, *Lorraine, France, Allemagne: Un parcours d’historien* (Metz, 2002), p. 32; G. Riederer, *Feiern im Reichsland: politische Symbolik, öffentliche Festkultur und die Erfindung kollektiver Zugehörigkeiten in Elsaß-Lothringen, 1871–1918* (Trier, 2004), pp. 222–4.



moderated repressive policies: in 1879, Alsace-Lorraine received a *Statthalter*, a representative appointed by the emperor, who mediated between Strasbourg and Berlin; in 1891, passport controls on the border to France and visa requirements for civilians were lifted;<sup>26</sup> in 1902, the *Diktaturparagraph* was abolished; and in 1911, the region obtained a constitution and a democratically elected parliament, the *Landtag*.<sup>27</sup> Around 1900, German political parties began to take hold in Alsace-Lorraine, mass protest against German rule subsided and economic growth further bound the region to Germany.<sup>28</sup> By the time the war broke out, however, integration was incomplete. The provinces had not achieved full legal equality with the other German states, and the civilian authorities remained under the supreme control of the emperor and the military.

The notorious Saverne Affair revealed how fragile the position of the civilian administrators and elected representatives was, and how easily local military units were able to defy the parliaments in Strasbourg and Berlin.<sup>29</sup> The crisis began on 28 October 1913 in the small Alsatian town of Zabern (French: Saverne), when a 20-year-old German lieutenant, Günter Freiherr von Forstner, set an award of ten marks for every ‘Wackes’ his recruits would assault. ‘Wackes’ was a strongly pejorative term for Alsatians. On 6 November, a local newspaper, the *Zaberner Anzeiger*, published von Forstner’s statement. What followed was a series of protest marches by local youths and workers against the military stationed in Zabern. On 28 November, the conflict escalated. Ignoring the advice of the civilian *Statthalter* Karl von Wedel and Georg Mahl, the chief administrative officer (*Kreisdirektor*) of the district of Zabern, Colonel Ernst von Reuter, von Forstner’s regimental commander, single-handedly declared martial law and ordered his troops to arrest the troublemakers. According to several testimonies, the military arrested twenty-seven persons that same night completely at random, including a number of jurists who happened to be at the scene.<sup>30</sup> Without using the term, the military authorities had effectively taken these civilians into protective custody. Anticipating developments during the war, von Forstner and von Reuter were backed by the emperor and the government, while the German parliament lamented the unlawful actions of the military but was ultimately unable to challenge its dominant position in the state.

Facing rising national pressures, the Alsatians and Lorrainers began developing a strong regional identity that centred on their Franco-German ‘double culture’.<sup>31</sup> In this way, locals hoped to stay aloof from the nationalist claims of Germany and France. Prominent writers and artists such as René Schickele and Charles Spindler but also politicians like the socialist Georges Weill thus sought to create bridges across national divides, knowing that any improvement of relations between France and Germany

<sup>26</sup> Military personnel required a visa to cross the border until 1900.

<sup>27</sup> See Preibusch, *Verfassungsentwicklungen*, pp. 496–516.

<sup>28</sup> On party politics and election results see Hiery, *Reichstagswahlen*. More specifically on the Social Democrats see Harvey, *Constructing Class*, pp. 86–92; A. Carrol, ‘Socialism and National Identity in Alsace from Reichsland to République, 1890–1921’, *European History Quarterly*, 40, 1 (2010), pp. 57–78, here pp. 60–1. On economic integration see Roth, *Alsace Lorraine*, pp. 49–50.

<sup>29</sup> On the Saverne Affair see H.-U. Wehler, *Krisenherde des Kaiserreichs, 1871–1918: Studien zur deutschen Sozial- und Verfassungsgeschichte* (Göttingen, 1970), pp. 70–88; D. Schoenbaum, *Zabern 1913: Consensus Politics in Imperial Germany* (London, 1982); Preibusch, *Verfassungsentwicklungen*, pp. 486–95; Fischer, *Alsace to the Alsatians?*, pp. 90–5.

<sup>30</sup> See Schoenbaum, *Zabern 1913*, p. 111.

<sup>31</sup> See Fischer, *Alsace to the Alsatians?*, chap. 1, and most recently Carrol, *Return of Alsace*, chap. 1.

would directly benefit Alsace-Lorraine.<sup>32</sup> While this regionalist approach provided a difficult but nevertheless promising ‘third way’ in peacetime, it raised suspicion and fear of sabotage among military authorities the moment the war broke out.

## II. Protective Custody and the Enemy Within

From the first days of the war, the military authorities began making arrests of allegedly dangerous Francophile civilians. Using black lists, they initially focused on well-known journalists, politicians and the clergy, but soon began to target all persons who were reported to display some form of ‘suspicious’ behaviour.<sup>33</sup> Protective custody often followed unverified denunciations or accidental observations by police or military personnel.<sup>34</sup> In a debate in the German parliament in June 1918, Lorrainian deputy Charles de Wendel recounted a striking incident of such an arbitrary arrest. In the first days of August 1914, a local priest from Amanweiler (French: Amanvillers) near Metz was on his way home from a neighbouring village when he encountered a Bavarian infantry colonel. The colonel asked the priest who he was, where he came from and where he was going. Later that same day, to everyone’s surprise, the colonel had the priest arrested, on the grounds that because the priest had stammered in his reply, he ‘was up to no good’. It was well-known in the village, de Wendel remarked, that the priest had a speech impediment. Placed in protective custody, the priest was released only three months later.<sup>35</sup>

