SOME ASPECTS OF THE PRINCIPLE OF MINISTERIAL RESPONSIBILITY IN NORWAY

BY

INGEBORG WILBERG

Assistant Professor of Law,
University of Oslo

I. INTRODUCTION

British writers on the constitution of the United Kingdom have sometimes noted—with a peculiar mixture of pride and irony—the inconvenience caused to foreign students of their system of government by the obstinate refusal of Parliament to enact a constitution. The inconvenience of the British system to students is said to arise from the circumstance that constitutional questions are often a matter of argument about the interpretation of general principles or political precedents. Be this as it may, the point I wish to make is that a constitution proper represents in itself no "free ticket" to an intelligent and correct understanding of the form of a country's government.

This is at least true with regard to Norway. Her constitutional system is based upon a written document—the Glorious Constitution of May 17, 1814, with later amendments and abrogations. In spite of this fact, a conscientious and intelligent study of the written Constitution will probably create in the reader's mind a conception of our form of government that is completely false. This is mainly due to a peculiar but consistent Norwegian habit, developed during the last century, of refusing to alter the letter of the Constitution if it can possibly be avoided. Many important changes in the constitutional system have taken place by the technique of slight alterations in the meaning and bearing of constitutional provisions—alterations that are hardly perceptible at the time but can be remarked clearly enough when seen from a certain distance. Other important changes are due to the fact that new constitutional instruments have been introduced through practice, without any formal amendments in the written Constitution. For these reasons some knowledge of Norwegian history is indispensable if one wants to interpret and understand our constitutional system of to-day.

The task of interpreting the relevant material correctly is, however, rendered difficult by the fact that constitutional arguments seem to play a very important part when matters of controversy

are discussed and settled by our governmental organs. "You Norwegians take your Constitution in earnest", comments the outstanding Swedish constitutional lawyer, political scientist and well-known politician, Nils Herlitz, who probably knows more than anyone else about the systems of government in the Scandinavian countries. This observation is pertinent, but it does not tell the whole truth about the attitude of our politicians in government and parliament to constitutional principles and provisions. Even though the politicians pay homage to the Constitution, and even though they accept that the Constitution forms a respectable system of law, they never lose sight of the other function of the constitutional system: the instrumental function. The main task of politicians is after all to act, to solve political problems and to achieve results. Therefore, they make use, in fact, of the Constitution as an instrument of government. It would be quite unrealistic to maintain the idea that their interpretation and application of the Constitution should remain unaffected by what is admittedly their primary concern. The politicians in power know that they ought to justify their steps by constitutional arguments, and they hardly ever fail to do so. The politicians in opposition know that it might prove useful or effective to call in question the constitutionality of the policy or the practice to which they are opposed, and they behave accordingly. The constitutional history of Norway since 1814 demonstrates beyond all reasonable doubt this "legalistic" character of its political life. But this fact does not justify any conclusion with regard to the real function of the Constitution as a rigid system of law. The truth about this question can only be ascertained by a very careful investigation and consideration of both law and practice. This means that students of our system of government will have to cope with a rather complex set of relevant sources, whose relative value is difficult to estimate. No wonder that there are differences of opinion among Norwegian constitutional lawyers, political scientists and politicians about the real role of our Constitution. The general tendency seems to be as follows. The politicians talk as if they take the Constitution in earnest, but they do not always act accordingly. The constitutional lawyers overestimate the constitutional aspects of political events, whereas the political scientists underestimate them. The very concept of the Constitution is vague enough to be an almost perfect disguise for the underlying changeable and changing facts. This enables everybody to

carry on along his chosen line with a splendid feeling of being in the right.

These introductory remarks may serve as a general background for the following presentation of some actual aspects of ministerial responsibility in my country, for recent events have brought to the fore and to some extent have clarified the principle of collective ministerial responsibiliy for the handling of governmental affairs.

II. COLLECTIVE MINISTERIAL RESPONSIBILITY

1. *The constitutional aspect*[1]

The written Constitution still gives the original picture of the Norwegian concept of ministerial responsibility. The Constitution, to a large extent based upon the ideas of separation and division of powers, vested real powers in the King. The King was obliged to have a Council of State at his side, and to deal with matters of importance in its presence, and he was bound to listen to opinions expressed by its members. But he was entirely free in his choice of ministers, and he was also entirely free to make decisions according to his own judgment. The responsibility for the King's decisions rested, however, with his Council. If a minister was of the opinion that the King's decision was at variance with the Constitution or the laws of the Kingdom, or obviously

[1] The Norwegian National Assembly or Parliament is called the *Storting*. It consists of 150 members, elected by general elections held every four years (Arts. 49, 57 and 71 of the Constitution). From among its members the Storting elects one-fourth, which constitutes the *Lagting;* the remaining three-fourths constitute the *Odelsting*. The members of the Lagting are elected for the whole period of four years at the first meeting of the Storting after a new general election (Art. 73). Nowadays the division into Odelsting and Lagting possesses hardly any real significance, mainly because the political parties are proportionally represented in both divisions. But from a legal, constitutional point of view it must be noted that the division has its importance for the legislative procedure (Art. 76), and for the exercise of the constitutional control (Arts. 75 and 86).

