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The (Ab)use of freedom of speech and the 1788 *Ismaël*-controversy: the legal limitations and affordances of a parodic periodical in the Dutch Republic

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Abstract: This article highlights a fascinating legal wrestling match over the legal limits of free speech through humorous artistic works in the late eighteenth century – just before freedom of speech became a constitutional right. It concerned the parodic item "Reports from Babel" in an issue of the anonymous Dutch journal *Ismaël* from 15 September 1788. The city of Utrecht and specific authorities were allegedly targeted who in turn prosecuted the local sellers of these perceived libels, Gijsbert Timon van Paddenburg and Justus Visch. The controversy is studied through the political-historical background of the Orangists, who had been returned to power following a turbulent period. The arguments of the court and the parties involved are analysed, as well as the reception of the Roman law of *iniuria* – specifically regarding libels. Literary and philosophical-linguistic theories are employed to gain insight into the way this particular parody as a form of free speech was perceived as dangerous to late-eighteenth-century society. We show that these defendants exploited the ambiguity of parodic language as part of their defense strategy. Nonetheless, the judicial authorities dismissed these language-based arguments, ultimately condemning the two booksellers with the considerable fine of 1000 guilders. This legal-historical discussion of humorous artistic works, such as *Ismaël*, highlights the complex relationship between libel laws and free speech.

Keywords: Dutch Republic; freedom of speech; infamous libels; *iniuria*; parody

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1 Introduction

Although freedom of speech, "the right to express beliefs and ideas without unwarranted government restrictions," was not yet a constitutionally guaranteed right in 1788, it was intensely debated in politics, society, and law in the Low Countries and throughout Europe.[1] This case study focuses on the publication of a local parody from the late eighteenth century as an – ultimately failed – exercise of the right to free speech through the enforcement of a statute on libels.[2] Throughout history, humorous parodic expressions in periodicals have tested the legal limits of the right to free speech (Lai 2019, 11). Libel laws often struggle with the perceived flexibility of parody. Insult by parody is difficult to comprehend, not only for an audience but also for the authorities. In this article, we focus on a fascinating late-eighteenth-century judicial controversy (1788–1789) about a parodic news item in the anonymous Dutch periodical *Ismaël*. The city government of Utrecht considered this a libelous text and prosecuted two booksellers who allegedly circulated it. On what grounds were the two booksellers prosecuted? What defense strategy did the booksellers employ? The litigants made clever use of parody, as a game of hide-and-seek that foregrounded the slippery nature of parody in the courtroom process of defamatory textual interpretation.[3] Although the two booksellers were ultimately convicted, the authorities' attempt to control the use of parody in this eighteenth-century lawsuit demonstrates an awareness of parody's potentially dangerous impact.

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1 Article 19 of the Universal Declaration of Human Rights (1948). Freedom of speech refers to both speaking and writing (and other forms of expression). In this article, however, we use the general term "freedom of speech" and thus consider freedom of the press as part of it. See the French Declaration of the Rights of Man and Citizen in 1789, the codification of the First Amendment of the United States Constitution in 1791, and in the Netherlands in 1798.

2 For research on contemporary humor and the law, see Godioli, Alberto. 2020. Cartoon Controversies at the European Court of Human Rights: Towards Forensic Humor Studies. *Open Library of Humanities*, 6 (1). 1–35. For contemporary (legal) perceptions on free speech, see, for example, Maitra, Ishani & Mary K. McGowan. 2012. *Speech and Harm. Controversies Over Free Speech*. Oxford: Oxford University Press; Ash, Garton T. 2016. *Free Speech: Ten Principles for a Connected World*. New Haven: Yale University Press; Kuhn, Philippe Y. 2019. Reforming the Approach to Racial and Religious Hate Speech Under Article 10 of the European Convention on Human Rights. *Human Rights Law Review* 19 (1). 119–147; O'Reilly, Aiofe. 2016. In Defence of Offence: Freedom of Expression, Offensive Speech, and the Approach of the European Court of Human Rights. *Trinity College Law Review* 19. 234–260.

3 Our main sources are the elaborate reports from the lawsuits of Paddenburg and Visch, currently held in Utrecht, *Het Utrechts Archief* (from now on referred to as HUA) 702, inventory number 2214 (Paddenburg) and 2215 (Visch).

After introducing the parody and the periodical in which it was published, we discuss the political background to the case. The periodical was issued shortly after a turbulent period, during which both central and local authorities in the Dutch Republic attempted to regain control of the press. We then turn to the law at the time and the legal merits of the lawsuits. In addition, literary theory on parody is employed in our analysis alongside linguistic theories about the inner workings of communication. Building on the speech act theory of the philosopher of language John L. Austin, we study the parodic news item in the *Ismaël* controversy as a perlocutionary act: the words do not only refer to reality but are also able to influence it by, for instance, changing the attitudes of readers, causing a commotion and sowing distrust among the authorities (Austin 1962). We therefore consider language, following the sociologist Pierre Bourdieu, as a medium of power (Bourdieu 1982).[4] We will also discuss the legal regulations of freedom of speech directly following the *Ismaël*-controversy, from 1789 on. The (legal) conceptualization of free speech at both the local and central level – all the way to the establishment of the Dutch monarchy in 1815 – changed rapidly. Our lawsuit takes place on the verge of modern laws, when new ideas about free speech began fully to emerge.

2 A controversial news item in the periodical *Ismaël* (1788–1789)

In the eighth issue of the satirical magazine *Ismaël*, dated 15 September 1788, a very short news item, titled "Reports from Babylon," mentions a newly discovered gold mine in Babylon. A special day of thanksgiving is declared in its honor.[5] Besides the Sovereign, a supposed "Lord praetor" receives half of the profit from the mine. The latter seems to be in great debt, however, because his creditors are overjoyed to

4 See also, on Bourdieu and Austin in the historical (late medieval) context of free speech ('*Franc parler*' as Bourdieu would put it), Dumolyn, Jan. 2008. Criers and shouters. The discourse on radical urban rebels in late medieval Flanders. Journal of Social History 42 (1). 111–135, on *franc parler*: p. 124.

5 Thanksgiving Day is a Protestant feast day in the Netherlands, celebrated during Church services. It can also have political connotations – for example the North-American tradition of Thanksgiving, which is a national holiday (instated by President Lincoln during the American Civil War between 1861 and 1865). Both in Church as in politics, they are seen as "a time for reflecting on the people and things in our lives we are most grateful for." Neale, Abbey. 2020. Leiden was key to the origins of Thanksgiving. *Dutch Review* 23 November 2020, https://dutchreview.com/culture/holidays/thanksgiving-and-the-netherlands-and-how-leiden-was-key-to-the-origins-of-thanksgiving/ (accessed 28 August 2021).

hear about this opportunity to collect and contemplate marking the occasion by festively illuminating the facades of their houses on Thanksgiving Day.

> **BERICHTEN uit BABEL, den 20sten Augustus**. Men heeft hier, voor eenige dagen, eene goud mijn ontdekt, die men oordeelt zeer rijk te zijn, en groote voordeelen te zullen opleveren. Volgens billijke onderling gemaakte schikkingen, is de helft van het provenu aan de *Souverainen des Lands*, en de andere helft aan den *Lord Praetor* dezer waereld beroemde stad toegewezen. Deze ontdekking heeft zulk eene algemeene blijdschap veroorzaakt, dat men het besluit genomen heeft, om, *deswegens*, eenen grooten en plechtigen dankdag uit te schrijven. Geene personen meent men, dat in de viering van dezen dag met meerdere hartelijkheids zullen deel nemen, dan de Crediteuren van welgemelden Heer *Praetor*; als hebbende deze reeds onder elkanderen in beraad genomen, of zij, ten blijke van hun genoegen over deze blijde gebeurtenis, niet behoorden, op den avond van dien dag, hunne huizen te illumineren.[6]

> **REPORTS from BABYLON, 20 August**. One has, for some days now, discovered a gold mine of, as is generally perceived, as very valuable and will yield great profit. According to fair settlements made among each other, half of the profit is appointed to the *Sovereign of the country* and the other half to the *Lord Praetor* of this world-famous city. This discovery has caused such widespread joy, that one has made the decision to, *therefore*, issue a great and solemn day of thanksgiving. It is believed that no one else but the creditors of the aforementioned Lord *Praetor* will join the celebration of this day with more pleasure; as they deliberated amongst each other whether they, as a token of their delight concerning this festive event, should light up their houses at the evening of this day [authors' translation].

