

# GERMANS AGAINST HITLER



THE STAUFFENBERG PLOT AND  
RESISTANCE UNDER THE THIRD REICH  
HANS MOMMSEN

I.B.TAURIS

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AND RESISTANCE UNDER  
THE THIRD REICH

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## Preface

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The German resistance against Hitler was drawn from different political and social strata. The conspiratory socialist groups, which already existed before the National Socialist seizure of power, survived only until the early Thirties when they were almost completely eliminated by the Gestapo. Mere remnants of the Catholic youth organizations survived until 1941. Only the Communists were able to preserve a basic organizational network even after the Gestapo had destroyed the central party apparatus. This network survived the phase of the German Soviet Non-Aggression Pact of 1939. However, the conspiratory cadres of the Communist party were no longer able to recruit members outside their former constituency and they failed to attract Social Democrats and other working class people. Thus, most of the oppositional groups which derived from the political parties and trade unions of the late Weimar Republic were almost completely suppressed by the Gestapo during the second half of the Thirties.

The bourgeois opposition which later formed the movement of 20th July 1944 was different from the socialist and Communist resistance. It did not develop before 1938, in conjunction with Hitler's intention to attack Czechoslovakia, but came into being mainly to prevent the emergence of a second World War. The bourgeois resistance consisted particularly of an informal group of notables arranged around the former Leipzig mayor, Carl Friedrich Goerdeler; Ludwig Beck, who retreated from his position



as chief of the German general staff after rejecting Hitler's decision to attack the Czechoslovakian Republic; and the influential diplomat Ulrich von Hassell, who was dismissed as German ambassador to Rome in conjunction with the Fritsch crisis in spring 1938. This network of predominantly conservative notables were closely connected to a group of former trade-unionist leaders who would meet at the Catholic Ketteler House at Cologne. This group was represented above all by the Social Democrat Wilhelm Leuschner for the Free Trade Unions, the Christian Socialist Jakob Kaiser for the Christian Trade Unions and Max Habermann as leader of the white-collar Unions.

The second influential group among the bourgeois resisters consisted of the Kreisau Circle. Their *spiritus rector*, Helmuth James von Moltke, together with his close friend, Count Peter Yorck von Wartenburg, formed a network of oppositional intellectuals which included representatives of the Christian churches, above all Jesuit priests such as Augustin Röesch and Alfred Delp. While the so-called Goerdeler Circle included a majority of people who had formerly held office under the Nazi regime, the members of the Kreisau Circle were younger. They had the support of a high percentage of aristocrats. Many of them had had a rather distant attitude toward the Nazi regime but, nevertheless, they had certainly held important administrative positions.

Originally Moltke aimed to lay the foundations for the organization of government after Nazi rule had come to an end. He and his partners were convinced that National Socialism – which they regarded as the secular consequence of the loss of Christianity in Europe since the Reformation – would necessarily lead to its self-destruction, thus providing an opportunity for a fundamental new start for European society and creating the conditions for general peace and the solution of the social question. Thus, they were primarily interested in preparing the moral and institutional basis for the day – and not in actively achieving the overthrow of the Nazi system. Therefore, Moltke rejected the idea of solving the crisis with the assassination of Hitler. However, after the winter of 1943, the Kreisau Circle arrived at the

conclusion that they could no longer wait for the Nazi terror regime to self-destruct and that it was necessary to overthrow the Nazi government by any means and, ultimately, to assassinate Hitler himself.

For these two main groups of the German resistance the Munich Conference of 1938 brought an important caesura. The conference postponed the military conflict with the Western powers as that would have implied the defeat of repeated attempts to halt the radicalization of Hitler's politics. After Hitler's successes over Poland and France the opposition was considerably weakened. Until Hitler's decision to wage war against the Soviet Union, the psychological pre-conditions to gain support among the military for the conspiracy did not exist. Although there had been very close contact between representatives of the civil opposition and several leading commanders of the Wehrmacht, under the impact of the expansion of the war and the Anti-Soviet campaign from June 22, 1941, active support of the civil conspirators by prominent troop commanders was extremely isolated and very few troops from the home army were available for a presumptive military putsch.

This arrangement changed in spring 1942, when the plan to defeat the Red Army in October 1941 was shown to have failed and the Battle of Moscow had brought harsh German losses of men, material and important reversals on the Eastern front. The critical military situation made it quite clear that the Blitz-war concept was no longer feasible. In conjunction with changing military expectations the concept of the 'racial annihilation war', pronounced by Hitler in his infamous speech to the leading commanders in May 1941, and the 'criminal orders' which had in the autumn been unanimously supported were now met with increasing scepticism by the army leaders. Simultaneously, the unanimous support for Hitler's war by the majority of the German population began to crumble, to be replaced by growing resentment at the hardship they would suffer during a second winter of warfare in the East.

Against this background the resistance among the military increased. Before 1941 resistance had been mainly restricted to

the Military Espionage group, under Wilhelm Canaris, Hans Oster and Helmut Grosscurth. Up to early 1942 only retired officers, such as Erwin von Witzleben and Alexander von Falkenhausen, sympathized with the resisters. From the spring of 1942 a *second* military opposition came into being, among them leading general staff officers who no longer trusted the field-marshalls and army leaders to whom they were subordinate. The most prominent and active representative of this group was Henning von Tresckow.