Protective custody interfered with and superseded wartime justice, most notably the work of the eight extraordinary military courts (*außerordentliche Kriegsgerichte*) that had been installed across the territory of Alsace-Lorraine at the beginning of the war.<sup>36</sup> These courts were supposed to hear all cases where civilians were accused of breaching military decrees, including, for instance, speaking French in public, spreading military rumours, crossing county borders without a permit and any form of offensive anti-German behaviour. The files of the military administration show that the Army High Command (*Armee-Oberkommando*) of the Army Detachments (*Armee-Abteilungen*) A and B, which were stationed in Alsace-Lorraine, frequently imposed protective custody on people who had been acquitted by one of the extraordinary military courts or, in case of conviction and imprisonment, after they had served their sentences. While the archival record does not allow for a quantitative analysis, it strongly suggests that the majority of people who appeared before the extraordinary military courts were

<sup>32</sup>On Schickele see D. Lamping, *Über Grenzen: eine literarische Topographie* (Göttingen, 2001), pp. 37–52; on Spindler see J.-M. Gyss, ‘Charles Spindler, écrivain et mémorialiste’, in C. Spindler, *L’Alsace pendant la guerre: 1914–1918* (Nancy, 2008), pp. 9–25; and on Weill see Carrol, ‘Socialism’, pp. 61–3.

<sup>33</sup>According to State Secretary for Alsace-Lorraine Georg von Tschammer, these black lists contained the names of 160 persons. See Archives départementales du Bas-Rhin, Strasbourg (henceforth ADBR), 22 AL 131, minutes of the Bingen conference, 16 June 1917.

<sup>34</sup>Even Statthalter Dallwitz admitted that denunciations had become a major ‘problem’ in Alsace-Lorraine, because many of them lacked proof or concerned banalities but nevertheless frequently led directly to protective custody. See *ibid.*, 15 June 1917.

<sup>35</sup>See the minutes of the 169th session of the German Reichstag, 7 June 1918, in *Verhandlungen des Reichstags: XIII. Legislaturperiode, II. Session*, vol. 312 (Berlin, 1918), p. 5266.

<sup>36</sup>On the extraordinary military courts see Huber, *Deutsche Verfassungsgeschichte*, vol. 5, pp. 45–6; Schudnagies, *Der Kriegs- oder Belagerungszustand*, pp. 168–70.



subsequently taken into protective custody and expelled. The military court councillor (*Kriegsgerichtsrat*) of Army Detachment B (also known as Army Detachment Gaede, for its commander, Hans Gaede), Heinrich Dietz, mentioned in his diary that trials had significantly augmented the number of arrests, because following a trial, the extraordinary military courts typically confirmed with the Army High Command whether further measures were to be taken:

Right from the beginning of the war, numerous politically suspicious persons were taken into protective custody. Owing to the large number of legal investigations, these cases have proliferated widely. Even where acquittal owing to lack of evidence had been pronounced, protective custody was always considered.<sup>37</sup>

A memorandum by Gaede specified that in cases of anti-German behaviour, defendants were 'generally (even after they had served their sentence) taken into protective custody or at least removed from the theatre of operations [*Operationsgebiet*]'.<sup>38</sup> Until the autumn of 1917, when many detainees and expellees were permitted to return, protective custody was usually followed by expulsion to a different region within Alsace-Lorraine or to the German interior.<sup>39</sup>

Owing to the sketchy archival record and the disjointed state of the military administration, it is difficult to assess the total number of people who were affected by protective custody, expulsion and trials. According to statistics communicated in the *Landtag* of Alsace-Lorraine in April 1918, by this date 1,640 civilians had been placed in protective custody and 1,900 had been expelled.<sup>40</sup> Further archival evidence by and large confirms these figures: the minutes of the Bingen conference of June 1917, where representatives of the military and the German government discussed wartime policies in Alsace-Lorraine, refer to 1,444 cases of protective custody by 1 June 1917;<sup>41</sup> a list of all expelled civilians from Lower Alsace states their number at 768;<sup>42</sup> and a similar list for Upper Alsace, although confined to 1915–1916, contains the names of 698 expellees.<sup>43</sup> After the war, the *Ligue des proscrits d'Alsace* (League of the Outcasts of Alsace) accepted 4,820 of roughly 6,000 membership requests from victims of arrest or expulsion during the war.<sup>44</sup> With regard to trials, the departmental archives in Strasbourg hold a complete list of all wartime trials for anti-German behaviour heard

<sup>37</sup> GLA Karlsruhe, 456 F3 118, war diary of Heinrich Dietz, military court councillor of the Army Detachment Gaede, from 21 Nov. 1914 to 15 Mar. 1915, p. 10.

<sup>38</sup> GLA Karlsruhe, 456 F3 97, memorandum by Hans Gaede, 27 Apr. 1915. See also the records of individual cases in GLA Karlsruhe, 456 F3 126, 152; 456 F9 143, 192, 406; and in Hauptstaatsarchiv Stuttgart (henceforth HSA Stuttgart), M30/1 BÜ 309.