2.1 Political context

Over the decade prior to 1788, when this news item was published, the political situation in the Dutch Republic had changed dramatically. In the early 1780s, the Dutch Republic was involved in the disastrous Fourth Anglo-Dutch War (1780–1784). At that time, a powerful call for reform, the so-called Patriot Movement, emerged and was in conflict with the conservative Orangists. The Patriots advocated for a truly free republican and democratic state, based on "popular sovereignty."[7] Freedom of speech and of the press played a central role as a weapon against despotism in this revolutionary movement (Israel 1995, 1105;

6 *Ismaël* 8 (15 September 1788), 62 (capitals, italics, and bold as in original).

7 Popular sovereignty: "the doctrine that sovereign power is vested in the people and that those chosen to govern, as trustees of such power, must exercise it in conformity with the general will." https://www.dictionary.com/browse/popular-sovereignty (accessed August 27, 2021).

Velema 1997, 72–73).[8] The Duke of Brunswick (9 October 1771–16 June 1815), a field-marshal in both the Austrian and Dutch armies and the main adviser to the Stadtholder of the Dutch Republic and Prince of Orange William V (8 March 1748–9 April 1806) (Theeuwen 2002, 178–180, 862), was a particular target for libels.

In 1786–1787, the Orangists suffered hard times in Utrecht as the Patriots took over the Utrecht government. The aspirations of the Patriots were, however, disrupted in 1787 by the entry of Prussian troops, during the so-called counter-revolution. The Orangists regained their power, which had great consequences for the limitations and affordances of free speech:

> The press was muzzled, political meetings forbidden, and the Patriot clubs and Free Corps dissolved. The oldstyle militia companies, controlled by the town governments now purged of anti-Orangists, were restored, though not before Orangist mobs had taken to the streets and attacked the homes of leading Patriots, usually pillaging but not destroying them (Israel 1995, 1114).

Between 1787 and 1788, many pamphlets and periodicals were forbidden in the Dutch Republic. Governments deemed such politically motivated press reports, like those in *Ismaël*, infamous libels, that is, "written statements that damaged the good reputation of government officials, thus undermining their authority."[9] The majority of the prohibitions came from the States-General, the States of Holland and in part also from the States of Utrecht. During the second half of the eighteenth century, such regulations were almost exclusively aimed at periodicals (De Bruin 1991, 415–416).

By the time the defamatory news item in *Ismaël* was published in 1788, the Orangists were back in power, after most of the Patriots had fled the country. The Orangist Utrecht government called for a Thanksgiving Day on 16 September 1788, to which the news item in *Ismaël* refers. On the whole, public debates through political periodicals had diminished after the Orangists regained power. *Ismaël* was already prohibited in the Dutch cities of Amsterdam and Haarlem (Van Wissing 2003, 306).[10] This prohibition lasted until 1795, when the Batavian

8 For an example of influential Patriotic pamphlet, see van der Capellen tot den Pol, Joan D. 1781. *Aan het volk van Nederland*.

9 More precisely as *fameuse libellen, seditieuse pasquillen* and *schandaleuse ende ergerlijcke boecxkens, liedekens, refereynen en nieu-maren*. For the definition of a libel, see Peel, Patrick. 2020. The Argument for Freedom of Speech and the Press during Ratification of US Institution 1787–1788. In Robert Ingram, Jason Peacey & Alex W. Barber (eds.), *Freedom of Speech, 1500–1850*. Manchester: Manchester University Press. 190.

10 See on censorship of literature in the Dutch Republic in the eighteenth century: Knuttels, Willem P.C. 1914. *Verboden boeken in de Republiek der Vereenigde Nederlanden, Beredeneerde catalogus*. The Hague: Nijhoff; Jongenelen, Ton. 1998. *Van smaad tot erger. Amsterdamse boekverboden 1747–1794*. Amsterdam: Stichting Jacob Campo Weyerman.

revolutionaries put an end to the 'Dutch' *ancien regime*. Patriots who left the country came back and published new periodicals. Some even positively referred to *Ismaël* (Van Wissing 2003, 386–388). The periodical was not forgotten.

2.2 *Ismaël* and the lawsuits

The kind of humor displayed in the 1788-*Ismaël* news item was not appreciated by the city of Utrecht. The news item contained "unsustainable offensive considerations and malicious insinuations" (*aanstotelyke reflexien en quadaartige insimulatien zonder grond*). Since the author was anonymous and could not be prosecuted, the two Utrecht booksellers who sold copies of the periodical were targeted. The case concerned a crime against honor. First, the good reputation the city of Utrecht had allegedly been damaged. The Chief officer demanded compensation in hopes of removing the stain on Utrecht's good name for being compared to the corrupt Biblical city of Babylon (Jongenelen 1998, 61).[11] Besides Utrecht, the Stadtholder of the Dutch Republic and Prince of Orange William V had been defamed ("*gevilipendeerd*"). The parody was also held to be a profound mockery ("*verregaande spotterny*") of the abovementioned Thanksgiving Day of 16 September 1788, instigated because of the momentous capitulation of the political reformers and critics called "Patriots."

The Chief officer of the city of Utrecht, *Jonkheer* Frederik Christiaan Rynhard Baron van Rheede and Agrim, fifth Earl of Athlone (1743–1808), became a pivotal player in the *Ismaël* controversy and prosecuted the two Utrecht booksellers, Gijsbert Timon van Paddenburg and Justus Visch.[12] Athlone argued that the character of "Lord Praetor" in the parodic news item referred to him – "Lord" assumingly alluding to the noble British title he held and "Praetor" to his function as a local magistrate (*schout*).[13] Together with Willem V., he felt they had both been exposed and ridiculed as fraudulent and having huge debts. Gerard Bentink was also involved in the trial. Athlone had recently prosecuted Bentink, who was the

11 See on Babylon the online reference in Browning, W. R. T. 2010. Babylon. In *A Dictionary of the Bible*. Oxford: Oxford University Press 2010.

12 He was also *Vryheer* of Amerongen, i.e., the owner of the rights of a seigniory of Amerongen (1743–1808), https://www.genealogieonline.nl/west-europese-adel/I74556.php (accessed 27 August 2021).

13 The word '*praetor*' originally refers to a special Roman magistrate, established in 367 BC, who dealt with the administration of justice. See, *e.g.*, Stein, Peter. 2002. *Roman Law in European History*. Cambridge: Cambridge University Press. 8ff.

wealthy director of the Utrecht lotteries as well as a Patriot (Hanou 1991, 47–48).[14] The "profit" that was mentioned in the parodic news item refers to the fine Bentink had to pay as a result of the prosecution. The penalty had been declared redeemable (*composibel*, which meant the prosecution could be bought off, i.e., that the offence or crime was suitable for settlement) (see also Hovy 1980, 413–429). The amount of money from that settlement would have been divided between the sovereign of the province, Stadholder William V, and the Chief Officer of the city of Utrecht, Athlone.

Athlone was an Orangist and was deemed "no doubt the most important adversary of [the] Patriots" (Van Wissing 2003, 197). Athlone returned to power with a vengeance after a year of exile in the Dutch city of Amersfoort. He had fresh memories of the Patriots banishing the Orangists from government in 1787 and likely had a bone to pick with Paddenburg, one of the prosecuted booksellers. Earlier, in 1782, he had legally clashed with Paddenburg, who was at that time the publisher of the Patriotic periodical *Post van de Neder-Rhijn* by Pieter 't Hoen (Theeuwen 2002). Although, in this case, the accusation was the same, i.e., the distribution of a libel for the purpose of defaming (*vilipendie*) high officials, an acquittal followed on 17 December 1782, by a unanimous vote.[15] That was a different outcome from the one just a few years later in the *Ismaël* case.