As leading General Staff Officer in the Army Group Centre, Tresckow had been rather sceptical from the very beginning about whether the German campaign against the Soviet Union could be successful. At first, under the influence of the general optimism among the German officers' corps that a less inefficient operational leadership would overcome the dangerous exaggeration of German resources, he hoped it would be. After the defeat in Moscow, he had increasing doubts about whether the available military manpower on the German side would suffice to bring the campaign to a successful end, even in the face of the massive losses sustained by the Red Army.

At first, Tresckow tried to put pressure on the leading commanders to achieve a qualitative change in the military leadership structure. He sought to put an end to Hitler's continuous intervention in strategic, as well as tactical, decisions and therefore to achieve a focus to the operations carried out by the Wehrmacht. But after April 1942, he became more and more convinced that any continuation of Hitler's warfare would unavoidably lead to a terrible military defeat. He therefore assembled a group of officers, who held similar views in staff positions at the Army Group Centre, and tried to make contact with the civil resistance, using his close relations to Military Espionage under Helmuth Grosscurth and Hans Oster to communicate with Ludwig Beck, who represented the military interests within the Goerdeler Circle.

By the summer of 1942, Count Claus Schenk von Stauffenberg was already in contact with Tresckow, mainly because of their shared interest in establishing Russian military volunteer units. From September, Stauffenberg was definitely involved in the

conspiracy to assassinate Hitler, which was initiated by Tresckow with Friedrich Olbricht. Stauffenberg entered the General Staff in 1943, before he took disastrous command in Tunisia and incurred heavy injuries in an Allied air attack. He was convinced that Hitler's strategy to crush the Bolshevik system; to destroy the Russian governmental system as such; and to lead the war against the Soviet peoples was doomed to failure.

After his move in 1943 to the staff of the General Army office – the Reserve Army – Tresckow, together with General Olbricht, started systematic preparations for a military putsch and the replacement of the Hitler cabinet with an emergency government, formed by the civil resisters led by Ludwig Beck and Carl Goerdeler. It was Tresckow who thought up the remarkable idea to use the plans to suppress an uprising of the millions of compulsory workers in Germany, which went by the code name 'Valkyrie', as cover-up for the intended military putsch and the assassination of Hitler.

Stauffenberg took his new position in the Reserve Army as chief-of-staff in October 1943, filling Tresckow's place after he was sent back to the Eastern front. Stauffenberg was convinced that there was no chance of winning the war against the Soviet Union, especially because of the imbalance between the manpower resources of both countries. Actually, the Wehrmacht would lose about 100,000 soldiers per month following the Battle of Moscow – increasing manpower losses which could no longer be replaced – making it impossible to continue the successful encirclement operations of the beginning of the anti-Russian campaign. Both Stauffenberg and Tresckow, who became close friends in 1942, knew that any attempt to convince Hitler of the need for change would be futile. Already in summer 1942, Stauffenberg declared that he was ready to assassinate the Nazi dictator himself. After Tresckow's displacement, Stauffenberg was the indispensable driving force behind the putsch especially because of his personal energy, organisational capabilities and willpower.

The fact that the assassination of Hitler repeatedly either failed, or had to be postponed, was the result of the extreme difficulties the conspirators had to overcome to break through the security

systems in Hitler's entourage. Stauffenberg used the repeated delays to improve the military operations despite the increasing lack of troops under the command of the Reserve army, and also to intensify contact with the civil resistance. Although there were a great many political differences between them, Stauffenberg received increasing confidence and support from the majority of the conspirators. The different wings of the national-conservative opposition were all resolved to support Stauffenberg's putsch strategy. It was very important that Stauffenberg gained close contact with Ludwig Beck, his former military superior, who more and more functioned as the unchallenged leader of the diverging oppositional groups despite many internal political differences and rivalries. Together, Stauffenberg and Beck represented the unifying centre of what one would later call the 20th July Movement. After Helmut von Moltke was imprisoned, following an abortive attempt to rescue a group of Jewish fugitives, the majority of the Kreisau Circle decided to support the assassination plans of Stauffenberg as well as his concept for the transitional government.

Stauffenberg and Ludwig Beck emphasized the specific political responsibility of military leadership and sharply criticized the idea of an apolitical military. Stauffenberg argued that the army was the most conservative institution in Germany, but was at the same time deeply rooted in the people. He regarded the army as a popular, and in some respects, democratic institution. Referring to November 1918, he promised that the army would not again neglect its political responsibility, whatever that entailed. However, he took a neutral position on the political and constitutional reforms which the civil resisters desired.

Last but not least, although military considerations were what determined Stauffenberg to enter and lead the opposition against Hitler's terrorist regime, this did not mean that he ignored humanitarian concerns. He sharply condemned the German criminal actions against the civilian population, particularly the use of forced labour, the elimination of the Jewish population in occupied parts of Russia, the murder of the Soviet commissars, and the deliberate deaths of millions of Russian prisoners of war. He claimed that the Nazi clique did not have any right to draw

the whole German people into destruction. In this respect, his sense of responsibility as a leading officer and his national credo, were inseparable.