<sup>39</sup> The Army High Command sought to accommodate preferences of the expellees in terms of their destination, although the authorities were also wary not to create 'a large colony of unreliable Alsace-Lorrainian elements' in the German interior, as was apparently emerging in Baden-Baden towards the end of the war. See Deputy General Commander XIV Army Corps to Deputy General Commander XXI Army Corps, 6 Feb. 1918, GLA Karlsruhe, 456 F3 135.

<sup>40</sup> See the minutes of the 169th session of the German Reichstag, 7 June 1918, in *Verhandlungen des Reichstages*, vol. 312, p. 5283. According to these figures, in 1,110 of the 1,640 cases of protective custody, arrest was based on political grounds.

<sup>41</sup> ADBR, 22 AL 131, 'Übersicht A, über die seit Kriegsausbruch bis 1.6.1917 in Schutzhaft genommenen Personen (soweit nach den Akten feststellbar)', annex to the minutes of the Bingen conference of 15–16 June 1917.

<sup>42</sup> ADBR, 116 AL 12, 'Namentliches Verzeichnis der Ausgewiesenen, 1914–1918', undated.

<sup>43</sup> GLA Karlsruhe, 456 F3 458, 'Liste B der aus dem Operationsgebiet entfernten Personen, 1915–1916', undated.

<sup>44</sup> See Rossé *et al.*, *Das Elsass*, vol. 1, p. 244. A total 3,385 Alsatians and 1,435 Lorrainers were admitted.

by the extraordinary military courts in Alsace-Lorraine. The list contains the names of 2,249 persons, including those who were acquitted.<sup>45</sup> Roughly a third (35.4 per cent) of all cases concerned women.<sup>46</sup>

The fluctuations in these numbers result not only from different methods of data collection, but also from the fact that there was substantial overlap between trials, protective custody and expulsion. The same person could be tried at one of the extraordinary military courts, placed in protective custody and expelled to the German interior. In other cases, civilians were merely placed in protective custody and then released, or they were directly expelled to the German interior without trial or protective custody. The archival record does not reveal with any precision the extent to which trials, protective custody and expulsions coincided. Considering the different figures discussed above, one can estimate that at least 3,000 civilians were affected by at least one of these measures of the military authorities.

A list created by Alfred Weill in 1921 based on various sources provides more fine-grained insights into protective custody, regional disparities and gender differences. The list includes the names of 1,455 Alsatians and Lorrainers who had been subjected to arrest, expulsion and/or police surveillance.<sup>47</sup> It indicates substantial overlap between these categories: 63.4 per cent of all persons on the list had been imprisoned or placed in protective custody (with an average sentence of 181 days), while 80.4 per cent had been expelled (for an average of 620 days) and 33.8 per cent had been placed under police surveillance (for an average of 613 days). Every one of those persons who had been imprisoned faced either expulsion (69.7 per cent) or police surveillance (14.1 per cent) or both (16.2 per cent). The list also reveals significant regional diversity. Upper Alsace, a region with a strong Francophile bourgeoisie that directly faced the Western Front, was disproportionately affected, with 46.8 per cent of all persons listed while representing only 27.6 per cent of the total population.<sup>48</sup> Lower Alsace (19.4 / 37.4 per cent) and Lorraine (31.2 / 35 per cent) were proportionately less affected (2.3 per cent were missing or outside Alsace-Lorraine). At the same time, the list also suggests that residents of Lower Alsace—although the region saw comparatively few cases—received the most severe penalties, with 73.1 per cent of prison sentences with an average of 196 days in prison, as compared to Upper Alsace (64.9 per cent and 176 days) and Lorraine (54.6 per cent and 172 days). Finally, there were also stark gender differences: while 25.3 per cent of all persons on the list were women, the proportion of women was highest in Upper Alsace, with 32.7 per cent, as opposed to 21.6 per cent for Lower Alsace and 16.1 per cent for Lorraine. On average, women received

<sup>45</sup>The list is in ADBR, 87 AL 5735.

<sup>46</sup>On the work of the extraordinary military courts see V. Prott, 'Challenging the German Empire: Strategic Nationalism in Alsace-Lorraine in the First World War', *Nations and Nationalism* (pre-print, 2021), <https://doi.org/10.1111/nana.12665>.

<sup>47</sup>The following are my own calculations based on J. Weill, *L'Alsace et les Alsaciens pendant la guerre*, vol. 1: *Schutzhaft et expulsion politique d'après des documents et des dossiers inédits* (Strasbourg, 1921), pp. 159–203. Weill's list contains many names that also appear in the records of the German military authorities (including Paul Tempé) and appears to be incomplete but otherwise reliable.

<sup>48</sup>According to the 1910 census, Alsace-Lorraine had a total population of 1,874,014, of whom 700,938 (37.4%) were in Lower Alsace, 517,865 (27.6%) in Upper Alsace and 655,211 (35%) in Lorraine. See J. Rossé et al., *Das Elsass von 1870–1932*, vol. 4: *Karten, Graphiken, Tabellen, Dokumente, Sach- und Namenregister* (Colmar, 1938), p. 37.

lighter penalties than men, with 54.9 per cent of all women receiving prison sentences (average of 167 days) while 66.3 per cent of the men were sentenced to imprisonment (average of 185 days). This pattern persists if the data is broken down for each region, that is, women received lighter sentences than men across all three regions.

