

a: STORLI

Audiatur et Altera Pars and Some Crucial Issues
Reconsidered.

By Per O. Storlid

A traitor is a person guilty of treason, whereas treason is the act planned or perpetuated by the traitor.

Let it be said, to avoid any possible interpretation differing from that here used by the author, that in this context the ~~then~~ treason is to be understood as defined in section 86 of the Norwegian penal code, as it read in the years ~~inter~~ ^{setting} us here, i.e. the taking up of arms against Norway, or any power allied to Norway, or otherwise assistance in word or deed to the enemy in a war going on, or in preparation of a war against Norway.

There is also the crime of high treason, as defined in section 98 of our penal code, which may, for our intention, be summarized as the attempt to change the Constitution by unlawful means.

To both of these regulations applies section 40 of the same penal code, establishing that the incriminated act must have been done deliberately. There can, accordingly, be no such thing as a careless act of treason or high treason : The individual in question must have known and understood the treacherous nature of the act or acts incriminated. This is of considerable importance to our subject. Consequently, a traitor is not simply a person committing an act which in a given situation may or must turn out to be detrimental to his country: There is also the prerequisite of his intention and knowledge of the noxiousness of his act or acts. For the theme here discussed it is important that this prerequisite be borne in mind.

This subjective side of the question is hardly apt to simplify our theme. Now, treason in our context applying to crimes against the Nation, there is even more to complicate it: Minority problems, irredentism etc. being excluded from our Norwegian situation then and now, this possible crime against the Nation is tantamount to a crime against the Nation's superstructure, i.e. the State. This entity now, since the days of Rousseau, is supposed to be the expression of some sort of Contract Social, implying equal obligations undertaken by rulers and the ruled. This would, in good logic, mean that this infringement of the said contract by the State rulers legalizes and renders necessary the departure of the ruled from a loyalty to the rulers which was, fundamentally, not an allegiance to these rulers as persons, but to their function as representatives of the true interests of the Nation, which through this very contract they were supposed and bound to take care of. This author being in principle in no way a partisan of the relativizing of the duty of State loyalty, he nevertheless feels bound to admit that in extreme circumstances the refusal of such loyalty may present itself, out of moral reasons, as justified. Certainly, Rousseau and his Contract giving raise to modern democracy did not make the question easy to handle. Then there came also Kant to complicate it furthermore with his Kategorischer Imperativ based on the individual's own conscience being understood as a sovereign guide.

It might perhaps be of some value for our subject to bear in mind these stray remarks concerning the concepts of duty and loyalty, as our main concern is the direct opposite of those, namely, the hideous notion of treason. The questions here touched upon do not relate to any given side in any given conflict, at any given time: Anybody advocating the legitimacy and praiseworthiness, say, of the attempted murder of Hitler on July 20. 1944, is in conscience and good logic bound not only to recognize that possible conflict between personal and national loyalty and ethics as understood by the acting individual, but also the general implication that a principle

granted people of one's own liking must necessarily apply also to others, including enemies and opponents. If not, it is reduced to an empty ad-hoc-argument pro dome sua.

This, now, obviously neither can nor ever will change the fundamental fact that any given society will by every means available try to enforce the loyalty which some or many of its members would otherwise possibly deny it. To this end political societies have and probably always will have, i.a., their treason legislation. Whether rightly or wrongly applied, will in most cases be the task of later times to clarify.

After half a century ours may perhaps be the time when, with some reasonable hope of success, the problems related to the Norwegian Purge following World War II could be entered upon in a spirit sufficiently objective not to exclude an understanding of some, as it would seem, important facts and factors hitherto generally let out of the official version of the events of those unhappy years.

Life being an unbroken chain of alternatives, every decision made and every action taken is the outcome of a choice made by the individual, regardless of his acting as a singular or as a representative of a community, say State, which at some time vested in him the authority to act on its behalf. It would also seem that every choice made will have consequences for those to be taken on later stages, enlarging or more often reducing the scope of possibilities then open to him. This is, perhaps, an aspect of the old notion of Fate, as seen by those who claimed man's active cooperation in forming it, and thereby also made him partly responsible for it.

We are arriving at the problem of making the right choice, confronting the additional one of establishing what would be required to qualify any such choice as right as opposed to wrong: What, now, would be the criterion for a right choice? It might perhaps be suggested that, to deserve this qualification,

it must be in concordance with the main principles of the individual in question, the action taken thereby being guided by these. This would apply to the subjective side of the matter, and would amount to a justification by motives. But what, then, if in the end the alternative chosen would turn out to be negative in its consequences? We should, probably, (then) be inclined to consider it a wrong one. Here we face the question whether to judge by motives or by results.

The dilemma may be illustrated, in the State sphere, by the British and French Government decisions leading up to World War II: If aimed at securing the integrity of Poland, preserving the European Balance of Power and making the world "safe for democracy", it certainly was a wrong one. There was no restitution of 1939 Poland, nor any independence for that geographically new State which emerged in the problematic peace that followed. There was no European Balance of Power restored, for the simple reason that in the outcome Europe in its entirety found itself included as an object in that much greater World Balance of Power game played by the two extra-European super-powers emerging from the conflict, and there certainly was not more democracy to be seen in the world after the war than before. If on the other hand, the up-rooting of Hitlerism or the smashing of Germany as a great power were, in themselves, good and reasonable aims, the decision to declare war on Germany surely was an appropriate one. But it would, probably, have been regarded in quite another way, had Great Britain lost that war.

