

Law and Morality: The Case of the Nazi Wife

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Facts

In 1944 a German soldier paid a short visit to his wife while under travel orders on a reassignment. During the single day he was home, he conveyed privately to his wife something of his opinion of the Hitler government. He expressed disapproval of (sich so abfällig geäußert über) Hitler and other leading personalities.

Shortly after his departure, the soldier's wife reported his remarks to the local leader of the Nazi party, observing that "a man who would say a thing like that does not deserve to live." He was arrested briefly, tried by a military tribunal and given a sentence of death. After a short period of imprisonment, instead of being executed, he was sent back to the front.

In 1950 after the collapse of the Nazi regime, the wife was brought to trial for having procured the false imprisonment of her husband under the German Criminal Code. Her defense rested on the ground that her husband's statements to her about Hitler and the Nazis constituted a crime under the laws then in force. Accordingly, when she informed on her husband she was simply bringing a criminal to justice.

You are the judge, what is your decision?

Key Statutes

1938 Statute

"The following persons are guilty of destroying the national power of resistance and shall be punished by death: Whoever publicly solicits or incites a refusal to fulfill the obligations of service in the armed forces of Germany, or in armed forces allied with Germany, or who otherwise publicly

discusses or disseminates against, or statements which disclose a base disposition toward, the leading personalities of the nation or of the National Socialist German Workers' Party, or toward measures taken or institutions established by them, and of such a nature as to undermine the people's confidence in their political leadership, shall be punished by imprisonment.

(2) Malicious utterances not made in public shall be treated in the same manner as public utterances when the person making them realized or should have realized they would reach the public.



(3) Prosecution for such utterances shall be only on the order of the National Minister of Justice; in case the utterance was directed against a leading personality of the National Socialist German



So the question is do rules need to have a degree of legitimacy or moral standard for them to be classed as "law" (natural law) or is law nothing more than a system of rules that performs a particular function or have a particular form? Is Nazi law as legitimate as the law of New Zealand (positive law)?

Legal theorists have argued over this for centuries and it remains a controversial topic. Put simply if you are asked to follow a law that is immoral, should you follow it? It depends upon your concept of law – the 1st subject we address at Law School (although you won't get a clear answer there either!)