The Ministers of the Crown form a *Council of State,* which shall consist of a Prime Minister and at least seven other members (Art. 12). In legal parlance and also in everyday speech the term the *Government* (Norwegian: Regjeringen) is more commonly used, both in the sense of the King with the Council of State, and in the sense of the ministers without the King.

prejudicial to the interests of the country, it was his duty to make strong remonstrances against it and to have his opinion entered in the Council's records. If he failed to do so, he should be deemed to have been in agreement with the King, and he might be impeached by the Odelsting (the first division of the Storting) before the Constitutional Court of the Realm (the Riksrett) consisting of the members of the Lagting (the second division of the Storting) and the members of the Supreme Court. These old-fashioned provisions still remain in the Constitution. To a large extent they have lost their constitutional and political significance since the introduction of the parliamentary system. But with regard to the constitutional concept of ministerial responsibility they still have their importance. They stress the principle of collective responsibility for the decisions made by the King in Council. Since this constitutional form for the making of decisions has been retained for matters of importance, the principle is applicable to a wide range of governmental affairs. It must, however, be noted that the Odelsting has been inclined to limit its impeachment actions or constitutional notices to the minister or ministers who are supposed to be chiefly responsible for the alleged breaches of duty.

The principle of constitutional ministerial responsibility has played an important part in Norwegian constitutional and political history. The impeachment instrument was in fact used (or abused: opinions are divided) in 1883–84 as a stepping stone for the introduction of the principle of parliamentary ministerial responsibiliy. Since this new, political aspect of the concept of responsibility was firmly established, the constitutional aspect lost much of its practical significance. But it still remains an integral part of the Norwegian constitutional system and it is, rightly, considered a valuable constitutional guarantee. It may be resorted to if the principle of parliamentary responsibility fails to secure adherence to constitutional principles and conventions.

2. *The parliamentary aspect*

The parliamentary system that has developed through practice in Norway has two main characteristics:

(i) The government (the Cabinet) must be so composed that it is acceptable to the majority of the Storting.

(ii) The government must exercise its constitutional functions in a way that is acceptable to the majority of the Storting. The Norwegian system does not require that the government shall hold the same political views as the majority in the Storting, nor does it demand that the government must have the confidence of a majority. The multi-party system has enforced our "negative" variant of the parliamentary system. For long periods the government has, however, had the support of a majority. This was the case with the Liberal government from 1913 to 1918 and with the Labour government from 1945 to 1961.

In the main our parliamentary governments have presented a united front to the Storting. The Prime Ministers have chosen ministers who have been able and willing to co-operate and compromise in the Cabinet under their leadership. Ministers who have been unable to reconcile themselves to the policy or the decisions favoured by their colleagues have as a normal rule resigned, more or less willingly. This principle of unity, which implies collective parliamentary responsibility for the handling of governmental affairs, is not, however, looked upon as an absolute rule which can tolerate no exception. Ministers have been allowed to dissent and to make their personal opinions officially known. There are several well-known instances, not only from the old days, when a minister could rely upon his high personal standing among his supporters in the Storting to risk open opposition to the rest of the Cabinet. Johan Castberg was, as Minister for Social Affairs, a disputatious member of the Liberal government from 1913, though the Prime Minister, Gunnar Knudsen, succeeded in getting rid of him before very long. Even the Labour governments since the second world war have permitted dissenting opinions to appear. The best-known example is the strong statement made by the Minister for Prices and Wages, Gunnar Bøe, against the Norwegian application for full membership of the E.E.C. Mr. Bøe did not, however, defend his view in the Storting, and he resigned shortly afterwards and went back to his professorship. Another, and rather curious, incident took place in 1958. In a statement presented to the Storting the government expressed the view that sweep-net fishing in Lofoten should still be permissible. Owing to illness, the Minister of Fisheries, Nils Lysø, had taken no part in the preparation and decision of the matter. His functions had temporarily been taken over by the Minister of Agriculture. The Minister for Transport had dissented both in the Cabinet and

in the Council of State. During the debate in the Storting, Mr. Lysø told the members of his absence at the preparatory stage, and went on to say that he disagreed with the recommendation made by the government and that he personally was in favour of the prohibition line; he also set out his reasons for this point of view. The Storting decided against the government, a majority of 87 (against 53) voted in favour of a motion recommending the prohibition of sweep-net fishing in Lofoten. This motion was accepted by the government, who subsequently took the necessary steps to enact appropriate regulations. The two dissenting ministers remained happily in office, as did also the Minister of Agriculture, who was not "punished" for the defeat which he had brought upon the government.