Protective custody and expulsions had a devastating effect on the reputation of the German authorities as purveyors of justice. The seemingly arbitrary character of these measures—not wartime justice per se—eroded people’s sense of legal security and instilled an atmosphere of nationalist resentment among the population. As Christian Baechler argued in his well-documented dissertation on public opinion in wartime Alsace-Lorraine, censorship, the suspension of civil liberties and the lack of reliable information on the course of the war prompted many people to rely on, and to spread themselves, rumours and information passed by word-of-mouth. In this tense setting, arrests, trials, expulsions, denunciations and police investigations occurred frequently enough to create a strong public perception of a ubiquitous threat of falling prey to an unpredictable military regime. It is no coincidence that virtually all contemporaries noted the atmosphere of distrust and suspicion that pervaded the region from early September 1914. Auguste Zundel, for instance, a businessman from Mulhouse, mentioned in his diary that he and a colleague quit their public duties at the town hall upon hearing of ongoing arrests and expulsions affecting friends and acquaintances: ‘We do not want to stay on in our posts if the government regards us as suspects.’<sup>49</sup> The diaries of other contemporaries and secret reports of Statthalter Dallwitz corroborate this impression of growing suspicion and distrust.<sup>50</sup> Huber’s assessment that protective custody was ‘free of excesses’ may be accurate in terms of absolute numbers, but it misses its significant impact on people’s perception of German rule as not just repressive but also arbitrary.<sup>51</sup>

The military administration was well aware of these shortcomings. As an internal army memorandum of March 1915 admitted, most victims of protective custody stated in the interrogation records that they did not know the reasons for their arrest.<sup>52</sup> The case of Paul Tempé mentioned at the beginning of this article is typical of the chronic neglect of detainees. Writing from his prison cell in Colmar following his second arrest, Tempé complained to Joseph, a friend or relative in Switzerland, about the circumstances of his two arrests:

I had just arrived in the capital [Berlin] when I was arrested without anyone telling me why. ... Emaciated, I arrived in Colmar on 9 January [1916]. My body weight had dropped to 122 pounds. I had been imprisoned for 19 days, without light during those long nights and without having drunk a single drop of beer or wine. I had hardly recovered when, on the eighth of this month [February 1916], I was again taken into

<sup>49</sup>See A. Zundel, *1914–1918: Journal de la Grande Guerre vécue à Mulhouse* (Colmar, 2004), p. 100, diary entry of 5 Sept. 1915.

<sup>50</sup>See Spindler, *L’Alsace pendant la guerre*, pp. 68, 86, diary entries of 19 Aug. and 4 Sept. 1914; Husser, *Un instituteur alsacien*, p. 45, diary entry of 14 Sept. 1914; M.-F. Zingerlé, *Toujours fidèle à la France! Journal de guerre 1914–18 d’une paysanne lorraine* (Sarreguemines, 2003), p. 26; diary entry of 21 Aug. 1916 (reflecting on the first weeks of the war); BArch, R43, 168a, Dallwitz, ‘Report on Alsace-Lorraine in the third quarter of 1914 until the end of 1915’, 4 Feb. 1916.

<sup>51</sup>Huber, *Deutsche Verfassungsgeschichte*, vol. 5, p. 53.

<sup>52</sup>GLA Karlsruhe, 456 F3 97, memorandum by Fürst zu Löwenstein, 27 Mar. 1915.

protective custody, and again I do not know why. Fortunately, I am now allowed to obtain my food from home and the conditions of imprisonment are by far not as severe as in the city on the River Spree.<sup>53</sup>

Indeed, circumstances of arrest and detention varied hugely between administrative units. Until at least June 1915, local police and military authorities carried out arrests independently of the Army High Command.<sup>54</sup> Lack of qualified personnel and poor co-ordination between police, military judges and officers meant that many detainees were interrogated several times by different people, while others were held for days or even weeks without interrogation if there was no qualified policeman, military officer or judge available.<sup>55</sup> In one extreme instance, a detainee had to wait for more than seven months for his trial, not only because the examination of witnesses had been delayed, but also because ‘seven higher’ military courts had been dealing with the matter’.<sup>56</sup>

Protective custody was emblematic of the haphazard implementation and indeed the limits of military rule, which undermined the effectiveness of the regime’s measures and further exacerbated perceptions of arbitrariness and legal insecurity. After the outbreak of war, Alsace-Lorraine had been placed under the authority of Army Detachments A (also named ‘Falkenhausen’, for its commander Ludwig von Falkenhausen) in the north and B (Gaede) in the south. These two larger units were divided into several smaller military districts and so-called fortress zones (*Festungsbereiche*), the commanders of which issued decrees, carried out police investigations and ordered arrests and expulsions independently of each other. They thus created a patchwork of decrees rather than a coherent system of repression.<sup>57</sup> As early as in October 1914, the Department of the Interior in Strasbourg warned the general command of the four army corps stationed in Alsace-Lorraine that a significant number of decrees infringed upon normal administrative practice. Thus exceeding their already considerable authority, military commanders further diminished the ‘feeling of legal security among the population’.<sup>58</sup> Moreover, in addition to the shortage of qualified personnel and lack of administrative consistency, civil society acted as a powerful barrier to the dictatorial pretensions of the military commanders. To the latter’s ongoing frustration, a significant number of local mayors, judges, priests, police officers, teachers and others successfully worked to attenuate or diffuse the effects of their decrees.<sup>59</sup>

### III. Limiting Protective Custody, Unleashing Mass Disaffection

In view of the alarming activities of police and military authorities across the entire territory of the German Reich, which had the potential to undermine the rule of law

<sup>53</sup> GLA Karlsruhe, 456 F9 390, Paul Tempé to Joseph (no last name given), 23 Feb. 1916. The letter was intercepted by postal control.