One of his weaknesses as a leader of the resistance was his tendency to overestimate the effectiveness of the system of military command. In the extremely difficult circumstances of July 1944 there was no realistic alternative to his putsch-strategy, which relied on the assumption that the authority of the Wehrmacht and its officer corps had remained intact. However, as events turned out on 20th July, this was no longer the case. Nevertheless, without Stauffenberg's willpower and moral determination, the plot of July 20th would not have occurred. The importance of this plot did not lie in its immediate success, but in the attempt to save Germany's reputation in the world as a starting point to overcoming Nazism.

This volume seeks to present a broader picture of the political variety and abundance of the divergent groups of German resistance. Their vision for greater European integration and more social justice, arose from a conviction that the social crisis of pre-World War I Europe was a crucial condition for the rise of Nazi fascism and similar movements. These ideas clearly did not correspond with the concept of parliamentary democracy. The German resistance to Hitler was looking for alternatives to what their generation regarded as 'mass democracy', which many of them identified as the main source for the rise of National Socialism.

The critical evaluation of the impact of anti-Semitism and the weakness of the liberal tradition in Germany did not find any direct equivalent in Western Europe. On the whole these ideas – far from being uncontroversial – reflect in many respects the historical alternatives to the Nazification of German political and social thought. However, it would be misleading to restrict these observations only to developments in Germany, which was distinct from England, the Scandinavian and Benelux States only by the fact that for the anti-Hitler resistance, any return to the conditions of the Weimar Republic was out of the question.

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Feldafing, Germany*



## Introduction

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Between 1933 and 1945 tens of thousands of Germans were actively involved in various forms of resistance to the Nazi regime and many thousands suffered death or long periods of incarceration in prison or concentration camp as a result. Among these actions were a series of concerted efforts to overthrow the regime between 1938 and 1944. They were undertaken by a number of partially inter-linked circles, consisting mainly of army officers, senior civil servants, clergy and individuals formerly associated with the labour movement. Their actions culminated in the unsuccessful attempt to assassinate Hitler by planting a bomb in his military headquarters in East Prussia on 20 July 1944. Though the bomb went off, Hitler survived. It is these efforts and the people associated with them that have been the main focus of interest, both for historians and the wider public, because they represented the form of resistance most likely to succeed in destroying Nazism; these men had thought longest and hardest about the alternatives to Hitler and it is they who form the subject of this book. However, we should not forget that there were many other resisters, unconnected with these conspiracies, such as the simple Württemberg carpenter, Georg Elser, who very nearly killed Hitler with a bomb in a Munich beer hall in November 1939. They showed equal courage and commitment in their resistance.

Ever since the defeat of Germany in 1945, the question of resistance by Germans to the Nazi regime has provoked controversy



both within Germany itself and in the rest of the world. Outside Germany the Resistance has, on the whole, not had a very good press. 'Too little, too late and for the wrong reasons' might be a fair summary of how it has generally been viewed. Yet such a perception, although not without an element of truth, both seriously underestimates the difficulties facing any resistance to the Third Reich from within and grossly oversimplifies and misconceives the complex and varied motives of those who became involved.

Within Germany politicians in both the successor states of the Third Reich, the Federal Republic in the West and the German Democratic Republic in the East, tried to exploit aspects of the Resistance to legitimise their respective regimes and, in the process, the history of the resistance became caught up in the Cold War. The East argued with some justification that the Communists had been the earliest, most consistent and most persecuted of the resisters, glossing over the party's ambiguous behaviour during the period of the Nazi-Soviet pact in 1939–1941. They also pointed out the extent to which many of the 'bourgeois' resisters had occupied various positions within the regime and had come to resist only rather late in the day. By contrast, some in West Germany tried to denigrate the Communist resisters by arguing that, since they were seeking to establish a totalitarian dictatorship in Germany, there was little to distinguish them from the Nazis, and hence their resistance was politically and morally flawed. Moreover, in response to foreign accusations of the collective guilt of the Germans, the Federal Republic claimed that it was the true heir of that 'other Germany' which in the dark days of the Third Reich had sustained Germany's true humane values. However, for most Germans of that generation, who had succumbed in various ways and in varying degrees to the temptations of Nazism, the heritage of the resistance remained deeply problematic. It gave rise to a general unease and even outright hostility among some who regarded the resisters as traitors for plotting against their nation's rulers in time of war. It is only comparatively recently, aided by the ending of the Cold War and above all by the change of generations, that Germans have been able to achieve a balanced perspective on the resistance through a deeper understanding of

its flaws, certainly, but above all of the daunting personal challenges faced by those who took part in it. In this process of a nation's coming to terms with the resistance German historians have played a key role and none more so than Professor Hans Mommsen.

Behind this book is almost 40 years' research into the history of the German resistance. Professor Mommsen's major contribution has been his thorough and sensitive elucidation of the ideas and plans for a post-Nazi Germany, elaborated by the various individuals and groups within the resistance. Mommsen was criticised in some quarters for demonstrating that these ideas and plans had little in common with the notions of Western liberal democracy that came to be accepted, first in the Bonn republic and then, following the fall of the Berlin Wall, in the whole of reunited Germany. Yet he was right to point out the need to understand the ideas and actions of the resisters within the historical context in which they were operating. It was a situation in which liberal democracy, whose roots in Germany were shallow at best, appeared to have been comprehensively discredited, not just in Germany – through the failure of the Weimar Republic – but in much of the rest of Europe as well.

