FORAN 50-ÅRSJUBILEET OVER FRIGJØRINGEN:

"OPPGJØRETS TIME"

ANALYSE - DISKUSJON

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HOW TO BRING NEW IDEAS
ON THE OVERALL UNDERSTANDING OF THE 'RETTSOPPGJØRET'
AFTER THE WAR IN NORWAY

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During the last debate over the Rettsoppgjøret in the Norwegian parliament in 1964 Mr. Eikeland said that it should be "taken as a 'point of light' that we now, almost 20 years after the events took place, analyse them over again with the possibility of arriving at new perspectives. This shall be seen as a proof that we live in well developed 'rettsstat' ('state characterized by the rule of law')".

Let his statement be taken as motto for this symposium and as a useful guidance for our willingness to be openminded in our analyses and demonstrate a certain breath of opinions, when we shall approach the challenge of debating and scrutinizing the Norwegian Rettsoppgjør in a comparative setting. Next year the world shall celebrate the end of the Second World War and I therefore feel it is also right now to throw som light on the consequences of the war and how we handeled its aftermath. The purges and settlements after the war, are so closely connected to the war itself, that we can not appreciate and understand the war and the victory without seeing them in their full accomplishment and their consequences.

It is perhaps correct to say that since the last debate in the Storting, there has not been any broad discussion and anlysis of the Rettsoppgjøret. Only on very few occations, and in connection with some odd TV-debates and instances of spesific issues as the publications of Quisling and Hamsun apologetic biographies has there been any public interest in it. Our symposium, I will like to say, is the first to take the Rettsoppgjøret under scrutiny in a broad and open analytic perspective.

Is there a tabu in discussing the Rettsoppgjøret today?

There are several reasons why the rettoppgjøret has not been the subject of a broad public debate, and why so relatively little has been done on scientific research on it. The available research so far accomlished, with some notable exceptions of collegaues presented around the table today, was carried out as part of projects which have had their main focus on other problems connected to the history of the war. We have nothing comparable to a study like Ditlev Tamm on Denmark, A.D. Belinfante and Peter Romijn on the Netherlands and the many important studies now being published on the purge and säuberung processes in Germany, Italy and France. Maybe this symposium can give incitament to such research in the future?

One reason for the assumption of the tabu in the Norwegian public has to do with the obvious feeling that a critique of the Rettsoppgjøret will colour the views we have on the heroic role of the Resistance during the war and most important of all: of the understanding, pity and sympathy we feel for all the people who suffered the most during nazi rule, being themselves or their relatives the subjects of terror and murder. But believe me, I trust that you share my conviction that a critical analysis of the Rettsoppgjøret does not have anything to do with a changed opinion on the symphaty with victims of torture and Gestapo persecution, or a decline in our honor of the resistance. It is possible to separate the critical analysis and the deep feeling of sympathy.

A second reason for the avoidance of a full debate on the Rettsopgjøret has to do with our possible fear that a discussion may lead to a situation where we loose our firm sense of what the concept of 'treason'/landsvik may convey. The Rettsoppgjøret established such standards and in a modern, democratic state the outmost importance of establishing undisputed ethical standards of right and wrong, of false and

truth, and of what constitutes the basic loyalties to the state, it is often stressed. Particularly when it is in a time of crisis. If a reconsideration of the Rettsopgjøret should lead to a dillution of what 'treason' constitutes, it will lead to - I believe many will argue - a weakening of our sense of what being a true citizens of our country involves. A true sense of honor and pride requires firm concept of what a 'true patriot' is, in contrast to a traitor. (Some people may also believe that a critique of the concept of treason will also give some right wing extremists the opportunity to present themselves as different from what they really are.)

A third reason why a broad discussion of the Rettsoppgjøret has not taken place in Norway has to do with the 'logistic implications' of it, if I may term it in this way. The share number of cases and people convicted prevents us from really go back into the many court decisisons and police files to re-evaluate them if we will find reasons to object some of the principles of the sentences passed. I can simply not be done, - it may be argued.