Now, given the state of war and the need for winning it, the range of next-step alternatives is circumscribed by this very need. We are at the point where, to a never-defined extent, means are justified by aims. Letting aside numerous other actions taken, let us approach the situation of Norway: The constant pressure on a small neutral nation, the "Altmark"-affair, the mining of the Leads and the thwarted invasion of the country in order, i.a., to push it into a war it did not

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want to participate in, making it an additional war theatre and thereby easing the Western Front situation, certainly are not consistent with the aims proclaimed as the Western Powers' reasons for going to war. Nevertheless, as tactical means to reach that supreme strategic objective they would appear to be most appropriate, i.e. necessary and recommendable. Which, if we adopt that view, will in its turn again amount to the acceptance of unrighteous means to serve ends which were, in the eyes of those employing such means, presumably noble. Depending on one's own decision on that moral issue, one might quite as consider Mr. Churchill the saviour of Western democracy, as a major war criminal. It would appear a fair suggestion that the rule applied to one side should apply to the other one as well.

What is valid in this reasoning on affairs concerning statesmen might, in good logic, be applicable to individuals also. It is at this point that our Norwegian "Rettsoppgjør" dilemma starts. Claiming, as it did, to be the expression of justice (Norwegian: "rett"), it has to be viewed from just that point, letting out of consideration other motives which might, per se, be very well understandable and, to some extent, justifiable.

Now, the audiatur et altera pars principle being inherent in that of justice, we should try our best to look into those situations in which Norwegians had to make their choice, like an impartial court would have felt obliged to do. We should, thereby, bear well in mind that at the outset no choice is, in principle, sure. Looking to the outcome, any choice may turn out to have been wrong, though having been, from the moral point of view, right, or at least quite as defensible as the opposite one, in the situation in which it had to be made. In this context, it is the moral aspect that requires our particular attention, this moral aspect being of paramount importance for the question of treason and this again being, as already observed, the one great point with which the "Rettsoppgjør" stands or falls, not only from the moral point

of view, but also from the legal one.

Our way of putting the question necessarily takes us back to years and situations before the actual events beginning April 9. 1940. Only thus, it would seem, may it be possible to arrive at a valid conclusion.

Going back to the early 1920s, it deserves mentioning that the socialist or socialdemocratic Labour Party of Norway, as the only one in Europe, joined the Komintern and programmatically declared itself a Marxist, class struggle-based revolutionary party. It is true that after a few years, following the debate on the Moscow Theses, it was expelled from the Communist International, but it is equally true that it maintained its ideological platform as described. This fact plus the fruits of the Russian Revolution admittedly aiming at World Revolution created strong feelings of apprehension in very wide segments of Norwegian society. This, plus the World Economic Crisis and a parliamentary system which at the time was putting up a rather bad show of ineffectiveness and incompetency to solve the nation's problems, is the background of Vidkun Quisling's entering the political scene.

This is not the place for attempting anything like a biography of Quisling, but as the history of the Norwegian NS movement and World War II Collaboration is, to a large extent, pivoting on this person Quisling, it is indispensable to dwell for a short time by him.

A pertinent question might be: Did he or did he not seem ^{to be} a man to rely on? What did his early and later followers see in him? What was the program he presented to them, to solve the problems the world and this country were facing?

Quisling was a career officer of, as presumably everybody will agree, outstanding intellectual gifts. Our more than one-and-a-half century old Military Academy up to this day never saw a

cadet equalling his examination score. He gave up his General Staff career to join Fridtjof Nansen's relief work in Russia of which he came to be the actual leader, and successfully carried out important missions for the League of Nations. His long service in Russia made him by far the best Norwegian knower of that enigmatic country and its Bolshevik leaders, and also earned him the order of a Commander of the British Empire as a reward for the diplomatic services done to Great Britain at a time when that contry had no diplomatic relations with the USSR. With this background, Quisling had a high standing in Norwegian public opinion, and deservedly so.

This was very suddenly to change, when he came out, in 1930, with a series of newspaper articles later published as a book, "Russia and Ourselves". It earned him the utmost enmity from the "Red" side, though also a passing sympathy from the opposite one, which made him accept the office of Minister of Defence in the Peasant Party's minority Goverment 1931-33. After this, he set about building his own Nasjonal Samling, or National Unity, movment. This earned him the animosity also of the bourgeois parties, as an act of splitting up their electorate. His party never succeeded in sending a single representative to the Storting, i.e. Norwegian Parliament.

This new creation of his certainly falls within the main framework of anti-Communist, and also anti-liberal and anti paliamentarian European thought which materialized most conspicuosly, first, in Italian Fascism, and later in German National Sosialism. Nevertheless, it undoutebly expressed his own original ideas, begin a blend of traditional nationalism and Corporate State thought with a marked religious component also. It was, if a comparison perforce there must be, more akin to Mussolini's theoretical Fascism, than to Hitler's¹ and Rosenberg's National Sosialism¹.

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The NS program, dated February 15, 1934, was never changed. As to the organization of the State, it claims (point 1.) a

From 1935 onwards Quisling began warning about a coming great war between the Versailles powers, Great Britain and France and

"Government independent of party politics", thereby seemingly advocating a return to the classic Three State Powers system prescribed in the 1814 Constitution and which, curiously enough, was never formally abolished, though superseded through the 1884 adoption of Cabinet Responsibility. This would amount to a decisive strengthening of the Executive, abolishing the Storting "usurpation" of 1884.

In point 2. it goes on to claim "the organization of the nation's cultural and economic life in autonomous, legalized trade associations forming the link between the individual and the State under the State's control. A Riksting (National Convent) of the trade associations is to be organized and given influence on the direction of the State.

It is noteworthy that in this program there is nothing reminding of the Duce- or Führer-role of Italian or German pattern, the program thus clearly differing from later, particularly 1940-45, practice.

