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Law, Foreign Policy, and the Question of Anti-Republicanism: Journalistic Treason Trials in Weimar Germany

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Abstract

After the First World War, the Versailles Peace Treaty obliged the German Reich to far-reaching military disarmament. Pacifist journalists who reported in the 1920s and early 1930s on illegal rearmament measures by the Reichswehr were threatened with legal action by the Reichsgericht, Germany's supreme court, on charges of journalistic treason. Contemporary opponents of the proceedings, as well as modern research, accused the Reichsgericht of siding with the Reichswehr against the republican governments in its ruling in favor of the Reichswehr's illegal rearmament. However, the rulings of the Reichsgericht were not solely based on legal provisions; they also invoked the official guidelines of German foreign policy. The article demonstrates that the Foreign Office exerted far greater influence than the Reichswehr Ministry for most of the period. It thereby highlights the tension between law and politics in political criminal trials and nuances the so-called "crisis of confidence" in the Weimar judiciary.

Keywords: political trials; Weimar Republic; journalistic treason; pacifism; Reichswehr

Introduction

On November 24, 1931, the *New York Evening Post* reported on the convictions of the German pacifists Carl von Ossietzky and Walter Kreiser in the Weltbühne trial before Germany's supreme court, the Reichsgericht. The article highlighted two "extraordinary features" of the judgment. First, this judgment was the harshest sentence imposed on a non-Communist editor, exemplifying the court's severity toward critics of rearmament. Second, "the government itself, or at least the Foreign Office, could hardly approve" this ruling, as it publicly drew attention to conditions that might otherwise have faded from view.¹

The 1929 proceedings against Ossietzky and Kreiser, which were widely criticized in Germany and abroad, stemmed from Kreiser's March Weltbühne article, "Windy Conditions in German Aviation" ("Windiges in der deutschen Luftfahrt").² In this article, Kreiser accused the Reichswehr of illegally developing an air force and collaborating with the Red Army, thus violating the Treaty of Versailles. The prosecutors indicted Kreiser as

¹ H. R. Knickerbocker, "Reich Seen Hurt by Treason Terms," *New York Evening Post*, November 24, 1931.

² Heinz Jäger, "Windiges in der deutschen Luftfahrt," *Die Weltbühne* 25, no. 1 (1929): 402–7.

the responsible journalist and held Ossietzky, as editor, equally accountable. In 1931, the Reichsgericht sentenced both men to eighteen months in prison.³

The judgment against Ossietzky, who would later receive the Nobel Peace Prize, soon became the primary point of reference in research on the journalistic treason trials of the Weimar Republic.⁴ Many scholars have treated this case as the only one in detail and retrospectively evaluated earlier proceedings in an anachronistic manner.⁵ Since the 1980s, Ossietzky has been considered a figurehead of the peace movement. As such, his case is often framed as a warning against the threat posed by an over-powerful state to both freedom of expression and the press. The trial has also been central in studies of the Weltbühne's political milieu, as well as in numerous biographies of Ossietzky, focusing on his role as a resistance fighter.⁶ As a result, the trial occupies a unique position in historical memory.

Scholarly engagement with journalistic treason, encompassing both the Weltbühne trial and related proceedings, reached its main phase during the 1980s and 1990s. It developed not only in dialogue with the German peace movement. It also emerged alongside strands of left-wing legal criticism shaped by the West German democratization and protest movements after 1968.⁷ These contexts shaped interpretations that were often normatively inflected and teleological in orientation. At the same time, questions of institutional variation and shifting policy dynamics received less attention.⁸ Subsequent publications have often reiterated the findings established during that time.⁹

Within this interpretive framework, the journalistic treason proceedings against pacifist critics of illegal rearmament have frequently been cited as evidence of political bias within the Weimar judiciary and interpreted as reflecting a broader rejection of the republican system. Relatedly, it has been suggested that the judges of the Reichsgericht had ideological ties to the Reichswehr, the so-called "state within the state." At the same time, this focus has left other institutional actors less visible. This imbalance is particularly evident in the limited attention paid to the role of the Auswärtige Amt (Foreign Office) in journalistic

³ Reichsgericht (RG), Judgment November 23, 1931 7J35/29.

⁴ Due to Ossietzky's later role as a resistance fighter against the National Socialists and his daughter Rosalinde Ossietzky-Palm's failed motion for reconsideration in the early 1990s, the Weltbühne trial is the best-known trial for journalistic treason, even among the general public. See Kammergericht (KG), Judgment July 7, 1991 1 AR 356/90 and Bundesgerichtshof (BGH), Judgment December 3, 1992 StB 6/92.

⁵ See, among others, Heinrich August Winkler, *Weimar 1918–1933: Die Geschichte der ersten deutschen Demokratie* (Munich: C. H. Beck, 1998), 434; Ursula Büttner, *Weimar: Die überforderte Republik 1918–1933. Leistung und Versagen in Staat, Gesellschaft, Wirtschaft und Kultur* (Stuttgart: Klett-Cotta, 2008), 303.

⁶ See Istvan Deak, *Weimar Germany's Left-Wing Intellectuals. A Political History of the Weltbühne and Its Circle* (Berkeley: University of California Press, 1968), 189–98; Bernhard Fulda, *Press and Politics in the Weimar Republic* (Oxford: Oxford University Press, 2009), 189; Elke Suhr, *Carl von Ossietzky: eine Biographie* (Cologne: Kiepenheuer & Witsch, 1988); Kurt Richard Grossmann and Dieter Hildebrandt, *Ossietzky, ein deutscher Patriot* (Frankfurt/Main: Suhrkamp, 1973).

⁷ These jurists, such as Heinrich Hannover and Ingo Müller, were also actively involved in the motion for the reopening of the Weltbühne trial filed by Ossietzky's daughter in the early 1990s.

⁸ See, among others, Elke Suhr, "Zu den Hintergründen des Weltbühne-Prozesses," in *Allein mit dem Wort. Erich Mühsam, Carl von Ossietzky, Kurt Tucholsky. Schriftstellerprozesse in der Weimarer Republik*, Schriften der Erich-Mühsam-Gesellschaft (Lübeck: Erich-Mühsam-Gesellschaft, 1997), 54–69; Ingo Müller, "Der berühmte Fall Ossietzky vom Jahr 1930 könnte sich jederzeit wiederholen," in *Recht Justiz Kritik. Festschrift für Richard Schmid*, ed. Hans-Ernst Böttcher (Baden-Baden: Nomos, 1985), 297–326; Eckart Rottka, "Der Weltbühne-Prozess 1931," in *Über den Zeitgeist. Deutschland in den Jahren 1918–1995*, vol. 2, ed. Wolfgang de Boor and Dieter Meurer (Marburg: Metropolis Verlag, 1995), 131–43.

⁹ Helmut Kramer and Wolfram Wette, "Pazifisten im Visier der Justiz. Ein bedrückendes Kapitel der deutschen Geschichte des 20. Jahrhunderts," in *Recht ist, was den Waffen nützt: Justiz und Pazifismus im 20. Jahrhundert*, ed. Helmut Kramer and Wolfram Wette (Berlin: Aufbau-Verlag, 2004), 28–29; Wolfram Wette, *Militarismus in Deutschland. Geschichte einer kriegerischen Kultur* (Frankfurt/Main: Fischer Taschenbuch Verlag, 2010), 157–59; Manfred Messerschmidt, *Militarismus—Vernichtungskrieg—Geschichtspolitik. Zur deutschen Militär- und Rechtsgeschichte* (Paderborn: Ferdinand Schöningh, 2006), 75–95.

treason proceedings. Alongside the Reichswehrministerium (Ministry of Defense), it issued expert opinions and dispatched representatives to the Leipzig hearings at the request of the Reich Prosecutor's Office. In doing so, the Auswärtige Amt's involvement reflected broader foreign policy priorities, including efforts to maintain Germany's diplomatic and media reputation. In contrast, the literature has focused primarily on the Reichswehr and its ministry, emphasizing their dual role as initiators of proceedings and expert authorities.¹⁰

Nevertheless, the role of the Auswärtige Amt is crucial not only for understanding the individual trials. It is also essential for situating them within two broader historiographical contexts. First, understanding the role of the Auswärtige Amt highlights the contradictory mechanisms that contributed to the broader "crisis of confidence" in the Weimar judiciary. This "crisis of confidence" involved a widespread loss of public trust in judicial practice.¹¹ Second, this understanding highlights negotiations between the judiciary and executive powers over the legacy of German public law, particularly in matters of external security. This type of negotiation reflects the fact that journalistic treason, as a political crime, lay at the intersection of law and politics.

Within this broader "crisis of confidence" in the Weimar judiciary, the relationship between the Reichsgericht and the Auswärtige Amt became especially significant. Large parts of the population that supported the new republican order distrusted the conservative judicial apparatus, whereas the Auswärtige Amt under Gustav Stresemann was widely perceived as a counterweight committed to reconciliation. The Auswärtige Amt's involvement in trials for journalistic treason is a key indicator of the Reichsgericht's attitudes toward republican cabinets.

These trials also reflected the challenges to judicial practice posed by the political transformation of 1919, particularly in the absence of legal reform during the Weimar Republic. In this respect, the rulings raised constitutional questions that extended beyond the individual cases. These questions were tied to the distinction between protecting the state and protecting the republic. They also related to the dual understanding of the state in state theory and to the separation between external and internal sovereignty.¹² In addition, they addressed the unity of the legal order in relation to criminal, international, and constitutional law. Above all, the rulings revolved around Article 118 of the Weimar Constitution on freedom of expression and the press. These seemingly abstract disputes were, in reality, of fundamental significance. They concerned how the German state would be legally defined after 1919 and the question of legal succession within the emerging republican order. They also addressed the extent of fundamental rights within the Weimar Republic.

This article examines the relationship between official German foreign policy and the jurisprudence of the Reichsgericht in the cases of journalistic treason against pacifist critics, who accused the Reichswehr of violating the Versailles Treaty through illegal

¹⁰ Heinrich Hannover and Elisabeth Hannover-Drück, *Politische Justiz 1918–1933* (Frankfurt/Main: Fischer-Bücherei, 1966), 182; Rüdiger Bergien, *Die bellizistische Republik: Wehrkonsens und "Wehrhaftmachung" in Deutschland 1918–1933* (Munich: Oldenbourg, 2012), 156; Malte Wilke, *Staatsanwälte als Anwälte des Staates? Die Strafverfolgungspraxis von Reichsanwaltschaft und Bundesanwaltschaft vom Kaiserreich bis in die frühe Bundesrepublik* (Göttingen: V&R Unipress, 2016), 89, fn. 340.

¹¹ See, among others, Daniel Siemens, "Die 'Vertrauenskrise' der Justiz in der Weimarer Republik," in *Die "Krise" der Weimarer Republik. Zur Kritik eines Deutungsmusters*, ed. Moritz Föllmer and Rüdiger Graf (Frankfurt/Main: Campus Verlag, 2005), 211–35. With regard to the question addressed in this article see Claudia Schöningh, "Kontrolliert die Justiz": *Die Vertrauenskrise der Weimarer Justiz im Spiegel der Gerichtsreportagen von Weltbühne, Tagebuch und Vossischer Zeitung* (Munich: Fink, 2000).