These few examples should be sufficient to show that, according to Norwegian notions, differences of opinion within the Cabinet are compatible with the principle of parliamentary responsibility. We do not share the British view, exemplified by the famous statement made by Lord Salisbury in 1878: "It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most essential principles of parliamentary responsibility established."

But, as already mentioned, the main rule is that a parliamentary government presents a united front to the Storting. And so it must be. A government cannot retain the necessary authority and confidence if the Ministers do not usually stand together, which means that the ministers must be prepared to fall together in the Storting. The principle of collective responsibility to the Storting secures loyalty and solidarity among the Cabinet members. It is commonly accepted in Norway that a reasonable amount of this kind of loyalty and solidarity is indispensable for modern government. But our politicians do not quite agree with regard to how far this kind of loyalty and solidarity ought to be extended. The Liberal Prime Minister Gunnar Knudsen was no keen adherent of the principle of loyalty to his colleagues. He won himself a reputation for many achievements, but he was also renowned for his high consumption of ministers. More than once he proved his willingness to sacrifice a minister for actions which were really the joint responsibility of the whole Cabinet. By and large these sacrifices of luckless ministers were accepted,

but the Prime Minister was criticized for the humiliating and *gauche* way in which he went about them.

Under the Labour governments since the second world war the practice has been quite different. The principle of solidarity has flourished. The members of the Cabinet have been able to count on the loyal support of the Prime Minister, and the Cabinet has been able to count on the loyal support of the Labour members of the Storting. The loyalty system of the Labour party has its reasons, which will not be set out here. This paper is only concerned with the obvious parliamentary consequences of the system. As long as the Labour party had the support of a majority in the Storting it used, or abused—opinions are divided—its system to defeat all attacks on its policy and decisions. It did not alter this attitude after it lost its majority in 1961. The general elections that year gave the "awkward" result that the 150 seats in the Storting were distributed as follows: Labour 74, the non-socialist opposition parties together 74, the new socialist party 2. This policy proved to be fatal, in the sense that the government was forced to resign in August 1963, following a motion of non-confidence carried by a majority of 76 against 74.

The "leading cases" of this period are as follows:

(i) *The Cuba affair. Act I.* In December, 1958, the Ministry of Justice granted a licence to the public enterprise Raufoss Ammunisjonsfabrikker to export a certain amount of arms and ammunition to the then government of Cuba. The licensing act was authorized by the Weapons Act of 1927, but was not in accordance with a plenary resolution passed by the Storting in 1935, according to which export licences were in future not to be granted for arms and ammunition destined for countries where a state of civil war existed. The question whether the licence should be granted had been discussed and in fact settled at a previous Cabinet conference. The Prime Minister, Einar Gerhardsen, the Minister of Foreign Affairs, Halvard Lange, and the Minister of Justice, Jens Haugland, were, for various reasons, not present at this conference, and other members of the Cabinet acted on their behalf. (Our political undersecretaries may not represent their ministers in the Cabinet or in the Council, or in the Storting.)

In March, 1959, the four opposition leaders presented a motion in which the Storting was invited to regret the granting of the export licence. The opposition made it quite clear that they wanted somebody's head. The Prime Minister answered for the

government. He admitted that the Cabinet might have committed a slight error of judgment, and he promised that more care should be taken in the future. But he did not express regrets or apologies, and he made it clear that the incident would not cause any changes in his government. Labour members of the Storting defended the government—not the licensing act—and their leader, Nils Hønsvald, bluntly said that members of the Labour group would never vote for a motion of censure directed against their own government. If they wanted a change in the composition of the government, they knew other ways and means of getting it. The opposition leaders in their turn accused Mr. Hønsvald of introducing a new and dangerous, unconstitutional and unparliamentary, doctrine which set party loyalty to the government above the duties of deputies as members of the Storting. The motion was rejected.