However, the committe who investigated the entire Rettsopgjøret from 1955 until 1962, wrote that the purpose for their huge report was to provide material for future research and analysis of the Rettsoppgjøret. In the parliamentary debates it was also mentioned that perhaps it was then too early to discuss the rettsoppgjøret in a fair way, but that it had to be done at a later stage. One may off course ask if today is the right moment, and that we may have waited until all the official celeberations next years was over. But there have, in my mind, been som many perverted and meaningless efforts to discuss the Rettsoppgjøret, or the NS-membership in general in Norwegian media, that our symposium may be well timed. And I do not believe that we shall have any final say anyway on the topic, but do a serious effort to reach at some new conclusions.

The relevance of the Rettsoppgjøret as a topic for research

In the majority statment of the parliamentary committe which prepared the debate for the Storting, one can read that what can be learned from the Rettsoppgjøret "is of limited value, because a new war will presumably be totally different from former wars".(p 345) When this statement was discussed in the Storting, Sverre Løberg a member of parliament and a former KZ-prisoner of much hardship, underlined the opposite; that the general preventive effect of the Rettsoppgjøret was of a very high value and of great importance as a signal for the future. (p. 2731)

When we glance over the global political scene today and also in retrospect over the last fifty years, we will find that purge processes and trials of political crimes or treason have happened and happen over and over again. I was hoping that Hanne Sophie Greve should have been here to give some examples of the trials they prepare against the war crimes in Bosnia and Kroatia, so you could have had some glimpses of the repetition of issues in the actual sitaution today. It is true that the Rettsopgjøret was unique for Norway at the time, and hopefully for the future, but the process itself is a general phenomena to be studied and observed in many and different settings. This is also why we have invited our distinguished colleagues from Germany, Italy and Japan. The Norwegian Rettsoppgjør is of course a genuine case, but can only be understood and evaluated when compared with other cases.

In Germany today they are in the process of 'cleansing' the former apparatus of the STASI and to try to bring the persons responsible for 40 years of dictatorial powers for the courts. This regime was kept alive by a large Soviet occupational army and legitimized by some two (?) million members of the Communist party (the SED). It has for long been realized that it would completely impossible to bring all these members for trial. As far as I know there are only a few dozen police

officers in jail waiting for trial, while the main trial slipped out off their hands when Honecker was decleared too ill to stand for the court.

In Chile there is no question of a trial of the responsible for a regime which was so cruel that one may wonder that Pinochet and his helpers can continue to live as ordinary citizens in what they today call the Chilean democracy. If we look at the pact which was negotiated in South-Africa before the transition to the newly elected democratic regime we may be astonished to learn that no single persons, none of the brutal killers and torturers, are to be tried. And the extremely repressive dictatorship in Argentina which fell after the Falkland Islands war, has not be brought into a Rettsoppgjør whatsoever. (In Russia the possible mangitude of 'complet' trial of all individuals who were involved as 'tools' or 'responsbile' in the former Soviet Union would both be logistically adn politically impossible.)

These comparisons may be not so relevant if we think of them as good examples of parallel elements to the Norwegian Rettsopgjør; i.e. comparison of details of legal statutes available and of spesific regulations for 'political' versus 'criminal' acts of violence etc.

They are examples of 'negotiated transitions' from repressive dictatorships to fragile working democracies which are ballancing on edges of peaceful solutions of political decisions against brutal reactions of military and banditary upsurge. The introduction of democracies in these countries are dependent on a context of uncertain consolidation of the most nececcary structures of democratic institutions and political rights. An effort of introducing a full fledged Rettsoppgjør in the Norwegian sense, would have ended in its contradiction: return to more and more causal violence.

The value of these comparisons is therefore both to demonstrate that settlements after dictatorial regimes are often very different things, but also valuable to point to the particular feature of the overall Norwegian context in which the Rettsoppgjøret was a part. It was prepared by the cohesive group of the resistance, eventually amalgamated into the Hjemmefrontens Ledelse, who wanted to see their fight and suffering against the German Gestapo resolved into a comprehensive trial and settlement of all persons and acts committed by them: a total cleansing of ills and wrongs done just before and during the war. They were in a spesific position to express the opinion of the Norwegian people as an almost undisputed authority. This was the basic context when the war was finally over by May 8. 1945.