<sup>54</sup> From June 1915, the Army High Command ordered local authorities to confirm any potential case of protective custody with them. See ADBR, 116 AL 11, directive issued by the Army Detachment Falkenhausen, Army High Command, Strasbourg, 17 June 1915.

<sup>55</sup> GLA Karlsruhe, 456 F3 97, memorandum by Fürst zu Löwenstein, 27 Mar. 1915.

<sup>56</sup> GLA Karlsruhe, 456 F3 97, memorandum by the commander of the XIV Army Corps, Hans Gaede, 27 July 1915.

<sup>57</sup> See GLA Karlsruhe, 456 F3 89, memorandum by Wilhelm Heye, chief of the operations department at the Army Group Duke Albrecht, 16 Dec. 1917.

<sup>58</sup> ADBR, 22 AL 51, Department of the Interior (Strasbourg) to the army corps in Strasbourg, Freiburg and Saarbrücken, Oct. 1914.

<sup>59</sup> Examples can be found in GLA Karlsruhe, 456 F3 122 and 123.

and erase the remainders of civic institutions, opposition to protective custody mounted in the Reichstag. The issue was first raised by the Social Democrats Richard Fischer (27 August 1915), Wilhelm Dittmann (18 January 1916) and Georg Davidsohn (17 April 1916).<sup>60</sup> Dittmann accused the German government of ‘trampling upon the law and the constitution’, which earned him a reprimand from the parliament’s vice-president, Heinrich Dove.<sup>61</sup> The debate gained momentum in late May 1916, when the Social Democrats were joined in their criticism by Alsatian deputy Joseph Emmel from Mulhouse. Emmel was the first member of the Reichstag to highlight the political ramifications of protective custody in Alsace-Lorraine: ‘You cannot “Germanize” the *Reichsland* (imperial country or reich country) with such measures’, he warned the government, ‘at least you need to provide the people with the necessary rights and the opportunity to defend themselves.’<sup>62</sup>

The growing criticism of protective custody in the Reichstag resulted in the Law on Protective Custody of 4 December 1916.<sup>63</sup> The new law provided detainees with the right to appeal and to consult a lawyer, required military authorities to inform arrested persons about the accusations raised against them upon arrest or immediately thereafter and imposed a limit of three months of detention, after which the arrest warrant was to be renewed or the detainee released. Victims of protective custody were henceforth able to claim compensation for unjustified detention through the supreme military court (*Reichsmilitärgericht*).

Although there were difficulties in putting these regulations fully into practice, the new law allowed the German parliament to exert significant pressure on the military authorities. At least in Alsace-Lorraine, the parliament was able to put limits on the policy of protective custody and expulsion.<sup>64</sup> As the records of the military administration indicate, from the autumn of 1917, large numbers of expellees were permitted to return to their homes, while protective custody was upheld in a comparatively small number of cases.<sup>65</sup> According to the minutes of the Bingen conference of June 1917, by this time, of 1,444 Alsatians and Lorrainers placed in protective custody since the outbreak of the war, 472 remained in protective custody, 471 had been expelled and 501

<sup>60</sup> See the minutes of the 20th, 32nd and 41st sessions of the German Reichstag, 27 Aug. 1915, 18 Jan. 1916 and 7 Apr. 1916, in *Verhandlungen des Reichstags: XIII. Legislaturperiode, II. Session* (Berlin, 1916), vol. 306, pp. 397–8, 716–25, and vol. 307, p. 906.

<sup>61</sup> Minutes of the 32nd session of the German Reichstag, 18 Jan. 1916, in *Verhandlungen des Reichstags*, vol. 306, p. 716.

<sup>62</sup> Minutes of the 53rd session of the German Reichstag, 14 May 1916, in *Verhandlungen des Reichstags*, vol. 307, p. 1243.

<sup>63</sup> See ‘Gesetz, betreffend die Verhaftung und Aufenthaltsbeschränkung auf Grund des Kriegszustandes und des Belagerungszustandes vom 4. Dezember 1916’, *Reichs-Gesetzblatt* (Berlin, 1916), pp. 1329–31, available online at [https://commons.wikimedia.org/wiki/File:Deutsches\\_Reichsgesetzblatt\\_1916\\_275\\_1329.png](https://commons.wikimedia.org/wiki/File:Deutsches_Reichsgesetzblatt_1916_275_1329.png). In return, on 6 December 1916, the Reichstag agreed to approve the Auxiliary Services Act (*Gesetz über den vaterländischen Hilfsdienst*), pushing the German economy towards total war.