In the early times, Quisling strongly emphasized that this program of his was no copy of any foreign model, as e.g., in "Fritt folk" April 8, 1937, attacking Nazi-style ex-NS members and stating that "These people - are working - for an extreme "Nazism" which we do not want in our movement. We do not want an utterly uninspired copy of the exterior. Our movement is building on a N o r w e g i a n fundament.", or in his article "Dictatorship or National Democracy" (*Fritt Folk* Nov. 11, 1937) stating, i.a., that "we want no foreign copy, of Fascism, National Socialism or the like. " - New Germany and Italy -. But the professional organization there is realized by, and completely subordinate to, a dictatorial party, a State Party, whose leadership or leader holds supreme legislating power, though mandated by the people. This is not the system we are working for."

As a matter of fact, during the occupation years the terms National Socialism, National-Socialism and Nationalsocialism were frequently used in NS propaganda, speeches etc., to characterize the party's ideology. This may, in some cases, indicate a full or partly adoption of the German system by the persons using the terms, in others, a calculated way of making a positive impression on German observers and counterparts in negotiations. Said one middle-ranking NS official remembering the years in question: When I or someone else said, "As good National Socialists you and we ought to.." or "We German and Norwegian National Socialists..", it very rarely failed to help in difficult situations." NS program I.v., i.a. in *Quisling har sagt-* (Said Quisling-), Oslo 1940, and Brevig, Hans Olaf: *NS - fra parti til sekt* (NS - from Party to Sect") Oslo u.å. (Ca. 1971)

New Germany, advocating a strong build-up of Norway's military forces and a strictly neutral foreign policy, as the only means to keep Norway out of that coming conflict. Extremely few paid any attention to it, and when the war finally did come, Norway was by far the most disabled and disarmed contry in Europe. Since 1935 it had a Sosialist Goverment with the express program of abolishing military defence. This state of our defence forces, and no act or acts of treason, accounts for the fact that this far-away country could be invaded and occupied in the way it was, although being from nature's side and with the technical and military means of that time little less than an easily defendable fortress.

We shall not, in this very brief summary, enter into the possible contents and results of Quisling's Berlin talks in 1939. Let us note only that, whatever has been said in Berlin at that time, Quisling was obviously no part to or in the actual plan for the ivasion or the following campaign. As a matter of fact, by his attempted coup d'etat of April 9 th he seriously hampered German plans and instructions, into which he did in no way fit.

The reason for leaving out of this context the certainly most interesting ^{Les .} question of Quisling's Berlin talks is the very simple one that nobody, neither in- or outside the NS, knew anything about their having taken place till after the end of the war. They can, therefore, not have influenced anybody's siding in the internal Norwegian strife. This point is certainly of som importance to our theme.

History being, or at least intending to be, the account of what really happened, it is but an idle pastime to play with the "if"-type questions. Nevertheless, let only this one be touched: What would have happened, had Quisling, instead of attempting his radio coup, done absolutely nothing until the debacle was over with or without him the military outcome must nescessarily be the same, and then had come forth to say: I

told you so".

That would, undoubtedly, have been a far wiser conduct. Let us agree, then, that in any case his coup d'etat was not wise: If he really meant to seize power just for the sake of seizing it and then hold it sitting on foreign bajonets, it was the worst of all ways and moments to try it. If he really meant to help the Germans, he must have realized that this was certainly not the way of doing it, throwing himself into a game he did not really know, and thus in all probability hampering instead of furthering their plans. There will, presumably, be a general agreement that in any case this way of acting would have been not only immoral, but also utterly stupid. Admittedly, there is the possibility that it might have been so. But there is also the probability that a man of Quisling's brilliant intellect and high moral standing would not act out of immorality and/or stupidity. One might think there would be a general consent that this way of reasoning has, at least, quite as good arguments for it as has that which leads to the opposite conclusion. At the time a choice had to be made, this was a fundamental question requiring to be answered.

This is the way Quisling's followers are understood to have thought: However unsuccessful, Quisling made an attempt to stop hostilities in this country, trying to seize the power the run-away Government had left vacant and thus reestablish a Norwegian authority able to come to reasonable terms with Germany, like the Danes had done. The alternative would be and very soon turned out to be bloodshed and huge material damage. All this for a cause that was not ours, and finally ending in defeat.

Quisling certainly was not the only one to hold the view that military resistance would be useless: The Supreme Commander of

the Norwegian Army told the Government exactly the same thing², and after his being obliged to resign, his successor told the Government that any such resistance would make sense only on condition that strong Allied assistance would be forthcoming³. As we know, this prerequisite was not complied with. The Norwegian Government itself entered into conversations with the German ambassador with a view to arrive at a "Danish" solution, and presented the German condition that Quisling should be accepted as Prime Minister as the reason why these efforts rendered no positive result. Nevertheless, after the German authorities had forced Quisling to resign his arrogated authority a week after the invasion, the Norwegian Government did not change its position, presumably believing in British promises of decisive help. On the other hand, confusion was great: It did not even bother to recall its Berlin Minister, who stayed on until thrown out by the Germans. Nor did it on its departure from Norwegian soil issue any statement to the effect that the war was to be continued. In this author's view there can be no reasonable doubt that a war was going on⁴ in this country between April 9 and June 10, when the remaining Norwegian forces surrendered to the German High Command after the Government had left for Great Britain, seeing that there was no positive response from the German side to its

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Innstilling fra Undersøkelseskommissjonen av 1945 (Findings of the (Storting's) Commission of Inquiry) Oslo 1946, page 115

3. Ruge, Otto: *Felttoget*. (The Campaign) Memories of the Fighting April - June 1940. Oslo 1989. page 20 also page 29, telegram from Headquarters Supreme Commander Norwegian Forces: "We need active military assistance at once and immediately (sic) - if we do not get it, Norway will be German within a week."