¹² This distinction becomes evident, among others, in Rüdiger Graf, "Transitional Injustice at Leipzig: Negotiating Sovereignty and International Humanitarian Law in Germany after the First World War," *Central European History* 55, no. 1 (2022): 34–52.

rearmament.¹³ The article traces how shifting foreign policy guidelines shaped both the Reichsgericht's rulings and the actions of the Reich Prosecutor's Office. Such dynamics become visible in the court's reasoning in four key trials that exemplify distinct legal and political constellations: the trials against the journalists Felix Fechenbach (1922), Walter Oehme (1923), Friedrich Küster and Berthold Jacob (1928), and Ossietzky and Kreiser (1931).¹⁴

These cases were selected to illustrate the relationship between government foreign policy and judicial practice in proceedings for journalistic treason. The Fechenbach trial marked the very first case of journalistic treason in the Weimar Republic and was heard before a Volksgericht (a Bavarian special court). The Reichsgericht's selected trials carried particular significance, as the defendants were explicitly identified as pacifists and supporters of the republican system. In contrast, all the other proceedings before the Reichsgericht involved journalists with overt or indirect ties to the communist movement. This is evidenced, for example, by their publication in *Die Rote Fahne*. Consequently, such proceedings offer only limited insight into the Reichsgericht's attitude toward the republican state system.

To provide a more comprehensive understanding of the proceedings against pacifists, this study draws not only on court records but also on internal correspondence among the Reich Prosecutor's Office, the Reich Ministry of Justice, and the Auswärtige Amt, as well as records of the Reichswehrministerium.¹⁵

The article uses the four trials as a prism through which to examine the Reichsgericht's jurisprudence in matters of journalistic treason. In particular, this work explores whether this jurisprudence, where foreign policy concerns intersected with questions of the legitimacy of the republican state order, can truly be described as consistently anti-republican. More broadly, the analysis situates these proceedings within the wider debate over whether Weimar jurisprudence exhibited political bias due to its opposition to the republican state system. Much of the existing research has unequivocally suggested that the Weimar jurisprudence did exhibit such political bias. This prevailing interpretation is supported by the asymmetrical judgments against left- and right-wing offenders, the failure to prosecute crimes against the republican form of government, and numerous political scandal trials marked by deliberate miscarriages of justice. According to this view, the Weimar judiciary was anti-republican and bore significant responsibility for the downfall of the republic.¹⁶

¹³ This article builds on one aspect of my dissertation on journalistic treason in the Weimar Republic but develops the argument beyond its original scope. The dissertation examines, more broadly, the extent to which the Reichsgericht can be accused of anti-republican jurisdiction. See Amelie Tscheu, *Publizistischer Landesverrat in der Weimarer Republik: Die Reichsgerichtsurteile gegen pazifistische Kritiker der illegalen Rüstung* (Tübingen: Mohr Siebeck, 2024).

¹⁴ RG, Judgment August 28, 1923 7J69/23; RG, Judgment March 14, 1928 7J63/25; Entscheidungen des Reichsgerichts in Strafsachen (RGSt) 62,65; RG, Judgment November 23, 1931-7J35/29. All judgments on journalistic treason can be viewed in a collective form in the library of the Bundesgerichtshof (BGH): *Urteile des Reichsgerichts wegen publizistischen Landesverrats 1923–1931*, ed. Mathias Hanten (F 8773/400).

¹⁵ All sources are written in German, and all translations are mine. In addition to the reasons for the judgments, the following archive files from the Bundesarchiv were consulted: "Landes-, Hochverrat und Verrat militärischer Geheimnisse volume 11," August 1924–October 1926, Bundesarchiv (hereafter BArch) Berlin R 3001/6141; "Bestimmungen und Gesetze Reichstagsverhandlungen 1928 zur Strafrechtsreform (Landesverrat) Prozess gegen Salomon/Küster (Das andere Deutschland)," 1926–1929, BArch, Freiburg, RW 6/57 and the *Akten zur Deutschen Auswärtigen Politik (ADAP) 1918–1945. Aus dem Archiv des Auswärtigen Amtes* (75 vols.) (Baden-Baden: Imprimerie Nationale, 1950–95).

¹⁶ In their work, Heinrich Hannover and Elisabeth Hannover-Drück, Karl Dietrich Bracher, and Udo Reifner emphasized the central importance of the judiciary in the transition to Nazi rule, while Gotthard Jasper only attributed decisive complicity in the downfall of the Weimar Republic to the judiciary due to its anti-republican stance. See Hannover and Hannover-Drück, *Justiz*; Karl Dietrich Bracher, "Einleitung," in *Politische Justiz 1918–1933*,

While this interpretation may be quantitatively plausible, it remains necessary to examine the courts' reasoning in individual judgments in detail. Such an approach helps identify exceptions to any blanket characterization. An analysis grounded in legal sources shows that previous studies have read these trials selectively. Passages that support the thesis of an anti-republican judiciary have been emphasized, whereas contradictory reasoning has been overlooked, especially in relation to foreign policy.¹⁷

This article begins by outlining the concept of journalistic treason and analyzes the 1922 proceedings against Felix Fechenbach before the Munich People's Court. It then examines the Reichsgericht cases of Walter Oehme (1923), Friedrich Küster and Berthold Jacob (1928), and Carl von Ossietzky and Walter Kreiser (1931).

Ultimately, the article concludes that the official and unofficial influence of the *Auswärtige Amt* was a pivotal factor in the Reichsgericht's decision-making throughout these proceedings. Moreover, it is demonstrated that the *Auswärtige Amt*'s capacity to influence the outcomes of the trials only declined at the end of the republic as the political composition of successive cabinets changed. The close alignment of the Reichsgericht's jurisprudence with the official policies of these governments shows that the Weimar judiciary cannot be regarded as uniformly anti-republican. Instead, this alignment reveals the situational interplay between law and politics in a fragile constitutional order.

Journalistic Treason as a Political Crime

With the ratification of the Versailles Peace Treaty, the new republican government reluctantly accepted the peace provisions laid down by the Allies after the German defeat in the First World War and the end of the monarchy.¹⁸ These provisions included numerous military demands aimed at the comprehensive disarmament of the German Reichswehr, such as the limitation of the German land forces to 100,000 men (Art. 160) and the prohibition of both air forces (Art. 198) and paramilitary organizations (Art. 177). However, the Reichswehr perceived that Germany's ability to defend itself was under threat and, thus, tried early on to circumvent the Allies' individual disarmament demands through illegal rearmament measures. The leadership of the Reichswehr acted both with and without the awareness of the various Weimar government cabinets.¹⁹ The German government's support for the individual rearmament measures, while not officially endorsed, also increased significantly during the 1920s and the early 1930s.²⁰

Concurrently, a cross-party "defense consensus" emerged within German society due to the absence of disarmament among the other European states, as stipulated in the Treaty of Versailles.²¹ In the 1928 Ponton trial, SPD defense attorney Paul Levi emphasized that no one in the party's parliamentary group seriously opposed illegal rearmament. In his view,

ed. Heinrich Hannover and Elisabeth Hannover-Drück (Frankfurt/Main: Fischer Bücherei, 1966), 9–13; Udo Reifner, "Rechtspolitik als Gesellschaftspolitik. Die Verantwortung der Juristen für die Krise der Weimarer Republik," *Zeitschrift für Rechtspolitik* 16 (1983): 97–104; Gotthard Jasper, "Justiz und Politik in der Weimarer Republik," *Vierteljahrshefte für Zeitgeschichte* 30, no. 2 (1982): 167–205, 167.

¹⁷ In previous research, these proceedings were often linked to the *Feme* murders committed by the Organisation Consul. See, among others, Jasper, "Justiz und Politik," 183, 197 and Schöningh, "Kontrolliert die Justiz," 139.

¹⁸ *Der Friedensvertrag von Versailles. Unter Hervorhebung der abgeänderten Teile* (Berlin: Hobbing, 1919).

¹⁹ For a clear overview of German arms policy, see Michael Geyer, *Deutsche Rüstungspolitik 1860–1980* (Frankfurt/Main: Suhrkamp, 1984). The military agreements between the Reichswehr and the Reich government are documented in the *Akten der Reichskanzlei. Weimarer Republik*, ed. Historischen Kommission bei der Bayerischen Akademie der Wissenschaften (Boppard/Rhein: Boldt, de Gruyter, 1970–1989).

²⁰ For a more thorough examination of the mounting endorsement of illicit armament measures by the shifting government cabinets, see Bergien, *Republik*.

²¹ Bergien, *Republik*.

by limiting itself to passive criticism, the SPD had rendered even republican deputies guilty of “treason” by omission.²²

Journalists who exposed illegal rearmament could be prosecuted under two imperial-era provisions that remained in force after 1919: the general treason clause (Section 92 of the Criminal Code, RStGB) and the Espionage Act of 1914 (Spionagegesetz 1914, SpioG). While Section 92 tied disclosure to harm to the “good of the Reich,” the Espionage Act more broadly criminalized the betrayal of military secrets. In practice, this confrontation between international and national law (i.e., the Versailles Peace Treaty and criminal law) was adjudicated by the Reichsgericht in Leipzig.²³ Contrary to the prevalent scholarly perspective, the high number of trials does not necessarily indicate the anti-republican nature of the Weimar judiciary.²⁴ Mathias Hanten’s detailed analysis of the extant sources revealed that the Reichsgericht convicted journalists as journalistic traitors in only eleven cases.²⁵ The allegedly high number of such cases has drawn considerable criticism. However, this criticism overlooks the fact that, as for murder or manslaughter, treason was an *Offizialdelikt* (i.e., an offense subject to ex officio prosecution). The Reich Prosecutor’s Office was required to initiate preliminary investigations upon receiving a complaint. This was the case regardless of its evaluation of the allegation’s credibility.²⁶

Oberreichsanwalt (Reich prosecutor) Ludwig Ebermayer criticized the contemporary discourse, noting that treason prosecutions were exploited as “downright disgusting propaganda” to give the impression that “hundreds of noble people” were sent to the “Zuchthaus” (i.e., a prison with harsh conditions). He highlighted that references to “more than 600 convictions in one year,” allegedly supported by Reich crime statistics, were misleading. These statistics did not distinguish between the various forms of treason enumerated under Section 92 RStGB and “military espionage, etc.” While “600 cases were pending” because every complaint triggered proceedings, Ebermayer stressed that there were only “four convictions in the year in question.”²⁷ Ebermayer also criticized the “epidemic” practice of the Reichstag routinely granting amnesty to political criminals. From Parliament’s perspective, these measures were intended to correct unjust rulings retroactively amid the judiciary’s “crisis of confidence.” In practice, the amnesties closed pending proceedings and reduced sentences, resulting in the early release of convicted journalists who never served their full terms.²⁸ However, the eleven sentences issued by the

²² “Bericht über die Hauptverhandlung gegen Salomon und Küster,” March 1928, BArch, Freiburg RW 6/57, item 269.

²³ RGBl. 1914, 195. For information on the development of treason laws, see Klaus Ulrich Kersten, “Die Entwicklung der allgemeinen Strafbestimmungen gegen den Landesverrat in Deutschland vom Preußischen Strafgesetzbuch von 1851 bis zur Gegenwart” (PhD diss., University of Cologne, 1975).

²⁴ According to Emil Gumbel’s contemporary count, see Emil Julius Gumbel, “Landesverratsstatistik,” *Die Justiz* 3, no. 4 (1927): 386–95. Gumbel’s count was adopted by Hannover and Hannover-Drück, *Justiz*, 198–202 and Theo Rasehorn, *Justizkritik in der Weimarer Republik: Das Beispiel der Zeitschrift “Die Justiz”* (Frankfurt/Main: Campus, 1985), 159.

²⁵ See Hanten, *Landesverrat*, 57–60.

²⁶ Regarding offenses prosecutable ex officio, it becomes clear that neglecting legal contexts can lead to historically inaccurate assessments, because the high number of preliminary investigations cannot simply be taken as evidence of political bias by the Reich Prosecutor’s Office. See Schöningh, “Kontrolliert die Justiz,” 140.

