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## **Dialogoog in recht en literatuur: kritiek van de narratieve rede**

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#### ENGLISH SUMMARY

## Dialogue in Law and Literature: A Critique of Narrative Reason

Legal positivism, which considers law as a science, could be regarded as the dominant concept when thinking about law. When this dominant concept is applied on adjudication, ideals such as legal certainty, neutrality, and objectivity are emphasised. Undeniably, both law and adjudication have dimensions which are inherently scientific. In general, as well as in this research, these dimensions are not being challenged. However, it could be questioned whether law is *essentially* scientific – and if it should be.

The interdisciplinary field of ‘Law and Literature’ challenges the scientific presentation of law. ‘Law and Literature’ puts forward a poetic approach that focuses on justice, humanity, and recognition of the other as a human being; values that can easily be ignored in a purely scientific conception. In this context, one of the leading figures within ‘Law and Literature’, the American philosopher Martha Nussbaum (1947), states that literature has great importance for jurists. When reading literature, readers experience emotions and feelings other than their own. They use their imagination to feel what it is like to live someone else’s life. Consequently, empathy and compassion are being instigated. According to Nussbaum, by reading literature, readers are able to develop a sensibility towards the other and, therefore, a humane perspective on law can be established. This so-called ‘literary imagination’ is important for public life as well as for everyone engaged in law. As argued, this imagination is especially important for judges, because it enables them to be more empathic and, consequently, they will decide with more depth and meaning. In this research, these presuppositions in ‘Law and Literature’ regarding empathy and literary imagination in relation to justice are called ‘narrative legal ethics’.

The question that presents itself, is the following: to what extent does narrative legal ethics succeed in offering a solution to the impersonal, scientific approach that defines legal positivism? Narrative legal ethics itself seems to be strongly characterized by doctrines and dogmas that carry a certain degree of scientificity. For that reason, core assumptions about (legal) empathy are re-examined in this research, specifically with regard to their sustainability and foundation. To what extent can the so-called 'narrative reason' itself be regarded as scientific? Can the poetic perspective in 'Law and Literature' break through the unilateral, scientific conception of law? Can empathy function as an instrument to do justice towards the other as a person? These and other questions are addressed in this research, in order to formulate an answer to the main research question:

*Is narrative legal ethics and its notion of empathy able to challenge a scientific approach to law?*

For this question to be answered, this research departs from literature and dives into the following three sub-questions. Firstly, what is the scientific representation of the law and adjudication? Secondly, to what extent can literature be a means to correct the scientific-legal reduction of the person? Thirdly, what role does empathy play in relation to recognition of the other in law?

In this thesis, a different, more radical view on core assumptions in narrative legal ethics is proposed from the perspective of dialogical philosophy. Departing from works of the Russian writer Fyodor Dostoevsky (1821-1881) and the Jewish philosopher Martin Buber (1878-1965), it is argued that doing justice towards the other demands a personal encounter with the other in order to enter into a dialogue. This approach is supported by references to the French philosopher Jean-Paul Sartre (1905-1980) and the French-Algerian writer Albert Camus (1913-1960).

The encounter is not to be compromised by the preconceptions of narrative logic in which the singular person is caught and framed. From a dialogical perspective, literature remains important and even indispensable. However, it plays a rather different role than narrative legal ethicists claim. Literature ought not to be a monologue on ethics and on how to do the best thing morally, nor should it be an explanation of what and who 'the other' is; literature is important because it can stress the necessity of entering into

a true dialogue. Some (existential) literary works show and do justice to the contingencies, ambiguities, and uncertainties that are inherent to life. If literature can teach us one thing, it is that 'the other' stays unknown to us. For judges to truly decide with more depth and meaning requires that they recognize a personal responsibility towards the other on whom they have to decide. It also means that they suspend their decision by being receptive to the uniqueness which characterizes every case – no matter how simple the solution may seem from a purely legal perspective.

To conclude, this research questions literature's 'ethical appeal', which it has according to narrative legal ethicists, and proposes the idea of an 'existential appeal' from the perspective of dialogical philosophy.