4. Some have argued that as Norwegian neutrality had already repeatedly been infringed by Great Britain, Germany was entitled to look after its own interests in the way it did, and this may probably be right. Nevertheless, it would seem a somewhat scurrilous deduction that the fighting on Norway would, therefore, in its nature be something different from a war between Norway and Germany. It would seem that any serious discussion must accept the state of war as a fundamental fact, whatever the reason that brought it about.

Swedish-sponsored idea of dividing Norway into an occupied and unoccupied zone, where the Norwegian Government would still exercise authority.

During all this, from April 15 a smoothly-collaborating so-called Administration Council consisting of high-ranking civil servants of the "good Norwegian" type and responsible only to the German Reichskommissar, took care of what would normally be termed Governmental affairs in the constantly expanding occupied zone. The least to be said about this whole situation is that it was a highly confused and confusing one.

The confusion does not end here. On the contrary, it goes on and on and on: The official version of history is that when the remaining armed forces capitulated in June, the Government going into exile in Great Britain went on waging war until, at least, May 1945, which would, then, mean that during all this time the whole of occupied Norway in some way were still a war theatre where the exiled Government went on exercising legislative power, notwithstanding the Hague Conventions regulating the status of an occupied territory. This construction being at the base of the "Rettsoppgjøret", we are obliged to look a little deeper into this particular matter.

The main piece of the "still at war" argument is that the capitulation of June 10 was but a partial one, affecting our 6th Division only. What actually happened on this day was that the Norwegian High Command, on Governmental orders, signed the capitulation of "Die gesamten Norwegischen Streitkräfte", with the German High Command as its counterpart. It may be asse^d that the Norwegian readiness to capitulate was communicated to the Germans via diplomatic channels, and not by a simple military signal, as had happened with all the other divisional etc. capitulations already signed. Now, it has, in fact, been argued that the "gesamte Streitkräfte" would not mean "all Norwegian armed forces", which everybody acquainted with the German language knows it unequivocally does, somehow it should

6a be given the interpretation of "concentrated forces" or something like it. Needless to say, there is nothing in the capitulation instrument itself, nor in any Norwegian or German documentary source to sustain this rather scurrilous interpretation. Following this, and footing on the preamble mentioning particularly the gallant fight of that Division, the capitulation should concern this 6th Division only. If so, this Division of certainly brilliant battle record would turn out to be absolutely unique: First, in that there was a need for its capitulating twice, - as a matter of fact it had already capitulated once, in the field, as all other Norwegian Divisions. It would be unique also in so far as it must be in charge of the Kingdom's lighthouses, telecommunications, pilot service, airfields, naval mine fields and more throughout the country, as specified in the document in question, and which one might hardly expect an infantry division to be.

6b It is a valid objection that the greater part of the documentary evidence, comptes-rendus, memoirs etc. were not known at the time, and consequently could not influence thoughts and decisions taken by any NS member or other Norwegians. But in case everybody saw the practical outcome of it: All prisoners-of-war released, including all officers on word of honour that they would not, for the duration of the war, take up arms against Germany. People saw our 2nd Division coming home from internment in Sweden after having referred the question to the Government in exile, - that is to say, with that Government's explicite approval; and they saw the non-NS Administration Council asking German authorities that ex-prisoners-of war be given a priority right to work for the Wehrmacht, as well as the setting-up of German-Norwegian Trade Chamber comprising practically all our business life, to intensify trade with Germany. They also saw a majority of the Storting members in the course of negotiations that Reichskommissar Terboven broke off, thus saving them from really doing it declaring their willingness to formally dismiss the exiled Government and even to depose the Royal House,

eagerly helped by persons of the highest rank, like Chief Justice Paal Berg and Bishop Eivind Berggrav. Towards the end of the year they were also to see what was termed the Nazification of local administration being put into effect by the Norwegian Government-appointed, "old" provincial Governors. It was, to say the very least, not obvious that simultaneously with all this Norway should still be at war with these same Germans. Now, the official contention is that it was.

But there were interesting things to be read in the press editorials also, - at that time with no coercion whatever being imposed on those who wrote them. On that fatal day June 10 *Dagbladet* in Oslo called its editorial "Peace in Norway, and stated i.a. that: "In active cooperation with the German authorities the whole people now has to take the consequences of the new situation".

On June 14 the same *Dagbladet* editorialist remarked that
"The King and Government let decisive political moments pass unexploited, fled in their own personal interest to England and even dragged sons of our country with them in order to obey England's order and interest. They left us in the lurch. We have to try mastering the situation ("ordne oss") without them".

On the same day, *Aftenposten* in Oslo told its readers that: "The whole of Norway is now occupied, and this occupied Norway is no longer at war with Germany", and went on to state, that it was true, that the exiled authorities had decided that Norway "nevertheless continues the war on the Allies' side". Thus it thereby was going much further than did, up that time, any declaration issued by those same exiled authorities. This appears to have been the only contemporary editorial comment of any important newspaper hinting at a continuation of the war regarding Norway.

On June 15 *Morgenbladet* in Oslo told its readers that: "The

State authorities now on the other side of the ocean have lost their right and possibility to exercise (any) functions in Norway."