²⁷ Ludwig Ebermayer, *Fünfzig Jahre Dienst am Recht. Erinnerungen eines Juristen* (Leipzig and Zurich: Grethlein & Co., 1930), 143–44. Hanten’s analysis of the statistics shows that in none of those years were there actually as many as four convictions for journalistic treason. Therefore, Ebermayer seems to be referring to convictions for general treason including journalistic treason.

²⁸ During the Weimar years, the Reichstag passed five amnesties for political crimes alone. Towards the end of the Republic, even declared arch-enemies such as the KPD and NSDAP cooperated to pass further amnesties as a kind of political “prisoner exchange.” See Christoph Gusy, *Weimar — die wehrlose Republik? Verfassungsschutzrecht und Verfassungsschutz in der Weimarer Republik* (Tübingen: Mohr, 1991), 239.

Reichsgericht were not directed exclusively at publicists with a pacifist background; the majority concerned journalists with communist affiliations.

Although numerous proceedings were launched against republican journalists who reported on illegal arms, none of them resulted in trials before the Reichsgericht. Instead, most cases were discontinued at an early stage, often at the request of the Auswärtige Amt. According to internal records from the Auswärtige Amt and the Reichswehrministerium, this occurred because pacifist critics of rearmament were considered a distinct journalistic group.²⁹ Their reporting was deemed substandard, as most accounts were partially inaccurate, exaggerated, or even fabricated, and by contemporary standards, this reporting did not meet the requirements for investigative journalism.³⁰

Legally, a key issue concerned Section 92 RStGB, which was carried over from the German empire. Specifically, Section 92 RStGB targeted “general” treason in peacetime and contained no specific provision for journalistic treason. However, Section 92 listed the publication of previously unknown “news” meant to be kept secret from “other governments” for the “good of the Reich” as a possible offense. The potential sanctions under Section 92 RStGB and the SpioG 1914 ranged from fifteen years in a Zuchthaus to as little as six months of Festungshaft (i.e., imprisonment in a fortress). Festungshaft, considered the mildest option, was often perceived by political offenders as an “honorary sentence.” A comparative analysis of Reichsgericht rulings on treason during the Weimar Republic showed that sentences for journalistic treason were markedly more lenient than for other treasonable offenses. On average, journalists received eighteen months of Festungshaft, and no cases resulted in confinement in a Zuchthaus, largely because mitigating circumstances were regularly applied.³¹ Additionally, journalists were permitted to continue publishing while they were imprisoned. Berthold Jacob, convicted in the Ponton trial in 1928, even signed a publishing contract for reports while incarcerated.³² Friedrich Küster, convicted in the same trial, was granted a suspension of imprisonment by the Reichsgericht to arrange his representation as chief editor of *Das Andere Deutschland*.³³ In this sense, the few convictions for journalistic treason offenses generally had no lasting deterrent effect. As such, Jacob, among others, emphasized before his conviction that he and his supporters were “unconcerned” about possible proceedings.³⁴ Furthermore, pacifist authors openly mocked the arguments put forward by the Reich Prosecutor’s Office in the proceedings without fear of reprisal.³⁵

Legally, the prosecution of journalists can be regarded as a form of “post-censorship.”³⁶ The convictions also involved confiscating all newspaper issues containing the articles, as required by Section 41 RStGB. However, since most newspapers were distributed by subscription and rulings often came years after publication, this measure had little practical effect.³⁷

²⁹ Der Reichsminister des Auswärtigen Stresemann an Georg Foerster, November 2, 1927, in: ADAP, Serie B, vol. 7, document 64, 150–51; “Bericht über die Hauptverhandlung gegen Salomon und Küster,” March 1928, BArch, Freiburg RW 6/57, item 271.

³⁰ See in particular the proceedings against Küster/Jacob in this article.

³¹ See Hanten, *Landesverrat*, 158.

³² “An die Reichsanwaltschaft Leipzig,” June 5, 1928, BArch, Berlin R 3003/4747, item 1336.

³³ “Der Polizeipräsident. An den Herrn Oberreichsanwalt,” April 5, 1928, BArch, Berlin R 3003/4747, item 1286; “Deutsche Liga für Menschenrechte. An den Herrn Oberreichsanwalt,” April 11, 1928, item 1296. However, due to a political amnesty, Küster and Jacob never had to serve their prison sentence.

³⁴ Berthold Jacob, “Das Zeitfreiwilligengrab in der Weser,” *Das Andere Deutschland*, April 11, 1925.

³⁵ Paul von Schoenaich, “Versuchter oder vollendeter Unsinn,” *Das Andere Deutschland*, March 26, 1927.

³⁶ Klaus Petersen, *Zensur in der Weimarer Republik* (Stuttgart: J. B. Metzler, 1995), 75.

³⁷ Among the array of pacifist newspapers that were expelled during the Weimar Republic, only the *Menschheit* and the *Pazifist* experienced a brief prohibition in 1923 and 1924, respectively. This initiative was undertaken at the behest of regional military district commands, which had been granted temporary authorization to interfere with

There was a key question at the center of all the proceedings. It concerned whether the accused journalists, based on their pacifist convictions, at least believed that their publications were acting for, and not against, the “good of the German Reich” (Section 92 RStGB).³⁸ The defendants repeatedly emphasized that their publications were committed to supporting the Auswärtige Amt’s policy of reconciliation. They also argued that the articles were intended to strengthen the Auswärtige Amt’s position with regard to the militaristic policies of the Reichswehr. However, depending on their respective political affiliations, there were considerable differences in the opinions of individual interest groups and institutions regarding the concrete interpretation of the term “good.” Indeed, the term was not defined in Section 92 RStGB or elsewhere in the Reich’s Criminal Code. In a groundbreaking ruling in this context, during the German empire in 1884, the Reichsgericht determined that the “good of the Reich” could only be defined in “factual” terms. The court reasoned that there was no generally valid definition in legal terms.³⁹

Accordingly, the “good of the Reich” was understood exclusively in relation to foreign policy and was defined by the respective government based on the prevailing political situation. Among its reasons for the ruling, the Reichsgericht stated that the situational assessment of the “good of the Reich” was the responsibility not of the Reichswehrministerium but of the representatives of the Auswärtige Amt, due to the latter’s foreign policy dimension.⁴⁰ According to the Reichsgericht, the Reichswehrministerium only had to make an assessment regarding whether the events described in the articles were “true” or “untrue.”⁴¹

The provisions for journalistic treason were interpreted in line with the widely accepted dualistic conception of the state in state theory and legal practice. According to this view, the provisions served to protect only the German state’s external sovereignty, not its internal sovereignty as in cases of high treason. This understanding drew on Georg Jellinek’s “Two-Sided Doctrine” (distinct from the well-known “Three-Element Doctrine”), which distinguished between the states “social appearance” and its “legal system.”⁴² In this context, the judiciary, which was entrusted with these proceedings, was thought to safeguard the German state in its “external sovereignty” rather than in its “normative framework.”⁴³ According to Christoph Gusy, the distinction between the state and the law did not necessarily mean that the state and the form of government also had to differ in terms of content. Nevertheless, “a situation could arise in which, from the perspective of the ‘state,’ a behavior was unlawful and undesirable, but from the perspective of the form of government, it was lawful, if not desirable.”⁴⁴

press freedom by Reichspräsident Ebert’s emergency decree of September 26, 1923 (RGBl. 1923 I 905). Petersen, *Zensur*, 148.

³⁸ According to a legal concept that was introduced in 1923, political “offenders by conviction” should automatically be granted mitigating circumstances. § 52 Reichsratsgrundsätze (RGBl. 1923 II 263). The then Reich Minister of Justice, Gustav Radbruch, also held this view: see Gustav Radbruch, “Der Überzeugungsverbrecher,” *Zeitschrift für die gesamte Strafrechtswissenschaft* 44 (1924): 36–37. Radbruch articulated that a criminal acting in accordance with their convictions is “neither in need of reform nor deserving of retribution,” and that the state should not “self-righteously impose measures of reform and retribution” on such a person.

³⁹ RG, Judgment March 12/19 1884; RGSt 10, 420.

⁴⁰ See Christoph Gusy, “Der Schutz des Staates gegen seine Staatsform: die Landesverratsrechtsprechung in der Weimarer Republik,” *Goltdammer’s Archiv für Strafrecht*, 1992, 195–213, 199.

⁴¹ RG, Judgment March 14, 1928 7J63/25, 12.

⁴² Georg Jellinek, *Allgemeine Staatslehre*, 2nd ed. (Berlin: O. Häring, 1905), 11.

⁴³ Hellmuth von Weber, “Das Verbrechen gegen den Staat in der Rechtsprechung des Reichsgerichts,” in *Die Reichsgerichtspraxis im deutschen Rechtsleben*, vol. 5: *Strafrecht und Strafprozess*, ed. Otto Schreiber (Berlin: de Gruyter, 1929), 173–200, 197.

⁴⁴ Gusy, “Der Schutz des Staates,” 208.

While the opinions of the ministries were not legally binding for the judges of the Reichsgericht, extant sources indicate that both ministries, as well as the Reichsgericht, generally concurred in their assessments of the political situation.⁴⁵ Experts appointed by the ministries played a central role both during investigations and in court. The importance of these proceedings is underscored by internal records from the Auswärtige Amt and the Reichswehrministerium, which show that they were discussed at the highest level, reaching even the acting Reich ministers. The extent to which the apparently close friendship between Foreign Minister Stresemann and Ebermayer, the Oberreichsanwalt until the end of 1926, directly influenced the proceedings is unknown.⁴⁶ However, sources suggest that Ebermayer's position was always closely aligned with the government's official foreign policy considerations.⁴⁷ In practice, following a formal request from the Reichsgericht, the Auswärtige Amt delegated responsibility to individual officials. Their expertise in diplomacy and law directly influenced the court's assessment. Concurrently, the Auswärtige Amt's internal records make it clear that the assessments of these experts were closely aligned with the government's broader foreign policy guidelines, thus ensuring consistency between judicial proceedings and official policy.⁴⁸

The Fechenbach Trial in 1922 and the Policy of Fulfillment

The so-called Fechenbach trial in 1922 was the initial judicial proceeding in which Section 92 RStGB was explicitly invoked in relation to the dissemination of "news" pertaining to violations of the Treaty of Versailles. This trial took place before the Munich People's Court, which was established in Bavaria during the 1919 revolution as a special court for the expeditious sentencing of putschists. However, the Bavarian government retained this court even after the revolutionary years, much to the displeasure of the German Reich government.⁴⁹ In the period following the dissolution of the German empire, treason proceedings remained under the jurisdiction of the Reichsgericht. However, the Emminger Reform of 1924 shifted minor cases to higher regional courts in an effort to ease the high caseload caused by a surge of political prosecutions. Nevertheless, proceedings of national importance continued in Leipzig.

The proceedings in Munich were directed against the political journalist Felix Fechenbach, who had previously served as the personal secretary of the USPD politician and first Minister President of the Free State of Bavaria, Kurt Eisner. In the so-called "Gargas complex," Fechenbach was accused of leaking information about the existence of paramilitary organizations to the foreign press and the Berlin branch of the *Transatlantic News Transmission Agency*. The agency's headquarters were in London, and the journalist Sigismund Gargas was the head of its German branch. In the opinion of the presiding judge Hass, the publication of the information had harmed the "good of the German Reich." As such, in October 1922, the Munich People's Court found Fechenbach guilty and sentenced him to five years in prison in the "Gargas complex."⁵⁰ Another factor that influenced the

⁴⁵ One exception was the *Weltbühne* trial of 1931, which is discussed in more detail below.

⁴⁶ Andreas Michael Staufer, *Ludwig Ebermayer: Leben und Werk des höchsten Anklägers der Weimarer Republik unter besonderer Berücksichtigung seiner Tätigkeit im Medizin- und Strafrecht* (Leipzig: Leipziger Universitätsverlag, 2010), 4.