(ii) *The Cuba affair. Act II.* In the autumn of 1959 a newspaper published an article containing the startling allegation that the public enterprise (Raufoss) had been helped to fulfil its obligations towards the Cuban government by an arrangement with the military authorities to borrow certain items, including ammunition earmarked under the Mutual Defence Aid Programme to remain in the country. The Press Service of the Ministry of Defence at first denied the alleged arrangement, but the newspaper repeated its accusations, and the Ministry then admitted the facts and apologized for the previous incorrect denial. The government and its supporters had a hard time defending these unfortunate transactions in the Storting in October, 1959, and in May and June of 1960. Everybody acted loyally, along the same defence line as in Act I: Things had just gone wrong, and therefore no member of the Cabinet deserved any serious blame. The Minister of Defence, Nils Handahl, told the Storting that he had informed the Prime Minister, Gerhardsen, that he considered his seat to be at his (Gerhardsen's) disposal, but the Prime Minister had asked him to remain in office. Later in the debate this piece of news was confirmed by the Prime Minister himself, who at the same time told the Storting that he had complete confidence in his Minister of Defence.

The government had a fairly easy time during the first period after it became a minority government in 1961. The parliamentary year of 1961–62 was tolerably peaceful, as was the autumn session of 1962. The four non-socialist parties showed a high degree of

moderation in their criticism of the government. It seemed as if some kind of understanding existed between the two big groups –Labour and the non-socialist parties—with a view to preventing the new Radical Socialist Party (SF) from "abusing" its key position so as to play a decisive role in the Storting. That a "gentleman's agreement" of this kind had in fact existed was disclosed by the Prime Minister during the stormy days in the summer of 1963.

But during the spring session this year (1963) the atmosphere changed. In March the Prime Minister, Gerhardsen, came to the rescue of his Minister of Justice, Haugland, who was confronted with a motion of censure in the Odelsting. Members of the four non-socialist parties strongly criticized an appointment of a police officer to a very senior post in the service, on the ground that since he was by no means the best qualified candidate for the job, the appointment must have been due to improper considerations. The Prime Minister stated that, as the appointment had been referred to the Cabinet, who had unanimously accepted the decision taken by the Minister of Justice, the responsibility for the appointment rested with the government as a whole. The Cabinet question thus put, the motion was defeated, against the non-socialist votes; one Liberal, the Chairman of the Committee of Justice did not, however, follow his group. But the SF leader, Finn Gustavsen, made it clear that he would not hesitate to vote for a motion of censure if he found such a step justified and necessary. The next and really serious incident took place on June 18. This time the Minister of Industry, Kjell Holler, was in great trouble and had a very narrow escape in

(iii) *The Koksverket affair.* The Minister of Industry had, on behalf of the government, asked for an extra grant of supply in order to finish the Koksverket (coke plant) at Mo i Rana, one of the public enterprises in the government's industrial scheme. The extra money asked for was granted, but the non-socialist parties moved a motion of censure, stating that owing to deficient planning, calculations and dispositions by the Ministry of Industry, the previous decisions of the Storting with regard to Koksverket had been taken on untenable premises. The Minister, Mr. Holler, told the Storting that he could not accept this motion and would resign if it was adopted. The SF moved their own motion of censure, not quite so severe in form, but quite as strong in reality. The criticism was implied and concentrated

upon the failure of adherence to standing orders with regard to expenditure. Mr. Holler was challenged to declare his attitude towards this second motion, but he did not do so. Towards the end of the debate the Prime Minister came to the rescue of Mr. Holler, by declaring that he considered the first motion (the non-socialist one) as a reflection upon the industrial policy of the government and therefore directed against the whole Cabinet. The Prime Minister also kept quiet about the second motion. After a short adjournment for group discussions, the motions were put to the vote. The first motion got only the votes from the non-socialist opposition, the second got only the two SF votes. The government was saved, and the Minister of Industry was under no constitutional or parliamentary obligation to resign. Indeed, on that night he showed every sign of a firm intention to remain in office.

Two days later, however, Mr. Holler tendered his resignation. The immediate and obvious cause was the report presented by the Royal Commission set up to inquire into the facts concerning a serious accident that had occurred in November, 1962, in the Kings Bay coal mines on Spitsbergen, owned by a public enterprise coming within the sphere of the Ministry of Industry.

(iv) *The Kings Bay affair* is the last "solidarity case". It started with a dramatic prelude in the Storting on June 20, experienced an interesting development inside and outside the Storting during the summer months, and had a stormy *denouément* in the Storting that occupied four consecutive morning-to-midnight sessions (August 20–23).