In this situation the resisters sought alternatives to Nazism within existing German political and cultural traditions. Their diagnosis of the problem focussed on the alleged 'massification' (*Vermassung*), atomisation and alienation produced by an industrialised and urbanised society operating under unbridled capitalism and fragmented by a political system (parliamentary democracy) driven by divisive and selfishly motivated political parties. They saw this as a systemic crisis that required a fundamental transformation of German politics, society and culture. They sought a 'third (German) way' between western liberal democracy and eastern 'Bolshevism'. Some of them had initially welcomed the Nazi takeover in 1933 with its rhetoric of a 'national revival' and its promise to reunite Germany in a 'national community', as offering precisely the kind of fundamental social and cultural transformation required to produce a German revival. And the following years saw them forced to undergo a painful learning process through which they came to view Nazism no longer as the solu-

tion but as part of the problem. For some it required an agonising reappraisal, since they had succumbed to the temptations of Nazism and in fact shared some of its core beliefs and values – its nationalism, its hostility to western liberal democracy, its anti-Communism, even to a degree its anti-Semitism.

Depending on the individuals concerned, this learning process was initiated either by professional disappointment, or by particularly shocking actions on the part of the regime (notably the Röhm purge of 1934 and the *Reichskristallnacht* pogrom in November 1938), or, in the case of many military and diplomatic personnel, by the fear of war and defeat by the West in 1938 and 1939. It was then reinforced by the day-to-day experience of the lawlessness, corruption and fundamental mendacity of the regime. In this situation resisters took their stand on the need to reassert humane values, drawing in particular on their religious beliefs. Even those who had hitherto not been active churchgoers, when confronted with the diabolical nature of Nazism and in the personal crisis provoked by the mortal danger involved in resisting a totalitarian regime, found comfort in religion.

These impulses also informed their plans for an alternative order to that of the Third Reich. Distrusting mass and party democracy, which had apparently been incapable of providing stable government and had proved vulnerable to plebiscitary dictatorship, they turned to the German traditions of corporatism and federalism, local and regional self-government, hoping to overcome the ‘massification’ of the modern world by reviving a sense of responsible citizenship rooted in local communities and building up the polity from below with a stress on the importance of subsidiarity. In many respects an elitist and utopian vision, it nevertheless marked a fundamental repudiation of Nazi political theory and practice.

In the case of the more conservative resisters the nation-state remained the central political category and German leadership in Europe was assumed, albeit distinguished from Nazi notions of German hegemony by a respect for the interests and cultures of other nations. However, the group which came to be known as the Kreisau Circle envisaged the replacement of the nation-states

by a federation of sub-national European regions. In fact what emerges very clearly from Professor Mommsen's work is the variety and complexity of the views of the various individuals and groups who composed the resistance and how they reflect the different generations and the social and occupational backgrounds of those involved. Even within the group of left-wing conspirators, as his chapters on Julius Leber and Wilhelm Leuschner demonstrate, there were marked differences of emphasis, for example on the nature and role of trade unions within a post-Nazi Germany. It has sometimes been argued that the resisters spent too much time and energy discussing and planning the future state and not enough on getting rid of the existing one. Again, while there is an element of truth in this, given the experience of the revolution of 1918, it was understandable that they should have wished to establish sound foundations for a state capable of filling the enormous vacuum that would have been left by the fall of the Third Reich.

Responsibility for overthrowing the regime had to be in the hands of those with access to the instruments of power – the Army. In fact, the military is considered the most controversial group among the resisters. Only a tiny fraction of the German officer corps took part in the resistance. By 1933 its proud traditions had been largely eroded in the process of its becoming merely a functional elite. Moreover, this had been accelerated by its rapid expansion following the introduction of conscription in March 1935. This had led to a dilution through the large influx of young officers who had been through the Hitler Youth. The military resisters have been accused of trying to overthrow the regime only when it appeared that Germany might be defeated in war, first in 1938 over the Czech crisis and then when the tide of war itself began to turn against them in 1942. There is some truth in this accusation but, as Professor Mommsen points out, it applies to some officers more than others (mostly the senior generals) and for a certain number it does not apply at all. Colonel Hans Oster of the military intelligence department (*Abwehr*) is perhaps the most striking example of an officer who, from 1938 onwards, systematically resisted the regime. He uncompromisingly confronted the dilemma that faced the German people at this time,

as the pastor and theologian, Dietrich Bonhoeffer, put it: 'either to hope for the defeat of their nation in order that Christian civilization might survive, or to hope for victory entailing the destruction of our civilization'. This was a particularly acute dilemma for the military whose whole professional *raison d'être* was to try to win any war in which they were engaged. However, by informing the Dutch military attaché of the German invasion plans, Oster, who was steeped in the traditions of pre-First World War Germany, showed that it was still possible for a German officer to rise above his purely functional role and affirm his wider responsibilities, both to his country and as a human being, thereby acting as a true patriot.

However, in his chapter on the military opposition to Hitler, Mommsen has drawn attention to a second criticism of the officer corps which has emerged from recent research on the Wehrmacht and, in particular, on its role in the Soviet Union. For it has been shown that a number of key figures in the military resistance, including Tresckow, Gersdorff, Stülpnagel and Wagner, were involved either, as in the case of Quartermaster General Wagner, in the planning of the war of extermination in the East, or, as many others did, participated in its execution, at least to the extent of condoning brutal actions against partisans and Jews, although they evidently became increasingly unhappy about such actions.