⁴⁷ The individual sources are described in detail in the following chapters.

⁴⁸ The specific tasks assigned to the experts are emphasized in an internal report by the Reichswehrministerium: "Bericht über die Hauptverhandlung gegen Salomon und Küster," March 1928, BArch, Freiburg RW 6/57, item 271.

⁴⁹ Law on the introduction of people's courts in the event of civil unrest, Gesetz über die Einführung von Volksgerichten bei inneren Unruhen July 12, 1919 (GVBl, 1919 365–70).

⁵⁰ The more serious part of the trial concerned the so-called Payot complex, which involved the leaking of copies of two "documents" on German war guilt. See Max Hirschberg and Friedrich Thimme, *Der Fall Fechenbach vor dem Münchner Volksgericht. Eine Darstellung nach den Akten* (Berlin: Verlag für Sozialwissenschaft, 1922).

trial was Fechenbach and Eisner's earlier attempts to prove Germany's war guilt through the publication of numerous documents, which made them many enemies, especially in Bavaria.⁵¹

Following the dissemination of the ruling, the Munich People's Court faced significant criticism from legal professionals in relation to various deficiencies in the criminal procedure, as some of the crimes were already time-barred.⁵² However, the primary focus of the criticism was Bavaria's assertion that treason cases should be adjudicated within the jurisdiction of a Bavarian court rather than the Reichsgericht.⁵³ Furthermore, critics of the judgment stated that the presiding judge Hass showed political bias. His manner of conducting the trial implied that Fechenbach should be held accountable not only for the offenses he was accused of, but also for his close relationship with Eisner. Hass was also criticized for his statement at the beginning of the trial that he was "confident in his own expertise in every respect" to decide whether Fechenbach had endangered the "good of the German Reich" with his "news."⁵⁴

Hass' assessment of Fechenbach's crime even contradicted the testimony of the expert witness Friedrich Thimme, who was a historian and co-editor of the collection of official diplomatic documents of the Auswärtige Amt but was not a civil servant.⁵⁵ Unlike in the later proceedings before the Reichsgericht, the Munich People's Court did not follow any established guidelines in appointing Thimme as an expert witness. Hass had previously speculated, albeit erroneously, that Thimme's conservative political views would lead to a condemning assessment of Fechenbach's publications. With regard to the "Gargas complex," Thimme concluded that the news reported by Fechenbach had, in certain instances, even advanced the "good of the German Reich" by highlighting paramilitary organizations that were pursuing separatist objectives in Bavaria with the support of France. Despite the fact that Hass' judgment did not take Thimme's objections into account, Hass later announced that he had spoken entirely in line with the expert's opinion.

Following the increasing public criticism, the Munich public prosecutor's office upheld its position that it and Hass had acted within the bounds of the law. Additionally, the office referred to an expert opinion from Oberreichsanwalt Ebermayer, which was issued in the Kirchpfennig case, another legal proceeding. In his expert opinion of April 21, 1922, Ebermayer discussed applying Section 92 RStGB in this case, which centered on the "betrayal of secret arsenals" that had survived in violation of the Treaty of Versailles. In his reasoning, Hass partially reproduced a statement by Ebermayer, but he changed it at a crucial point. Specifically, Hass stated that the objective offense of treason through publication "always applies under all circumstances" when the press reports on violations of the provisions of the Treaty of Versailles relating to illegal rearmament measures. However, Oberreichsanwalt Ebermayer interpreted Section 92 RStGB more narrowly. For him, such publications alone did not constitute a criminal offense; instead, criminal liability only arose if the disclosure implied that the German authorities "favored or tolerated"

⁵¹ Pius Dirr, *Bayerische Dokumente zum Krieausbruch und zum Versailler Schuldsspruch*, ed. Pius Dirr (Munich: R. Oldenbourg, 1922).

⁵² See Max Hirschberg and Friedrich Thimme, *Der Fall Fechenbach. Juristische Gutachten* (J. C. B. Mohr: Tübingen 1924).

⁵³ Bavaria invoked the treaty concerning its accession to the constitution of the German Confederation, in conjunction with the final protocol of November 23, 1870 (RGBl. 1871 9–26).

⁵⁴ Quoted from Hirschberg's transcript in: Hirschberg and Thimme, *Fechenbach*, 8.

⁵⁵ See Johannes Lepsius, Albrecht Mendelssohn Bartholdy and Friedrich Thimme, *Die große Politik der europäischen Kabinette 1871–1914. Sammlung der Diplomatischen Akten des Auswärtigen Amtes. 40 Bände nebst Kommentar*, ed. Johannes Lepsius, Albrecht Mendelssohn Bartholdy, and Friedrich Thimme (Berlin: Deutsche Verlagsgesellschaft für Politik und Geschichte, 1922).

illegal rearmament measures in violation of the treaty.⁵⁶ He further insisted that “a message can only be considered secret if its disclosure poses a risk of serious foreign policy complications.” In this sense, the Reich’s interest was not in “the existence of prohibited arsenals” but in ensuring that they were not concealed from the Allied powers. According to Ebermayer, Germany’s genuine interest was “to fulfill the obligations imposed by the peace treaty as completely as possible and to acknowledge that complete fulfillment has not yet been achieved despite all efforts.”

This passage was followed by a list of the measures taken by the Weimar government, which according to Ebermayer, also proved that the “entrusted authorities had fulfilled their duty.” The “news” of the continued existence of individual arms depots represented “the disclosure of a fact objectively contrary to the peace treaty.” However, with regard to the aforementioned government measures, this fact could only be attributed to the incorrect behavior of individuals, not to the fact “that the Reich had culpably neglected to fulfill its obligation.” As a result of the peace treaty, “the possibility [could not] be [completely] ruled out” that the Allies “could use the fact that the government, despite all its efforts, [had] not succeeded in getting hold of all the weapons as a pretext to cause difficulties for the Reich.” However, Ebermayer emphasized that such an action by the Allies would be an “abuse” of their power and, thus, probably an insignificant “exception.” Ebermayer stated that “as a rule, the German government, if it can demonstrate that it has done its duty, will be able to calmly counter any claims by the Allied powers regarding the existence of prohibited weapons depots.”⁵⁷ Building on this statement, Ebermayer maintained that the foreign policy risks of publishing information on weapons depots were relatively minor. Ebermayer argued that the decision to prosecute such disclosures as “treason” was far more damaging, since this indicated the government’s interest in concealment.⁵⁸ In his report, Ebermayer concluded that non-compliance with individual rearmaments regulations by subordinate authorities was a temporary failed attempt to conscientiously fulfill all the provisions of the Treaty of Versailles. Ebermayer was convinced that the German government was striving to meet all of the demands of the Allies, which were difficult to implement at the time. Although becoming aware of the non-fulfillment of individual demands could theoretically jeopardize the “good of the German Reich,” Ebermayer trusted that the Allies would understand if the German government admitted to not complying with certain provisions. Ebermayer interpreted foreign policy in accordance with the German government’s official fulfillment policy at the beginning of the 1920s. As such, he concluded that the danger of journalistic treason lay “not in the notification of the existence of a prohibited arms depot, but in the notification that the German government was secretly violating its obligations under the peace treaty.”⁵⁹ However, this impression only arises in the criminal prosecution of pacifist journalists.

In retrospect, the Fechenbach trial not only exemplifies the political bias of the German judiciary but also the prominent role played by the right-wing Bavarian judiciary. This perception is confirmed by the final judgment of the Munich People’s Court in the trial of the Beer Hall Putsch, which was widely regarded as an unprecedented act of political bias.⁶⁰ Under pressure from the Reich government, the Bavarian state government ultimately pardoned Fechenbach but tied this to the simultaneous pardon of Adolf Hitler.

⁵⁶ Printed as a facsimile: Dieter Windisch, “Die Strafverfolgung von Kritikern der illegalen Rüstung in der Weimarer Republik” (PhD diss., University of Würzburg, 1969), 148–50.

⁵⁷ Windisch, *Die Strafverfolgung*, 149.

⁵⁸ Windisch, *Die Strafverfolgung*, 149.

⁵⁹ Windisch, *Die Strafverfolgung*, 149.

⁶⁰ See Harold J. Gordon Jr., *Hitler and the Beer Hall Putsch* (Princeton, NJ: Princeton University Press, 1972 [Princeton Legacy Library reprint, 2015]).

It should be emphasized that the Fechenbach case was the first case in which the treason clause was applied against journalists who had uncovered violations of the Treaty of Versailles. This interpretation was vehemently opposed by the Reich Prosecutor's Office during that period, which aligned with Germany's policy of fulfillment. However, this attitude changed decisively in the 1923 Oehme trial, which was the first to be heard by the Reichsgericht itself and marked by the occupation of the Ruhr region.

The Oehme Trial in 1923 and the End of Fulfillment Policy⁶¹

Despite Ebermayer's position in 1922, the journalist Walter Oehme was convicted just one year later in the inaugural journalistic treason trial before the Reichsgericht in Leipzig. The internal significance of the proceedings was highlighted by Ebermayer's personal presence in court as a representative of the Reich Prosecutor's Office and by the questioning of Otto Gessler, the Reichswehrminister at the time.⁶² Furthermore, the Auswärtige Amt sent Legation Councilor Hans Ludwig Moraht as an expert.⁶³

The accusation of journalistic treason was based on an article published by Oehme on January 27, 1923, in the *WiPoSID* (*Wirtschaftlich-Politisch-Spezial-Informationsdienst*), which was directed toward a fixed, partly international subscriber base.⁶⁴ The accusation also related to the forwarding of "news" to the *Transatlantic News Transmission Agency* in February 1923, to which Fechenbach had previously reported.⁶⁵ The reports by Oehme were issued during a period of significant political turbulence, precipitated by the occupation of the Ruhr region by France and Belgium on January 11, 1923. This occupation followed the demand by both states for the Ruhr region as a "productive pledge" in compensation for Germany's failure to adhere to the terms of its reparation obligations. Consequently, the fundamental premise of the fulfillment policy remained unvalidated. Non-compliance with the Versailles peace provisions, albeit with regard to German reparation payments and not German arms restrictions, resulted in punitive action by France and Belgium.⁶⁶

In his *WiPoSID* report of January 27, 1923, Oehme described "enormous national excitement," especially among "the still-marauding stormtroopers and Baltic Free Corps," and noted widespread reports of new recruitment. While the government sought to counter this "political danger with the utmost vigor," Oehme observed that "not all sub-organizations necessarily follow the government's instructions" and that "some Reichswehr commands seem to believe that they must prepare behind the government's back for measures against possible unrest." After surveying regional developments, Oehme concluded that "in national circles, a war is expected in the very near future," since these groups believed "the government will not be able to prevent it."⁶⁷ In his transatlantic reports the following month, Oehme described a secret meeting in the Reichswehrministerium with Chancellor

⁶¹ Parts of this section draw on an earlier research paper that addressed the origins of Reichsgericht jurisprudence in the early 1920s. However, the present article adopts a different analytical focus and expands the analysis through additional archival material and a broader foreign-policy perspective. Cf. Amelie Tscheu, "The Beginning of Reichsgericht Jurisprudence in Journalistic Treason Cases: Evidence of an Anti-Republican Weimar Judiciary?," *Max Planck Institute for Legal History and Legal Theory Research Paper Series* no. 2023-09 (2023): 1–18.

⁶² Kabinettssitzung August 18, 1923, 1. Erteilung der Genehmigung zur Vernehmung des Herrn Reichswehrministers Dr. Gessler als Zeuge, in Akten der Reichskanzlei (AdR), Die Kabinette Stresemann I/II, 1, vol. 30.

⁶³ Helge Dvorak, *Biographisches Lexikon der Deutschen Burschenschaft*, vol. I, *Politiker*, Teilband 4: M–Q (Heidelberg: Winter, 2000), 132–33.