Just before midnight on June 20, the Storting unanimously decided to postpone its formal dissolution, which was due to take place on the following day, until September 30, in order to be able to deal with the Kings Bay affair, if this should prove justified and necessary. The cause for this extraordinary step was that some members had heard from friends in the press lobby that the report on Kings Bay was to be published in the press on the following day, and the reporters had given the members to understand that the report contained severe criticism of the safety conditions in the mines; besides this the members had heard that the Minister, Mr. Holler, had resigned. The members felt strongly about this queer timetable adopted by the government. Why was the report to be made public just when the Storting would no longer be sitting? Why had the government said

not a single word about the report during the Koksverk debate? These two enterprises were closely connected, for Koksverket was based on the coal production in Kings Bay. The Prime Minister must have known of the report when he saved Mr. Holler two days before and declared that his Minister was the exponent of the government's industrial policy? What did it all mean? The government promised to present the case fully to the Storting as soon as possible. Furthermore it was decided that the two appropriate Standing Committees should start their preparatory work at once.

The constitutional machinery was thus at work. Interest groups set to work as well—mainly the political parties, labour and other organizations. Full use was made of the press and other instruments of expression. It was obvious that this affair might turn out to concern the future of the whole government, and in fact it did. This turning of the affair might very well have been prevented, but the people in positions of power and influence on both sides wanted a decisive battle. Labour decided on an aggressive, uncompromising line of defence: the opposition parties were exploiting a lamentable accident to discredit a government that had done all that could reasonably be demanded of it, and they were doing so only in order to score a political gain. The opposition were no less uncompromising: Labour were abusing the accident as a shield for governmental incompetence and neglect of duty, brought to light by the report of the Royal Commission of Inquiry.

The government presented its case to the Storting in the middle of July, in a statement and report on the accident and a proposition on the future of Kings Bay. The government here adopted a careful but firm line of defence. No administrative failure was admitted, the government did not acknowledge that it had anything to excuse or regret. But on the other side some alterations in future practice were announced, and the Storting was invited to give its consent to stop the mining of coal in Kings Bay and to grant the money required to pay incurred debt. (Mining operations had been suspended since the accident.)

The members of the two co-operating Standing Committees divided along party lines. The non-socialist members stressed the importance of the decision taken by the Storting on March 20, 1956, which made adequate safety measures a *conditio sine qua non* for the carrying on of coal mining in Kings Bay and laid

down as a binding prescription for the grant of public money then made for further investments. According to the view taken by these members the decision in March, 1956, created a very clear and definite duty for the government to take such measures and actions as would prove to be adequate to ensure adequate safety arrangements in the mines. The facts now brought to light, which were incontestable, proved that the safety arrangements had been unsatisfactory. The deficiencies now proved could have been prevented by more energetic and attentive management on the part of the government. Considering the seriousness of the breach of constitutional duties, these members found it justified and necessary to table a motion of distrust (non-confidence) against the government.

The Labour members accepted that the 1956 decision established a special responsibility for the government for satisfactory safety arrangements in the mines. They admitted that these arrangements could have been better, but they found no reason for blaming any member of the government. They had all done everything that could reasonably be expected of them with regard to looking after the mines.

The debate in the Storting was long, sharp and bitter, sometimes even vindictive. In point of fact there were three debates, hardly separated from each other, one concerned with the Kings Bay affair, another concerned with the merits and demerits of the present government, and a third concerned with the political aspects of exchanging a Labour government for a non-socialist coalition government. On the first day the Prime Minister, Einar Gerhardsen, delivered his main speech, concerned with all three debate subjects, in which he made it quite clear that he did not accept that either he, or any member of his present government, or his two former Ministers of Industry, Sjaastad and Holler, had failed in fulfilling their duties to the Storting in respect of the Kings Bay affair; the Prime Minister expressly stated that the resignation of Mr. Holler did not imply any admission of failure or responsibility. The parliamentary leader for the Conservatives, John Lyng, the Prime Minister *in spe,* in his turn made it quite clear that the whole behaviour of the government had rendered it absolutely necessary to state in plain and direct language that the Storting was no longer willing to tolerate the offhand and negligent treatment the government had made it endure too long. Now the cup was full, and if the opposition did not protest this

time, as strongly as they could, they had no more to do in the Storting.

