# Ideal Law and the Nazi Use of Analogy

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Abstract

Ideal legal systems are ideal in virtue of having properties the law ought to have. For example, the law ought to be secure, consistent, stable, action-guiding, epistemically accessible, morally acceptable, *etc*. In view of these principles, there is no doubt that the Nazi legal system represented a non-ideal legal system. For those interested in assessing the normative failure of Nazi law, the task is to find out why and what practical implications these failures have for the lawmaker.

In early discussion of Nazi criminal law, there was a trend to identify a large proportion of the normative failure of the system with the Nazi use of analogical legal reasoning. In particular, it has been argued that the Nazi use of analogy in itself rendered the criminal law unpredictable. In this paper, we argue that this view is incorrect. While there is no doubt that the Nazis’ introduction of analogical reasoning contributed to the normative decay of Germany’s legal system, it did not, in a strict sense, constitute the decay of this feature in particular. The Nazi type of analogical reasoning can be made consistent with this normative principle of ideal law. We argue that consistency of this sort depends on whether the use of analogy is supplemented by certain contextual background conditions. We then briefly examine whether there could be an obligation for the lawmaker to bring about these background conditions.