2.3 *Ismaël* and parodies

The anonymous periodical *Ismaël* was sold in various cities in the Republic, including Utrecht, Amsterdam, and Haarlem. Eleven issues of the periodical ('*periode*') were published between 28 July 1788 and 9 February 1789.[16] It was part of a larger literary tradition of satirical periodicals at the time, which included *Janus* (1787).[17] Just as in other magazines, *Ismaël* contained reports,

14 There is very little information on Gerard Bentink. See Van Wissing, Pieter. 2003. *Stokebrand Janus 1787. Opkomst en ondergang van een achttiende-eeuwse satirisch politiek-literair weekblad*. Nijmegen: Vantilt. 132.

15 The *Appointement* is included in *Pleidoye in der zaake van Gisbert Timon van Paddenburg, boekverkoper en boekdrukker te Utrecht, gerequireerden; contra Jonkh. Frederik Christiaan Rynhard baron van Rheede en Agrim, Graaf van Athlone, Vry heer van Amerongen, Hoofd Officier derzelve Stad, R.O., requirant* (…). Utrecht 1783. 178; - Van Hulzen, Albertus. 1966. *Utrecht in patriottentijd*. Zaltbommel: Europese Bibliotheek. 41; see also Sautijn Kluit, Willem P. 1880. De post van den Neder-Rhijn. *Bijdragen voor Vaderlandsche Geschiedenis en Oudheidkunde*, Nieuwe reeks, X. 328–329.

16 *Ibid*., 306.

17 *Ismaël* presented itself as the successor to *Janus*. *Ibid*., 295–304.

advertisements, announcements, and news items that often recounted local political matters. It was full of allusions to the Bible and Ancient texts as well as to famous international authors, such as François Rabelais, Jonathan Swift, Laurence Sterne, and Henry Fielding. As was often the case, *Ismaël* was probably put together by a collective of editors and writers, of whom Johannes Kinker (1764–1845) was probably the main author – one of the most important thinkers and writers at the end of the eighteenth century.[18] Kinker obtained his Ph.D. in law in 1787. He worked at the law firm in The Hague of the famous poet and lawyer Willem Bilderdijk (1756–1831), who was his literary mentor. Kinker, however, clashed with Bilderdijk's anti-Patriot political and philosophical notions (see Leemans and Johannes 2017, 2010).[19] He was the author of the periodical *Post van den Helicon* (1788–1789), and the aforementioned periodical *Janus* is also attributed to him. Tellingly, in three issues of Kinker's *Post van den Helicon*, he refers to *Ismaël*, which suggests that he was certainly familiar with this periodical.[20]

The journalistic content of *Ismaël* might be seen as a form of fake news – not in the contemporary sense of spreading lies, but in its ridicule of the misbehavior of the authorities, by laughing at them and by sparking debates about their behavior (Sinclair 2020, 61). Most items in the journal can be thought of as parodies, humorous imitations of a serious genre – a news item in this case – to criticize those in power and to expose the bad behavior of the authorities (Dentith 2000). Parodic expressions can be influential in a society. They have the ability to disseminate subversive voices and shape public opinion, while also circumventing the repressive censorial controls of the authorities. As the legal and literary scholar Amy Lai puts it: "Controls on parodic expression throughout history have acknowledged its potential power to bring social change. Speaking through parodies is also essential to self-fulfillment, the pursuit of truth, and democratic

18 *Ibid*., 167, 306–307; Vis, Georgius J. 1967. *Johannes Kinker en zijn literaire theorie. Bijdrage tot een interpretatie van de voorredes bij zijn gedichten (1819–1821)*. Zwolle: Tjeenk Willink. 292; Van Vliet, Rietje (s.a.). "Ismaël (1788–1789)", "Janus (1787)" and "Post van den Helicon (1788–1789)." In *Encyclopedie Nederlandstalige Tijdschriften*, https://www.ent1815.nl/p/post-van-den-helicon-1788-1789/ (accessed on August 27, 2021).

19 On Bilderdijk see: Kollewijn, Roeland A. 1891. *Bilderdijk. Zijn leven en zijn werken*. Amsterdam: Van Holkema & Warendorf.

20 See issue 19, 21, 23. Van Vliet, Rietje (s.a.). Ismaël (1788–1789). In *Encyclopedie Nederlandstalige Tijdschriften*, https://www.ent1815.nl/i-j/ismael-1788-1789/ (accessed July 10, 2021), Van Wissing, Pieter. 2003. *Stokebrand Janus 1787. Opkomst en ondergang van een achttiende-eeuwse satirisch politiek-literair weekblad*. Nijmegen: Vantilt. 306. On *Post van den Helicon* see: Leemans, Inger & Gert-Jan Johannes 2017. *Worm en donder. Geschiedenis van de Nederlandse literatuur 1700–1800: de Republiek*, 2nd edn. Amsterdam: Bert Bakker. 208–211.

governance" (Lai 2019, 11).[21] Because of its critical attitude, parody can be regarded as an exercise of the right of freedom of speech and of print.

Moreover, parodies are, in the words of philosopher and linguistic theorist Mikhail Bakthin, "double-voiced." In this specific context, this means that a text can express multiple meanings or "voices."[22] Parody is highly "referential." Without context, it has no meaning – in the words of philosopher Judith Butler: "parodic displacement, indeed, parodic laughter, depends on a context and reception in which subversive confusions can be fostered" (Butler 2022, 177).[23] Readers play a vital role in shaping meaning in parodies. As stipulated by J. Todd in *Review of Litigation*: "The audience recognizes the outsized distortion, questions whether the author intends it as true, and then attempts to resolve the ambiguity by finding alternative meanings." For a parody to be "effective," readers must identify a critical message regarding political circumstances and powerful others (Todd 2016, 39). Readers must be willing to inspect the language more closely to fully understand the double voices, to recognize the act of defamation. Moreover, critical interpretations of parodic texts are often connected to an immediate context. Readers must possess substantial knowledge of politics, customs, and

21 Parody as a literary form is intimately related to satire: "satire creates caricatures by distorting persons' physical and verbal characteristics, not only to ridicule the individuals but also to expose the true subjects of criticism — folly and vice — to censure them.": Hutcheon, Linda & Michael Woodland. 2012. Parody. In Roland Greene & Stephen Cushman (eds.), *The Princeton Encyclopedia of Poetry & Poetics*, 4th edn. Princeton: Princeton University Press. 1002. Satire is brought into play *through* parodies: "It is parody's defining critical distance that has always permitted satire to be so effectively deployed through parodic textual forms.": Todd, Jeff. 2016. Satire in Defamation Law: Toward a Critical Understanding. *Review of Litigation* 35 (1). 56, see also Goodrich, Peter. 2005. The Importance of Being Earnest: Satire and the Criticism of Law. *Social Semiotics* 15.1. 43–58. On satire in periodicals in eighteenth-century Dutch Republic, see Nieuwenhuis, Ivo. 2017. Performing rebelliousness: Dutch political humor in the 1780s. *Humor* 30.3. 261–277.

22 Bakhtin coined the term "double-voiced discourse" in the context of fiction, more specifically Dostoevsky. His thoughts on this concept are complex and variable. See Bakhtin, Mikhail. 1984a. *Problems of Dostoevsky's Poetics*, ed. and trans. Caryl Emerson. Introduction by Wayne C. Booth. Theory and History of Literature. vol. 8. Minneapolis, London: University of Minnesota Press. See also: Bakhtin, Mikhail 1984b. *Rabelais and His World*, trans. Helena Iswolsky. Bloomington: Indiana University Press.