This raises the sensitive issue of the attitude of the resisters towards the Jews, covered in the final chapter. Professor Mommsen shows that almost all the resisters shared the basic prejudices against the Jews that were common among those from their backgrounds at the time. In the case of the Jews in the Soviet Union they were influenced by the association of the Jews with Bolshevism that had been widely prevalent among the European upper and middle classes since 1917. Some of the resisters sympathised with the Nazis' initial policy of segregating the Jews from German society to the extent of treating them legally as aliens, thereby reversing the emancipation measures of the nineteenth century. However, where they parted company from the Nazis was in their rejection of the savage methods with which the Jews were treated and which

led ultimately to the programme of extermination. Indeed, in the case of individual resisters these measures prompted them to embark on resistance to the regime in the first place; in the case of all of them the actions against the Jews provided an additional motive for their resistance.

Following the successful Allied landings in Normandy in June 1944, Colonel Claus von Stauffenberg, leader of the 20th July plot to kill Hitler, posed the question to his colleague Henning von Tresckow, as to whether it was worth carrying out the assassination plan since it would no longer serve any practical purpose. Tresckow's reply was uncompromising:

The assassination attempt must take place at whatever cost. Even if it does not succeed we must still act. For it is no longer a question of whether it has a practical purpose; what counts is the fact that in the eyes of the world and of history the German Resistance dared to act. Compared with that nothing else is important.

It is at this point that the moral principles which lay at the core of the German resistance were clearly revealed and it acquired a heroic dimension. For these men were fully aware of how isolated they were among their own people, a fact demonstrated only too clearly by the subsequent strongly negative response by the German public to the assassination attempt. On the day following the failure of the coup Tresckow told a fellow-conspirator:

The whole world will vilify us now. But I am still firmly convinced that we did the right thing. I consider Hitler to be the arch-enemy not only of Germany but of the world. When, in a few hours, I appear before the judgement-seat of God, in order to give an account of what I have done and left undone, I believe I can with a good conscience justify what I did in the fight against Hitler. If God promised Abraham that he would not destroy Sodom if only ten righteous men could be found there, then I hope that for our sakes God will not destroy Germany. None of us can complain about our own deaths. Everyone who joined our circle put on the 'Robe of Nessus'. A person's moral integrity only begins at the point where he is prepared to die for his convictions.

In his first chapter Professor Mommsen draws attention to Germany's flawed tradition of the right of resistance, the result of a philosophical and legal tradition which saw the state as an expression of moral as well as political values and conceived of the law primarily in formal terms as the expression of the sovereign will of the state. As he makes clear, arguably the most valuable contribution of the German resistance was to demonstrate the importance of refusing to treat the state and the nation as absolutes. Through their actions they were urging that citizens should give their primary allegiance to a set of values that transcends state and nation and affirms mankind's humanity. It is a lesson whose relevance is not confined to Germany and one that needs constantly to be reaffirmed.

*Jeremy Noakes*  
*Professor of History, University of Exeter*

## CHAPTER

# I

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### **Carl von Ossietzky and the concept of a right to resist in Germany**

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*Carl von Ossietzky (1889–1938) was the pacifist editor of a small weekly paper, Die Weltbühne, ('The World Stage'), in which he exposed the secret rearmament of Weimar Germany under General von Seeckt. The Reichswehr (the regular army of the Weimar Republic) called for Ossietzky's prosecution and he was jailed briefly in 1932. When the Reichstag was burnt down in 1933 he was suspected by the Nazis of involvement and sent to Oranienburg concentration camp. During his imprisonment he was awarded the Nobel Peace Prize. He died of tuberculosis in Oranienburg in 1938. [Tr.]*

On the morning before the Reichstag Fire, on 27 February 1933, Carl von Ossietzky was urged by friends to go abroad and escape imminent arrest by the political police. He felt that such a move was premature, but probably also hesitated because of his wife Maud's poor health. However, the crucial consideration was that by leaving Germany he would be abandoning his life's work as a political activist and pamphleteer. It was the very thing for which, years before, he had reproached Erich Maria Remarque.<sup>1</sup>

Ossietzky had already been faced with the question of whether to go into exile after his conviction in the *Weltbühne* trial. Before beginning his prison sentence he published an editorial about the trial in the *Weltbühne* of 10 May 1932. In it he wrote:

When someone who opposes the government leaves his country,



his words soon sound hollow to those who remain. To be more precise, in the long run the pamphleteer cannot survive if dissociated from everything he is fighting against, or fighting for; he will simply lapse into hysteria and distortion. To be really effective in combating the contamination of a country's spirit, one must share its entire destiny.

Ossietzky sacrificed his life for this conviction.