The political settlement versus the Legal purge

Let me forward the following thesis and formulate the major arguments which may support it:

Because the legal trials of NS-members, war criminals and other collaborators did amount to such an immense scope, - the 'political trial' of groups and individuals was abaondoned. (Explanation: One could not carry two far-reaching processes at the same time, and it would also have been tempting to draw too easy parallells between them.)

During and after the unsuccessful defence of Norway during the hectic months i the Spring of 1940 several individuals, either on their own initiative or acting as members of the Storting, went into negotiations with the German occupants in efforts to find acceptable solutions for a civil government under the German Wehrmacht. Many of the politicians and many of the bureaucrats went very far in the direction of collaboration by working for solutions which meant abandonment of important clauses of the Constitution, abdication of the King and subordination under German military rule.

On August 6. 1945 the government appopinted a commission to investigate all matters of 'political collaboration', matters of accountability on behalf of the government before and during the actual fighting, as well as the overall policy of the exile government in London. The report of the commission: *Innstilling fra Undersøkelseskommisjonen* appeared in several volumes during the period of 1946-47 and was brought for the Storting in 1948. It was discussed at lenght, but in the end the parliament decided to do nothing. In the opinion of the parliament there was no need to bring the responsible for a constitutional or criminal court.

Edvard Bull has in his history of Norway after 1945 dwelt on the political considerations and the discussion which ended in the vote: "The 'case' provides no opportunity for action from the Odelsting". Because the debate came so late (the Cold War had began) and the *Innstilling* as well as the debate in itself had emptied the critique, and since the responsbility was spread among actors from many political parties, there was no opportunity space for maneouvres for any of the fractions within the parliament. And since the Nygårsvolds government under attack had been a Labour goverment and the present majority in the Storting was based on the Labour party, the outcome was given.

Thus there was no real trial in the political process (even if the most heavy critiziced politicians met their final political defeat during the debates), and since the scrutiny of the responsibility for Norwegian military failures during the war in 1940 was limited to charge only four officers for mistakes, one can safely say that the 'political trial' ended in very little. Can we however infer anything from this sitaution to the legal trial of the collaborators?

The situation in the early days of freedom in Norway was characterised by the idea already mentioned, that all persons and authorities whatsoever (except the Homefront itself) should

be 'cleansed' if there could be sustained any form of collaboration or non-responsbility of action. This was the background for the appointments for the two Undersøkelses-comissions (committes of investigations). But the mandate of the commissions and their competence was unclear in terms of acting as 'hearing comittes' or comittees preparing cases for trial. And the most important point was that there should not be taken actions or arrests against any person before the final investigation had been decided in parliament. Thus the investigations dragged on and the parliamentary committe preparing the case for the parliament, after the *Undersøkelseskommisjonen* had finished their work, spent a long time of deliberation before they gave their opinion. In 1948 people and politicians were tired of trials and investigations: one had to look forwards into the future, and not be stuck by going too deep into the past.

Therefore, the intentions behind the investigations, may have been as irreconsilable as behind the Rettsoppgjøret, but political strategy, moral reconsideration and - perhaps - the experiences with the vast comprehensiveness of the Rettoppgjøret, made people more careful in diving into another deep sea of trials and judgements, which would have been the case if a constitutional court had been brought into action.

In this way of reasoning, on may say that the Rettsopgjøret 'saved' the political purge, or gave it a much milder profile than was intended from the outset.

Stortinget's failure to take the lead
The Need for an overall persepctive

One typical feature of the Norwegian way of settling the accounts with the war-events was to separate the two processes: the political settlements and the criminal. Even if the so called Landsvikopppgjøret very often was brought for the parliament in forms of Meldinger, Instillinger and Odels- og

Storting debates, it never materialized to any serious disagreements. Often voices were raised and comments made on the desirability to do things different, but in the final voting there were only minor disagreements (f.ex. in the vote on the death sentences) or unanimous vote of not doing anything.

The typical action within the dissenting minority group was to say, or bring forward suggestions that the Landsvikoppgjøret had become too big an event because of the *Landsvikanordningen* (The provisional statute of legal treatment of treason) and they argued that it should not have been inforced. However there was no real interest in trying to change the situation: The politicians may have felt it would have been a hopless task to think of starting an operation of such a considerable scale as to reconsider the process in its full length.