And on June 26 *Tidens Tegn* in Oslo stated that: "it is part of these efforts to keep it going, that Heads of State and Government are kidnapped. This kind of diplomatic kidnapping was particularly successful in Norway." Thus it came surprisingly close to a description of what actually happened at Tromsø prior to the evacuation: We now know that at first neither the King nor the Crown Prince wanted to leave Norway⁵, while the Government members had very different ideas as to what to do next, as e.g., quit politics and go into exile in Finland (Prime Minister Nygaardsvold)⁶, or perhaps obtain a professorship in America (Foreign Minister Koht's reflections on May 1.⁷)

Now, an average Norwegian having to make up his mind concerning the real state of Norway, the Norwegian Government etc. might very well, it would seem, come to the conclusion that this contry was in fact out of war. This must, e.g., have been the view of the Storting majority, which, supposedly, nobody would earnestly look upon as traitors. Summing up the situation as it appeared in the summer of 1940, the Storting's Commission of Inquiry states that: "there were those holding the view that Norway was, in a way, still neutral, the war being that of the Great Powers."⁸

Evidently, those holding that view must have been quite a lot,

5. Kersaudy, Francis: *Vi stoler på England* (We trust in England) Oslo 1991, page 52.

6. Hjelmtveit, Nils: *Vekstår og Vargtid* (Years of Growth and Time of Lawlessness and roaming Wolves) Oslo 1969 pp. 158 ff

7. Koht, Halvdan: *Frå skanse til skanse* (Driven from Defence to Defence) Oslo 1947, page 105.

8. UK, 207

as will already have been remarked. In his essay
"Riksrådforhandlingene" ("The State Council Negotiations")
professor Sverre Steen remarks that

"In the summer of 1940 it was a not uncommon opinion
that the war between Norway and Germany did, factually,
end on June 9, and that Norwegians continuing the war
abroad were to be considered volunteers not binding the
State of Norway."⁹

The crucial question is, in fact, if there was or not some kind
of treason implied in that "not uncommon opinion". The
implications of an affirmative answer will, clearly, be
dramatic, and so will, to no smaller extent, be those of the
negative.

To avoid those implications and the ensuing consequences the
thesis has been advanced that maybe, after all, the situation
was at that time confused enough to excuse those who did not
understand that Norway's war was still going on, with the
exception of Quislings's followers, to whom one must, if the
thesis be sustained, then attribute some kind of unexplained
clear-sightedness not found in the rest of the population. But
also this part, unpossessed of that extraordinary power of
political and legal vision, must at some later time have
realized that this country was still at war. The problem would
be, then, at what time and how. The question does not, after
all, seem so clear as would appear desirable.

There is, finally, the often-quoted article by the renowned
lawyer Harald Holte [*Tidens Tegn* August 4, also *Dagsposten* Aug.
6] stating, i.a. that: "Norway found itself at war with Germany
on April 9 this years. The war ended on June 9, when arms were

9. Steen, Sverre: *Riksrådsforhandlingene* (The Regenc
Negotiations) in *Norge og den 2. verdenskrig: 1940 - fra
nøytral til okkupert.* (Norway and the 2. World War: 1940 - From
Neutral to Occupied) page 267

laid down in Norway. "The Norwegian people has never - and under no circumstances constitutionally - signed any treaty of alliance with Great Britain, we never agreed to engage ourselves in a world struggle. If Norwegians abroad chose to go to war for Great Britain, this is a voluntary affair. Norway as a State is not bound. Neither the King nor the Nygaardsvold Government is entitled to let the State of Norway be a belligerent for Great Britain's case."¹⁰

This lawyer was, before the war, a Storting's consultant on international law. After the war he was appointed Governor of Southern Trøndelag. He must therefore, presumably, at some time unknown have changed his opinion on the matter. But not all of his readers might have been informed of that change. Did they, owing to such lack of information, enter into the category of traitors? Another question is, what had, in the meantime, so fundamentally changed in the past?

It would appear that there is, to say very least, no obvious proof of any kind that Norway were, after June 10. 1940, at war. That no peace treaty had been concluded does in no way affect that conclusion: A country may very well be out of a war in so far as it has capitulated with all its military forces, having thus passed into the status of an occupied territory subject to Hague regulations. There is even evidence that the Norwegian chargé d'affaires in Stockholm looked upon himself as "neutral" in the war going on between Allied and Axis powers, as well, as written evidence from Foreign Minister Koht¹¹ as well as from his successor Trygve Lie¹² that Norway did not, neither before nor after April 9. 1940, enter into any treaty

10. Interview Capt. Odd Jensen *Morgenbladet* May 26. 1979. The chargé d'affaires referred to was Mr. Jens Bull, a scholar of international law.

11. Koht, Halvdan: *For fred og fridom* (For Peace and Freedom), Oslo 1957, page 282, and UK III, 295.

12. Mr. Lie to Department of Justice 21 July 1945, cfr. UK III, 295

of alliance with any foreign power. There was and is, consequently, good reason to hold the view that there was no Norwegian war going on, nor any allied to Norway to take up arms against. That contingents of Norwegians were, nevertheless, on active service with British naval, land and air forces, even flying the Norwegian flag, does not affect this fundamental fact. The Government in exile had not a single soldier, sailor og airmen at its disposal in so far as operative command is addected, although, generally, and in the words of King Haakon: "we were allowed to let them fly the Norwegian flag, although they came under British command".¹³

Even admitting that there were also, and in spite these undisputable facts, reasons to hold the view, in the confused situation following the total June 10. capitulation, that Norway was still a party to the war, there obviously is no reason to dismiss the opposite opinion as criminal or treacherous. Neither is there, consequently, any reason to term the acts resulting from that conviction as such, in so far as they did not contravene any other Norwegian or international law. If so, the question is a very different one.

