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"An echo of our parents": Norway's Legal Reckoning with Underage NS Collaborators

On 18 June, 1945, a 15 ½ year old boy, O. A. E. (born 1929), was brought before the Stjørdal and Verdal court of inquiry together with his father. Both had spent two days in Vollan circuit jail and six weeks in Falstad internment camp on suspicion of criminal treason, as they during the German occupation had been members of the collaborationist party Nasjonal Samling (NS). According to the newspaper *Adresseavisen* on 19 June, 1945, the 15-year-old stated "boldly" when asked by the magistrate that he had joined the NS's sub-organisation for 10 to 18-year-olds (NSUF) "to help create a healthy youth." The boy was released on condition of reporting to the police and his case was later dismissed.[1]

Young E. was one of around 5,000 Norwegians born between 1924 and 1931 who almost exclusively were from NS families and who had all joined the party as minors. After the liberation in May 1945, they came under suspicion of treason.[2] E.'s example illustrates some of the challenges that group constituted for the justice system. Even though the age of criminal liability was 14, the legal age was 21 and the voting age 23. So, how could a minor be charged with having committed a political crime?

In the Norwegian research literature, the treatment of underage NS members during the post-war judicial reckoning so far has been little investigated.[3] In hindsight, did they get a fair hearing, i. e. in accordance with the Norwegian prewar legal standard, where their special situation was taken into account by the courts, or were many punished unreasonably? We will show how the judiciary dealt with

Note: This chapter was written in conjunction with Lars-Erik Vaale's investigation for the Ministry of Labour and Social Inclusion (Arbeids– og Inkluderingsdepartementet, AID), and based upon his report *Myndighetenes behandling av NS-barn i Norge etter 1945* (The governmental treatment of NS children in Norway after 1945), published 24 April, 2023.

1 RA/S–3138–38/D/Dc/L0067/0006, Hdat. 18/10/49, O. A. E.

2 The estimate is based on Stein Ugelvik Larsen, *Database med opplysninger om 61 462 NS medlemmer og frontkjempere* (Bergen: unpublished, 2018). Some of the youngest ones are probably not included in this material.

3 This theme was briefly addressed in Johannes Andenæs, *Det vanskelige oppgjøret: Rettsoppgjøret etter okkupasjonen* (Oslo: Tano-Aschehoug, 1998), 131, 213, 257.

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the youngest among the close to 93,000 suspected collaborators.[4] A question of special interest in that connection is to what extent relevant mitigating circumstances such as adolescence and parental influence were acknowledged and taken into consideration by the police and courts.

Empirically, our analysis is based on a variety of sources, from a database – created by the political scientist Stein Ugelvik Larsen in the 1970s – containing personal information on all investigated members of the NS/NSUF and the legal reckoning involving them,[5] but also the original registry cards on which the electronic register was based,[6] as well as historical and legal literature, court transcripts and newspaper reports from public trials. As an analytical tool, we make use of transitional justice theory, which deals with how newly installed or re-established democratic governments through legal processes address injustices and crimes committed under the prior authoritarian regime.

Historical and legal background

Already on the evening of 9 April, 1940, when German troops had occupied important towns in southern Norway, Army Major Vidkun Quisling (1887–1945), a former minister of defence and leader of the small, fascist-like NS party, came forward publicly in a radio speech as a collaborator and self-proclaimed head of state. From September 1940 and until the liberation, his NS-regime cooperated with the German occupiers and also despite little popular support sought to reform society as stated in the party's authoritarian ideology.[7]

The legislative basis for settling scores with Quisling and all his followers, possibly the most comprehensive transitional justice process in history, was twofold. The first basis was Norwegian pre-war legislation, that is two sections of the *Civil Penal Code* of 22 May, 1902, namely section 86 on aiding the enemy "in word or deed" and section 98 on unlawfully altering the state constitution of the kingdom. In addition, existing criminal legislation was supplemented by a series of transitional laws, known as provisional statutes, issued by the London government-in-

4 Baard Herman Borge and Lars–Erik Vaale, *Grunnlovens største prøve: Rettsoppgjøret etter 1945* (Oslo: Scandinavian Academic Press, 2018), 64–65.