If one think in retrospect, a serious rethinking of such an undertaking could only have been done at the very beginning of the process. But there was no debate over the process before it started, since the main decisions on the Landsvikanordningen was already taken by the Resistance and the exile government in cooperation during the war (The exception was the decisison to abandon some of the most drastic clauses on August 3. 1945) . The need for an instant beginning forced immediate action, because people demanded it, and the ultimate scope of the process itself prevented a solid, political discussion of principles before they started to be applied. The atmosphere of accumulated hatred and confrontation towards the NS and the nyordning, as well as the now lifted fear for the German police and military, 'freed' the demand for the process. And in contrast to the political process the prospective accused was picked up immediately and the process went on without delay. Politician and the public also avaited the final judgement in the Supreme Court on spesific principles of justice, and even if one could disagree on them these decisions could not be appealed.

The other reaction was thus to say that it was not the task of the Storting to evaluate the trials in the courts and the principal judgements made by the Supreme court. The Storting thus placed itself in a traditional, but also in an impossible position with regard pass a the final judgement on the settlement. Again and again it was stated in the overall debate in 1964 on *Innstillingen Om Landsvikoppgjøret,* that the Storting could not pass judgements of what had happened in the process, because it would then challenge the formal separation of functions and power within the Norwegian political system. It is therefore fair to say that the Landsvikoppgjøret was to become a legal process, where the politicians were on the sideline (The prime minister Gerhardsen also mentioned in his memoirs that he was not much interested in the Rettsoppgjøret and willingly left it to others to deal with it. When the former Supreme Court judge Johs. Andenæs wrote his book on the Landsvikoppgjøret (Det Vanskelige Oppgjøret, 1979) he also concluded on most issues that it had been 'very well administred' and carried through by 'outstanding' lawyers and judges.)

It is also typical that the final document: *Om Landsvik-oppgjøret,* which was debated in the Storting, that it was not an evalution of the settlements itself, but the report was a descriptive, informative 1000 thousand pages (Din A-4 compact double colunms 560 pp) document giving a broad overview of what had happened. It did not bring forward a conclusion (As Andenæs also did not try to do), but stated instead that it only intended to collect material that could be useful for future historical research. The chairman of the committe J. O. Gundersen was also for many years head of the department of Justice and at that time himself responsible for the Rettsoppgjøret. You should therefore not expect him to forward a critical review of it.

Thus the handling of the Landsvikopgjøret, was very much a task of the legal branch of the Norwegian authorities and

government, and was well kept in the long standing traditions of 'legality' of Norwegian ways of handling important political problems. The Storting was once in a while contacted to give approval on changes required in the process, proposed by the Department of justice, but did not take initiative on their own.

These remarks is thus intended to convey the message that the way the handling of the Rettsoppgjøret developed, it was from the beginning moved out of the sphere of real critical political initiatives and reserved for the men of law. But that does not mean that it was less just or well done, but it is important to see how it was cushed in a context of political consensus and in a trust of the legal ways to deal with it. And it was not coupled with the political 'cleansning/purge' process, neither in time, nor in form and content.

What will be the best comparison?

Was the Rettsoppgjøret fair, just and was it positive with regard to the persons who were sentenced and the nation which should live with it as part of their history?

Such a set of questions can only be answered in the affirmative when one applies the proper comparative perspective. Generally the Norwegian purge process is compared with the one in Denmark, the one in the Netherlands and sometimes with France. When comparing with countries like Belgium we are confronted with 'special problems' of the regional separations in Belgium with her the two national communities, which creates difficulties for a 'direct' comparison. (In Belgium you also had the last settlement as a second one in a row, with much of the smilar problems as after the First World War.) The Norwegian Rettsoppgjør comes mostly through very favourably in such comparisons: it was 'milder' than the others and it was more 'consequent' in legal terms. It has also been stated that

the Norwegian Rettsoppgjør functioned as a model for the Danish one: the early Norwegian decisions, their motivations and the clear formulations of the purge in the provisional statutes, served as exampels to be followed.