23 Ivo Nieuwenhuis points to satire being referential in his excellent study of the late-eighteenth century Dutch editorial press: Nieuwenhuis, Ivo. 2014. *Onder het mom van satire. Laster, spot en ironie in Nederland, 1780–1800*. Hilversum: Verloren, 23. Parody is also characterized as "rhetorically unstable": it does not have a fixed meaning, but is deliberately formulated in obscure language. See: Griffin, Dustin. 1994. *Satire. A Critical Reintroduction*. Lexington: University of Kentucky Press, Bogel, Fredric V. Bogel 2001. *The Difference Satire Makes. Rhetoric and Reading from Jonson to Byron*. Ithaca: Cornell University Press. On ambiguity of humor in law: Godioli, Alberto. 2020. Cartoon Controversies at the European Court of Human Rights: Towards Forensic Humor Studies. *Open Library of Humanities* 6 (1), 1.

religion. In the words of John L. Austin, an active readerly attitude is necessary to perform the speech act of (unlawfully) criticizing power. It is a "constitutive condition" – a necessary ingredient to the performance of a speech act (Austin 1962).

How do readers know when to search for alternative meanings? To understand this more fully, we adopt the terminology of philosopher and linguist Paul Grice in *Logic and conversation* (1975) as applied to human conversation. According to Grice, participants in a meaningful dialogue want to cooperate. As speakers, they want to be as informative, truthful, relevant, and clear as possible; as hearers, they expect speakers to be so. This assumption is called the "cooperative principle" (Grice 1989).[24] Grice expanded his theory by adding four maxims that speakers want to adhere to: Quantity (saying no more or less than is necessary for the conversation), quality (no lies), relevance (no irrelevant information) and manner (avoiding ambiguity, obscurity). In humorous expressions, these maxims are often violated (or "flouted") through, for example, meaning the opposite (quality), understatements (quantity) and ironic expressions (manner). Speakers want their listeners to cooperate on a non-literal level, and hearers seek to understand them by searching for coded meanings.

The cooperation principle applies not only to (humor in) conversations, but also to written parodies. As noted above, a parody is ambiguous or double-voiced: it says one thing, but means (also) the other. In Grice's terms, the maxim of manner is "exploited": the message is purposely obscured, or ambiguous (see also Knight 1985, 241 and Todd 2016, 56). Readers cooperate by looking for other interpretations than the one on the surface, by reading between the lines. As we shall see below, the booksellers in the lawsuit denied that the average reader would cooperate with the writer and solve the obscurity or ambiguity by reading between the lines. First, though, we dive into the lengthy lawsuits that resulted from the parody in *Ismaël* and the legal context for the accusation that the parody was an insult in writing, or "infamous libel" (*libelous famosus*). Because in this case the sellers of *Ismaël* were brought to court, we pay particular attention not only to the responsibility of distributors in libel trials, according to eighteenth-

24 Grice, Paul. 1975. Logic and conversation. In *Syntax and Semantics*, New York: Academic Press, 41–58. For further explanation and a legal interpretation of Grice's theory, see for example Poggi, Francesca. 2016. Grice, the Law and the linguistic special case thesis. In Allessa Capone and Francesca Poggi (eds.), *Pragmatics and Law. Philosophical perspectives*, 231–248. Cham: Springer. For the combination of humor/satire and Grice see for example: Knight, Charles A. 1985. Satire and Conversation. The Logic of interpretation. *The Eighteenth century* 26. 239–261; Nilsen Don L.F. and Allen Pace. Nilsen and Allen 2018. Rhetoric and Composition. *The Language of Humor: An Introduction*. Cambridge: Cambridge University Press. 320–332, see especially p. 323. Grice focuses on speech rather than print, but the same principles apply.

century jurisprudence, but also to "intent" (was the insult on purpose?) and "truth" (what if the insult were true?).

2.4 *Roman-Utrecht law and the Roman delict* iniuria

The case against the booksellers started in October 1788, when bailiffs visited Paddenburg and Visch to collect all the copies of *Ismaël* no. 8.[25] Until then, the periodical was openly for sale in their shop. The lawsuit kicked off a few months later, in February 1789. Procurator N.M.J. van Buuren requested the honorable judges of the Court of the city of Utrecht ('*Gerechte der stad Utrecht*') to punish both booksellers through a fine of 1000 guilders, confiscation of all remaining copies, and so-called "arbitrary penalties" ("*arbitraire straffen*"). In both lawsuits, both parties had legal representation, known as *procureurs*. Van Buuren acted on behalf of Chief Officer Athlone, who litigated *ex officio* in both proceedings. He stated that the booksellers printed and distributed this periodical in violation of a local statute, the Utrecht *Plakkaat* of 4 July 1781. This resolution was a revision of earlier statutes. It prohibited the:

> making, printing, selling, distributing, and marketing of scandalous or infamous libels, poems, or print, with or without the name of the maker or printer, bringing disadvantage or disdain to the High Government of the Duke of Brunswick or any high or lower class persons working in the state's service.[26]

This statute, and the *Ismaël* cases in general, offer an example of the eighteenth-century application of the (Roman) private delict of *iniuria*. The law in force in Utrecht at the end of the eighteenth century was an amalgam of rules from various origins, including learned law (Roman law and canon law), feudal law, customary law, the law of the States of the Provinces (*Provinciale Staten*), and the law of the City of Utrecht and other cities (See Michael and Van Dongen 2018, 19). The law in

25 Request 8 April 1789 concerning Paddenburg, Utrecht, HUA 702, inventory numbers 2214–2215.
26 See also condemnation ('*Acte van condemnatie*') Paddenburg, 24 April 1789. See also Kruseman, Arie C. 1893. *Aanteekeningen betreffende den boekhandel in Noord-Nederland in de 17de en 18de eeuw*.Amsterdam: P.N. van Kampen & Zoon. 411–412. The prohibition of dissemination of licentious writings should be seen against the background of the libel war against the Duke of Brunswick, as mentioned above. According to Paddenburg, in his *Pleidoye in der zaake van Gisbert Timon van Paddenburg, boekverkoper en boekdrukker te Utrecht, gerequireerden; contra Jonkh. Frederik Christiaan Rynhard baron van Rheede en Agrim, Graaf van Athlone, Vry heer van Amerongen, Hoofd Officier derzelve Stad, R.O., requirant* (…). Utrecht 1783. 14, the rationales of the statute are to curb the writings on the conduct of Duke Louis van Brunswick and the influence on the execution of public affairs.

force in the Low Countries was thus already, since the fifteenth and sixteenth centuries, permeated by Roman law (Broers 1996, 43).

This statute allowed for penal action—that is, the penalization of the wrongdoer by a pecuniary penalty. In serious cases, insults were prosecuted by the government through criminal proceedings, especially if the government itself had been insulted, such as a higher or lower government agency or an official working for such agency, as in the Ismaël cases (Broers 2012, 93). These cases were conducted civilly by a "criminal" prosecutor and could lead to the imposition of a civil fine (a so-called "*civiele strafzaken*"). Sometimes the adversarial model, to a certain extent, was used in criminal proceedings, depending on the seriousness of the facts and the amount of evidence (Von Hattum 2012, 112–113). Minor offenses were not punished with capital or (serious) corporal punishment but only in principle with civil punishment, such as a fine, in so-called non-capital delicts or civil crimes. In criminal proceedings, instigated by virtue of the office (*ex officio*), it was then possible to proceed in the same manner as in civil cases (Wielant 1515–1516, cap. 1.6; see also Monballyu 1991, 124–125). This was, for example, the case when government officials were defamed (see also Broers 2003, par. 4.2). The penalty for defamatory writing had ceased to be a capital one and, in various edicts in the Low Countries, a fine and some discretionary penalty were imposed (see Groenewegen van der Made 1669, ed. 1987, 115).

The eighteenth-century jurists described the law in force and, in their commentaries, often attempted to connect Dutch law with the learned law. Legal scholars who studied Roman law, in turn, paid attention to (indigenous) law in practice (Broers 1996, 43ff.). Legal doctrine on this topic focused on the manner in which an insult could be brought about: either in writing or by speech. In the eighteenth century, the *actio iniuriarum* (the action for the delict of *iniuria*) was defined through *contumelia* (Zimmermann 1996, 1064).[27] According to Roman law, contumelies could be caused by acts or by words, whether in speech or in writing (D. 47.10.1.1). Insults in writing could occur through public defamatory writings, known as an "infamous libel" (*libelous famosus*) or "lampoon," in which an individual's honor or reputation was damaged.[28] In practice, written defamations

27 On *iniuria* in the legal commentaries of the modern age, see Broers, Erik-Jan M.F.C. Broers and Erik-Jan 1996. *Beledigingszaken voor de Staatse Raad van Brabant 1586–1795* (diss. Tilburg). 62 ff.