The 'contamination' to which Ossietzky was referring arose from the rampant authoritarianism which he, as a dedicated pacifist, pointed to in the historically inappropriate glorification of the military. Indeed, the enforced demilitarization of the German Reich under the Treaty of Versailles brought about an all-embracing *militarization* of civil society, which, from the start, Ossietzky consistently fought against, especially in the pages of the *Weltbühne*. Ossietzky possessed an astonishing knowledge of the internal political imbroglios which led to the build-up of the 'Black Reichswehr' and later the preparations for the creation of an army of 21 divisions. Thus Ossietzky's clash with the authorities was in a way pre-ordained. In November 1931 proceedings were opened in the Fourth Criminal Chamber of the Reich High Court against Ossietzky as publisher of the *Weltbühne*, on a charge of treason. The so-called 'Weltbühne Trial' was one of the most spectacular political court cases under the Weimar Republic, and it attracted great international attention. The fact that more than a year and a half had elapsed between the publication of the incriminating article and the laying of charges strongly suggests that the Reich Defence Ministry under Wilhelm Groener, operating in the background, intended to make an example of Ossietzky to the pacifist movement, and to the parties of the left, whose criticism of the illegal rearmament was increasing in vehemence.

In Ossietzky they were targeting one of the most consistent opponents of the creeping militarization of the Weimar political system – a system which with good reason he mercilessly attacked as 'the military state in intellectual form'. He repeatedly and sarcastically pointed out that the 'enthusiasm for arms' promoted chiefly by Groener and his successor, Kurt von Schleicher, had

replaced the civilian virtues of the Republic. The essential falseness of the Republic lay not least in the fact that in 1919 it had not conclusively called the representatives of the imperial army to account. It was these men who posed a threat to the stability of the democratic system well beyond the early days of the Republic. True, Gustav Stresemann<sup>2</sup> had, despite holding on to the notion of a powerful Germany, put up some modest opposition to the ambitions of the military under von Seeckt. But on 2 June 1932 Chancellor Papen's cabinet decided to dissolve the Reichstag; in the new phase of rule by presidential decree, as Ossietzky stressed, there was a fundamental change. Government thinking and rearmament were now indissolubly linked.

It was symptomatic that not only the noisy nationalist right but also the 'bourgeois' centre parties were unwilling to take pacifist positions seriously, let alone tolerate them. The sentence to 18 months' imprisonment, for the publication of facts that had long been known to the initiated, was blatantly unjust. Yet it was happily accepted by his opponents, as were subsequent similar verdicts. Resistance to the power of the state in this area was considered intolerable. Very few voices were raised in protest; but one was the liberal *Frankfurter Zeitung*, which wrote ironically:

It is true that we live in a democracy, but anyone who applies its principles, particularly against military authorities, or those which would like to be seen as such, is punished with imprisonment and – what is worse – with the odium of being branded a traitor.

The paper was alluding to the fact that, unlike normal press trials, Ossietzky was accused of acting not out of conviction, but from dubious motives. It was a charge which, despite being inured to ignominious accusations, he had difficulty in disproving.

It was precisely this evidence which the Nazi arrest warrant on 28 February 1933 made specific reference to. It described Ossietzky as a 'malicious agitator' who had not hesitated 'to betray the vital interests of the Reich'. This continuity from the latter days of the Weimar Republic reveals the murkiness of the allegedly constitutional nature of the presidential regime, even though it adhered nominally to due processes of the law. In many

respects Ossietzky's battle against the militarization of Weimar anticipated the later resistance to the Nazi regime. Ossietzky challenged the way in which the nationalist loyalty of the ordinary citizen was being perverted for the purpose of establishing absolute military power.

In the 'final report' written by Ossietzky before he went to prison in Berlin, he committed himself to maintaining the *Weltbühne* as a voice of opposition:

Even in this country trembling under the elephantine tread of fascism, it will keep the courage of its convictions. Whenever a nation sinks to the murkiest moral depths, anyone who dares to take an opposing line is always accused of having violated national sentiment.

Very similar words were spoken by Henning von Tresckow<sup>3</sup> in the weeks before the attempted coup of 20 July 1944, when he referred to the 'Robe of Nessus' that the conspirators had donned, in the full knowledge that the patriotism which had prompted them to act would never be apparent to the mass of the people.

Ultimately Ossietzky was fighting against Germany's persistent belief in the supremacy of the state, against an idealized concept of the state which lay at the heart of German governmental tradition, and which made it impossible set the interests of the individual citizen against a state seen as standing above party politics. As Ossietzky repeatedly observed, the authoritarian attitudes of broad sections of the population had by no means been removed with the collapse of the Kaiser's empire. The problem was not simply that the overt or covert opponents of the parliamentary system were in the majority and were forcing the democratic parties into ever greater concessions. It was rather that the leftwing liberals, among whom Ossietzky counted himself, had since the beginnings of the Weimar Republic found themselves in a dwindling minority.<sup>4</sup> Ossietzky wanted a different, genuinely liberal republic, based on broad civic participation, and it is clear that he assumed too much political insight on the part of the majority of citizens, in whose name he expressed unconditional opposition to the encroachment of the state apparatus.

It is a fact that, precisely because his views were ethically based,

Ossietzky belonged to the minority of political activists under Weimar, who shared a western understanding of politics that viewed the state as essentially an instrument for the service of the citizen. In his book *The German Idea of Freedom*,<sup>5</sup> Leonard Krieger, the most important American historian writing on Germany in the early post-war years, was one of the first to point out the fact that German liberalism, unlike its counterpart in western Europe, ultimately claimed that state and society were identical. This can largely be traced back to the impact of Kantian philosophy, which conceived of the state primarily as a moral structure and assumed the virtual identity of the citizens' interests with those of the state, whether this took the form of a monarchical regime or a constitutional system.