The crucial point in the comparisons is thus focus of interest. But the focus will often not be enough clarified in the comparison. I will use one example to illustrate this problem when using the most simple forms of statistics. In Denmark 46 death sentences were carried out, in the Netherlands 40, while only 25 (Norwegians) were executed in Norway. Thus Norway was 'milder' than Denmark, but harsher than the Netherlands taking into account that the population size was three times higher.

But if one look at the amount of actual excutions compared to the death sentences passed in court, Norway is by far the least lenient. The figures are as follows: Norway 30/25 = 83 per cent, Denmark 78/46 = 59 per cent, and the Netherlands: 154/49 = 26 per cent. How can this figures be understood? One way to do it is to imagine that the acts commited and found qualified for a death sentence in each country were the same in all three of them. Then we may conclude that the Dutch practize of amnesty/lenience was much milder than Denmark's and far more lenient than Norway's.

However, when comparing the full scale of wild Säuberung in the first weeks of the liberation in the Netherlands, police reports release that 10 people were killed in 'private revenge' and 40 others committed suicide or died in the interment camps during horrible conditions. Thus the numbers of 'private or unfortunate executions' are in reality much higher than the 40 'official executions'. In Norway there is only rumors of 'wild säuberungs' or suicide committed/death of maltreatment in camps, and the general understanding is that Norway had a much more sober treatment of the collaborators than most countries in Europe.

If we look at the actual sitaution of war and liberation in the Netherlands we are struck by the extreme hardship encountered during the occupation and the difficult situation of being half liberated and half occupied in the last phase of the war. Norway did not experience and Allied invasion. Instead the approximate 300 000 soliders and 800 SD-SIPO men, all gave in their arms with no effort of armed resistance. With such peaceful conditions, compared to the Dutch experiance, it should have been higly exceptional if Norway's first weeks of freedom should resemble the Dutch in violence and deaths. What Norway then had less than the Dutch, it outnumbered them in various forms of small sentences: fines, loss off 'public confidence' and the regulations of collective economic responsibility. Therefore the direct and 'easy comparisons' which so far has been done are, in my mind, of limited value. They are pair-wise comparisons on isolated statistics where the entire context is not enough taken into account.

A last word of problems of comparisons can be mentioned when we look at the Danish situation. Only 46 death sentences were executed. However, looking at the 'silent killing' by the resistance ("stikklikvideringene") of Danish nazies and collaborators during the last two years, and in the final week of May 1945, we find that as many as 500 had been liquidated. If we add these 500 to the 46 'official executions' we may conclude that perhaps the Danish settlement with the collaborators was the hardest one in northern Europe. Denmark was also "not at war" with Germany before 29.8.1943, as it was declared after the liberation, and did not experience an invasion by the Allies. But what is the hardest: The total number of peopel hit in some way or other (The Norwegian Rettsoppgjør) or the highest number of executions and killings (Denmark)? These questions can only be dealt with when one combine the comparisons of the actual persecutions and killings, with the overall purge and the long term consequences of the people concerned, their relatives and the society at large. This is a great but difficult challenge, but 'isolated

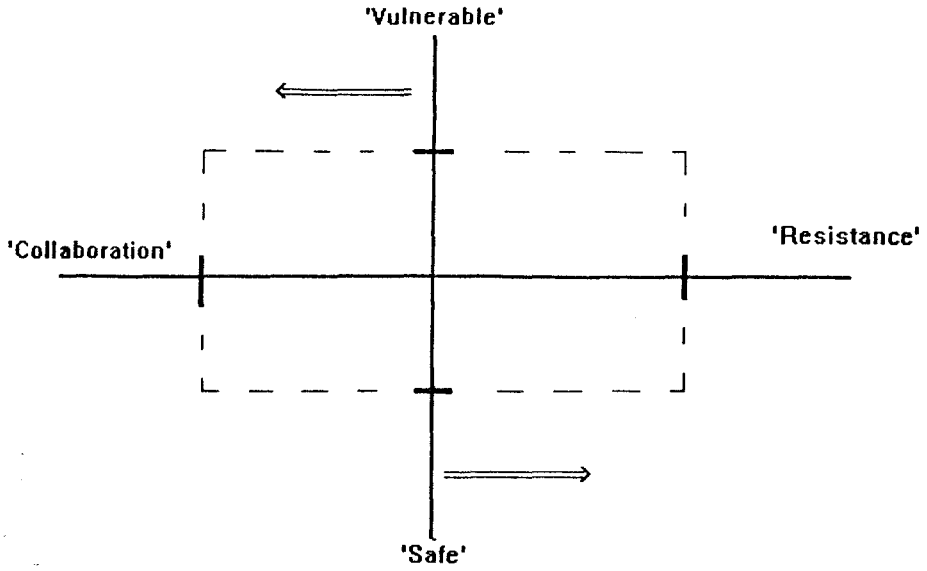
comparisons' can not be used to explain marco events and macro structures. And it is often these types of 'overall' explanations which are most important and interesting.