<sup>64</sup> Cf. Keil and Stibbe, ‘Ein Laboratorium des Ausnahmezustandes’, who observe increasing numbers of protective custodies or similar forms of detentions in Prussia and Bavaria and conclude that the law of 4 December 1916 had little tangible effect on the practice of protective custody in these regions.

<sup>65</sup> See GLA Karlsruhe, 456 F3 137, ‘Namentliches Verzeichnis der in das Gebiet der Armee-Abteilung Zurückgelassenen’, without date (after Feb. 1918). This list contains the names of 443 expellees who had been permitted to return home between December 1916 and February 1918, with the majority of releases occurring in the last three months of 1917.

had been released and returned to their homes.<sup>66</sup> By April 1918, a total 700 of 1,900 expellees had returned to their homes, and only 67 of 1,640 persons remained in protective custody.<sup>67</sup> Between January 1917 and August 1918, about a quarter of 130 appeals against wrongful imposition of protective custody and expulsion were successful at the supreme military court, leading to the release of the claimants in 30 cases (23.3 per cent) and to an additional payment of compensation in 24 cases (18.5 per cent).<sup>68</sup> In Paul Tempé's case, the supreme military court rejected both his appeal and his claim for compensation as 'unfounded', reiterating the earlier charges of his 'Francophile utterances' in Berlin in December 1915 and his unauthorized contact with French prisoners of war in Schwerte in June 1917.<sup>69</sup>

In contrast to the rest of Germany, where the law of 4 December 1916 had little tangible effect, in Alsace-Lorraine it significantly reduced the number of detainees and new arrests in the second half of the war. The regularization of protective custody in the *Reichsland* marked a gradual return to the prewar political system, wherein the executive power of the government and the military was checked by what Matthew Fitzpatrick has identified as 'intense and often effective forms of political scrutiny and civic pressure'.<sup>70</sup> Testifying to the growing leverage of civilian forces, in February 1917 State Secretary of the Interior Karl Helfferich, in line with the Prussian War Ministry, vetoed a proposal by General Ludendorff, by this point a dominant force in the German state, that the relatives of deserters from Alsace-Lorraine be taken into protective custody. Helfferich and the war ministry were notably afraid that the matter might cause an uproar in the Reichstag.<sup>71</sup> Placing military commanders and police under legal and political scrutiny was part of a wider 'cross-party campaign for the liberalisation or reform of the Reich constitution in the years 1917–18', as outlined by Matthew Stibbe.<sup>72</sup>

Even so, the parliament's successes in bringing protective custody under legal control and taming the government's policy in the final year of the war had little positive effect on the loyalty of the local inhabitants to Germany. Quite the contrary, in leaving the political rationale of national suspicion and the claim on the borderland's unconditional loyalty intact while loosening the administrative strings, moderation of repression simply caused discontent with and disaffection from German rule to gain mass public traction.<sup>73</sup> Notably, the continued policy of 'Germanization' in other areas—by

<sup>66</sup>ADBR, 22 AL 131, 'Übersicht A, über die seit Kriegsausbruch bis 1.6.1917 in Schutzhaft genommenen Personen (soweit nach den Akten feststellbar)', annex to the minutes of the Bingen conference of 15–16 June 1917.

<sup>67</sup>See the minutes of the 169th session of the German Reichstag, 7 June 1918, in *Verhandlungen des Reichstages*, vol. 312, p. 5283.

<sup>68</sup>HSA Stuttgart, M 30/1 Bü 115, rulings of the supreme military court on cases of protective custody and expulsion of Alsations and Lorrainers, Jan. 1917 – Aug. 1918. Of 130 cases heard, the court accepted 30 claims (23.3%), partially accepted a further 4 (3.1%), rejected 72 (55.8%) and declared inadmissible 23 (17.8%).

<sup>69</sup>GLA Karlsruhe, 456 F9 390, ruling of the supreme military court in the case of Paul Tempé, 8 Feb. 1919.

<sup>70</sup>M. P. Fitzpatrick, 'A State of Exception? Mass Expulsions and the German Constitutional State, 1871–1914', *Journal of Modern History*, 85, 4 (2013), pp. 772–800, here p. 799.

<sup>71</sup>See B. Ziemann, *Violence and the German Soldier in the Great War: Killing, Dying, Surviving*, trans. A. Evans (London, 2017), p. 117. My thanks to Matthew Stibbe for alerting me to this reference.

<sup>72</sup>M. Stibbe, *Germany, 1914–1933: Politics, Society, and Culture* (New York, 2010), p. 15.

<sup>73</sup>As Matthew Stibbe shows, a similar mechanism of belated and half-hearted reforms causing growing internal dissent occurred in Austria-Hungary, after Emperor Charles had issued amnesty for domestic political suspects in May 1917. M. Stibbe, 'Enemy Aliens, Deportees, Refugees: Internment Practices in the Habsburg Empire, 1914–1918', *Journal of Modern European History*, 12, 4 (2014), pp. 479–99, here pp. 493–6.



seizing French private and corporate property and by offering sequestered houses and estates to Germans from the interior<sup>74</sup>—counteracted any effort to put limits on the use of protective custody. In the nationally charged and polarized political climate that the military authorities had themselves created, many people had lost their trust not just in the administration and the management of the war but also in German rule altogether. They increasingly began to perceive France, which had thus far been a symbol of protest against martial law and the military commanders, as a realistic alternative to German rule.