5 All statistics from Larsen, *Database.*

6 Riksarkivet, Oslo (RA), S–1543, Erstatningsdirektoratet (ED).

7 Borge and Vaale, *Grunnlovens største prøve*, 13–15.

exile between October 1941 and May 1945, as well as by later ordinances and laws issued up to 1950.[8]

Out of the 49,000 people who were eventually punished, 26,000 were so-called passive NS members, whose formal membership was the only count in the indictment.[9] The foundation in law for their punishment was the most important of the new penal regulations, the *National Treason Ordinance* (NTO) of 15 December, 1944, in conjunction with Section 86 of the Civil Penal Code. More serious cases of treason were sentenced under the 1902 Penal Code (§§ 86 and 98) and the Military Penal Code of the same year, supplemented by provisional statutes.[10] The Norwegian government-in-exile's decision to prosecute every single NS member, including the completely passive ones, is unprecedented in the history of legal settlements with fallen regimes.[11]

As for minors suspected of unlawful collaboration, the legal foundation also combined pre-war laws and new provisional statutes. Historically, the Criminal Code of 20 August, 1842, had set the minimum criminal age at 10 years, with absolute freedom from liability for children under that age. For children between 10 and 15 years of age, the rule on relative criminal responsibility applied, where responsibility was conditional on the child having realised the criminal nature of its actions. Later, the *Civil Penal Code* of 1902 raised the minimum age to 14 years (Section 46), but Section 55 of the Act also contained a clear provision on sentence reduction for persons under the age of 18, and stated that under no circumstances could a custodial sentence be imposed on them for life.[12]

On 1 June 1928, the Parliament (Stortinget) passed an act on underage offenders, which was amended on 26 May, 1939. The modified act had not yet come into force when the settlement with the NS was prepared and implemented, but it clearly shows that the authorities' focus before 1940 was on treatment, not punishment, for young offenders. The law of 1939 gave an opening for the judge to give the prosecuting authority the right to send a defendant who had turned 18 to a labour school instead of prison, and then the imposed punishment lapsed. Professor Jon Skeie, J.D. (1871–1951), wrote in his overview of Norwegian criminal law from 1946

8 Finn Hiorthøy, "Lovgivningstiltak vedrørende landssvikoppgjøret," in *Om landssvikoppgjøret*, published by Justis– og Politidepartementet (Gjøvik: Mariendal, 1962), 36–49.

9 Andenæs, *Det vanskelige oppgjøret*, 24.

10 Borge and Vaale, *Grunnlovens største prøve*, 12.

11 Hans Fredrik Dahl and Øystein Sørensen, "Et parti av lovbrytere," in *Et rettferdig oppgjør? Rettsoppgjøret i Norge etter 1945*, ed. Hans Fredrik Dahl and Øystein Sørensen (Oslo: Pax, 2004), 93.

12 Linda Gröning, "Kriminell lavalder – noen utgangspunkter," *Tidsskrift for strafferett* 4 (2014): 315–16; Jon Skeie, *Den norske strafferett. Bd. 1: Den alminnelige del* (Oslo: Norli, 1946), 196–197.

that young offenders could justify a lighter sentence than ordinary, even if the defendant had reached the age of 18.[13]

There was no provision on sentence reduction for persons under the age of 18 in the government-in-exile's first provisional ordinance on treason of 22 January, 1942, but only in the later NTO of 15 December, 1944.[14] The latter, on the basis of which most cases were settled during the reckoning, was drawn up by the government in collaboration with the resistance movement. None of the two laws singled out the NSUF, and consequently equated the children and youth organization with the mother party in relation to criminality.

Section 2 of the NTO made it punishable either to have been, applied for or consented to becoming a member of NS, its affiliates or similar organisations after 8 April, 1940. The legal rationale was that the criminalisation of NS membership itself could not be subsumed under the provisions on treason and high treason in the civil and military penal laws from 1902 alone. Section 3 of the ordinance authorised punishment with imprisonment or forced labour for up to three years, fines, loss of public trust or limited loss of rights for such actions. If they were made under duress, the court could, according to § 5, determine a penalty below the device's minimum or waive the penalty altogether. The same applied if the actions in question were committed by the accused before the age of 18. The provision was continued unchanged in the *National Treason Act* of 21 February, 1947.[15]

From the liberation onwards, NS and NSUF members under the legal age of 21 were basically treated under the same laws as adults, i. e., two paragraphs of the 1902 Penal Code as well as provisional laws, over all the NTO of 1944. Although that ordinance did allow for a more lenient treatment of minors, it was a matter of discretion whether this should be done.

13 Jon Skeie, *Den norske strafferett. Bd. 1: Den alminnelige del* (Oslo: Norli, 1946), 380.

14 Hiorthøy, "Lovgivningstiltak," 41, 46.

15 "Provisorisk anordning om tillegg til straffelovgivningen om forræderi (Landssvikanordningen) av 15. desember 1944," in *Samling av provisoriske anordninger, kgl. res. m.v.*, published by Justisdepartementet (London: Justisdepartementet, 1945), 203–20; Erik Solem, *Landssviklova: Lov um straff og økonomisk straff for landssvikarar* (Oslo: Tanum, 1947), 32.