28 They were often regarded by medieval and later jurists as a species of written defamation. See Joost de Damhouder, *Practijcke ende handtboeck in criminele saecken*, I, kap. 125 (ed. 1650, p. 205): … *Fameuse libellen, oft Biljetten, zijn Briefkens diemen saeyt achter strate, plact, oft stelt voor Deuren, oft Poorten, om yemandt daer mede te blameren, ende diffameren* … and Ph. Wielant, *Practijcke criminele,* kap. 127 (ed. 1872, p. 165): *fameuse libellen zijn brieffkens, die men saijdt achter straten oft plaetsen, voer dueren oft poorten, tot ijemands difame*. Broers, Erik-Jan M. F.C. 2003. *Van plakkaat tot praktijk. Strafrecht in Staats-Brabant in de zeventiende en achttiende*

were considered more serious than spoken defamations (Nassau la Leck 1778, 332; Ranchod 1972, 73).

In cases in which an individual's honor or reputation was harmed by a public defamatory writing, it made no difference whether the accused was the perpetrator of the libel or insult or simply its distributor. Both the author and the distributors of the libel were liable on grounds of *iniuria* (see C. 9.36.1).[29] However, the application of the Resolution in the *Ismaël* process led to this defamation being imputed solely to the writer or printer, since the booksellers had been authorized – provided the conditions were met – to sell all books and writings.[30]

An important question is whether the person insulted was explicitly mentioned in the infamous libel. According to the leading Dutch scholar Hugo de Groot (Grotius, 1583–1645), for an accusation to have legal ground, the name of the defamed person needed to be mentioned or at least accurately determined.[31] If it could not be deduced from additional circumstances, the writer was required to indicate who he had in mind and/or what exactly he had intended.

According to Professor Johannes Voet (1647–1713), in his commentary on D. 47.10 §10 (*Commentarius ad Pandectas*), both the perpetrator and the announcer could be held equally responsible for a libel (C. 9.36.2.1). Defamation in writing – he uses both the terms *injuria literis* and *libelli famosi* – occurs when:

> (…) assailing the reputation of the Sovereign (*princeps*) or someone else by handing over a libel to another person or, with the intent to condemn, mock and damage a person's reputation by making up, publishing, noising abroad, making known to others, or by printed information, or by making any of these things happen, with evil intent.

According to Voet, a defamatory libel was generally disseminated without a name, with the name of another person, or a false name. According to some scholars, a

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eeuw. Nijmegen: Ars Aequi Libri. 47. On p. 48, Broers mentions that the *arbitraire straffe*, i.e. a penalty the judge determined at his own discretion, i.e. with discretionary power, later took on a prominent role in customary and statutory law. See also Coopmans, Josephus P.A. 1970. *Vrijheid en gebondenheid van de rechter vóór de codificatie*. Deventer: Kluwer. 13–14.

29 Antonius Matthaeus, *De criminibus*, ad D. 47.1 §4.

30 Cited by Paddenburg in his rejoinder (*dupliek*) of 4 May 1792, HUA 702, inventory number 2214.

31 Hugo Grotius, *Hollandsche Consultatien*, III.2 (ed. F. Dovring, H.F.W.D. Fischer & E.M. Meijers 1952, p. 361), cons. 167 (advice 7 February 1616); see Broers, Erik-Jan M.F.C. Broers and Erik-Jan 1996. *Beledigingszaken voor de Staatse Raad van Brabant 1586–1795* (diss. Tilburg). 86–87. See also D. 47.10.15.9: *"Cui" non sine causa adiectum est: nam si incertae personae convicium fiat, nulla executio est*. Thus, if the clamor was raised against a person who was not designated, there could be no (ground for) prosecution. According to D. 47.10.6, when the victim of the defamation is not mentioned, it is difficult to establish the truth. In that situation, the case is dealt with in public proceedings. If a name is mentioned, an ordinary (private) action based on *ius commune* can be brought in private proceedings based on the *actio iniuriarum*.

libel could therefore not be called defamatory if the author did not disguise his name.[32] This view seems in line with article 110 Criminal Ordonnance of Charles V (1530; see ed. Zoepfl 1883).[33] Voet, however, thought it more reasonable that the mere expression or omission of the name of the writer was inessential to a defamatory libel. Instead, he reasoned, the libel ought to be assessed according to the *libellus*'s contents and actual allegations.[34]

The concept of *vilipenderen* was also relevant to this case. It was understood as making individuals – and especially a figure with authority – look contemptible, by mocking or twisting their actions, or by defaming them and shoveling dirt on them through false imputations. A necessary ingredient to *vilipenderen* was malicious intent (*dolus*). No intention to defame (*animus infamandi*) meant no defamation. In principle, this intention was presupposed based on the factual circumstances of the case. The alleged perpetrator had the burden of proving that he or she had no such intent (Broers 1992, 300ff.; see also Ranchod 1972, 75). If two different explanations of an expression were possible, legal doctrine differed in opinion (see Broers 1996, 101). According to the German lawyer Augustinus a Leyser (1683–1752), if arguments for both views – whether an unintentional mistake or a malicious intent – were equal, one has to give the benefit of the doubt to the accused: "Acts and words, as wells as ambiguities, have to be interpreted in a benevolent direction."[35] The addressee then had to demonstrate that the words were used to intentionally defame someone (Broers 1996, 101).

What if the defamatory words were true? Was it legally still considered a *vilipendie*? The exact nature of the defense of truth (*exceptio veritatis*) was controversial among Roman-Dutch scholars. Most authors accepted the view that truthful defamatory writings were only allowed in the public interest (Ranchod 1972, 84ff.). According to Voet, however, truth and public benefit did not

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32 See Nebelkra, Heinrich. 1617. *Decisionum, sententiarum, et praejudiciorum forensium*. I. Giessae. *decis*. no. 16; Remus, Georg. 1618. *Nemesis Carolina*, Frankfurt am Main. cap. 110; Carpzovius, Benedictus. 1635. *Practica nova rerum criminalium*. part. 2. quest. 98, no. 28.

33 A relevant passage from canon law is C.5 q.1 c.1: *Qui in alterius famam publice scripturam aut uerba contumeliosa confinxerit, et repertus scripta non probauerit, flagelletur, et qui eam prius inuenerit rumpat, si non uult auctoris facti causam incurrere*.

34 Johannes Voet referred to D. 47.10.5.9, from which it appears that a document can also be defamatory if it has been published in the name of another or anonymously.

35 Von Leyser, Augustin. 1772. *Meditationes*, ad Dig., vol. 8. Halae. Spec. 550, med. 2: *facta verbaque et ambigua in meliorem partem interpretanda sunt*. See also Maes, Louis Th. 1947. *Vijf eeuwen stedelijk Strafrecht. Bijdrage tot de rechts- en cultuurgeschiedenis der Nederlanden*. Antwerpen/'s-Gravenhage: De Sikkel. 244, who refers to Paul van Christijnen (P. Christianeus), in his commentary on the customs of Mechelen. In his *In Leges Municipales*, ed. 1671, II, 4, p. 134, he writes: *quando igitur verba in utramque partem accipi possunt, tunc ea in bonam partem interpretari debemus, et sic, ut evitetur delictum, impropriari debent* (…).

constitute a complete ground upon which to except defamatory libels – thus the *exceptio veritatis* was inadmissible, since they require a stretch of time to compose them and stemmed from a settled and persistent motive to cause harm (*animus iniuriandi*).[36]

2.5 Paddenburg and Visch before the Court of Utrecht

What arguments were brought forward by the litigants in the *Ismaël* cases, especially in regard to the subjectivity of the parody? We argue that both the booksellers and the Chief Officer theorized the linguistic aspects of the offending document in an attempt to determine the defamatory meaning of words.[37] Despite their shrewd arguments, both Paddenburg and Visch were convicted and had to pay a fine of 1000 guilders each. Unfortunately, extant sources do not reveal the deliberations of the judges of the city of Utrecht, but we do know that Visch later took the case to the States of Utrecht, where he lost again. Nonetheless, the *Ismaël* cases are particularly illuminating, showing how an average reader (whether Visch or Athlone) might cooperate with a writer in reading between the lines.