⁶⁴ Walter Oehme, *WiPoSID*, January 27, 1923.

⁶⁵ RG, Judgment August 28, 1923 7J69/23, 3f.

⁶⁶ See Heinz Hürten, *Das Krisenjahr 1923: Militär und Innenpolitik 1922–1924, Quellen zur Geschichte des Parlamentarismus und der politischen Parteien*, vol. 4, ed. Heinz Hürten (Düsseldorf: Droste Verlag, 1980).

⁶⁷ Oehme, *WiPoSID*.

Wilhelm Cuno, Reichswehr Minister Gessler (DDP), Chief of the Army Command Hans von Seeckt, and the Prussian leaders Otto Braun and Carl Severing (both SPD). The discussion centered on Seeckt's plan to establish a self-defense organization along Germany's eastern border, reflecting the broader concern with frontier security after the cession of Upper Silesia.⁶⁸ From the beginning of the 1920s, the Reich government and Prussia, whose territory had been affected, sought a uniform, agreed method of managing the various types of paramilitary border guard units. A secret agreement in January 1923 between Gessler and Prussian Interior Minister Severing coordinated Reich military units with Prussian authorities, but this cooperation was only officially codified in June 1923 (i.e., after Oehme's publications).⁶⁹ In August 1923, the vacation penal (Feriensenat) of the Reichsgericht sentenced Oehme, in camera, to one year in prison. This sentence was based on Section 92 RStGB, in conjunction with SpioG 1914, for the alleged crime of "attempted betrayal of military secrets in conjunction with attempted treason."

In its judgment, the court made reference not only to the specific events reported by Oehme, but also to his general description of a "new political climate" within German society, which alluded to the planning of a war initiated by Germany.⁷⁰ In its reasoning, the Reichsgericht primarily referred to the article published by Oehme in the *WiPoSID* about "marauding storm troopers" and the "troop recruitment campaigns" of the Reichswehr.⁷¹ For the Reichsgericht, the "publication of this untrue and in any case substantially exaggerated and sensationalized news" represented a potential detriment to "the foreign policy position of the German Reich."⁷² According to the judgment, "this report" by Oehme "must have created the impression in everyone who came to know it that wide areas of Germany were in a veritable war frenzy and that the outbreak of war operations to the east and west was imminent." The Reichsgericht explicitly referred to the French "invasion of the Ruhr" and stated that, for France and its allies, "the announcement of a flare-up of war enthusiasm in Germany was an incentive to punish real or alleged violations of the Treaty of Versailles by warlike measures."⁷³ The reasons for the judgment also emphasized that England, unlike France, was to be regarded as an "allied" and "pro-German" state.⁷⁴ However, there was a danger that "news" of the violation of the peace provisions could reach the rest of the world from there.

In contrast to Ebermayer's restrictive view in 1922, the Reichsgericht ruled that the "need for secrecy is not altered" even when reports acknowledge the government's efforts to combat the nationalist movement. The Reichsgericht argued that the key issue was that such reports emphasized the "impotence of the government in the face of the alleged desire for war in national circles," and foreign powers would not be reassured by "a powerless government" not openly endorsing movements that it could not suppress.⁷⁵ The Reichsgericht stressed that "no state that does not want to give itself up will allow it to go unpunished that a citizen [...] betrays to a foreign country, leads the enemy into the country, [and] causes immeasurable oppression of his fellow citizens." The Reichsgericht held that such

⁶⁸ See Jun Nakata, *Der Grenz- und Landesschutz in der Weimarer Republik 1918 bis 1933: die geheime Aufrüstung und die deutsche Gesellschaft* (Freiburg: Rombach Druck- und Verlagshaus, 2002).

⁶⁹ "Vereinbarung in Sachen des Landesschutzes," January 30, 1923, BAArch, Berlin R 43-I/685, item 9; Schreiben des preußischen Ministerpräsidenten an den Reichskanzler December 12, 1926, Anhang, AdR, Die Kabinette Marx III/IV, 468f; see Rüdiger Bergien, "Staat im Staate? Zur Kooperation von Reichswehr und Republik in der Frage des Grenz- und Landesschutzes," *Vierteljahrshefte für Zeitgeschichte* 56 (2008): 643–78, 645.

⁷⁰ RG, Judgment August 28, 1923 7J69/23, 16.

⁷¹ Oehme, *WiPoSID*.

⁷² RG, Judgment August 28, 1923 7J69/23, 13.

⁷³ RG, Judgment August 28, 1923 7J69/23, 13–14.

⁷⁴ RG, Judgment August 28, 1923 7J69/23, 14.

⁷⁵ RG, Judgment August 28, 1923 7J69/23, 14.

conduct could not be excused as “contributing to the realization of laws.” Instead, the Reichsgericht stated that “every citizen must remain loyal to his own country,” for “the good of his own state is his highest commandment,” and “the interests of a foreign country are of no concern to him.”⁷⁶ The question arose of whether the Treaty of Versailles held primacy over German criminal law. Unlike in much Anglo-American legal thinking, German legal doctrine and jurisprudence largely denied such primacy, with only a few dissenting legal scholars.⁷⁷ They instead treated international and national law as separate spheres. International law addressed states, whereas domestic criminal law addressed individuals. The Reichsgericht considered the treaty to be binding exclusively on states, not on their citizens. This statement was followed by the section on the reasoning for the judgment, which was almost identical to the Reichsgericht’s official guidelines on journalistic treason published at a later date.⁷⁸ This section was criticized both by contemporary opponents of the Reichsgericht’s judicial practice and in the retrospective assessment of the proceedings after 1945. Specifically, critics highlighted the following passage as both a breach of the rule of law and an implicit admission of the Reichswehr’s illicit rearmament: “the unrestricted recognition of the idea that the uncovering and disclosure of unlawful conditions can never be detrimental to the good of the Reich [...] must be rejected, especially with regard to foreign policy conditions.” The court added that since “the good of the state is the supreme law and guiding principle,” judges must decide in each case “which interest is more in need of protection and more worthy of protection.”⁷⁹

The Reichsgericht utilized the 1884 imperial ruling that defined the “good of the Reich” in purely “factual” terms. In the judgment of Oehme, the Reichsgericht held that “the decision as to what is to be kept secret in order to safeguard the good of the Reich” lay with the criminal judge, who had to “consult experts as assistants.” In practice, the judge would “primarily select the personalities proposed by the state government,” since the government would generally be in the best position to judge what would harm or benefit the Reich in terms of foreign policy.⁸⁰ The Reichsgericht declared all of Oehme’s reports “untrue,” apparently following the opinions and statements from the experts of the Auswärtige Amt and the Reichswehrministerium. In light of the domestic and foreign policy circumstances of 1923, the Auswärtige Amt and the Reichswehrministerium agreed to keep their collaborative efforts with the Prussian government on border protection confidential. The Reichsgericht justified its judgment mainly based on the exceptional situation of the Ruhr occupation. It considered this situation proof that the “good of the German Reich” was endangered by the public discussion of treaty violations. This danger was thought to exist regardless of whether the government was accused of deliberately participating in breaches of the treaty or of being incapable of preventing them. By contrast, the question of whether Oehme’s reports were “true,” “exaggerated,” or “false” was of secondary importance, affecting only the sentence rather than the conviction itself.

Notably, during the occupation of the Ruhr region, neither the republican nor the social democratic press contested the judgment against Oehme. Furthermore, the judgment was

⁷⁶ RG, Judgment August 28, 1923 7J69/23, 15.

⁷⁷ See, e.g., Walther Schücking, a renowned international law scholar and the first German judge at the Permanent Court of International Justice in The Hague, provided a voluntary expert opinion in the subsequent Ponton trial, asserting that the Treaty of Versailles superseded German criminal law. See “Gutachten von Walther Schücking,” 1928, BAArch, Berlin R 3003/4747, items 232–38.

⁷⁸ The judgment in the Küster/Jacob case, handed down in 1928 after a three-year trial, was included in the official collection of “Entscheidungen des Reichsgerichts in Strafsachen” as a guideline for dealing with journalistic treason in order to demonstrate that the application of Section 92 RStGB did not fundamentally contradict the Treaty of Versailles: RG, Judgment March 14, 1928 7J63/25 (RGSt 62, 65).

⁷⁹ RG, Judgment August 28, 1923 7J69/23, 15.

⁸⁰ RG, Judgment August 28, 1923 7J69/23, 17.

not regarded as an attack on the freedom of the press. In fact, the journalist Georg Bernhard praised the Reichsgericht's objectivity in the *Vossische Zeitung*, noting that "the political atmosphere in Germany" had "changed so dramatically that the judges' prewar experience was more a hindrance than a help in understanding political cases." He concluded that "the judges in the Oehme case made extraordinary efforts" to grasp the "foreign world of political journalism."⁸¹ The lack of criticism of the Reichsgericht's ruling reflects the domestic climate after the Ruhr occupation, when both political leaders and the public embraced the "primacy of security."⁸² In the subsequent *Ponton* trial, defense attorneys argued that all Reichstag parties had formed a cross-party "united front" that supported unofficial rearmament since 1923.⁸³

As such, the Oehme trial reflects the climate of the Ruhr crisis and the Reichsgericht's stricter stance on journalistic treason. In contrast, the later Küster/Jacob case unfolded in the Locarno era and, thus, reflects the more conciliatory approach to foreign policy adopted by Germany at this time.

The Ponton Trial in 1928 and the Guidelines of Reconciliation Policy

In contrast to the judgment against Oehme, Ebermayer reverted to his original position of 1922 in a legal commentary on Section 92 RStGB in 1925. According to this commentary, only the accusation directed at the government suggesting that it had initiated or knowingly tolerated illegal rearmaments should be prosecuted.⁸⁴ Concurrently, internal correspondence between Ebermayer and the Reich Ministry of Justice highlights that both, together with the Auswärtige Amt, unofficially intended to prevent the initiation of the proceedings for reasons related to foreign policy. The correspondence also shows that if prevention were not possible, they would follow the Auswärtige Amt's demand to treat investigations "dilatatorily" once they had been opened. In line with this demand, they would either discontinue them after public interest had waned due to a lack of evidence or await the occurrence of one of the customary amnesties for political offenses by the German Reichstag.⁸⁵ If these outcomes were also not possible due to the notoriety of the defendants, it had to be ensured in advance that only a conviction for "attempted" treason would be handed down in court. In consultation with Ebermayer, the Auswärtige Amt and the Reich Ministry of Justice reached an agreement with the other ministries in 1925 to initially suspend all pending proceedings due to the delicate situation before the signing of the Locarno Treaties. This suspension was carried out to avoid jeopardizing the negotiations and, in particular, the planned withdrawal of the Military Inter-Allied Commission of Control.⁸⁶

The internal documents from the Reichswehrministerium reveal that even following the ratification of the Locarno Treaties, many investigations were terminated by the Reich Prosecutor's Office at the behest of the Auswärtige Amt. Furthermore, these documents show that the ministry deliberately prevented the most dangerous cases from reaching

⁸¹ Georg Bernhard, "Der Oehme-Prozess," *Vossische Zeitung*, August 29, 1923.

⁸² Bergien, *Republik*, 123.

⁸³ "Bericht über die Hauptverhandlung gegen Salomon und Küster," March 1928, BArch, Freiburg RW 6/57, item 267.

⁸⁴ Ludwig Ebermayer, "§ 92 RStGB," in *Strafgesetzbuch. Leipziger Kommentar*, ed. Adolf Lobe, Ludwig Ebermayer, and Werner Rosenberg (Berlin: De Gruyter, 1925), 364.

⁸⁵ Aufzeichnung des Ministerialdirektors Köpke, December 18, 1926, in Akten der Auswärtigen Politik (ADAP) Serie B, vols. 1, 2, 630–31.