Here, this author wants to state unequivocally his view that the admittance of the good faith and honourable intentions of the great majority of NS members does in no way imply any conclusion detrimental to the views and acts of those who chose the other side and fulfilled what they, owing to this honourable conviction, deemed to be their national duty. There is, on the contrary, every reason to pay homage to their courage, deeds and sacrifices. In a situation having, in some aspects, the characteristics of a civil war, respect for one side does in no way imply vilification of, or contempt of, the other one.

13. *Kong Haakon taler* (King Haakon speaks), Oslo 1947. Speech delivered on assival at Tromsø july 8, 1946., this point referring to the Norwegian Navy.

It is but a fair assumption that there will have been cases of individuals joining the NS out of selfish motives, as there always are in any party detaining power, or seemingly near it. But as a matter of fact the greatest afflux ever of new members came in the months following the Reichskommissar's speech on September 25, 1940, categorically stating that the road to Norwegian independence would be that of the NS¹⁴. In the light of later events - and some would say: also of preceding ones-, one may, of course, raise the question of the trustworthiness of his declaration, but the world situation being as in fact it was at the time, it is only fair to assume that in the eyes of many it would seem only reasonable chance of regaining that independence so dear to all Norwegians. There seems to be nothing vile or treacherous in such an assumption, the whole question reducing itself to that of the viability or not of the road chosen.

To some never-cleared extent World War II was also an ideological war, and the belligerents did their utmost to enhance that aspect of the conflict. Needless to say, the German attack on the USSR was not only, but also, an attack on the very center of world Communism. Equally clearly the Western Allies' war aim was also, but not only, an effort to restore Western Europe's collapsed democratic regimes. The idea and willingness to combat Bolshevism cannot in good faith be termed less respectable than the idea and willingness to combat Nazism. It is true that much had been said and written of the evils caused by Hitlerism, but it is equally true that even more was at the time positively known of the effects of Stalinism in the USSR. In the years following the downfall of Bolshevism even more has come to public knowledge, allowing the conclusion that in its decades of power it was responsible for a holocaust many times as great as even the highest of varying figures ever put on Nazi Germany's account. It would seem, therefore, that the ever-returning question as to what it feels

14. Reichskommissar Terboven: *Nyordningen i Norge* (The New Order in Norway), Oslo 1940, page 29.

like having been on Hitler's side might better be omitted.

There is also the embarrassing counter-question whether it feels better having been on that of Stalin. Let it be stated that the anti-Communist position is in no way less moral than the anti-Nazi, and that the resolution to go out fighting Communism actively has no moral stain whatsoever attached to it. It should be born in mind that this very anti-Communism was an important part of the NS ideology, and that even in the Berlin-Moscow pact days Quisling stubbornly went on stating that the "final struggle" would be that between Western European civilization, headed by Germany, and World Communism centered in Moscow. This anti-Communism is characteristic of the whole Quisling movement, and of course most particularly applies to those, volunteering for the Eastern Front. Regardless of the prosecutions assertions during the "Rettsoppgjøret" and as will already have been noted, there was, by the way, nothing like an alliance between Norway and the USSR. The Eastern Front volunteers cannot, therefore, be looked upon as having taken up arms against "a power allied to Norway".

Whilst there is, in this author's view, no serious foundation for the treason charge against each and every NS member, which was the main piece of the "Rettsoppgjøret", the question appears to be a far more complicated one when we approach the charge founded on section 98 of the penal code defining high treason.

In principle, there is nothing vile or treacherous in collaborating with an occupying power, as clearly established by The Hague Land Warfare Conventions. It is only by exceeding the limits set by these conventions that such collaboration takes on the hideous face of betrayal of one's own country. In this respect this author will restrain himself referring to the certainly most instructing wartime history of the British Channel Islands under German occupation.

The charge against Quisling and his followers is precisely this: They were but lackeys of the enemy, doing their best to help him subdue and to exploit their own people. This is supposed to have been at the bottom of all their actions. In addition to that, and in order to further this same intention, they tried, helped and instigated by this same enemy, to force upon their people a new, Nazi-type regime. From the NS point of view, reality was fundamentally different: The collaboration with the occupying power was, per se, legal and highly necessary. If not, how could the very fact that they succeeded in out-manoeuvering other would-be collaborators of the ancien-regime type, of which there were, in fact, a lot, be turned into a charge against them? Further, this co-operation was also a counter-operation: Against the manifest intent of German circles personified in Reichskommissar Terboven to reduce Norway to a kind of Generalgouvernement of Polish model under exclusively German administration, if not even to a Gau of the Greater Germanic Reich which was dream of some influential German leaders at that time¹⁵.

Certainly, in an occupied country the reality of power is clear to everybody. It is a fact, nevertheless, that no other European collaboration group or party leader ever managed to reach a position equal to that of Quisling as Ministerpresident, and leader of Government, with a formally independent Norwegian administration at his orders. It certainly goes without saying that this "independence" was a highly relative one. Even so, it brought him and them into a position from which they were able to do more to safeguard national interests than any other collaborationist, movement ever got the means to do. In the outcome, the returning exiles found a well-administered country which, with the exception of Denmark, clearly had suffered less than any other European country from World War II amongst those involved in it.