The atmosphere was tense on the first day of the debate, and everybody was in fact waiting in suspense for Mr. Gustavsen; as the leader of SF with its two votes, he was in the cat-bird's seat. In his midnight speech Mr. Gustavsen announced that he would vote for the motion of distrust, but this voting would be combined with the move of a supplementary motion, recommending that the government crisis should be solved by the formation of a new administration based on the Labour group in the Storting. This two-step solution was based on the following considerations: the conflict between the government and the opposition concerned a constitutional issue—the content and extent of the government's duties towards the Storting. The government had the principal responsibility, but the non-socialist opposition had a co-responsibility for turning this constitutional conflict into a question of the future of the present government. As the government, in his opinion, had failed to fulfil its constitutional duties, and as it had been quite unwilling to admit any failure, he had to vote for the motion of no confidence. In the circumstances, this was the only possible way of expressing in a clear and unmistakable manner that he would not accept the government's standards of behaviour. By his supplementary motion he sought (1) to underline the non-political, constitutional reason for voting for the motion of no confidence, and (2) to contribute to a constructive solution of the unavoidable government crisis, corresponding with the parliamentary situation. In his view the situation was as follows: one group of 76, consisting of the non-socialist members and SF, were against the present government on the constitutional issue; another group of 76, consisting of the Labour members and SF, were in favour of a Labour government. The government could not be allowed to have its way on the constitutional issue, but the forming of a coalition government of the non-socialist parties was not the necessary consequence of this fact. SF did prefer a Labour government, and therefore a new Labour government ought to come to power after the Storting had taken its decision on the constitutional issue.

This refined (possibly, elaborate) solution of the awkward situation was not graciously accepted by Labour. On the contrary, voting with the non-socialist parties against a Labour government was characterized as a betrayal of the working class, while the

supplementary motion was either dismissed as a joke in singularly bad taste, or taken seriously and condemned as unconstitutional or unparliamentary.

During the remaining part of the debate the three groups fought their battle according to the principle of "all against all", and for the benefit of the public gallery, the radio listeners and the television viewers, with an obvious side glance at the municipal elections which were due to take place on September 23. One single voice did, however, speak in favour of moderation. Just before the motions were put to the vote, a Labour member, Trygve Bull, well known for his independence, declared in an impassioned and moving speech that he, on certain not inessential points, agreed with the criticism voiced by the opposition leaders. The accusation levelled against the opposition of wanting to overthrow the government on an industrial accident was based on a misapprehension of their fundamental view of the relationship between government and Storting. But as he could not accept that the failures committed by the government justified a motion of no confidence —a motion of censure would have been adequate—he would vote against the motion.

The voting on August 23 gave the following results: 76 voted for the motion of no confidence, but the supplementary motion got only the two SF votes. On the following day the government fulfilled its constitutional obligation to tender its resignation. The Prime Minister advised the King to ask John Lyng to form the new government. On August 27 the coalition government of the four non-socialist parties—the first in our parliamentary history—was formally appointed by the King in Council.

Labour was out of office for the first time since 1935. The question whether the parliamentary blow on August 23 was justified or not is a difficult one, and I shall make no attempt to give an answer. I shall limit myself to some comments on the constitutional and parliamentary aspects of the cases presented above.

In the Cuba case the Prime Minister acted correctly and wisely in accepting responsibility for the granting of the licence. The matter had, in accordance with a firmly established practice, been referred to the Cabinet. A decision taken in a Cabinet conference must be considered as the responsibility of the Prime Minister, even if he has not personally been present. The Prime Minister is the shepherd and if he leaves his sheep and they go astray and

do silly things he must acknowledge the responsibility. In my opinion neither the Prime Minister nor the Labour group in the Storting could justly be accused of unconstitutional or unparliamentary behaviour, when they spoke and voted against the motion of censure. In the prevailing circumstances this was the only thing they could do, if they were of the opinion that no minister ought to resign. The political wisdom of this opinion might, however, be questioned. The political imprudence of not openly admitting and regretting the licence is, in my opinion, unquestionable. The granting of the licence was a blunder, and a serious one, especially since the 1935 plenary resolution was still in force and represented an instruction which was binding, constitutionally and parliamentary, for the government. The Storting therefore had sound reasons for criticizing the government. A sincere apology would have had a good chance of being accepted as a satisfactory amend. Everybody knew that the Prime Minister was unhappy about the whole affair—it would never had happened if he had been at home. The principal "sinner"—everybody knew in fact who it was, and besides the Prime Minister made the mistake of implicitly giving his identity away to the Storting—had been in a difficult situation, being charged with the hard job of taking care of the balance of trade and of foreign affairs at the same time. But the Prime Minister's handling of the affair was felt as a disrespectful challenge to the Storting. The same was the case with regard to the lending arrangement. This was clearly the responsibility of the Minister of Defence alone. The Prime Minister had no duty to come to his rescue. Even if nobody seriously questioned his constitutional or parliamentary right to do so, many members felt that he did it too willingly, and that by doing so he in point of fact endorsed what he must honestly have considered to be wrong. Feelings in the Storting were likely to be hurt when the Storting, as the constitutional body, got no apologies for the blunder committed, whereas the United States had received the most sincere and humble excuses for the negligent handling of the arms aid. (Relations with the U.S.A. were not helped by the malicious twist of fate by which the ammunition destined for Batista actually fell into the hands of Castro!)