Potentially mitigating circumstances in cases against minor collaborators

In May 1945, when the mass arrests of NS members began, the young people in question here were between 14 and 21 years old and suspected of illegal acts of collaboration, most of which had been committed one to five years earlier.

Legally, several circumstances could potentially lead to a more lenient practice regarding underage members of the NS. Firstly, their age. Traditionally, the main argument in legal literature for exempting young offenders from punishment has been their lack of, or limited, culpability. Unlike adults, minors cannot be automatically found guilty for their own actions and therefore held responsible and punished. So, a young lawbreaker cannot be assumed without further ado to have had criminal intent, i. e. to have acted with resolve or determination to commit a crime.[16]

In the historical case at hand, the judiciary's evaluation of the accountability and criminal intent of a young collaborator hinged on whether he or she could be assumed to have committed treasonous acts independently, and consciously. In other words: To what extent had they been misled by others, and had they at the time understood that their actions were punishable by law?

Concerning the first of those two considerations, influence from other people, the minors' family background repeatedly stood out. As mentioned earlier, nearly all of them came from a home where one or both parents, often also siblings, also belonged to the NS. In the case of the young O. A. E., not only his father but also his mother had joined the party already in June 1940.[17]

Thus, if we look at the typical initial decision among the youngest offenders to become collaborators, that is to join the NSUF, who did so among the country's children and young people was anything but random. Only rarely would non-NS parents allow their children to enlist, even if the latter wanted to. Within the NS, all members who had children were on the contrary expected to send them to the youth organisation. Members who did not comply were meticulously registered and could be exposed to pressure from the local party organisation.[18]

All told, it seems unlikely that most minors initially came to the NSUF entirely out of their own free will. Nonetheless, enlisting could also be attractive to some

16 Gröning, "Kriminell lavalder," 315–16.

17 RA/S–1543/Dl/L0004/0001, ED–kort nr. 17374, A. E.

18 John Mikal Kvistad, *Det unge Norges fylking klar til slag: Historien om Nasjonal Samlings Ungdomsfylking 1933–1945* (PhD diss., University of Oslo, 2011), 90–91.

minors, as NS families increasingly were isolated socially. In many ways the NSUF became a social refuge for children of NS members, since peers often broke contact with them. Within the youth organisation, the isolation led to a strong social cohesion but also exposed the young people to an even more one-sided influence.[19]

Regarding possible criminal intent behind joining, it is important to establish at what age the typical NSUF member joined, as their ages at the time of enrollment ranged from 10 to 17, and one would expect the older ones to be somewhat more independent and knowledgeable. As shown in table 1, more than four out of five minor collaborators came to the youth organisation in 1940–1942, in the first half of the German occupation.

Table 1: 4,237 investigated NSUF or NS members born 1924–1931, by year of enrollment.[20]

	1940–1942		1943–1945		Total	
Born 1924–1927	3,023	(79,5 %)	784	(20,5 %)	3,807	(100 %)
Born 1928–1931	385	(89,6 %)	45	(10,4 %)	430	(100 %)

The majority thus made their fateful decision three to five years before they were investigated. While the oldest of the two age cohorts displayed in Table 1 typically were still in their teens (13–17 years old) at the time of admission, the younger cohort was usually only 10–14 years old. For the legal assessment of young peoples' decision to join the NSUF or NS, and to a certain extent also later acts of collaboration, as will be argued later, the fact that most had joined the NS movement at such an early age could have two implications. Firstly, it reduces their culpability and makes conscious criminal intent less likely, especially concerning their original motivation for entering the NSUF. Secondly, their young age of entry also means that most had been exposed to indoctrination over a period of three to five years while at an impressionable stage of development.

The NS did not always accept resignations. Still, both adult and minor members sometimes left. While just eight percent of the NSUF or NS members born 1924–1926 left the party, mostly in 1943–1945, only 1 ½ percent of those born 1927–1931 did the same. The reasons for young peoples' infrequent exit, even as they grew older, are probably complex. Several factors could affect minors' abilities to act independently by leaving the NS movement: Firstly, the children's loyalty to parents, who often would forbid their minors from withdrawing. Second, leav-

19 Kvistad, *Norges fylking*, 90–91.

20 Larsen, *Database.*

ing also meant losing a close-knit social community with peers. Third, the effect of yearlong propaganda, both at home and in the NS, will have been substantial.