Administrative reports reflect the gradual unravelling of German rule in Alsace-Lorraine as many detainees and expellees returned to their homes, the authorities became more lenient in their suppression of anti-German behaviour and the Allies began their decisive offensive in the west. A report by the Secret Field Police (*Geheime Feldpolizei*) of the 19th Army, stationed in Saint-Avold in Lorraine, warned that the local population had previously spoken German, but about June 1917 had begun switching to French. According to the report, the main causes for this shift to French were the almost complete cessation of denunciations and the fact that church services were now held in French, which made it seem acceptable to people to use the language in public.<sup>75</sup> From August 1918, reports mentioning increasing numbers of people speaking French in public and displaying affinities to France multiplied. Ticket inspectors in the trams of Thionville (German: Diedenhofen) in Lorraine complained that passengers would refuse to speak German and that any attempt to compel them to do so only attracted their ‘hatred’, without achieving anything.<sup>76</sup> In late September, the secret field police in Thionville remarked that following the recent successes of the French army, there had been several instances where locals had assaulted Germans from the interior and had insulted them as ‘dirty Prussians’ and ‘boches’, a derogatory term for Germans. Meanwhile, the report went on to say, schoolchildren and everyone else openly spoke French.<sup>77</sup> Clearly, a growing number of local authorities now tacitly accepted the public use of French, which had been banned in most parts of Alsace-Lorraine by military decree.<sup>78</sup>

<sup>74</sup>By March 1918, the Westmark GmbH had seized the property of 2,302 private citizens (931 in Lower Alsace, 495 in Upper Alsace and 876 in Lorraine), while 215 large estates were in the process of being ‘liquidated’. *Statthalter* Dallwitz boasted that the policy of dispossession was ‘in full swing’, so that ‘the peace negotiations will be presented with a *fait accompli*’. See Dallwitz’s report on Alsace-Lorraine for the second half of the year 1917, dated 5 Apr. 1918, in BArch, R43, 168a. On the radical plans to replace the bourgeoisie of Alsace-Lorraine with Germans from the interior see H. G. Kessler, *Das Tagebuch*, vol. 6: 1916–1918, ed. G. Riederer (Stuttgart, 2006), p. 394, diary entry of 18 May 1918. Kessler cites from a conversation with Wilhelm Kapp, an Alsatian professor of theology in Strasbourg, who outlined the ‘operation’ planned in the Great Headquarters (*Großes Hauptquartier*) and the circle around Ludendorff: a ‘trust’ of sequestered textile factories with a capital of 30 million marks would organize ‘artificially, from the top, a violent transformation and reconstruction of the Alsatian people’s body [*Volkskörper*] by violently implanting new economic agents [*Wirtschaftsträger*]’.

<sup>75</sup>HSA Stuttgart, M 30/1 Bü 104, report by the Secret Field Police of the 19th Army, 9 Aug. 1918.

<sup>76</sup>HSA Stuttgart, M 30/1 Bü 104, W. Vieten, director of Lorrainian railways, to the chief of police in Thionville, 29 Aug. 1918.

<sup>77</sup>HSA Stuttgart, M 30/1 Bü 104, report by the Secret Field Police of the 19th Army, 27 Sept. 1918.

<sup>78</sup>See HSA Stuttgart, M 30/1 Bü 104, report by Felix von Bothmer, commander of the 19th Army, 20 Aug. 1918, in which he notes that after the ‘pressure’ had been reduced and police and military had stopped ‘intervening’, public use of French had increased ‘dramatically’.

On 6 August 1918, the chief of the military police in Metz noted the close relationship between people's defiance of military decrees and regulations, the successes of the Allied armies and the waning authority of the administration, thus providing a stark account of the dissolution of German rule in Alsace-Lorraine:

Those well-acquainted with local conditions attribute this phenomenon [the increased use of French] to the fact that the local population is convinced that Germany will lose the war and will be forced to abandon Alsace-Lorraine. It is striking that whenever news from the Front is less favourable, the number of people speaking French instantly increases. Those acquainted with local conditions attribute the increased use of French also to the return of many political expellees and detainees to Metz.<sup>79</sup>

#### IV. Conclusion

In modern German and European history, protective custody points to a long-lived tendency for the state and the military to try and impose national loyalty on the civilian population by force during intense periods of conflict. This authoritarian tradition dates back to the mid-nineteenth century, reached a peak in the two world wars, and in the German context has echoes in contemporary debates on the terrorist threats of the late 1970s and the early 2000s.<sup>80</sup> During the First World War, the state used protective custody in Alsace-Lorraine to avert what it perceived as an existential threat to German national and territorial cohesion. The dogma of absolute control and national security prompted the military authorities to crack down on any deviant behaviour and dissent as dangerous signs of anti-German subversion. That repression was an attempt to resolve a crisis of political legitimacy and national solidarity by imposing national coherence from above, that is, by using martial law to silence the population and suppress civilian and democratic structures.