In my opinion the government made a serious mistake in the Cuba affair. The opposition felt affronted, not so much in their capacity as the opposition, as in their capacity as members of the Storting. They got the feeling that the constitutional organ

to which they belonged did not really count, and that the government did not even take the trouble to disguise this state of affairs. The government behaved as if the job had been done as soon as it had ascertained the support of its party members; and to the opposition it looked as if this support was very easily obtained.

The case of the police officer was of more incidental interest. The appointment was questionable, presumably unwise, but evidently not unlawful. The Minister of Justice was not confronted with a direct motion of non-confidence, so he had the possibility of acknowledging the criticism. As the matter had been referred to the Cabinet, it must be taken for granted that he did not embark upon the uncompromising line of defence without previously conferring with the Prime Minister, and that the latter had promised to come to his rescue if this should prove to be needed. Since the appointment was not a natural or necessary consequence of governmental policy, only a pet or petty idea of the Minister of Justice, the incident in itself only told that the Prime Minister was reday to risk the political life of his government in order to please his ministerial colleague.

The next two cases, Koksverket and Kings Bay, are closely connected, and not only from an economic point of view,[2] but also in respect of their constitutional and parliamentary aspects. The Koksverk debate was in point of fact a kind of dress rehearsal for Kings Bay. In the first case the opposition tried a lenient line with the Minister of Industry in order to obtain respect for and adherence to their standards of constitutional and parliamentary behaviour. But the Minister insisted upon the correctness of his own standards, and the Prime Minister readily endorsed them. The opposition interpreted this attitude as a definite sign that the government insisted upon having its own way just as it had had in the safe majority period. The opposition felt seriously alarmed; in their view they were entitled to more respect now, when they notoriously had a majority. But it was obvious that the parliamentary situation gave the government a good chance of doing as it pleased and still getting away with it. An opposition divided into a non-socialist group, consisting of four different, independent parties on the right, and a tiny radical socialist party on the left, could make themselves tiresome enough,

[2] Cf. *supra*, p. 255.

but represented hardly any real obstacle for a solidly united Labour party in power. But then the Kings Bay case arose, at a time when the relations between the opposition and the government were strained. The case had a bad start; the government did handle the report from the Royal Commission of Inquiry clumsily, and the immediate resignation of the Minister of Industry only added to the general ill-feeling. Why did the Minister run away from his responsibility? The opposition exacted a statement from the government, and when they did not find this satisfactory, they decided on a severe line. The non-socialist members of the two co-operating Standing Committees made the government jointly responsible, and they even took the extraordinary step of expressing in the strongest possible way their displeasure with the government's behaviour in their written proposition to the Storting. They did not even await the debate. As the case stood when the debate opened, the government had one single chance of survival: the Prime Minister could admit that either he or some member of his government had failed in fulfilling his duties. Had he done so, the motion of no confidence would not have obtained the two SF votes. An admission of this kind might even have caused the non-socialists to withdraw the motion.

During and since the debate two different questions have been vividly discussed both inside and outside the Storting.

A. The constitutional and parliamentary right of *the opposition* to insist upon the collective responsibility of the government is the first matter concerned. Even the Prime Minister did in fact question this right by asking: What could *I* have done, and what could, e.g., the Minister of Trade and the Minister of Foreign Affairs have done in order to improve the safety arrangements in the mines? The ministers followed this line of argument by insisting upon their personal innocence: their job was to look after the affairs of their respective departments, and that they had done very well, at least according to their own lengthy statements. What were then the reasons for demanding their resignation? Commentators outside the Storting have maintained that the opposition had obtained full satisfaction by the resignation of the Minister of Industry, and therefore it was unnecessary to attack the government.

In my opinion the opposition were within their rights when they directed their criticism against the whole government. One

constitutional argument for their point of view is the following. It was the government that was the addressee of the 1956 Storting's decision. It was then for the government to decide what ought to be done in order to fulfil the imposed duties. If the opposition felt satisfied that neglect of duty had been proved, they were entitled to criticize the whole government; they were under no obligation to confine the criticism to the Minister who had been chosen by the government to do the job. However, had the Minister of Industry remained in office, it would have been in better conformity with constitutional and parliamentary traditions to ask for *his* head only. But the Minister had resigned. In many cases the resignation of a minister might be considered as a satisfactory amend for a governmental or ministerial failure. As the circumstances were in this case, the government could not very well expect the opposition to feel satisfied with the resignation of Mr. Holler. In my opinion it was the Prime Minister himself who destroyed this possibility by (1) stressing that the resignation did not imply any admission of failure, and (2) stating that in his opinion the opposition had no ground whatsoever for blaming the conduct of the resigning former minister. By this attitude the Prime Minister expressly endorsed Mr. Holler's behaviour, and thus he made it a governmental matter. If the opposition wanted to ensure more careful conduct in the future, they had a very natural right to make the whole government the addressee of their criticism. If the "innocent" ministers felt themselves unjustly treated by this action, they ought to blame their Prime Minister for this, not the opposition.