Regularly, entering the NSUF or NS as a young person led to more and sometimes graver acts of collaboration, as that person was persuaded, or ordered, to assume particular positions and perform a multitude of services for the party or its regime.[21] Thus, while the gravity of their unlawful actions frequently escalated over time, minors found themselves caught in a web from which, as argued above, it was often not easy to escape.[22]

A typical career of a minor within the NS regime is that of S. M. (born 1925). According to the newspaper *Hamar Stiftstidende* from 21 December, 1945, he joined the NSUF at the age of 16, by his own admission because his parents and siblings were already in the movement, but also because the youth organisation had "such a nice uniform." When he turned 18, he was, like many other NSUF members, automatically transferred to the NS, although the party's own regulations dictated that transfer should only take place upon application. Later, he took part in both weapons training, guard duty and standby duty, that is actions that were considered serious by the courts.[23]

From a legal point of view, the multiple unlawful acts of collaboration carried out by minors after they joined the party cannot necessarily be excused and thus lead to acquittal because of the mitigating circumstances described above. However, even their more serious acts were committed not only at a young age but also within a specific context, which should be considered.

The Norwegian treason trials in the light of transition theory

Prior to our empirical analysis of the treason trial of Quisling's youngest followers, we posit seven hypotheses, based on our application of transition theory and our knowledge of the legal settlement as such. The field of transition theory, in which transitional justice is a core perspective, was initially developed by political scientists in response to the wave of transitions from authoritarian to democratic rule

21 In the NS movement more than one in three (34,9 %) were females; see Larsen, *Database*.
22 Stein Ugelvik Larsen, "Die Ausschaltung der Quislinge in Norwegen," in *Politische Säuberung in Europa: Die Abrechnung mit Faschismus und Kollaboration nach dem Zweiten Weltkrieg*, ed. Klaus–Dietmar Henke, and Claus Woller (Munich: dtv, 1991), 258–59.
23 "Påstand om 4 ½ års fengsel for hotelldirektør E. D.," *Hamar Stiftstidende*, 21 December, 1945, see also "Dagens gjester i forhørsretten," *Hamar Arbeiderblad*, 11 July, 1945; "Seks hedemarkslandssvikere får dom i dag," *Hamar Arbeiderblad*, 21 December, 1945.

in southern Europe in the late 1970s and subsequent examples of democratisation in other parts of the world.[24] Yet, concepts and insights from this theoretical tradition can also be useful for the study of regime changes and subsequent legal processes that occurred long before the theories discussed here were formulated. There are many parallels between the transition back to democracy in Norway and other western European countries following the German occupation and later waves of democratisation.[25]

Historically, new or reestablished democracies have chosen different solutions to the challenges raised by transitional justice, not least how to handle perpetrators and others who supported the old regime. Basically, the successor regime can either start a legal reckoning, as done in Norway and other occupied countries after their liberation in 1944–1945 or refrain from doing so. In transition theory, it is assumed that variation between countries on that score reflects differences in context. Typically, a transition caused by the collapse of the non-democratic regime will be followed by prosecutions, while a negotiated transition will not. The second decisive factor is the post-transitional balance of power. If the new democratic government is strong and former adherents of the authoritarian regime are weak and delegitimised, a comprehensive legal process is likely; otherwise not.[26]

Where prosecutions are initiated following a transition to democracy, a typical feature is that the legal procedures chosen in this type of exceptional situation are partly different from those implemented under normal conditions. This reflects the tension that often arises between rule of law principles and other considerations, not least political ones in the broadest sense.[27] Moreover, such court settlements are also usually characterised by haste and limited resources. Finally, those suspected of collaborating with the fallen regime are often treated with little nuance due to an underlying perception of collective guilt.[28]

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24 Juan Linz and Alfred Stepan, *Problems of democratic transition and consolidation: Southern Europe, South America, and post-communist Europe* (Baltimore: The Johns Hopkins University Press, 1996); Jon Elster, *Closing the books: Transitional justice in historical perspective* (Cambridge: Cambridge University Press, 2004).

25 Stein Ugelvik Larsen, "Rettsoppgjør i en elitestyrt overgang: Gjeninnføringen av demokrati i Norge etter 1945," in *Forsoning eller rettferdighet? Om beskyttelse av menneskerettighetene gjennom rettstribunaler og sannhetskommisjoner*, ed. Bård–Anders Andreassen and Elin Skaar (Oslo: Cappelen Akademisk Forlag, 1998), 236, 252, 269.

26 Baard Herman Borge, "Transitional Victimization: Collaborator's Offspring as Children at Risk," in *Children & Society* 33 (2019), 215–216.

