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Statutory Lawlessness and Supra-Statutory Law (1946)

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(trs. Bonnie Litschewski Paulson and Stanley L. Paulson)

By means of two maxims, ‘An order is an order’ and ‘a law is a law’,

National Socialism contrived to bind its followers to itself, soldiers and jurists respectively. The former tenet was always restricted in its applicability; soldiers had no obligation to obey orders serving criminal purposes.¹ 'A law is a law', on the other hand, knew no restriction whatever. It expressed the positivistic legal thinking that, almost unchallenged, held sway over German jurists for many decades. 'Statutory lawlessness' was, accordingly, a contradiction in terms, just as 'supra-statutory law' was.² Today, both problems confront legal practice time and time again. Recently, for example, the *Süddeutsche Juristen-Zeitung* published and commented on a decision of the Wiesbaden Municipal Court [handed down in November of...

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