15. Dahl, Hans Fr.: *Quisling, en fører for fall* (Quisling, a Fører facing Doom), Oslo 1992 pp 413 ff.

The question is, if this, wholly or partly, involved a manifest infringement of the penal code's high treason section. As an undisputable matter of fact, the Quisling movement aimed at, and for the duration of its time of relative power succeeded in, replacing the country's constitution by means, to say the very least, not authorized by the law. Furthermore, it can be rightfully argued that this attempt took place under the auspices of a foreign, occupying power, and by means which they, without the presence of this occupying power, would not have had at their disposal. This would amount to rebellion, with the assistance of the power occupying the country. On the face of it, there is pretty good reason to uphold that charge. Moreover, Quisling and other high-ranking NS leaders are on record repeatedly referring to that "National Revolution" of theirs. 10

Now, it might be argued that the Constitution thus violated had in fact already been suspended, through the occupation of the entire country and the King's and Government's going into exile, being thus deprived of any possibility of fulfil their constitutional duties. That amounts to say, and was at the bottom of the Storting representatives' bargaining with the German authorities, that there was, actually, no constitution to change. It is easy to see the point that, if Great Britain - and later, she and her allies - against so many odds should, after all, win the war, no harm would have been done, in so far as everything would, then, be restored to its former state. People so reasoning go on to say that if, as the vast majority then undeniably did expect, Germany was to win, it would be of vital importance for Norway to have a regime able to come to reasonable terms with the Germans and then to secure it a worthy place as an independent nation fitting into the framework of the coming New Order Europe. Admittedly, rather than to a full acquittal, this would amount to a concession of mitigating circumstances. The principle of equality before the law would, then, and irrespective of likings and dislikings, apply exactly

the Storting members and other who at the time acted as they did.

One should, when it ~~when~~ it comes to the examination of motives, not forget that, before all this came to happen, Quisling and his followers were termed extreme Nationalists. It is, therefore, very unlikely that they should suddely have turned into anti-national sell-outs wanting, or at least willing to, give up this Nation of theirs. It stands to reason that they meant, by this so-called revolution of theirs, to look to Norway's best interests, however much they might at that point depart from the prevailing majority view. This would, certainly, have earned them the classification as rebels, and some of them even admit to that charge. Opinions may differ strongly as to what to think of rebels, but one might assum there is a pretty general consent that being a such is not infamizing as is being a traitor.

It stands to reason that, from the very beginning, Quisling honestly meant to act in the Nation's interest. This, evidently, would apply also to the great majority of his followers. The wisdom or not implied in their choice is a question which could not be answered before the results were manifest. If the war had ended with an Axis victory, there might possibly have been a consent that this point of view had proved right, and the action consequently taken accordance with the Nation's best interests. But this, again, only if he had, in that hyothetical case, succeeded in reestablishing an independent Norway within the framework of the much-heralded New Order. As the first prerequisite - the Axis victory - was not met with, this further alternative was never put to test of reality and can, therefore, be discarded as a theme of serious debate. In its result, Quisling's action evidently was wrong, as the final situation envisaged by him never materialized. So much for the practical results.

another one, namely, if the action taken in the situation given was morally evil and, from a legal point of view, treacherous. The wording of saction 86 should be borne in mind when answering the legal aspect question, as should the confused choice situations with regard to the moral one.

There were, in fact, more than one such situation. The first may be said to have been the one arising out of the momentaneous April 9 scene, where extremely few responded positively to Quisling's attempted coup d'etat. (Which does not mean, by the way, that there were anything like an unanimous backing of the Government's wavering stand. The majority view might, probably, be best described as a lukewarm wait-and-see position.) Then, after the military debacle in Norway and the fall of France came ^{the} already mentioned Reichskommissar's statement of September 25, promising the restoration of Norwegian independence in a NS-shaped "New Order" State. As said before, this was the moment of the greatest afflux to the Quisling movement. Then there came the new situation created, in June 1941, by the German onslaught eastwards. This seemingly clear, new situation where finally Bolshevism was held out as the main enemy, attracted a considerable number of new adepts, amongst these a remarkably great number of veterans of the 1940 campaign against the Germans, now wanting to fight what they considered civilization's enemy no. 1. Additionally, and of great importance to many of them, there was the point of shaping, through the volunteer formations, the cadres of a new Norwegian army. Som 15 000 Norwegians volunteered for the Eastern Front, but only approximately half the number was actually admitted for service. The greater part of these, but far from all, were already NS members.

Here, one may feel entitled to object: In spite of his strenuous efforts, including those to induce Norwegians to take up arms on the German side in the East, there was no peace treaty signed between the Quisling Government and Germany, and no precise guarantee - if so it might be termed - ever given as

to the status of Norway in the coming New Order. Why, then, hold on to this semi-power depending on the invader's forces, in the face of growing discontent, opposition, incipient sabotage and underground activities which, in their turn, inevitably resulted in increasing reprisals and brutalities from this same occupying power upon which his whole position depended? Was it, after all, but a desperate and miserable bid for power, or for that dwindling appearance of power which the German civil and military authorities allowed him and his NS movement to wield? There is, in fact, good evidence of Quisling's growing disappointment and bitterness at broken German promises and increasing interference in what he termed his own field of action, - must he, then, not finally reach a point where he had realize that he was the loser in a play in which he had, from the very beginning, fatally miscalculated his chances? And would it not be highly advisable and perhaps morally imperative, then, to leave it and let the Germans run this country alone? (a