27 Ivo de Figueiredo, "Et rettferdig oppgjør? Etterkrigsoppgjøret som rettslig og historisk problem," in Dahl and Sørensen, *Et rettferdig oppgjør?*, 44.

28 Eva Schandevyl, "Transitional Justice and Cultural Memory: The Prison Diaries of Ernest Claes and their Literary Adaptation (1944–1951)," *Life Writing* 1 (2018), 10.

In Norway, following Germany's capitulation and the instant collapse of Quisling's regime the exile government on its return from London enjoyed legitimacy in public opinion and was determined to punish all former members of the NS. Both the form of transition and the ensuing power relations thus, in accordance with transition theory, provided for a comprehensive criminal process and harsh punishments. Another factor pulling in the same direction was the strong emotions that tend to characterise such court settlements when, as in this case, they are implemented immediately after the transition. While the Norwegian judiciary itself was not unaffected by the atmosphere, public opinion was heated and reluctant to accept lenient sentences.[29]

Seven assumptions on the judiciary's treatment of the youngest collaborators

Our first assumption (A1) about the course of the reckoning with under-aged collaborators born 1924–1931 is that even the youngest among them were subjected to zealous police scrutiny, also for petty acts that might fall within the broad definition of treason in the NTO of 15 December, 1944. A reason for A1 is the comprehensiveness of the legal settlement with NS and the lack of nuance often found in transitional justice processes.

In the second assumption (A2), we presume that most of the young ones in Larsen's database did receive some form of penalty, even though a membership in the NSUF alone, according to a decision by the Attorney General in the autumn of 1945, would not be sufficient to punish.[30] The reason for A2 is that, as explained earlier, there were frequently other charges brought, of varying severity, in addition to NSUF membership. Even if trivial, they could in total justify a penalty for treason.

A third assumption (A3) is that the youngest in our age sample nevertheless both avoided punishments more often and, if punished, received milder penalties than the oldest. What makes such a difference likely is that the older minors had not only committed more, but also in many cases more serious treasonous acts. Another factor supporting H3 is that section 5 of the NTO, as mentioned above, allowed for a lighter penalty if unlawful acts of treason were committed before the age of 18.

29 Borge and Vaale, *Grunnlovens største prøve*, 279–281.

30 Andenæs, *Det vanskelige oppgjøret*, 31.

Assumption number four (A4) suggests that a significant number of minors were arrested and put in pretrial detention for weeks or months, even though they were only suspected of petty offences. The basis for A4 is that during the judicial settlement, minors were treated in many ways like grownups. The London government's directives on who should be arrested and detained gave no minimum age. Besides, Home Front arrest squads often brought in more suspects than those named on the official lists. Since arrestation and often prolonged internment with questionable legal justification became a prior punishment for many adult NS members, some of the youngest almost certainly were also subjected to it.[31]

The fifth assumption (A5) is that minors were routinely ascribed criminal intent to betray their country, even when they themselves denied it. Like A4, this assumption assumes that minors and adults were treated in largely the same way. Neither young nor old had the right to a publicly appointed defence lawyer while the investigation was ongoing; the legal basis used was practically the same, as was the practice concerning criminal intent, according to A5.[32]

In the sixth assumption (A6) we assume, based on the limited room for nuance in transitional justice processes, that the typical mitigating circumstances explained earlier were given varied and often only moderate weight in the assessment of individual minors.

Finally, given the considerable room for judges' discretion in the legal assessment of minors assumed in A6, our seventh assumption (A7) is that the judiciary's practice regarding underage collaborators came to vary significantly. In the results section below our seven empirical assumptions are discussed chronologically, based on all the available sources.

Results 1: An overview of the legal settlement with minor NS and NSUF members

In the following table our sample of minors has been divided into three age groups, based on patterns found in the database.

31 Borge and Vaale, *Grunnlovens største prøve*, 214–221.

32 "Provisorisk anordning om rettergang i landssviksaker av 16. februar (Rettergangsanordningen)," in *Samling av provisoriske anordninger, kgl. res. m.v.*, published by Justisdepartementet (London: Justisdepartementet, 1945), 246–256.