⁸⁶ "Der Oberreichsanwalt an den Herrn Reichsminister der Justiz," November 5, 1924, BArch, Berlin R 3001/6141, items 36–37; "Schreiben II b 2504 Mettg.," November 17, 1924, BArch, Berlin R 3001/6141, item 39; "Zum Entwurf eines Gesetzes zur Änderung des Strafgesetzbuches," January 1925, BArch, Berlin R 3001/6141, items 75–76; Aufzeichnung des Ministerialdirektors Köpke, December 18, 1926, in Akten der Auswärtigen Politik (ADAP) Serie B, vols. 1, 2, 630–31.

trial. The Reich Prosecutor's Office, at the behest of the relevant parties, ceased proceedings that were deemed particularly deleterious to foreign policy.⁸⁷ This decision included the discontinuation of several investigations targeting the radical-pacifist journal *Die Menschheit*. There is also evidence that, at least in individual cases, the Auswärtige Amt encouraged the Reich Prosecutor's Office to take over court proceedings from higher regional courts in order to stop them.⁸⁸

However, even though the Auswärtige Amt expressed disapproval toward public court hearings, it also regarded the reporting of the pacifist journalists as negative and as a potential threat to the "good of the Reich." In the context of the reconciliation policy that emerged in the mid-1920s, the Auswärtige Amt was not concerned about the Allied governments taking note of the illegal rearmaments, as they were already aware of the majority of them and tolerated them to an extent. Instead, the office feared that the anti-German segments of the European population could exert domestic political pressure on their respective governments. In 1926, Rupprecht von Keller, the German envoy in Brussels, warned the Auswärtige Amt that domestic press campaigns against the Reichswehr had an "extremely unpleasant effect on the mood toward Germany here." While experienced party leaders abroad were "less influenced by this polemic," Keller emphasized the following: "Among the general public, however, the repetition of news from the German press does have an effect, as I have unequivocally observed from many conversations."⁸⁹ In a 1927 letter to Georg Foerster, uncle of the pacifist journalist Friedrich Wilhelm Foerster, Foreign Minister Stresemann expressed his frustration with pacifist journals such as *Menschheit*. He complained of the following: "At the very moment when I am supposed to be negotiating the evacuation of the Rhineland, a German newspaper claims that Germany is not behind this policy at all and that the men going to Geneva are just pathetic extras." The magazine further asserted that "for every Frenchman who departs from the Rhineland, 10 Stahlhelme [i.e., The Steel Helmet, League of Front-Line Soldiers'] will arrive." Notably, this claim was interpreted by Stresemann as a "direct appeal to France not to vacate the Rhineland." Despite his conviction that "the majority of the French people support Mr. Briand," he expressed skepticism about the feasibility of a policy of reconciliation, "when there are Germans behind my back who continue to incite the French not to give in, but to remain in the Rhineland."⁹⁰ In this context the Auswärtige Amt implemented an increasingly professionalized press policy through the establishment of its own press department in 1919. This implementation served, among other purposes, to coordinate press communication and, above all, to manage and legitimize Germany's foreign policy position abroad. The ministry cooperated with selected newspapers and press actors as part of its diplomatic communication strategy, integrating them into broader efforts to shape Germany's international image.⁹¹ Within this wider framework, domestic legal proceedings against journalists were occasionally perceived by the Auswärtige Amt less as purely judicial matters. They were instead seen as potential risks to Germany's foreign policy position and international image.

⁸⁷ See for example "Landesverrat im Strafrechtsausschuss," March 20, 1928, BArch, Freiburg RW 6/57, item 156.

⁸⁸ This included a case against the pacifist politician Ludwig Quidde (DDP) in Bavaria. See for example Aufzeichnung des Ministerialdirektors von Schubert in ADAP Serie B, vol. 1.9, document 239, 625, Note 4 (with reference to Akten der Abteilung II, F-M, F 9, Fall Quidde).

⁸⁹ Der Gesandte in Brüssel von Keller an den Staatssekretär des Auswärtigen Amtes von Schubert, Brüssel, December 18, 1926, in ADAP Serie B, vols. 1, 2, document 271, 631–33.

⁹⁰ Der Reichsminister des Auswärtigen Stresemann an Georg Foerster, November 2, 1927, in ADAP, Serie B, vol. 7, document 64, 150–51.

⁹¹ See Heidi J. S. Tworek, "Journalistic Statesmanship: Protecting the Press in Weimar Germany and Abroad," *German History* 32, no. 1 (2014): 24–46.

Due to foreign policy considerations in the period leading up to the Locarno Treaties, the legal proceedings against the journalists Küster and Jacob, who reported on the illegal training of *Zeitfreiwillige* (temporary volunteers in the Reichswehr) in the newspaper *Das Andere Deutschland* in April and July 1925, were not pursued further.⁹² In consultation with the Auswärtige Amt, Oberreichsanwalt Ebermayer noted in Reich Prosecutor's Office files that public trials against critics of illegal rearmament could damage negotiations with the former Allies and obstruct European reconciliation.⁹³

The two articles under consideration were both based on the Veltheim ferry accident of March 31, 1925, in which eighty soldiers drowned in a pontoon ferry in the Weser during an army exercise under unexplained circumstances. In his articles, Jacob asserted that a significant proportion of the casualties in the Weser were conscripted not as regular soldiers but rather as *Zeitfreiwillige* to augment the official German army, which was constrained to 100,000 personnel. Jacob then stated the following: "We have to express that an end must finally be put to the system of treaty violations of which the dead of Veltheim appear to us to be the indirect victims." Addressing the Reichswehr Minister Gessler directly, Jacob emphasized the "unwritten" right "to object" and "to protest" in view of the violations of the Treaty of Versailles committed by the Reichswehr.⁹⁴ The investigation files of the Reich Prosecutor's Office suggest that the alleged facts were not only demonstrably false but also extremely poorly researched, as they were primarily based on hearsay.

The judicial proceedings against Küster and Jacob were resumed at the end of 1926, following a delay of over one year, upon the assumption of office by the newly appointed Oberreichsanwalt, Karl August Werner. Werner, an anti-Republican figure, is presumed to have initiated the proceedings for personal reasons.⁹⁵ In court the Reich Prosecutor's Office was represented by the controversial Paul Jorns.⁹⁶ Nevertheless, the political bias of both does not appear to have played a significant role in the judgment of the Reichsgericht. In its reasoning in 1928, the Reichsgericht was again demonstrably guided by official German foreign policy and the opinion of the expert sent by the Auswärtige Amt (Dr. Friedrich Gauss).⁹⁷ Indeed, the internal minutes of the Reichswehrministerium also stated that it was crucial to win over the Auswärtige Amt due to its importance for the Reichswehrministerium's own position.

The Reichsgericht determined that the information reported in the articles, which the defendants believed to be accurate, was in fact false. Regardless of the veracity of the information, the publication of such content was considered to potentially compromise the

⁹² Jacob, "Das Zeitfreiwilligengrab"; Berthold Jacob, "Weitermachen ...," *Das Andere Deutschland*, July 25, 1925. However, after a political amnesty in August 1925, Jacob could only be prosecuted for the second article, as a preliminary investigation had not yet been opened in August. Law on Impunity, Gesetz über die Straffreiheit August 17, 1925 (RGBl. 1925 I 313). On Jacob's biography and his persecution in the Third Reich see Manfred Asendorf, *Demokratische Wege: Ein biographisches Lexikon*, ed. Manfred Asendorf (Stuttgart: J. B. Metzler, 2006), 300–1.

⁹³ "Der Oberreichsanwalt an den Herrn Reichsminister der Justiz," November 5, 1924, BAArch, Berlin R 3001/6141, items 36–37.

⁹⁴ All quotes from Jacob, "Das Zeitfreiwilligengrab in der Weser."

⁹⁵ Werner would remain in the office of Chief Reich Prosecutor until his death in 1936. He had already become a member of the NSDAP in 1933. Werner's appointment as Oberreichsanwalt in 1926 was met with resistance from numerous Republican politicians. Otto Braun, the Socialist prime minister of Prussia, would later assert that Werner's appointment was influenced by Radbruch, who had initially held Werner in high regard. See Howard Norman Stern, "Political Crime and Justice in the Weimar Republic" (PhD diss., Baltimore, 1966), 365.

⁹⁶ As a former investigating judge, Jorns had played a crucial role in covering up the murders of Rosa Luxemburg and Karl Liebknecht and was set to rise to the rank of Oberreichswalt under the Nazis. Heinrich Hannover and Elisabeth Hannover-Drück, eds., *Der Mord an Rosa Luxemburg und Karl Liebknecht: Dokumentation eines politischen Verbrechens* (Frankfurt/Main: Verlag Neue Kritik, 1979).

⁹⁷ Gerhard Stuby, *Vom "Kronjuristen" zum "Kronzeugen"*. Friedrich Wilhelm Gauss. Ein Leben im Auswärtigen Amt der Wilhelmstraße (Hamburg: VSA-Verlag, 2008).

security of the German Reich. It was noted that “publications with false content” could also “provide the former enemy alliance with material to accuse the Reich government of violating the Treaty of Versailles [...]”⁹⁸ Specifically, the 1928 judgment referred to the Allies’ collective note of June 4, 1925. In this note, the Allies accused Germany of failing to implement the disarmament requirements demanded in the Treaty of Versailles, and based on this accusation, the evacuation of the Cologne zone announced for 1925 was postponed.⁹⁹ According to the Reichsgericht, a central point of criticism in the Allies’ note was the issue of the *Zeitfreiwillige*, even though the court did not believe that the publications by *Das Andere Deutschland* had actually influenced the note. Nevertheless, the collective note was exemplary of the past foreign policy threat situation, and the new phase of reconciliation policy was still in its infancy. From the court’s perspective, at the time of publication, the political relaxation during the years leading up to the Locarno Treaties was not foreseeable for either defendant. In this respect, the court followed the assessment of the Auswärtige Amt and its expert opinion, according to which the articles could have posed a real threat to rapprochement with France.

The court argued that neither Versailles nor Locarno restricted Germany’s ability to prosecute journalistic treason under national law.¹⁰⁰ As such, the court framed such trials as an exercise of the state’s “natural right of self-defense,” pointing in particular to the 1926 Koblenz Agreement, which was part of the conditions for the evacuation of the second occupation zone around Cologne.¹⁰¹ The purpose of this Agreement was to establish an amnesty for the transgressions committed by both parties during the occupation. However, the most serious crimes, namely high treason, treason, and espionage, were excluded in agreement with the French government.¹⁰²

During their investigation and trial, Küster and Jacob argued that their publications aligned with the foreign policy of reconciliation. However, the expert from the Auswärtige Amt had already refuted this claim in his report. The Reichsgericht accused both defendants of having failed to inform the authorities about the alleged illegal rearmament measures taken by individual Reichswehr units and instead publicizing them. In response, the defendants’ attorneys argued that, based on recent experience, the Reichswehr Ministry never responded to reports of this type. Internal trial minutes from the ministry noted that Groener confirmed that this problem existed under Gessler in the mid-1920s when “the Ministry and the troops” worked against each other, as follows: “Two bodies were united in one, and it was always unclear to which body the complaint should be addressed.” Since neither Küster nor Jacob had attempted to contact the public authorities prior to publication, these arguments of their attorneys were deemed irrelevant by the court.¹⁰³

The Reichsgericht sentenced Küster and Jacob to nine months in a fortress, a decision influenced by the consideration of mitigating circumstances. After their conviction, both men requested a suspension of imprisonment. Specifically, Küster needed to appoint a successor as chief editor at *Das Andere Deutschland*, as mentioned above, and Jacob had health issues requiring medical examinations. Although Jacob was willing to serve his sentence, his

⁹⁸ RG, Judgment March 14, 1928 7J63/25, 4.