The individual within her/his context

In most cases of serious 'angiveri' (informery) and criminal actions, there has been little public attention. This is also so with the cases of 'high treason' like the proceedings against Quisling and the higher elite of his party.

It is in the 'smaller cases' the discussion of how just and how fair the Norwegian Rettsoppgjør was carried out has been mostly focused and on the problem of how the subjective understanding of the individual (det subjektive rettsforhold og spørsmålet om handling under forsett/handle i god tro) could be justified as motivation for the decisions. This was particuarly relevant in the cases of the so called 'passive membership' and connected to the issue of the Penal code from 1902: Did the accused understand that Norway was at war with Germany and that s/he by her/his membership in the NS gave 'bistand' (help) to the enemy?
This discussion has not really been "won" by the Norwegian authorities, and may be the one part of the Rettsoppgjøret which in the "judgement of history" perhaps will be one of its weakest points. In a proper Social Science research design one may decompose the idea of subjective guilt in a two-dimensional structure: the scale of vulnerability/'safety' against the scale of treason/resistance. By using this format one may better visualize the "thin line of demarcation" between acting and being passive against the position of being 'safe' and being vulnerable. The situation of subjective guilt may then again be understood in light of the individual's "move" in this two dimensional space. Even if this way of portraying a well know pheonomenon may look awkward to you, we may try to utilize it to gain knew knowledge or raise new questions on the problem of 'guilt' and 'subjective evaluation of actions'.

THE OPPORTUNITY SPACE FOR INDIVIDUAL CHOICES



	'Vulerable'	'Indeterminate'	'Safe'
'Resistance'	÷		+
'Neutral'			
'Collaboration'	+		÷

The figure and the ~~six~~ nine fold table shall illustrate the idea of how people who went to the "right" (resistance) or the "wrong" (NS/collaboration) position in the 'opportunity space' (choice of actin) was dependent on their original position within the society. Thus the temptation for a 'vulnerable' positied person in the society to become a collaborator, or an ardent involved member of the resistance, must be explained from her/his position. And in the connection with the Rettsopgjør, her/his 'guilt' or subjective responsibility of s/he's 'choice' should be related to and 'weighted' according to this position.

This simplified figure is thus intended to point to the dilemma of giving the 'correct' sentence to the individual person depending on her/his behaviour during the war. Let me illustrate the logic and its implications with a couple of examples: If a person had been an enthusiastic 'patriot', admiring the program of Fedrelandslaget (The Patriotic Leage), and approved Quisling's ideas in the early thirties leading her/him to join the party durign that period - s/he would be much more vulnerable towards collaboration, than a member of the Labour party impressed by its ideas of equality, of the unjust effects of capitalism and its appeal of internationalism. These two persons would therefore have - in their 'original position' - very different suceptability of "move" within the opportunity space.

How should then the collaborator be persecuted after the war, and how should the 'jøssing'/'god nordmann' ('patriot') be 'judged' after the war? The figure is intended to convey the message that one can not judge their cause only when looking on what they did in isolation from their 'vulnerability'/'safety'.

This ideas has in some way been cleraly recognized by the courts during the Rettsoppgjøret, but perhaps not in their full implication. F.ex. some of the pre-war NS-members did get a more severe sentence if it was proved that they were 'true belivers' of the NS message from the thirties, than people

joining later. The deep ideological convinced collaborator (in the figure: the most vulnerable) deserved, and was given, a harder sentence than the 'latecomers', or opportunists.