Rather than enforce security and national cohesion, however, this approach only deepened the divide between rulers and ruled. Protective custody transformed the relationship between state authorities and local citizens into one of mutual fear and suspicion. While the local population feared arbitrary arrest, military rulers felt surrounded by people of dubious national affiliation who always seemed to be on the verge of sabotage or collaboration with the enemy. In their view, protective custody was an indispensable instrument to pre-emptively remove the threat of subversion by 'protecting' the population from the malicious influence of the allegedly omnipresent enemy within. This mutual perception of threat and national subversion prevented constructive political dialogue, undermined the rule of law, focussed all attention on nationalist subversion and ultimately worked to alienate the Alsatians and Lorrainers from German rule.

<sup>79</sup>HSA Stuttgart, M 30/1 Bü 104, report by the chief of police of Metz, 6 Aug. 1918.

<sup>80</sup>Parliamentary debates of the late 1970s demonstrate that although there were calls for martial law or summary executions of left-wing terrorists, these calls remained outside the political mainstream. Even so, the debates also reveal that the rule of law and the Nazi past were key reference points surrounded by much anxiety: while Social Democrats and Liberals feared that tighter legislation and swift police action against left-wing terrorists might lead to the rebirth of a past authoritarian spirit, Christian Democrats alluded to the weakness of the Weimar Republic in the face of extremist forces and the need for a militant democracy. See Vinke and Witt, *Anti-Terror-Debatten*, p. 90 (Helmut Schmidt, SPD), p. 114 (Alfred Dregger, CDU), p. 120 (Willy Brandt, SPD) and pp. 164–70 (Franz Josef Strauß, CSU).

To be precise, it was the *perception* of unchecked and arbitrary military domination—not a large number of arrests or a tight-knit repressive regime—that worked to discredit German rule. In the decisive first half of the war, the use of protective custody seriously undermined legal security in Alsace-Lorraine not only because of the lack of legal constraints but also because of the lack of central coordination in the military apparatus. Moreover, in the absence of reliable information on the war and its conduct, many people began to rely on rumour and word-of-mouth. In this manner, a significant but nevertheless comparatively small number of arbitrary arrests and expulsions sufficed to create an all-pervading atmosphere of national suspicion and distrust. Protective custody gradually worked to erode the credibility of the military administration and, given the military authorities' obsessive fear of national betrayal, it also worked to erode the legitimacy of German rule as such.

The case of Alsace-Lorraine in the First World War thus reveals the multiple limitations of early twentieth-century German imperialist nationalism.<sup>81</sup> As this article has demonstrated, the German parliament and local civilian actors were able to put limits on the escalation of state-led violence against the civilian population in the final phase of the war. From the spring of 1917, the number of arrests and expulsions decreased markedly, and a significant number of people were granted permission to return to their homes. Yet these attempts to moderate wartime policies did not restore the credibility and legitimacy of German rule in Alsace-Lorraine, as they left the authoritarian nationalist doctrine unchanged. Aggravated by the failure of the German government to improve the material lot of the population and the continuing efforts of Germanization in other areas, the more lenient administrative approach had a disintegrative rather than a stabilizing effect. It was less, not more, repression that would fuel mass disaffection with German rule towards the end of the war.

More generally, the case of Alsace-Lorraine demonstrates that in sensitive areas such as borderlands, protective custody and other emergency measures can cause widespread national disaffection, undermine the state's legitimacy and, depending on the circumstances, threaten its territorial control of the area. Policymakers in conflict-ridden regions such as Catalonia, Kashmir or Hong Kong, to name but a few, are well-advised to weigh very carefully the political risks of abolishing civil liberties and the rule of law in the attempt to keep recalcitrant populations under control. As in Alsace-Lorraine, in these regions the populations are characterized by multilayered identities that their national governments tend to perceive as a challenge to national unity. And as in Alsace-Lorraine, in these regions attempts to enforce national unity by declaring a state of emergency or martial law may have the adverse effect of mass disaffection with the larger nation. In a wider historical perspective, the case of twentieth-century Germany suggests that what may be needed in such cases is a more fundamental change in authoritarian nationalist doctrine rather than either the intensification of emergency measures or half-hearted reform efforts.

<sup>81</sup> On the strong historical connections between nationalism and imperialism see recently P. Kolstø, 'Is Imperialist Nationalism an Oxymoron?', *Nations and Nationalism*, 25, 1 (2019), pp. 18–44.

## Abstract

When the First World War broke out, the French government declared the return of Alsace-Lorraine its only public war aim, arguing that the population was 'French in spirit'. In an age rife with claims of national self-determination, trapped in a protracted war of attrition and facing a nationally ambivalent population, the German state soon came under enormous pressure to ensure the loyalty and patriotism of the inhabitants of its western borderland. This article examines why Imperial Germany failed to meet this 'stress test'. It focuses on the crucial but hitherto neglected issue of protective custody (*Schutzhaft*), whereby police and military authorities were able to arrest and detain 'suspect' civilians without charge or trial. The article finds that protective custody, an emergency measure under martial law, played a central role in the failure of German policy in Alsace-Lorraine: it undermined the rule of law, shifted the focus onto national dissent and gave rise to an atmosphere of suspicion and fear. The article also demonstrates that the Reichstag successfully put limits on protective custody in the second half of the war. Yet leaving the authoritarian doctrine of enforcing national loyalty in place, the more lenient administrative approach had a disintegrative rather than a stabilizing effect, preparing the ground for widespread disaffection with German rule months before the war ended.

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