As we know, he and his followers did not leave it. The reason might be, like the official interpretation goes, simply a despraeete clinging-on to this German-based power in order to exploit it so long as it might last. But there might quite as well be another one: We know from reliable evidence that Quisling, at least on one occasion, seriously considered extricating himself from his increasingly impossible situation, leaving the whole affair to the Germans. This he did not do. Facing this dramatic new choice, he and his followers's answer appears to have been that the alternative, all-Reichskommissar rule would be the worst of all possibilities: To a certain extent there evidently was some Hitlerite prestige to play upon: Repeatedly, the Fuhrer had committed himself, although never in precise terms or a formal agreement, to the friendship and collaboration with Quisling's "New Norway", and in order not to lose this seemingly reliable "ally" - there were, approaching the foreseeable end, so desperately few left! - he might be expeted to make some effort to keep him. That would,

first of all, mean to put some restraint on his Reichskommissar's ever-growing harshness in his attempts to secure order and "peaceful" conditions in Norway. Here, Quisling undoubtedly was right. The most outstanding instance to prove it is the Reichskommissar's incredible idea, in January 1945, of shooting 10 000 - ten thousand - "hostages" to put a definitive end to sabotage and other underground activity in this country, which came to nothing precisely because of Quisling's intervention in Berlin¹⁶. Even so, there also are instances of Quisling's assepting responsibility for an absolutely unlawful act like the execution of a police officer sentenced to death by means of a retroactive law in 1943. Here, after all which has come to be known of this infamous affair, the alternative appears to have been German "measures" by far exceeding this single execution, to maintain control over a rather reluctant Norwegian police corps.

One might, in this author's opinion, view this whole tragic situation as a succession of choices. Where every choice made conditions the nature and number of those open in new situations. With no detriment to the honour of those who, at once or later on, took opposite views and acted accordingly, ours must finally be the time to recognize that the situation of this country was at no time clear enough to say that there must perforce be on single point of view and ensuing kind of action entitled to be called the right one, nor is there, consequently, any objective reason to stigmatize as evil and treacherous the views held and action taken by those who chose the oppsite direction.

Reverting to those who made the "wrong" choice, and following the scheme of classic Greek tragedy, one might perhaps say that the initial and subsequent choices made by the person or persons portrayed all bear in them the seed of doom, though it can at no point be said that these choices were, morally or

16. Hans Fredrik Dahl, 1992 op.cit.p. 535, and Scharffenberg, Johan, dr.med., *Morgenbladet* May 8. 1954.

intellectually, wrong; one might, on the contrary, and judging them from the situation in which they were made, find them absolutely logic, or at least fully defensible, and quite as logic as would have been the alternative. This, it would seem, is to a large extent the story of Norwegian NS collaborationism during World War II. As in the tragedies of ancient Greece those destined for disaster are not in any way more evil or less moral than those who are not, it would seem that the NS movement did not act wrongly or willingly opposed to national interests but on one decisive point: Their initial belief that Germany would win the war. And this, one would agree, was not a moral question. That those who, headed by the King and Government, took the opposite course did in the outcome appear justified by events, bears, per se, no testimony to any higher morality or wisdom on that side, if by morality one would here mean willingness to serve the Nation's best interests. Nor is there any proof of any greater wisdom on that side, - one should bear well in mind that the following events, which in the end were, apparently, to prove them right, were at the time of choice totally unforeseeable and therefore neither were nor possibly could be of any importance for the direction chosen. One might even say that on more than one cardinal point the results registered proved them fundamentally wrong. Now, if neither moral nor wisdom proved the one side "right", how could they, inversely, prove the other side "wrong"? - Again, we are back to the Greek tragedy plot.

Discarding the question of wisdom and moral, one finally lands on that terrain where the fate of nations and individuals is, in the end, decided upon: We are back to politics, where it all started. Making a step further, we are facing what is termed political justice, an adequate term if thereby is meant the formal appearance of justice employed to serve the ends of those momentarily in political control, and an absurd one, if by justice one would mean that absolutely impartial weighing of deeds and motives which the term, ideally, implies. It is all too well comprehensible that the sheer term "political process"

is, to all ears, an infamous one. Clearly, the whole "Rettsoppgjøret" was, from beginning to end, exactly a series of such political processes. Anybody continuing to claim it was not, would have quite a hard stand trying to prove that of all nations at all times Norway would, as surely the only nation hitherto known by History, have been able to sanction political thoughts and deeds - regardless of their being, in a presumably neutral observer's view, good or evil, right or wrong - without letting politics lay hands on one of the scales of Justice.

Now, if by justice there should be meant that rather Platonic idea of impartialty, the following points must be answerable in absolute terms:

1. Was Norway a belligerent country after the capitulation on Governmental orders, of all its armed forces ?
2. Was the NS' fundamental aim to serve German and proper interests, to the detriment of those of Norway ?

We shall not, in this context, dwell with the way the "Rettsoppgjøret" was handled, nor shall we enter into the question of its juridical foundations. Prolonging the line already suggested we should rather, in all fairness, allow this question to be raised: Out of which motives was it born, and which ends was it meant to serve ? This, then, would provide an answer, or answers, regarding the moral question of good and evil. Then there would be, here also, the question of the results registered, accounting for the question of the wisdom or not that inspired it. We would hereby, it might seem, have transferred it to the domain to which in the end it irrevocably belongs: To History, which is in no way dependent on our immediate answers. We might, at the very best, perhaps get some idea of what that answer of coming times will most probably be.

Said general de Gaulle: "The future lasts long". And we might

add: So does History, and certainly long enough to allow herself a shrug of shoulders at the question of who was, in some remote past like our actual time now, on some particular issue held to be right or wrong. If an answer to that question there really is, we should not exclude the possibility that we would, had we been able to hear it, be somewhat surprised.

It might, to some extent, be a question of the frog's versus the bird's perspective. Let us enter into no debate as to which of them is "true": They certainly both are. Knowing this is our advantage over frogs and birds, at the same time fatally compelling us to act imbued with the knowledge that there may very well be "truths" visible to other, and which we at the time of decision do not know. This knowledge might perhaps allow us some more broad-mindedness in our judgement on fellow members of that great family which is the Nation. It would, it might appear, in no way be detrimental to the interests of History, and would, probably, render some humble service to those of the Nation.

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