I shall not expand this logic too far, but I feel that one may be able to formulate some fruitful questions of critics and anlyses from the perspective behind the simple figure. It will lead us to ask questions of who were the vulnerable and who were the 'safe' - and also what were the structural conditions in the Norwegian society for "moving" from one position to the "right" or "wrong" side? We may also be able to more clearly formlate the questions of why some people were "crossing the fatal border" to collaboration, or to resistance (wich invovled high risks) with their very differenct consequences.

Political and legal reasoning.The questions of retroactive laws and constitutional 'nødrett' (emergency laws).

During the Rettsoppgjøret particularly two questions on principles of law were often discussed. The first has the background in article 97 of the Norwegian Constitution from 1814 which explisitly forbids the parliament and government to enact laws with a retroactive character. The main legal instrument used against the NS-members was the Provisorisk anordning (Provisional enactment) which was enacted in two steps: the first on February 22. 1942 and the comprehensive one on December 12. 1944. Both were retroactive, but the final one the most decisive one which also contained new, so far unkown, legal measures: the loss of public confidence. In addition it stipulated the so called 'collektive erstatningsansvar' (joint economic responisibility for all NS- members for the damages made by the NS-government during the war). This was an extra fine which should be measured on each NS-members according to her/his economic ability and seriousness of treason.

The other important discussion concerned the competence of the government to issue emergency laws in general. What were the

limits given by the Norwegian Constitution article 17 for such laws, would the re-introduction of the death sentence as part of the Penal code be a case outside this competence?

In various decisions within the Supreme Court both principles were accepted: The article 97 in the Constitution does not prevent the government to enact retraoctive laws and there is 'in principle' no limitit to what a government can decide in a situation of emergency. When taken to the extreme these solutions says that any Norwegian government, in a time of crisis, will in no way be limited by law or the Constitution when what they are doing can be said to be in the interest of the country. The definition of 'crisis' is off course important, but that is a basically a political, not a legal issue.

This solution was again brought to the surface during the debate over the 'Beredskapslovene'(preparedness laws') in 1950 which where accepted by the majority of the Storting and partly incorporated as new elements in the Penal Code. They say just this, and concluded in some way what came out of the lengthy processes in court.

But what does this mean for the legal basis in the future for Norway as a democratic society? In the Storting-debate in 1950 voices were raised against such legal instrumentalism and the tendency again to try to formalize political reality. It will anyway be a political judgement of the government on what actions are necessary when a real danger requires exceptional measures.

The important point about these remarks is therefore not to critize the way the Rettsoppgjøret went, but to emphasize how much energy of legal thinking that was spent to construct a legitimate way of defending political actions taken by the resistance and the government in London. They wanted a very extensive Rettopppgjør and they knew that the sentiments in

Norway in general was positive for such a settlement. Therefore they had the power and they enacted the provisional statutes which they felt necessary. However, in order to counter the compariosn with NS-laws and German regulations during the occupation, often fomrulated in the sentence: "Macht ist Recht", it was necessary to legitimize the handling of the Rettsoppgjøret, particularly the questions of retroactive laws and emergency competence, as logically part of Norwegian law. As a political strategy for legitimacy it was successful, but as a legal maneouvre it must be questionable.

If we look at how the processes went in the three comparing cases presented in this symposium (Grmany, Italy and Japan), and also in Denmark and the Netherlands, in all of them used enforced legislation with retroactive character as a common feature of the purges and the säuberung. And the entire Nürenberg trial was a process on radical new concepts, new legislation and with retroactive power. It could not be different since the world had never earlier experienced cruelty and lawlessness on such a scale and cynizims as prevalent in the Third Reich. They needed to invent the legal measures after they knew what really the nazi monsters had done to the people they ruled during these dreadful years. These laws and their enforcement were also brought into Germany, and into Italy and Japan by foreign elites: the victorious Allies.

