

法律與文學之比較研究

－以《德語課》為例

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目 次

壹、前言	肆、納粹法制與《德語課》中的倫理
貳、法律與文學的異同	一、納粹法制與「拉德布魯赫公式」
參、「文學中的法律」從《德語課》說起	二、從「惡法亦法」到「惡法非法」
一、《德語課》中的《履行職責的歡樂》	三、惡法與倫理道德之辯析
二、《德語課》中體現的《公民不服從》	伍、反思與結語

關鍵詞：法律與文學、履行職責的歡樂、惡法亦法、惡法非法

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摘 要

「法律與文學」運動，乃是關於法律和文學的新興策略性研究主題，屬跨學科理論研究。這運動已顯然或潛在地蘊含著牽涉及於未來教學方法、學術、法釋義學產生重大影響。《德語課》雖然不是一部法學著作，但是可以通過研究這部文學作品，提供作為研究德國納粹法制豐富的素材。亦即從《履行職責的歡樂》到《公民不服從》，介於「惡法亦法」與「惡法非法」的論辯。納粹立法是納粹法制的重要一環，其在實踐中的一個突出特點是對法律一般性原則的破壞。深入探討納粹法律的非理性特點及納粹政權的不法本質，反映出「惡法非法」，就其戕害法治精神的歷史教訓，對加強法治本質的認識頗有意義。

Comparative research on law and literature

— A case study of “*German lesson*”

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Abstract

The law and literature movement focuses on the interdisciplinary connection between law and literature. This movement has broad and potentially far reaching implications with regards to future teaching methods, scholarship, and interpretations of legal texts. “*German lesson*” is not a work of jurisprudence, but this literary work is to be explored as the material of a case study on Nazi's law. Namely, the “happiness of fulfilling the duty” and “civil disobedience”, even “draconian law” and “draconian illegality” once again become a hot topic of discussion. Nazi's Legislation in the Nazi's legal system played an import point of view. To contravene the general principle of law hereof is a special feature in practice. The unreasonable feature of Nazi's law and the unlawful nature of Nazi's government indepth discussion reflected this, that is, the draconian law is illegal. Historical lessens can be learned from infringing the spirit of rule of law, therefore it is so as to be helpful for a better understanding of the nature of the rule of law.