This can be demonstrated by the role of the right to resist, which Adolf Arndt, the social-democrat constitutionalist, once called an inalienable human right. It is significant that this right does not get a mention in the philosophy of Immanuel Kant and is only developed in a rudimentary form in Hegel's philosophy of government. Similarly, Friedrich Christoph Dahlmann<sup>6</sup> and Karl Rotteck,<sup>7</sup> the two principal advocates of liberal constitutional theory in Germany, rejected this legal concept. They saw the state as a moral entity and invested it with a purpose that was independent of the individual citizen. Hence they did not relegate the state to being a guarantor of civil liberty, with the added task of providing the greatest possible happiness to its members, as conceived by western pragmatism.

This loading of ethical content into the concept of state was most pronounced in Protestant church circles and found theoretical expression in the philosophy of identity developed by Kant. The notion that there could be justified civil protest against arbitrary acts by the state, as in the case of the Göttingen Seven in 1833,<sup>8</sup> and later with the revision of the constitution of the Saxon monarchy in 1851, may still have been alive in the first half of the nineteenth century. But in the wake of the newly acquired national confidence of the German Empire it became completely obsolete. This is perfectly demonstrated by the views of the historian Heinrich von Treitschke, which were representative of German

public opinion in general. Treitschke saw 'the right to resist' as a contradiction in terms.

In contrast to the western constitutional tradition, which – as in the Declaration of Human Rights of 1793 – granted a central place to the right to resist, the German constitutional tradition remained wedded to the fundamental assumptions of the philosophy of identity, and negated any claims of natural law. This position was reinforced under the dominance of legal positivism in the late nineteenth century, which used the principle of a state founded on the rule of law to exclude any legally based protest by the citizen. Even Max Weber, the sociologist of law, takes no account of the older doctrine of tyranny and despotism and ignores the problem of the abuse of any political dominance that has a formal legitimacy.

The notion that a modern constitutional state cannot, by its nature, be an unlawful state, explains why even the Weimar constitution, which adopted the basic rights of the Paulskirche Constitution,<sup>9</sup> stopped short of including a right of resistance. During the 1920s, when largely unfounded criticism of the 'party-political state' became widespread, the illusion grew that conflicting social and political interests could be overarched by adhering to the formal principle of legality. That is why the senior officers of the Reichswehr, who shared many of Adolf Hitler's anti-constitutional aims, nonetheless sought to bind him to the 'pillar of legality' and restrain him from revolutionary action. In doing so they, like the rightwing political parties, prepared the way for Hitler's pseudo-legal acquisition of power. Similarly, the centrist democratic parties bowed to blackmail and the threat of civil war by the NSDAP and the SA and, on 23 March 1933, approved the Enabling Law in order to avert a breach of ostensible legality.

Even the political left, by adhering to the principle of legality, missed their last chance of opposing the steps that led relentlessly to their dissolution. As late as 30 January 1933 the Social Democratic Party and the Free Labour Unions adopted a stance 'with both feet on the ground of legality'. They failed to see that this 'legality' had long ago become a tool in Hitler's hand, even though Benito Mussolini had already demonstrated how, without

a formal breach of the prevailing constitution, it was possible to take the road to dictatorship.

As the *Weltbühne* trial showed, the cult of formal legality had already been exploited to criminalize minority positions and eliminate them by quasi-judicial means. What had begun under Weimar, continued on a greater scale after the Nazi *Gleichschaltung*, or 'co-ordination', of the judicial system. Until the collapse of the Third Reich, the judiciary functioned as a loyal instrument of the regime. The Special Courts, established in 1944 under the Gauleiters and Reich Defence Commissioners and staffed by the regular judiciary, proved themselves willing enforcers of the brutal orders issued by the foundering regime, right up until April 1945.

The fixation with the principle of formal legality went so far that, when the leading figures of the SA were murdered on and after 30 June 1934, the German public did not regard this as a breach of legal order but as a move to restore it. The securing of the formal rule of law, which at the time was promoted by Carl Schmitt,<sup>10</sup> was undertaken in the legislation to justify the national state of emergency of 1 July 1933. However, the formal rule of law collapsed with the dismantling of the state. In a similar process the administrative civil service of the Reich placed itself at the disposal of the Nazi leadership, in order to preserve the principle of legality and to avoid losing the initiative to the Party. The price paid for this was a massive infringement of rights, which finally led to the complete abolition of the stricken *Rechtsstaat*. In order to retain 'control in the Jewish question' – as the Reich Minister of the Interior, Wilhelm Frick, put it – the senior ranks of the civil service were prepared to give way in this matter and to accept the progressive marginalizing and impoverishment of the Jewish citizens of Germany.

The complete usurping of the administration of justice by the Nazi system was only possible against the background of an overvaluation of formal legality, which caused many to close their eyes to the fact that the regime did not hesitate to break the law consistently and gave itself ever greater scope for action that was immune to the normal processes of law. This reached from the Party's own internal courts, through the increasing judicial

prerogatives of the Gestapo, down to the denial of access to proper justice for Poles, Jews and other 'alien races'.