⁹⁹ The collective note is printed in *Materialien zur Entwaffnungsnote* (Berlin: Reichsdruckerei, 1925), 5–47.

¹⁰⁰ Locarno Treaties (RGBl. II 978–79).

¹⁰¹ All quotes from RG, Judgment March 14, 1928 7J63/25, 6–7.

¹⁰² “Der Reichsminister für die besetzten Gebiete an die Herren Reichsminister,” October 29, 1926, BAArch, Berlin R 43-1/197, items 275–94.

¹⁰³ “Bericht über die Hauptverhandlung gegen Salomon und Küster,” March, 1928, BAArch, Freiburg RW 6/57, item 269.

lawyer and the *Liga für Menschenrechte* petitioned the Reichsgericht to delay it.¹⁰⁴ However, due to the amnesty for political offenses, which was enacted in the same year, they were ultimately exempted from serving their sentences.¹⁰⁵

Unlike the Fechenbach and Oehme cases, the Küster/Jacob trial was centered on the constitutional guarantee of “freedom of expression and freedom of the press.” While the defense argued that this right shielded the journalists from prosecution, the Reichsgericht maintained that press freedom applied only “within the limits of existing laws,” as stated in Article 118 of the Weimar Constitution. Press freedom was already enshrined in the Press Act of 1874, which remained in effect after 1919 but was subordinate to the Criminal Code.¹⁰⁶ In theory, incorporating this right into the Weimar Constitution could have elevated its status. However, most members of the Constituent National Assembly in 1919 regarded Part II of the Constitution as merely a civic “basic commitment” or “people’s catechism,” which, without legal reform, had no binding effect.¹⁰⁷ An interpretation of criminal law that was “in line with fundamental rights,” as understood in a modern legal conception, was thus alien even to the members of the SPD and the Weimar coalition.¹⁰⁸ The Constituent National Assembly deliberately decided against including fundamental rights with legally binding force at the beginning of Part II of the Constitution, which would have given them precedence over the other laws of the Reich.

All of the major daily newspapers reported in detail on the proceedings presided over by Judge Josef Reichert. However, contrary to expectations, they expressly emphasized Reichert’s political impartiality and openness to pacifist positions.¹⁰⁹ Criticism of Reichert’s conduct of the negotiations in court came almost exclusively from pacifist press outlets, which also attacked those left-wing journalists who were sympathetic to Reichert.¹¹⁰ Overall, reports suggest that the trial was viewed more as a media spectacle than as an attempt to silence opponents of rearmament. The majority of the Republican press did not see this trial as a serious threat to freedom of the press, as Jacobs’ claims were considered to be obviously false and unfounded. During the hearing, Senate President Reichert also emphasized the distinction between responsible journalism and the superficial nature of Jacobs’ research.¹¹¹

Therefore, it should be noted that in the period of political détente, the Küster/Jacob trial was not perceived as a serious threat to freedom of the press by the German public but, at most, as a nuisance. This perception underwent a substantial shift following Stresemann’s demise, when the *Weltbühne* trial was widely regarded as the zenith of treason jurisprudence in the final years of the republic. In the political constellation of the presidential cabinets, foreign policy became increasingly centralized in the Reich Chancellery and took on a more revanchist orientation.

¹⁰⁴ For an extensive collection of correspondences pertaining to these motions see BArch, Berlin R 3003/474, items 1296–1317.

¹⁰⁵ Law on Impunity, Gesetz über die Straffreiheit, July 14, 1928 (RGBl. 1928 I 195).

¹⁰⁶ Reich Law on the Press, Reichsgesetz über die Presse, May 7, 1874 (RGBl. 1874 65).

¹⁰⁷ Motion 82 Versuch volksverständlicher Grundrechte von Abgeordneten Naumann, Verhandlungen der Verfassungsgebenden Deutschen Nationalversammlung, Stenographische Berichte, in vol. 336, Berlin 1920, 171–73; Verhandlungen der verfassungsgebenden Nationalversammlung, Stenographische Berichte, in vol. 336, 18. session March 31, 1919, Berlin 1920, 184–86.

¹⁰⁸ Hanten, *Landesverrat*, 211.

¹⁰⁹ Among others N. N., “Der Leipziger Ponton-Prozess. Die Beweisaufnahme,” *Vossische Zeitung*, March 14, 1928.

¹¹⁰ Even Kurt Tucholsky spoke positively about Reichert’s conduct of the negotiations: Ignaz Wrobel, “Die großen Familien,” *Die Weltbühne*, March 27, 1928.

¹¹¹ “Bericht über die Hauptverhandlung gegen Salomon und Küster,” March 1928, BArch, Freiburg RW 6/57, items 266–67.

The 1931 *Weltbühne* Trial and the Decline of the *Auswärtige Amt* Following the Death of Stresemann

The Reichswehrministerium, which was disappointed by the lenient judgments against Küster and Jacob, increasingly demanded that the existing treason laws be tightened. Internal records from 1928 confirm that until that point, no cases against pacifist publicists had been brought to trial if the *Auswärtige Amt* was opposed to it.¹¹² Consequently, a key demand of the Reichswehrministerium entailed the formulation of new legislation that would preclude the German government from discreetly stopping proceedings in instances of deliberate treason.¹¹³ In this context, the internal records of the Reichswehrministerium provide insight into how various subgroups of journalistic traitors were defined under Minister Groener. Specifically, the records show that the ministry classified journalists as belonging to one of four groups: communists, “radical pacifists,” “deliberate traitors,” and “supporters of various political classes concerned about the constitution.”¹¹⁴ The last group, which reportedly included Republican journalists, was considered secondary in criminal law by the Reichswehrministerium. Additionally, the ministry considered “radical pacifists” to be naive but not malicious. In contrast, “deliberate traitors” were seen as acting “in the service of foreign powers” and only ostensibly being pacifists. Groener specifically urged the enactment of a new law targeting this group.¹¹⁵ Despite the efforts of the Reichswehrministerium to tighten treason laws, this objective was not achieved.¹¹⁶ This resulted from the recurring tensions between the Reichswehrministerium and other ministries during cabinet debates on reforming the treason law since 1927. While all ministries agreed to reject publications about illegal rearmament, a complete ban on pacifist press organs was considered unfeasible. In this context, the *Auswärtige Amt* and the Justice Ministry advocated for a law requiring the Reich government’s approval before initiating proceedings for journalistic treason. The aim of this law was to bypass the principle of *Offizialdelikt* and block such cases for tactical reasons.¹¹⁷

The *Weltbühne* trial, previously referenced, serves as a prime example of the diminution of the authority of the *Auswärtige Amt* over the jurisprudence of the Reichsgericht during the Weimar presidential cabinets. This shift mainly occurred following Stresemann’s death in 1929. His successor, Julius Curtius, played only a minor role, as foreign policy was increasingly directed by the Reich Chancellery. During the *Weltbühne* trial, Chancellor Heinrich Brüning served as foreign minister, which centralized a more revanchist policy and reduced the *Auswärtige Amt*’s influence compared to the Reichswehrministerium.¹¹⁸ Concurrent

¹¹² “Vorschlag für die Stellungnahme des Herrn Ministers in der Chefbesprechung,” February, 1928, BArch, Freiburg, RW 6/57, item 251.

¹¹³ The position of the Reichswehrministerium on the reform of the treason laws can be found in “Semler Memorandum,” January 1929, BArch, Freiburg, RW 6/57, items 320–38. The memorandum was presumably written by Paul Semler, who was a privy counselor in the Reichswehrministerium.

¹¹⁴ “Denkschrift. Die Preisgabe eines Staatsgeheimnisses aus Ueberzeugung,” 1928, BArch, Freiburg RW 6/57, items 72–78.

¹¹⁵ “Denkschrift. Die Preisgabe eines Staatsgeheimnisses aus Ueberzeugung,” 1928, BArch, Freiburg RW 6/57, item 72.

¹¹⁶ For a detailed discussion of the Reichswehrministerium’s view of political “offenders by conviction” and its position on reforming existing treason legislation, see Amelie Tscheu, “Die Preisgabe militärischer Staatsgeheimnisse aus Überzeugung. Pazifistische Landesverräter aus Sicht des Reichswehrministeriums,” *Militärgeschichtliche Zeitschrift* no. 1 (2026): 38–77.

¹¹⁷ Ministerbesprechung March 7, 1929, Strafrechtsreform, Landesverrat, in AdR, Das Kabinett Müller II, vol. 1, document 147, 472.

¹¹⁸ Wolfgang J. Helbig, “Between Stresemann and Hitler: The Foreign Policy of the Brüning Government,” *World Politics* 12, no. 1 (1959): 24–44.

with these developments, there was growing endorsement of the Reichswehr's illicit rearmament initiatives. These initiatives had been steadily increasing, albeit in an unofficial capacity, since 1927 within the republican cabinets even before the presidential governments. The "statization" of the Reichswehr's illegal rearmament program, initiated under the national conservative Marx IV cabinet, was subsequently continued by the SPD-led Müller II cabinet.¹¹⁹

The long delay in bringing the case to trial was primarily caused by the opposition of the Auswärtige Amt, which, for a time, succeeded in stalling the proceedings despite growing political pressure.¹²⁰ The Auswärtige Amt initially declined to dispatch an expert witness to Leipzig to provide testimony in court, and thus, only his written report was presented during the trial.¹²¹ Oberreichsanwalt Werner repeatedly requested expert opinions, which demonstrates that the Reichsgericht still regarded the Auswärtige Amt as being fundamentally involved in treason proceedings. The Auswärtige Amt thus continued its strategy of avoiding treason cases, unaffected by Stresemann's death or the rightward turn in foreign policy. The prospect of the 1932 Geneva Disarmament Conference likely reinforced this stance, as the ministry feared damage to Germany's negotiating position from convictions of such prominent defendants. In contrast to earlier proceedings, the judgments against Ossietzky and Kreiser contained few references to foreign policy and, instead, stressed the weakness of "our small Reichswehr."¹²²

The court warned that "the damage that can easily be inflicted on the German Reich and its government offices by such serious indiscretions can be significant, indeed incalculable." Specifically, the court stressed that this risk related not only to army administration but also the interests of the German people, especially given the importance of aviation in a possible future war.¹²³ Instead of having an expert witness from the Auswärtige Amt, an expert witness from the Reich Ministry of Transport was questioned in court, who followed the assessment of the Reichswehrministerium in his testimony. The presence of this witness also illustrates the extent to which the German government had begun to support the illegal rearmaments of the Reichswehr as a matter of course, as well as its decision to support illegal rearmament measures in unofficial budget plans.¹²⁴

The reasons given for the judgment explicitly stated that, contrary to the expert opinion of the Auswärtige Amt, the Reichsgericht agreed with the expert opinion of the Reichswehr. The court ruled that the defendants had committed "military betrayal of secrets" and "completed" treason, citing SpioG 1914 and Section 92 RStGB as legal references. Following its earlier tactics, the Auswärtige Amt only sought a conviction for "attempted" treason. However, it is evident that even the Auswärtige Amt had not foreseen the extent of the international criticism that would occur after the convictions of Ossietzky and Kreiser. For instance, the *New York Evening Post* argued that the Weltbühne ruling had undermined Germany's international reputation. By convicting the defendants, the Reichsgericht had "effectively confirmed the accusation" that civil aviation served to circumvent the Treaty of Versailles and could be "quickly" converted into a military force, thus

¹¹⁹ Bergien, *Republik*, S: 150–67.

¹²⁰ See, for example, Gerhard Jungfer, *Strafverteidigung: Annäherung an einen Beruf* (Berlin: LIT, 2016), 234.