In both instances, Paddenburg and Visch pleaded "not guilty." The basis of their defenses, however, was not freedom of speech per se or even the

36 On *animus iniuriandi*, see Broers, Erik-Jan M.F.C. 1996. *Beledigingszaken voor de Staatse Raad van Brabant 1586–1795* (diss. Tilburg). 93ff. On the *exceptio veritatis* in legal history, see also De Roo, Egon J. 1975. Smaad en openbaar belang. *Rechtsgeleerd Magazijn Themis*. 7ff. If a defamatory libel is in the interest or safety of the public, according to the edict of the Emperors Valentinianus and Valens (365), one is even *obligated* to make the facts orally and publicly known. See C. 9.36. 2(1). 2–3. However, the author of the defamatory libel has to prove this and provide the name of the culprit. In case the truth of the assertions is established, the author (or distributor) will be entitled to the greatest praise as well as a reward. If not, he will be punished by death (*poena capitalis*). See Codex Theodosianus (C.Th.) 9.34.1, and Voet's *Commentarius ad Pandectas*, ad D. 47.10 §10, with reference to other literature. Voet also argues that an author is not free from punishment because he preferred *defamare* above *accusare*. See also art 110 *Constitutio Criminalis* (in fine) and, amongst others, Zieritzius, Bernardus. 1676. *Constitutionem Criminalem notae et observationes*. Frankfurt am Main, ad art. 110, s.v. '*licet etiam*'.

37 For two seventeenth-century examples of cases with arguments about multiple interpretations of literature, see Grüttemeier, Ralf. 2000. De Schriftuure bewijst niets met zekerheid. Botsingen tussen literatuur en recht vóór 1800. *Literatuur* 18 (1). 10–18. Literature has a special status because it is difficult to find an unambiguous meaning. Grüttemeier points out that, although in these cases literature is said to have a special status for its ambiguous meaning, this does not mean that every meaning has the same value, a notion that grows in popularity during the twentieth century (17). See also Grüttemeier, Ralf (ed.). 2016. *Literary Trials: Exceptio Artis and Theories of Literature in Court*. New York: Bloomsbury Academic.

rejection of the local statute. Nor did the booksellers aim to justify oppositional political speech (for example, by pointing to the truth of the text or its public benefit). Instead, they focused on their accountability as booksellers. The main question in this controversy was whether the *Ismaël* news item fell within the scope of the prohibition defined by the statute. It had to be injurious to or pertaining to the *vilipendie* of the High Government or of persons of the state (i.e., Utrecht).

The defence of Visch sought to pinpoint possible weaknesses in the Utrecht statute of *vilipendie* (4 July 1781) by exploiting the flexibility of language. The words themselves, they argued, could undoubtedly be understood in more than one way ("*te meer om dat die woorden ongetwijfeld voor meer dan eene uitleginge vatbaar zijn*"; argument 45).[38] The libelous interpretation of these words was "vague" at best and therefore dangerous: according to such a loose reading, almost anyone could be subject to libel charges. Such a reading thus also compromised the safety of society ("*veiligheid van de maatschappij*"; argument 47–48). According to Visch, it was simply mere guesswork whether the allegation represented the real opinion of the author ("*altijd Eene Loutere gissing blijfd of zulke waarlijk de meninghe van den autheur geweest zij*," argument 42/43).

In the defense of Paddenburg, led by the solicitor Zeger Coenraad van Leenen, the condition of explicitly mentioning the victim's name in the libel was cleverly exercised that the victim be explicitly mentioned in the libel. As seen above, this humorous, parodic text does not, however, contain obvious names, but is ambiguous or "double-voiced" in Bakhtinian terms. In addition, Paddenburg focused on the intention of the anonymous author. Without denying that the Babel parody possessed a multiplicity of meanings, he argued that one cannot provide proof of what the author meant. Even if a writer refers to a specific interpretation, it is an "undeniable truth" ("*onweederspreekbare waarheid*") that one cannot read "in an author" what had not been written down ("*dan men in Een auteur niet leezen kan, het geen niet geschreven staat*"; argument 9).[39] The Chief Officer may refer to the defamation of specific matters and people, but he will never be able to prove

38 Rejoinder ('*dupliek*') of Visch, dated 27 September 1791, in: HUA 702, inventory number 2215.
39 Rejoinder ('*dupliek*') of Paddenburg, dated 30 March 1790, in: HUA 702, inventory number 2214. See also Paddenburg's *Pleidoye in der zaake van Gisbert Timon van Paddenburg, boekverkoper en boekdrukker te Utrecht, gerequireerden; contra Jonkh. Frederik Christiaan Rynhard baron van Rheede en Agrim, Graaf van Athlone, Vry heer van Amerongen, Hoofd Officier derzelve Stad, R.O., requirant (…)*. Utrecht 1783, p. 35 ('each one is the best interpreter of his own words').

sufficiently what the writer meant ("*nimmer in staat zal zijn om den regter genoeg doende te bewijzen, door den schrijver gezegd te zijn*"; argument 5).

Moreover, Paddenburg argued that malicious intent (i.e., *mala fide* or *mala dolus*) could not be proven.[40] The bookseller was held responsible for selling a libel for the purpose of disdaining high officials (*vilipendie*), because he was unaware of the harmful content of the libel ("*ten eenemaal onbewust was*"). He never read the magazine, let alone the news item on Babel (argument 37–40).[41] Subsequently, Paddenburg shifted his focus from the role of author to the role of the reader. Again, he focused on the linguistic aspect. The Chief Officer may well declare that "everyone" (*ijder een*) agreed on the injurious interpretation of the text, but he is unable to identify any of these witnesses (argument 19). The word "*ijder een*" was simply too vague and general ("*zo vaag en algemeen gesteld*"; argument 21).

Such an argument relied on the double-voiced nature of the parodic news item. The allegedly subversive political opinions are not expressed in a straightforward manner, but only through the humorous imitation of serious genres. When readers recognize the imitation, they then seek out alternative meanings. These are based on expectations of the genre, general knowledge, and the exploitation of "the cooperative principle" (Grice, see above). However, no libelous authorial intent or "general interpretation of the readers" can be undoubtedly determined, so there is no judicial ground for condemnation. Following Austin's terminology, there is no validation of the speech act of criticizing power and therefore no dangerous perlocutionary effect on the readers – for example, a critical attitude, leading to dissatisfaction and uprisings.

Both booksellers attempted to refute the accusation by referring to a later legal ruling, the Resolution of the States of Utrecht (12 October 1781). The resolution stipulated that booksellers were allowed to sell all books and works of which the author or printer was known. Thus, one can sell potentially injurious publications if another party can be held accountable, such as the author or the publisher.[42] This was a mitigation of the Utrecht statute of 4 July 1781. As a precondition, the

40 Rejoinder ('*dupliek*') of Paddenburg, dated 30 March 1790, in: HUA 702, inventory number 2214, argument 61: the Chief officer cannot add 'titel or Jota from which malicious intent will manifest:' '*Titel of Jota bij te brengen, waar uit de kwaade trouw of opzet manifesteeren kan*', '*Titel of Jota*': Biblical reference to Matthew 5.

41 Before providing a reply to the accusation, Paddenburg requested delivery of a copy. He indicated that he was unfamiliar with the content of the periodical. Therefore, in order to defend himself, he needed to read it first. The Chief Officer agreed to his request. This already seems a smart argument in disguise, when it comes to the prerequisite of malicious intent: how could he intentionally distribute libels, if he did not even read them?