The adherence to the legality-principle imposed a lasting handicap on middle-class conservative resistance, which was only sluggishly taking shape. This resistance did not emerge until the resistance-groups formed in connection with the Weimar associations and parties had been largely wiped out by the Gestapo, or, like the communists, had to limit their activities to re-establishing the cadres that were constantly being broken up. The oath of allegiance to the Führer, which the conspirators elevated to a near-religious problem, and the aversion to tyrannicide, were significant inhibiting factors.

The obsession with legality doubly handicapped the German political elite in making a decisive move against Hitler, quite apart from the fact that there were considerable affinities between the attitudes of the middle-class elite and those of the National Socialists, specifically in foreign and military policy. On one hand the idolizing of Hitler as head of state led to his being dissociated from the crimes of the regime. With the oft-repeated formula 'If the Führer only knew about this', he was presented as the victim of deceiving advisers. On the other hand the elite was prevented from acting by an exaggerated fear of a 'revolution from below', which represented an indirect reaction to Germany's traditional lack of a right of resistance.

This applied, first and foremost, to the Protestant camp, which showed a high degree of affinity with the Nazi regime, both ideologically and through the German Christian movement and Reich Bishop Müller's ambitions for a nationalist Church. Leading Protestant theologians made it emphatically clear that a Christian had no right to oppose the established authority. As Paul Althaus put it

Every power that maintains order is there by God's grace, has authority and a claim to our obedience, even if it is a foreign power; as long as it maintains order, it is better than chaos or an impotent national government.<sup>11</sup>

Even the anti-Nazi Dietrich Bonhoeffer hastened to concede to the state the right to take action, including the use of force, against

the Jewish section of the population, and that this had to be accepted by the Church.

Greater flexibility was shown by the Catholic Church, which could draw on a long tradition of resistance going back to Thomas Aquinas, in which tyrannicide was not automatically rejected but was subject to certain conditions. Among these were that all means to a peaceful resolution of the conflict must have been exhausted, that there were good grounds for believing an improvement to the existing situation would result and that the violence used would be limited and would not be allowed to descend into a bloody civil war. These provisos, which were adopted by Protestant theologians after 1945, admittedly proved to have little practicality under the conditions of Nazi dictatorship. Nonetheless, Helmuth James von Moltke<sup>12</sup> was anxious to obtain from Hans von Dohnanyi<sup>13</sup> theological credentials for the right of resistance, in order to push the hesitant generals into action.

The younger members of the 20th July movement, especially Claus Schenk von Stauffenberg, Henning von Tresckow and the Kreisau group, tended to put aside legalistic concerns of this kind. By contrast, Carl Goerdeler<sup>14</sup> and his supporters, who belonged predominantly to the older generation, wanted at all costs to avoid an assassination and advocated having Hitler arrested. They were convinced that, in all circumstances, violent resistance should be considered only after all available legal remedies had been exhausted. Early in the summer of 1944 the Prussian Minister of Finance, Johannes Popitz,<sup>15</sup> declared: 'Every effort has been made to get rid of the regime legally. Now only a dead Hitler can save us.' For only Hitler's death would free soldiers and civil servants from their oath. Nonetheless, even the planning of 'Operation Valkyrie' gave a nod to the fiction of legality.<sup>16</sup> In the circular, which von Witzleben sent to his army subordinates on 20 July, there was mention of 'an unscrupulous clique of battle-shy Party leaders' having staged a coup, which had been met by the imposition of a military state of emergency.<sup>17</sup>

After the German surrender on 8 May 1945, interest in the German resistance movement was slight and only revived when the appeal to 'the other Germany' offered a chance to counter the



notions of collective guilt that had occasionally arisen on the Allied side. However, it cannot be said that the German opposition to Nazism was rated highly either by the occupying authorities or by the German public. Rather, the relationship with the resistance remained largely severed, and this situation became more acute following the rearmament of Germany from 1954 onward, even though the Department of 'Moral Leadership' (*Innere Führung*, dealing with the political re-education of officers) was anxious to encompass the memory of the military resistance in the Bundeswehr's cultivation of tradition.

The debate about the justification of resistance was renewed from the mid-1950s onward, and it is no surprise that attention was focussed on the question of the right to resist. In 1960 the second edition of a semi-official publication, *Die Vollmacht des Gewissens* ('The Prerogative of Conscience'), was published. This carefully restricted the right to resist to those people who distinguished themselves through social status and moral insight, who carried 'positive responsibility in the state structure' and who 'risked the decision to resist' on the basis of knowledge of 'a positively better way for the state to fulfil its function of maintaining order'. The 'interim status', since it lacked any legal safeguards, must be reduced to a minimum and not be allowed to become 'turbulent and anarchic', in the jargon of traditional German thinking on law and order.

Views of this kind found their way into the highest echelons of the judiciary of the Federal Republic. They limited the right of resistance to the ruling elite, to resistance 'from the command level', as otherwise the criterion of 'expert insight' could not be fulfilled. In 1962 the General State Prosecutor, Fritz Bauer, protested in vain against this restriction of the right of resistance to an elite minority and the exclusion of the ordinary citizen, as well as of resistance by socialists and communists.

A further criterion stressed by the leading writers on the subject was the serious examination of one's conscience, which had to precede the decision to engage in active resistance. This doctrine, essentially influenced by Protestant theology, arose from the longstanding tendency among historians to declare the decision to