¹²¹ For details on the course of the court proceedings, see Hanten, *Landesverrat*, 162–63, and in particular, the historical reports by the military historians Manfred Messerschmidt and Wolfgang Gessenharther, based on the secret files of the Auswärtige Amt, as part of the motion for reconsideration. They can be viewed at the following: Akten zum Wiederaufnahmeantrag Rosalinde Ossietzky-Palm, Landesarchiv Berlin B Rep. 057 Nr. 274.

¹²² RG, Judgment November 23, 1931 7J35/29, 28.

¹²³ RG, Judgment November 23, 1931 7J35/29, 28.

¹²⁴ For the government's secret budget planning in 1929, see "Protokoll," October 18, 1929, Barch, Berlin R 43-I/951, item 258.

weakening Germany's position ahead of the 1932 Disarmament Conference.¹²⁵ To counter this criticism, the Auswärtige Amt claimed the journalists were convicted only of "attempted" treason, although the prison terms announced by the Reichsgericht contradicted this statement. To the surprise of Ossietzky, Kreiser fled to France before serving his sentence and published reports on the secret trial from there.¹²⁶ These reports were reprinted in *Das Andere Deutschland* in the time leading up to the Geneva Disarmament Conference.¹²⁷ At this point, the newspaper was also accused of "warmongering" by republican members of the Reichstag, since it "provided the French nationalists with material" to prevent the other European states from disarming.¹²⁸

After Ossietzky's clemency plea was rejected by President Paul von Hindenburg, he began serving his sentence at Berlin-Tegel in May 1932. The Reichstag's new political amnesty, the so-called *Lex Ossietzky*, secured his early release in December.¹²⁹ After the sentence became known, Reichswehr Minister Groener demanded a special law against "alleged pacifists" or "deliberate traitors," citing the Weltbühne case. He explicitly included Kreiser but omitted Ossietzky, who the ministry classified as a "radical pacifist."¹³⁰ While the pacifist press rejected Groener's demand outright, some in the republican press were more ambivalent. For example, the *Vossische Zeitung* agreed with Groener's assertion that "the security of the state is a paramount legal interest that must be protected with the utmost diligence."¹³¹ In this regard, the article demonstrates the profound support for illegal rearmament that was prevalent in German society during the early 1930s.

Conclusion

The cases of journalistic treason against pacifist critics of illegal rearmament, examined in this article, reveal a more differentiated picture of the Reichsgericht's stance toward the republican state system. More specifically, in proceedings shaped by external security and foreign policy concerns, this stance was more complex than a simple characterization in terms of political bias would suggest. The Auswärtige Amt's involvement in these cases was particularly significant, since this shows that the court regularly consulted an institution associated with Stresemann's republican and conciliatory foreign policy. Therefore, legal-historical analyses of these proceedings must be situated within the tension between law and politics. The Reichsgericht's jurisprudence can only be understood in relation to the foreign policy developments that shaped the framework of legal interpretation. Successive cabinets, aside from the Reichswehrministerium, shared the view that pacifist publications were often inaccurate and problematic. However, these cabinets also feared that prosecutions would do more harm than the articles themselves by suggesting that Germany had something to hide. For the same reason, suppressing pacifist journals was never considered a viable option.

German foreign policy was a constant point of reference in these journalistic treason trials. The judgments were based not only on legal arguments but also on current political events shaped by the Reichsgericht's notion of the "good of the Reich." Accordingly, the Auswärtige Amt and the Reichswehrministerium routinely provided expert opinions,

¹²⁵ Knickerbocker, "Reich Seen Hurt by Treason Terms."

¹²⁶ For example, Pironneau, "Les Révélations du procès Kreiser-Ossietzky," *L'Écho de Paris*, February 21, 1932.

¹²⁷ N. N., "Echo de Paris schleudert eine Bombe. Schwerer Schlag gegen Deutschlands Position in Genf—Wer ist Schuld?—Der Kreiser-Ossietzkyprozess," *Das Andere Deutschland*, February 27, 1932.

¹²⁸ The Zentrum member of parliament Joseph Ersing: *Verhandlungen des Reichstags, Stenographische Berichte*, 46, session March 19, 1931, in vol. 445, Berlin 1931, 1744.

¹²⁹ Law of Impunity, Gesetz über Straffreiheit December 20, 1932 (RGBl. 1932 I 559).

¹³⁰ Wilhelm Groener, "Staatsverleumdung," *Vossische Zeitung*, November 29, 1931.

¹³¹ C. M., "Lex Groener," *Vossische Zeitung*, December 1, 1931.

and their representatives appeared in court. However, previous research has largely overlooked the role of the Auswärtige Amt, focusing instead on the dual function of the Reichswehrministerium. This is despite the fact that the Reichsgericht consistently relied on expert opinions from the Auswärtige Amt, even when their influence was no longer explicitly reflected in the reasoning of the judgments of the Weltbühne trial.

The selected rulings against pacifists, arranged chronologically, reflect the official foreign policy guidelines of the fulfillment policy, the subsequent departure from this policy, the policy of reconciliation, and finally, the revanchist orientation at the outset of the presidential cabinets. A review of the internal documents reveals that the Auswärtige Amt placed a higher priority on public opinion in France and Great Britain than on the reactions of the Allies concerning the publications on illegal rearmament measures. As such, the Auswärtige Amt regularly consulted with the Reich Prosecutor's Office and the Justice Ministry to delay or quietly drop treason proceedings and often allowed them to lapse through recurring amnesties.

The Auswärtige Amt's influence frequently clashed with that of the Reichswehrministerium, which demanded stricter treason laws to prevent unofficial interference. In the Ossietzky and Kreiser case, a decline in the Auswärtige Amt's influence became evident, as it could no longer prevent the trial, while the Reichswehrministerium's position gained greater weight. Nevertheless, the Reichsgericht still felt compelled to obtain expert opinions from the Auswärtige Amt, which ensured the ministry's continued involvement even when its political influence was waning. It should be noted that, prior to the establishment of the presidential cabinets, the Auswärtige Amt exercised a greater degree of influence on the Reich Prosecutor's Office and the Reichsgericht in journalistic treason proceedings than the Reichswehrministerium. This greater influence can be attributed to two primary factors. The first factor pertains to the unofficial influence of the Auswärtige Amt, which led to the discontinuation of the Reich Prosecutor's Office's investigations. The second factor is related to the fact that, according to the Reichsgericht itself, the situational determination of the "good of the Reich" fell within the sole authority of the Auswärtige Amt. Previous studies have largely overlooked the pivotal role of the Auswärtige Amt. This oversight is tied to the anachronistic focus on the Weltbühne trial and the broader tendency to interpret Weimar history through the lens of the republic's failure.¹³² Consequently, the origins of treason jurisprudence and its interaction with political developments in the 1920s and early 1930s have remained understudied.

The Auswärtige Amt's recurring involvement in these cases shows that until the formation of the presidential cabinets, the court's stance on external security largely aligned with that of the republican governments, which increasingly supported illegal rearmament. The interaction between government policy and the Reichsgericht reveals dynamics that have direct implications for historiography, indicating that the Weimar judiciary cannot be regarded as a homogeneous body whose jurisprudence necessarily reflected a rejection of the republican state system.¹³³ The widespread condemnation of the Reichsgericht's jurisprudence highlights a central challenge in assessing the Weimar judiciary. Scholars have rightly noted that the Weimar judiciary was partly responsible for the decline of the republic.¹³⁴ However, far less attention has been paid in the existing literature to the failure

¹³² Cf., among others, Föllmer and Graf, *Die "Krise"*; Rüdiger Graf, "Either-Or: The Narrative of 'Crisis' in Weimar Germany and in Historiography," *Central European History* 43, no. 4 (2010): 592–615; Nadine Rossol and Benjamin Ziemann, eds., *The Oxford Handbook of the Weimar Republic* (Oxford: Oxford University Press, 2024), 3–6.

¹³³ Anthony McElligott, *Rethinking the Weimar Republic: Authority and Authoritarianism, 1916–1936* (London: Bloomsbury, 2013), 100. There are only a few publications on judges who openly identified with the republican cause. See Birger Schulz, *Der Republikanische Richterbund (1921–1933)* (Frankfurt/Main: Lang, 1982); Michael Kißener, *Zwischen Diktatur und Demokratie: Badische Richter 1919–1952* (Munich: Oldenbourg, 1991).

¹³⁴ Jasper, "Justiz und Politik," 167.

of the legislature to implement crucial legal reforms after 1919.¹³⁵ Instead of implementing fundamental reform, the Reichstag relied on piecemeal laws and repeated amnesties for political offenders, and these measures further eroded the rule of law. According to former Oberreichsanwalt Ebermayer, the expectation of future amnesties directly influenced the work of the Reich Prosecutor's Office, whose investigations were often conducted in fear that they would be in vain. The "crisis of confidence" was, thus, mutual. While politicians viewed the judiciary with skepticism, the judiciary, in turn, doubted the reliability of political decisions, as there was a risk that their work would be rendered invalid by amnesties. In treason trials, the expectation of amnesties, combined with lenient penalties, further reduced deterrence. Even in the *Weltbühne* case, the Reichsgericht imposed a relatively mild sentence compared to the possible fifteen years of imprisonment in a *Zuchthaus*, despite this case representing the final instance with the option of the maximum penalty.

From a legislative perspective, it is noteworthy in the proceedings against pacifist journalists that Part II of the Weimar Constitution, which set out the fundamental rights and duties of German citizens, was not considered formally binding without a corresponding reform of criminal law by most contemporaries. This view was largely shared across party lines and informed both parliamentary debates and judicial practice. However, one of the main criticisms of the Weimar judiciary is the claim that it deliberately disregarded democratic legislation in its rulings. Existing studies have rarely distinguished between cases in which the courts subordinated post-1919 legislation of undisputed legal validity to imperial law codes and cases in which they subordinated the formally contested Part II of the Weimar Constitution to those same codes.¹³⁶ In the first scenario, it is clear that the courts' interpretation was contradictory to the legislature's obvious will. The assessment of the second scenario is more complex. Granting primacy to fundamental rights without an explicit constitutional provision or accompanying legislative reform would have required the judiciary to assume an interpretive authority. This authority was not clearly conferred by the constitution itself. The fact that this distinction has received comparatively little attention in the extant literature may be primarily due to a modern conception of law that regards democratic constitutions as inherently normative frameworks. Such a conception retroactively projects a binding hierarchy of fundamental rights and thereby overlooks their historically non-self-evident status.

Against this backdrop, a comprehensive analysis of the trials against pacifist critics of illegal rearmament, with particular attention to the pivotal role of the *Auswärtige Amt*, demonstrates how closely the Reichsgericht's jurisprudence was intertwined with the shifting political realities of the Weimar Republic. Rather than confirming a uniformly ideological judiciary, these proceedings reveal the complex interplay between law and politics in the aftermath of the transition from monarchy to republic. Taken together, the proceedings suggest that examining the political and normative implications of the courts' reasoning may offer a more differentiated perspective on Weimar political criminal trials as a reflection of the republic's fragile constitutional order.

Acknowledgements. I would like to thank the anonymous reviewers for their thoughtful and engaged comments, which greatly helped to sharpen the argument and improve the structure of the article.

Competing interests. The author declares none.

¹³⁵ Jasper, "Justiz und Politik," 192.

¹³⁶ Gotthard Jasper, *Der Schutz der Republik: Studien zur staatlichen Sicherung der Demokratie in der Weimarer Republik 1922–1930* (Tübingen: Mohr, 1963), 185–86.

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Cite this article: Amelie Tscheu, “Law, Foreign Policy, and the Question of Anti-Republicanism: Journalistic Treason Trials in Weimar Germany,” *Central European History* (2026): 1–25. <https://doi.org/10.1017/S0008938926101472>.