42 According to the Count of Athlone, a letter is insufficient proof that the person whose name was written on it is actually the sender.

author or printer had to reside in one of the seven united provinces of the Netherlands or the Generality. Moreover, booksellers had to prove an acquaintance with the author and printer to the Chief Officer. The ruling was the result of a petition (*rekest*) by the Utrecht book vendors that was submitted to the States of Utrecht on 18 July 1781 against the concept of *vilipendie* in the statute from 4 July 1781. Paddenburg was one of the submitters of the petition that led to this resolution, so he was well acquainted with this settlement.[43]

Paddenburg and Visch indicated that they were not acquainted with the author, but they did know the publisher. Before the prosecution, Athlone should have investigated whether the booksellers had complied with the requirements and could thus name the author or printer. Paddenburg stated that he did not sell *Ismaël* until the printer and sender were known to him. Paddenburg, in his response to the legal claims of Athlone (on 23 June 1789), noted that it was "Barend Onnekink living at the Rapenburg in Leiden" who had published *Ismaël* in 1788 (argument 64). And he could prove it. Athlone countered that the evidence, a printed letter (*missive*) with Onnekink's name, was not compelling.[44] Yet Paddenburg declared that he was in possession of various notes (*biljetten*) written by Onnekink and that he published several other (non-humorous) works including the *Genees Natuur en Huishoudelijk kabinet* by a medical doctor named Engelen, *Wallen Court Harmonie der vier Evangelisten*, *Eduart en Julia*, *Du Tour, raadgevende vader, Brasser* and *Over 't Regt der bloedverwantschap* (argument 130–134).[45]

43 Because there was no official response to the petition, Paddenburg and others submitted another petition, which was decided upon on 12 October 1781. See Appendix C in *Pleidoye in der zaake van Gisbert Timon van Paddenburg, boekverkoper en boekdrukker te Utrecht, gerequireerden; contra Jonkh. Frederik Christiaan Rynhard baron van Rheede en Agrim, Graaf van Athlone, Vry heer van Amerongen, Hoofd Officier derzelve Stad, R.O., requirant* (…). Utrecht: G.T. van Paddenburg, 1783. 141–143. See also Bodel Nyenhuis, Johannes T. Bodel Nyenhuis and Johannes 1892. *De wetgeving op drukpers en boekhandel in de Nederlanden tot in het begin der XIXe eeuw*. Amsterdam 1892 (Dutch translation of Latin original from 1819. 176–177).

44 See *Practisijns Woordenboek of Verzameling van meest alle de woorden in de rechtskunde gebruikelijk*, Dordrecht 1785 (ed. The Hague 1996), 70, s.v. missive: zendbrief.

45 Rejoinder ('*dupliek*') of Paddenburg, dated 30 March 1790, in: HUA 702, inventory number 2214. In addition, this work was sent to Paddenburg as is custom by using printed delivery notes, leaving empty spaces to fill in the date and the names of the sender and the receiver. Because of this, Paddenburg had no doubt that the printer and sender were Onnekink, given the mentioned place of dispatch, which was known to him, as well as Onnekink's handwriting, which was also known to him.

2.6 Argumentation of Visch before the States of Utrecht

Though Paddenburg accepted his conviction, Visch contested the verdict and turned to the States of Utrecht. In particular, he requested to be relieved of execution of the penalty in the provisional sentence for having sold *Ismaël* no. 8. He relied on the instrument of "notorious injustice" ("*notoire iniquiteit*"), claiming that the ruling was contrary to an earlier judgment and thus unlawful (we will return to this claim later).

Visch contested the ability of most readers to cooperate with the author by looking for interpretations other than the one on the surface. Was Athlone's defamatory interpretation also generally understood by readers from all levels of society? He gave an example in which a metaphorical interpretation was indeed obvious, the well-known saying that "the cart does not keep a straight line" ("*De wagen gaat niet recht*"), which has a clear meaning in the Dutch language, and is comprehensible to everyone in Utrecht.[46] This differs from the supposed allusion of "Lord *Praetor*" Athlone. This combination of English and Latin was most likely not to be understood by the common man and even by many jurists, let alone the reference to Athlone. If nobody is able to understand the perceived reference to Athlone, how can the text be injurious? Building on the terminology of Austin, we might say that, according to Visch, knowledge of foreign languages is a "constitutive condition" – a necessary ingredient to the performance of a speech act (Austin 1962). Without this knowledge, it is not possible to perform the speech act of an insult to the government or government officials. The defense pointed to the Babylonic confusion of tongues, suggesting that it was unlikely that Utrecht was intended:

> (…) indeed, who is able to say, less than prove that in the year 1788 Babel has to be interpreted as Utrecht, where everything was quiet and not confusing, also not of tongues.
>
> *(…) immers wie kan zeggen, veel min bewijzen dat in de jaare 17agt en tachtig door Babel Utrecht moet verstaan worden, daar alles stil en geene verwarring was, ook niet van talen (…).*[47]

46 He does not get into the meaning of the saying itself, i.e., "this action is not (entirely) right". See https://spreekwoorden.nl/spreekwoord/de-wagen-gaat-daar-niet-recht (accessed August 24, 2021). It is also mentioned as a saying in *Pleidoye in der zaake van Gisbert Timon van Paddenburg, boekverkoper en boekdrukker te Utrecht, gerequireerden; contra Jonkh. Frederik Christiaan Rynhard baron van Rheede en Agrim, Graaf van Athlone, Vry heer van Amerongen, Hoofd Officier derzelve Stad, R.O., requirant,* (…) (Utrecht: G.T. van Paddenburg, 1783), 141–143.

47 Response of Visch, dated 27 September 1791, in: HUA 702, inventory number 2215, argument 54–56 (in transcription the numbering of arguments is left out). "Quiet and not confusing": Visch might refer to this post-revolution period in which the Patriots lost their power.

Interestingly, Visch, in his defense, was not against enforcement of the specific statute on infamous libels per se: he even acknowledged the need for censure. By no means did he condone unjust print licenses or publications by "fortune seekers" ("*veele gelukszoekers*"; argument 43–44).[48] According to him, the resolution rightfully punished libelous authors or printers in order to "cut the evil off at its root" ("*het kwaad de hartader wordt afgestoken*"). Such writers and printers should be regarded as spreaders of poison ("*verspreiden van het vergift*"; argument 111). Their harmful publications degraded the moral standards of society ("*invloed van Schadelijke geschriften aan het zedelijk bestaan der maatschappij*"; argument 115).

Visch moreover argued that, according to the resolution of 12 October 1781, he could only publish "dangerous texts" if there was another party who could be held accountable: the author or publisher. But if booksellers were required to read everything, scanning their textual products for possible insults, they could never practice their profession. There was simply no time to read everything before selling. It would be to the ruin of booksellers, he declared dramatically, and would expose a class of good and decent citizens to continuous persecution and considerable damage (*"een geheele Classe van menschen, van goede en veele deftige ingezetenen aan vervolgingen en aanzienlijke schadens te exponeeren";* argument 117–118).

2.7 Chief Officer Athlone before the States of Utrecht

Athlone resourcefully and successfully undermined Visch's defence strategy in his preliminary advice, addressed to "Edele Mogende de Heeren Staten dezer Provincie" (Lordships of the States of the Province).[49] Apparently, Visch grew irritated in front of the Lordships, because Athlone refers to his angry outbursts ('*uitspattingen van drift*') multiple times – thus suggesting Athlone was the collected, sensible one in this battle. He argued that Visch's claim of "notorious injustice" were a "debatable truth" ("*betwistbare waarheid*"). Visch had no reasonable grounds and was therefore not entitled to request its invalidation (*rescissie*). For one, the Sovereign would never give impunity to a bookseller for distributing libels. And if even the case, a judge has the duty not to apply it (with reference to C. 1.19.7). Fascinatingly, the Chief Officer

48 Statement of defence of Visch, in: HUA 702, inventory number 2215.

49 Preliminary advice (*preeadvis*) of Athlone, dated 18 August 1789 in: HUA 702, inventory number 2215 [no numbering of arguments, all quotations from Athlone in the following subparagraphs are derived from this advice].

explicitly refers to the freedom of the printing press ("*vrijheid der drukpers*"). He declares himself a "sincere apostle" ("*de oprechtste zelateur*") of this right. However, even this has its limits. He draws the line at debauchery ("*losbandigheid*") and the abuse ("*misbruik*") of this freedom. Such behavior cannot be reconciled with a free press. He also downplayed Visch's claim that reading everything beforehand would lead to his ruin, which was pure exaggeration ("*seer geoutreerd*"). The "read-before-selling" rule is an excellent remedy to ridding the printing press of such "garbage" ("*een exellent middel moet zijn om zich van de vulnis der Drukperse*"). Moreover, Visch should have warned the government to initiate an action against the author and/or publisher, not simply by mentioning the name of the publisher but through demonstrable proof.