Table 2: 3,968 investigated NSUF or NS members born 1924–1931, by outcome of their cases.[33]

	Punished		Other outcome		
	Sentence	**Fine**	**Case dismissed**	**Failure to prosecute, or acquittal**	**Total**
Born 1924–1926	995 (31,2 %)	1,286 (40,3 %)	644 (20,2 %)	264 (8,3 %)	3,189 (100 %)
Born 1927–1928	81 (13,1 %)	118 (19,1 %)	313 (50,6 %)	106 (17,1 %)	618 (100 %)
Born 1929–1931	3 (1,8 %)	5 (3,1 %)	135 (83,8 %)	18 (11,2 %)	161 (100 %)

If we start with A1, the bottom row of Table 2 shows that also the youngest, born in 1929–1931, as we assumed, were investigated by the police. Whether they were scrutinised for petty offences, we will discuss shortly. Regardless of that, there are far fewer investigated in this group, only 161, than in the two older groups. This could be due to the incompleteness of the NSUF archives combined with a lower recruitment 1943–1945. However, it also suggests that some cases in this age category, particularly those where only membership of the NSUF was a reason for suspicion, were disregarded and not investigated. The justification for such a practice would probably be the circular of the Attorney General of 15 November, 1945. Since membership of the NSUF alone would not lead to a punishment, further investigations were probably not always considered necessary.[34]

Although the information found in Larsen's database does not specify the grounds for the 161 investigations in question, the fact that less than five percent of the youngest suspects in the end received a punishment indicates mostly trivial acts of treason. In police documents, such examples abound. While S. B. S. (born 1929) was investigated because of an application to the NS for money to travel to a course in model aircraft construction held by the party's militia, the police in B. K. T.'s (born 1929) case, among other things, tried to establish whether the boy had participated in a ski race under the auspices of NS and received a participant badge.[35] In conclusion, A1 nevertheless was weakened, since many of the youngest likely were not investigated.

A2, on the other hand, was substantiated as the numbers for all three age groups in table 2 when added up show that 2,488 minors, i. e. nearly two thirds (62,7 %) of the total sample, were either sentenced (27,2 %) or fined (35,5 %) for trea-

33 Larsen, *Database.*

34 Andreas Aulie, "Registrering av landssvikforbrytelsene med gjerningsbeskrivelse og statistikk," in *Om landssvikoppgjøret*, published by Justisdepartementet (Gjøvik: Mariendal, 1962), 167, 247–248.

35 RA/S–3138–28/D/Da/L0207/0002, Anr. 3277, S. B. S.; RA/S-3138–34/D/Da/L0014/0002, Anr. 98, B. K. T.

son.[36] Table 2 also supports A3, as the percentage who were punished increases significantly with the age of the suspects.

We now move on to A4. Since arrest and detention were not always recorded in the first months after the liberation, it cannot be determined how many minors were detained, or for how long. However, in our review of cases, leaving the more serious acts of collaboration aside, we found many examples of arrests with unclear justification and apparently unreasonably long detention. Thus, 15–year-old O. A. E., the boy who, as said in the introduction, was interned for more than six weeks due to his membership in the NSUF, was not an isolated case. The aforementioned B. K. T. was kept in internment for a full four months, mainly with the curious justification that there were still many Germans in Stryn, the small rural community he lived in.[37] Overall, the threshold for keeping underage collaborators in extended custody seems to have been low, even if they were only suspected of trivial offences. In conclusion, therefore, A4 is supported.

Results 2: On the criminal intent of young suspects

> I have never heard of it being a punishable offence to be a member of NS or any other organisation I have been a member of. J. H. B., (born 1924), 1945.[38]

To evaluate A5 it is necessary to review how the young defendants' criminal intent was evaluated in a sample of court cases. Although the NTO effectively disregarded the Penal Code's intent requirement by making NS membership itself a criminal offence, the court, or in trivial cases against passive members only the police, still had to address the issue. When dealing with adults, courts and police officers satisfied the intent requirement by routinely declaring, often contrary to the defendant's own statement, that he or she "must have understood" that NS was providing unlawful assistance to the enemy.[39] To what extent was the same practice followed in cases involving minors, where such attribution of criminal intent could be even more problematic from a legal point of view?

On the one hand, our review confirmed that even the young collaborators were regularly imputed with an intent to commit treason, even though, in accordance with the prevailing perception of reality in their families and environments,

36 Out of the 3,968 a total of 1,079 were sentenced and 1,409 fined.

37 RA/S–3138–34/D/Da/L0014/0002, Anr. 98, B. K. T.

38 Cited after police interrogation, 8 August 1945, in RA/S–3138–04/D/Db/L0007/0008, Anr. 26/45, J. H. B., translated by the authors.