With this comparative beackground the Norwegian Rettsoppgjør and its concern with f.ex. the fine refinements of interpertation of legality of retroactive laws (if they could be seen as 'softening' the sentences in comparison with the harder measures provided in the Penal law), is somewhat puzzling. But it gives a very profound picture of how Norwegian politics, as a small nation, much more tend to legitimize its power within legal formulaes than many larger states.

This emphazis of being 'right' more than being 'wise' may therefore have been a factor explaining why the Norwegian

Rettsoppgjør took on such a large scale, and much larger than the resistance and the exile government may have wanted from the beginning. But when they first had put their wagon on the trail, they did not have the freedom to change direction, bound as they were to Norwegian political traditions.

The high percent of 'henlagte saker' (dismissed cases)

Around 92 805 Norwegians were brought for the courts or the police but 37 150 were dismissed, comprising 40 per cent of all cases. This high number can either be taken as a proof of mercy or 'understanding', or as a proof of the irrationality of the provisional statutes: they did really cover cases which could not reasonabely be decided as cases under the law. On the other hand this high per cent of dismissals can be taken as the unusual eager among the population to bring people for surveillance by the police. In such cases it may both reflect the feeling of uncertainty within the population stemming from years of repression and cencorship by the German secret police, as well as an opportunity offered to 'make up their business' with people they did not like and thus as a way of social revenge.

In the report *Om Landsvikppgjøret* they have not looked into the dismissed cases and my own search is of limited value. One find German born but naturalized Norwegians, farmers suspected for 'black marked selling', women accused of friendship with soldiers, as well as NS-members, but where their cases had been dismissed for mental disabilities, for proved assistence to the resistance and for a variety of other reasons.

Before a complete research project has been carried out on these cases it is too early draw any firm conclusion on who they were, and why they came under scrutiny by the police. But my share suspicion is that such an analyses will cast much new light on the overall scope of the Rettsoppgjøret as a political trial and as a social earthquake in Norway.

Some concluding remarks

The purpose of this symposium is not to be regarded as a research project, starting out a full investigation of the Rettsoppgjøret. It is rather intended to raise some new questions and suggest some new ideas on how to understand what happened in this important period of Norwegian history.

And its is not a tribubal which may excerzise some judicial functions outside the official apparatus.

It is not intended as a revisionst initiative, even if critical discussions normally always throws some new light on former accepted truths. Maybe revisionism is naturally now 50 years after the events took place, but revisions has particular importance in itself only if rests on better foundations than the accepted versions.

Magne Skodvin (p. 304) has discussed this challenge in his last book on the war and termed what he calls "automatic revisionsm"; with that concept he indicates how each new generation has to bring a new view of history to justify itself as a new generation.

In my mind there are at least two very different types of revisionism visible regarding the war period. The less valuable is formulated by people like David Irving and his combatants in an apologetic effort to reduce the impression of the nazi cruelties.

The other form of revisionsm, or let us rather say new explanation of historical events, is perhaps well represented by Ole Christian Grimnes in his recent work on the Norwegian government in exile during the war, the Nygårdsvold government. It represents an interpretation of the events in their broader context with a distance of 55 years or more.

The value of looking back with many years of distance and interpreting the past when the political, partisan attachements of events have been reduced, represents a great value to clarify the overall perspective. However, the distance from the atmosphere in which events took place, when the immediate fear of the Gestapo was around, and later when the collaborators were under heavy pressure and stigmatization from the surronding institutions and neighbourhood, makes us less sensitive to the realism in what was going on. The historical perspective has thus to ballance between 'distance' and 'sensitivity' of the situation the individual was experiencing during these years.

Some people belive that the 'judgement of history' will always be fair and restore injustice. Let us hope this will come true, even if it is not so selfevident. It is perhaps better to believe in the intrinsic value of disccussing and doing research by istself on the mot turbulent phase of Norwegian modern history in order to try to understand it better, instead of having too much loading of normative incentives on what we are doing. But I can, on the other hand, very well understand that there is lot of unresolved tensions and feelings of injustice that needs to be released and brought to public knowledge in a fair and open manner.

This is an important objective in itself. I therefore hope that this symposium can contribute in different ways to fulfill different objectives and give some new insight in the future understanding and discussion of the Norwegian Rettsopgjør.