B. The second question which has been discussed is the constitutional and parliamentary right of a politically divided opposition to overthrow a government. The view has been maintained that the parties in opposition are not entitled to unite in order to turn a government out of office, unless they are also ready to unite to form a new government.

In my opinion this is an unfounded and dangerous doctrine. Were it applied, it would be possible for a government, politically in the centre, to carry on as high-handedly and negligently as it pleased, without risking serious and effective parliamentary sanctions. In the Kings Bay affair the opposition parties had two different solutions for the governmental crisis, which they created by uniting their forces. The non-socialist parties were prepared to form a coalition government; SF was prepared to accept a

new Labour government. Thus there was no danger that their action would result in a situation such as that which existed in France during the Fourth Republic. Labour was given the right to choose between the two solutions; as the Labour group voted against the supplementary motion from SF, they implicitly accepted that a non-socialist coalition government would be the immediate result of the crisis.

III. CONCLUSIONS

The implications of the principle of collective ministerial responsibility have played an important role in the contest between Labour and the opposition parties. Our parliamentary history since 1945 unveils the conflict that has existed between Labour and the other political parties about the proper balance of power between the government and the Storting. The struggle between the two conflicting views has been fought in accordance with our best "legalistic" traditions.

Labour suffered a parliamentary defeat in the Kings Bay affair because the opposition insisted that the government should take the consequences of its own principle of collective responsibility. Kings Bay has, of course, many other aspects. It may be interesting to record that Labour decided to get back into power as soon as possible, and accordingly the coalition government was defeated on September 18 on its statement on future policy. Mr. Lyng's government tendered its resignation on the following day, and on September 25 Mr. Gerhardsen's new Labour government was formally appointed by the King in Council. The Prime Minister brought back most of his former ministers, but Mr. Holler did not return, nor did the unfortunate minister who had handled the report in such a clumsy way. The composition of the new government thus indicated that the Prime Minister was willing to make the natural parliamentary concessions after Kings Bay, but nothing more.

The new government has already had several difficult affairs to handle, all related to the sphere of the Ministry of Industry. On October 11, the Prime Minister had to answer an interpellation in respect of the Sör-Aluminium undertaking at Husnes. The opposition wanted to know why the Storting was not given certain

information in connection with a proposition presented in December the previous year. The Prime Minister now for the first time openly admitted a ministerial failure by stating that in his opinion Mr. Holler as Minister of Industry had made a mistake in keeping relevant facts from the Storting. Ten days later things took a dramatic turn. Mr. Lindström, a senior civil servant in the Ministry of Industry, was arrested on a charge of gross breach of trust (Penal Code of 1905, section 275 and 276). Mr. Lindström was the head of the Mining Division of the Ministry and the "key" man in and behind many of the public enterprises which have given rise to parliamentary debates. The criminal charge against him was based upon the allegation that he had secured unlawful gains for himself through various devious transactions concerning coal from Kings Bay. The criminal investigations now in progress may prove these and many other instances of gross breach of trust. When the arrest was publicized it created great interest and concern. A commission to inquire into the whole administrative system of the Ministry was demanded. At first members of the opposition parties were in favour of a parliamentary commission—in their opinion the government could not be trusted to conduct the inquiry. But fairly soon they realized that it would be a mistake to take the affair out of the hands of the government in that way. It was the government's business to take adequate steps in order to find out how and why things went wrong in the Ministry and to take the requisite administrative and disciplinary steps to prevent a recurrence of serious mistakes in this particular Ministry. When the government had done what it thought fit, it should report fully to the Storting. Then the time would be ripe for the Storting to consider the matter and decide what to do about the government. The possibility of impeachment of the minister responsible for the relevant period would also have to be taken into account. So, when the interpellation debate on the Lindström affair took place on October 30, 1963, the Prime Minister readily promised a commission of inquiry, and it was made clear that it was for the government to find suitable members for a Royal Commission and to decide the terms of reference—all on its own responsibility. The opposition would not risk prejudicing the possibilities of later independent and full criticism. A Royal Commission of Inquiry was then appointed by the King in Council on November 15. The results of the inquiry are awaited with intense interest.