39 Borge and Vaale, *Grunnlovens største prøve*, 145, 333.

they themselves denied it. In its verdict against B. T. (born 1924), Kongsberg District Court found that she had understood that Norway was at war with Germany, that the King and Government were continuing the fight from London and that NS was supporting the enemy. In her later application for pardon, however, she denied any criminal intent. When joining the NSUF at the age of 16, she had no knowledge of politics. Furthermore, she could not understand how caring for patients as a voluntary nurse for the German Red Cross at Aker hospital in Oslo could be an illegal act.[40] In its verdict against V. E. B. (born 1924), the Oslo District Court concluded that her joining the NSUF at the age of 16 was intentional treason, even though she herself had perceived the organisation as a kind of scouting movement. The court's rather curious reasoning was that at the same time she had also taken a job in a German company and must therefore have been aware that both the job and her NSUF membership were criminal offences.[41]

In many cases, the court drew a distinction in its assessment of intent between a defendant's initial acts of collaboration, typically admission to the NSUF, and later, often more serious acts. The argument was that, although the defendants may not have fully understood the unlawfulness of their first actions, at least as they grew somewhat older they must have realised that NS supported the enemy. In one such case, the one against B. H. (born 1926), who joined the NSUF at the age of 15 ½, Numedal county court assumed that he had already a year later, after having learned about the organisation's ideology at a course, become sufficiently conscious and thus capable of committing intended treason.[42] To conclude, A5 was supported by the evidence.

Results 3: On the significance of mitigating circumstances in the courts

As regards A6, this will also be illustrated by an examination of selected court decisions and their bases. A first observation is that, in cases against minors, there were widely differing views on possible mitigating circumstances and their significance among both prosecutors and judges. Although the young age of the accused was normally mentioned, it was not clear how this factor would affect the sentencing. Among the lawyers who participated in the treason trials, some argued that adolescence should not be exaggerated as a moderating or exonerating factor. In

40 RA/S–3138–15/D/Da/L0033/0008, Anr. 232/45, B. T.
41 RA/S–3138–01/D/Da/L0081/0001, Dnr. 659, V. E. B.
42 RA/S–3138–15/D/Da/L0046/0008, Anr. 375/45, B. H.

the case against B. A. J. (born 1925), the prosecutor Olaf Trampe Kindt (1913–1995) rejected the idea that the defendant's youth should have a mitigating effect, as Kindt considered the crimes too serious.[43] In another case, against E. W. (born 1926), the prosecuting lawyer, Iver Holter Alnæs (1904–1978), even stated that the court should react strictly precisely because of the defendant's young age.[44] However, a third prosecutor, police officer Ølvar Berven (1898–1979), highlighted adolescence as an extenuating circumstance in his assessment of G. D.'s (born 1926) actions. He and other young people had been victims of ruthless propaganda, Berven said.[45]

Similar age and environmental factors, primarily the minor's family background, were most often mentioned during the trials. Typically, one or both parents of the defendant had been members of the NS, and judges therefore assumed that this had influenced him or her to a greater or lesser extent. When the Supreme Court unanimously reduced the sentence against E. L. (born 1925), a son of a prominent NS man, the main reason was that the Aker county court had placed too little emphasis on the father's influence. It had been "very strong," according to the final verdict.[46] In some cases, however, information about the NS affiliation of parents and other close relatives was ignored by the court. Although in the case of P. L. (born 1925), who enrolled in the NSUF at 16, both his parents were members of the NS, this fact was neither mentioned as mitigating by the district court nor during the appeal hearing in the Supreme Court.[47]

There are only a few examples of the court looking at the situation of these young defendants in its entirety, where both entry into the NSUF and later acts of treason can often be understood in the light of circumstances outside themselves. When the lawyer Johs. Aanderaa (1905–1997), the defender of L. M.E. (born 1928), referred to the fact that he came from a NS family and was just 13 when he was admitted to the NSUF, only to be boycotted by his comrades and later "met with Nazi nonsense at all hours of the day," the court took little account of this.[48]

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43 RA/S–3138–12/D/Da/L0030/0006, Dnr. 255, B. A. J.

44 RA/S–3138–01/D/Da/L0020/0002, Dnr. 153, E. W. Traditionally, an argument for punishing young first-time offenders severely has been that it discourages them from committing new crimes in the future. Robert Galbiati and Francesco Drago, "Deterrent effect of imprisonment," in *Encyclopedia of Criminology and Criminal Justice* (New York: Springer, 2014), 1023–1030.

45 RA/S–3138–08/D/Da/L0022/0265, Anr. 97/46, G. D.

46 RA/S–3138–01/D/Da/L0192/0006, Dnr. 1314, E. L.

47 RA/S–3138–10/D/Da/L0001/0001, Dnr. 1, R. S.

48 RA/S–3138–29/D/Da/L0055/0004, Anr. 321/45, L. M.E.

Several court reports give the impression that judges also often failed to see how, among other things, loyalty to parents and long-term NSUF indoctrination, as described earlier, made it difficult for young people to change course. Instead, it was often treated as a criminal offence for the young person not to have resigned from the party or not to have refused to carry out orders from superiors. Thus, B. H. (born 1926) was reproached by the Supreme Court for, at the age of 16, not having discussed the contents of an NSUF course with others who did not belong to the NS at his place of residence.[49] In the case against K. A. (born 1928), who at 16 had been ordered by the local NS militia leader to perform armed guard duty, and whose father was also in the NS and did guard service, a fact apparently unknown to the court, the boy was punished for not refusing.[50] Even when an NSUF boy had volunteered for German military service and was then consequently put under military discipline, as in the case of F. N. C. (born 1926), the court punished him for not later attempting to disobey orders or escape.[51]

All in all, A6 was supported. That the weight given to the special mitigating circumstances was highly variable appears evident, not least due to the many different judges and courts involved in the legal reckoning. Lower court judgments could be made both stricter and milder by various departments of the Supreme Court depending on how youth and NS family had been weighted. Besides, even convictions where the court has allegedly given a young defendant a reduced sentence for treason appear in many cases to be as severe as in comparable cases against adults.

As for our final assumption (A7), it follows logically from the conclusion of A6 that the seventh is also supported by the empirical sources. Moreover, given the difficult judgments the court had to make in cases against juveniles, it is safe to assume that sentences varied even more than when the defendants were older.

Conclusion

> We had uniforms and we marched, but we did not know what we were doing, we were merely an echo of our parents. A. B., (born 1932).[52]

49 RA/S–3138–15/D/Da/L0046/0008, Anr. 375/45, B. H.

50 RA/S–3138–32/D/Da/L0039/0201, Dnr. 198, K. A.; RA/S-1543/Dl/L0002/0007, ED-kort nr. 13219, S. A.

51 RA/S–3138–05/D/Da/L0010/0007, Ark. 152, F. N. C.

52 Cited after Baard Herman Borge, "*De kalte oss naziyngel": NS–barnas historie 1945–2002* (Oslo: Samlaget, 2002), 90, translated by the authors.

To summarise, the Norwegian court settlement with the youngest collaborators in general went as we expected based on transitional justice theory and knowledge about the trials. All our assumptions, except for A1, were substantiated. There is therefore good reason to argue that many of the youngest NS members were unfairly treated by the police and courts not only by today's but also by pre-war legal standards. The root cause of this injustice is that children in their teens were largely treated as adults in the sense that many of them were presumed, on dubious grounds, not only to have acted both voluntarily and independently, but also to have committed the political crime of treason deliberately. The courts routinely ruled that underage defendants had "voluntarily" and "without coercion" joined the NSUF, regardless of their parents being members of the NS or not. Although the juveniles rarely mentioned having been pressured or influenced at home, as this could have worsened their father's and mother's treason cases, crucial parental influence was often cited in testimonies.

In the Norwegian legal literature, the discussion of children's criminal responsibility at different ages has historically revolved around their culpability. It has often been pointed out that they have not yet developed an understanding of the social nature of certain crimes and therefore cannot construct counter-narratives like an adult.[53] Even so, while a political act such as treason in German-occupied Norway is an obvious example of a crime committed in a complex social context, only rarely did the judiciary reflect on how the minors related to their political crimes. When R. S. (born 1926) was asked by magistrate Gunnar Christian Otterbech (1881–1963) why he at 14 had joined the NSUF, he replied that he thought the party programme was "correct". However, when Otterbech followed up by asking if he really had had any interest in politics at such a young age, S. replied in the negative.[54] In this way he was probably representative of many young defendants.

Finally, what lessons may be drawn for dealing with young offenders, both in general and after future transitions to democracy? From today's perspective, the assessments and sentences that took significant account of the circumstances of minors' actions undoubtedly appear in the best light. Thus, the attitude demonstrated by the two Supreme Court judges, Cathinko Stub Holmboe (1892–1980) and Einar Hanssen (1874–1952), who in several cases argued strongly for sentence reduction because they thought a minor NS member received too harsh a punishment, may stand as an example to follow for future jurists.[55]

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53 Gröning, "Kriminell lavalder," 317–318.

54 RA/S–3138–10/D/Da/L0001/0001, Dnr. 1, R. S.

55 RA/S–3138–32/D/Da/L0013/0071, Dnr. 70, O. E. A.; RA/S–3138–32/D/Da/L0012/0064, Dnr. 63, I. H. O.; RA/S–3138–05/D/Da/L0010/0007, Ark. 152, F. N. C.; RA/S–3138–15/D/Da/L0046/0008, Anr. 375/45, B. H.

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