Athlone also addressed Visch's specific argument about the parody's ambiguity in his judicial reply.[50] Athlone did not deny or dismiss the ambiguous nature of parody, but stipulated that, in the specific case of the "Sovereign of the Country," his identity was revealed, as everybody knows who is was. What matters is the immediate *effect* of the written words on the Sovereign, who had been insulted. Hidden in the margin of the "repliek" is written that by reading the passage "half of the profit is appointed to the *Sovereign of the Country*" whom everybody would easily understand ("*bij een blote lecture*") to be the Sovereign of this particular province who has been insulted ("*zeer is gevilipendeerd*") – whomever the author may of or may not have had in mind. Therefore, Visch is in breach of the *Plakkaat* of 4 July 1781 and should be fined. On 23 December 1789, the States of Utrecht indeed rejected Visch's request (unfortunately, the archival records do not reveal any of their deliberations).

2.8 Freedom of speech and the press at the turn of the century

At a national level, legislation around free speech and press freedom evolved in the decades following the *Ismaël* case. Various rules were issued by newly formed state governments (De Bruin 1991 414–427). In the aftermath of the French Revolution, French troops invaded the Republic of the Seven United Netherlands in 1795. This was the beginning of the so-called Batavian Republic, as the Netherlands at that time was called – a sister republic of France. Free speech and press freedom became an essential legal element in the new order. Batavian

50 Preliminary advice (*preeadvis*) of Athlone, dated 18 August 1789 in: HUA 702, inventory number 2215.

society was characterized as a place in which "people think and speak and write freely."[51] In 1795, a new regulation was issued regarding the freedom of speech, article 4 of the Declaration of the Rights of Man and Citizen (*Verklaaring der rechten van den mensch en van den burger*), by the Provisional Representatives of the People of Holland (Velema 1997, 66). In the same year, however, another proclamation limited free speech, by prohibiting speaking or writing in a way that endangered human and citizen rights and "popular sovereignty."[52]

Press freedom in particular was taken up at a national level and codified in art. 16 of the Constitution for the Batavian People in 1798 (Velema 1997, 67–68).[53] It resonated with the republican political ideology that emerged over the course of the eighteenth century (Velema 1997, 78; see also Huussen 1987, 120–121). As was the case in the Statute of 4 July 1781, the writer as well as the publisher and printer were mentioned in this rule. In 1798, the Executive Government of the Batavian Republic issued a proclamation that strongly condemned certain periodicals in which the freedom of the press had been abused. In the same year, on 19 July 1798, the Intermediary Legislative Body issued a decree, which prohibited speaking or writing against the "present order of business and administration" (Velema 1997, 68–69).[54]

In 1806, the Batavian Republic, known from 1801 as the "Batavian Commonwealth," was succeeded by the Kingdom of Holland, and in 1815 became the United Kingdom of the Netherlands. A new constitution came into force in 1815 (*Grondwet voor het Koningrijk der Nederlanden*), which included an article on freedom of the press. According to article 227, everyone is allowed to express their thoughts and feelings through the printing press without prior permission "to expand

51 *De politieke opmerker*, no. 18 (1795), p. 161 ("*in der Bataven Maatschappij – en denkt en spreekt en schrijft men vrij*"); Velema, Wyger R.E. 1997. Politiek, pers en publieke opinie. Het debat over de vrijheid van drukpers in de Bataafse tijd. In *Grondwetgeving 1795–1806*. Haarlem: Hollandsche Maatschappij der Wetenschappen. 65.

52 Sovereign popularity: 'the doctrine that sovereign power is vested in the people and that those chosen to govern, as trustees of such power, must exercise it in conformity with the general will.' https://www.dictionary.com/browse/popular-sovereignty (accessed August 27, 2021).

53 See art. 16 of the *Staatsregeling voor het Bataafsche Volk* (1798): '*Ieder Burger mag zijn gevoelens uiten en verspreiden, op zoodanige wijze, als hij goedvindt, des niet strijdig met het oogmerk der Maatschappij. De vrijheid der Druk-pers is heilig, mids de Geschriften met den naam van Uitgever, Drukker, of Schrijver voorzien zijn. Dezen allen zijn, ten allen tijde, aansprakelijk voor alle zoodanige bedrijven, door middel der Drukpers, ten aanzien van afzonderlijke personen, of der gantsche Maatschappij, begaan, die door de Wet als misdadig erkend zijn*.' See also Alkemade, Dirk. 2014. *De Bataafse reactie. Bataafs constitutioneel denken en de staatsregeling van 1801* (master thesis University of Amsterdam), with reference to *Nationaal Magazijn*, 150–154, 198–199.

54 See *Decreten van het Intermediair Wetgevend Lichaam des Bataafschen Volks*, II, July 1798, The Hague, 1798, 348–350.

knowledge and to progress enlightenment." However, one was not allowed to violate the rights of either individuals or the society as a whole:

> (…) those who write, print, publish or distribute remain responsible to society and particular persons, insofar as their rights may be infringed.
>
> (…) *blijvende nogtans elk voor hetgeen hij schrijft, drukt, uitgeeft of verspreidt, verantwoordelijk aan de maatschappij of bijzondere personen, voor zoo verre dezer regten mogten zijn beleedigd*.

In places where the Constitution speaks of crimes against persons or society, it refers directly to insult. Freedom of the press thus finds its limit in defamation – just as in the cases discussed above that occurred earlier in eighteenth-century Utrecht.

3 Conclusion

Fascinatingly, the parody of Utrecht as Babel is centrally about a language conflict – a Babylonic confusion of tongues. The controversial humor in this parody in the periodical *Ismaël* led to significant legal challenges. It is an example of how libel charges were brought against humorous artistic works at the end of the eighteenth century. Moreover, thanks to the documentation around this remarkable eighteenth-century controversy, we can identify the role of parody as part of the history of free speech, a right overruled by judicial powers to the benefit of libel laws.

The lawsuit is also a captivating legal example of how defendants theorized the inner workings of parody and the notion of verbal ambiguity (among other novel arguments). According to the booksellers, they were not accountable for the distribution of libelous prints, because the libelous interpretation of the parodic news item could not be demonstrated. Did it really contain a harsh critique of the behavior of state officials and fellow citizens, as the Chief Officer argued? Both booksellers thus exploited the flexibility of language in parody to defend themselves.

At the same time, the social impact of parody – protected by its ambivalent nature and its circumvention of censure – should not be overstated. Although the idea of parody's ambivalent nature was used as an argument against these libels, it did not ultimately protect the booksellers. Chief Officer Athlone explicitly addressed this matter. He did not deny the ambivalent nature of parody in general, but according to him the reference to the Sovereign, and thus the accusations made against him, would have been obvious to every reader. The idea that parodies are ambivalent and therefore cannot be censored was in this case overruled.

Finally, the case sheds light on historical debates about the inclusion and exclusion of free speech. Our analysis shows that historical and legal contextualization is crucial. The Utrecht statute can only be understood in its historical context, which goes back to the Roman delict of *iniuria*. The legal requirements for granting a claim based on *iniuria* and the exact elements mentioned in the Utrecht statute are needed to understand the parties' respective arguments. As our analysis has shown, the eighteenth-century Utrecht judges limited the circulation of parodical texts by booksellers in which political and state affairs were (presumably) mocked. This put the local booksellers of parodic periodicals on constant guard to the threat of persecution.

However, neither the concept of *iniuria* nor the concept of *vilipendi* takes into account parody and humor in general, where ambiguity plays a central role. The parodic statements in *Ismaël* can be viewed as a strategy to evade government control, a way to express critical opinions about the central actors in the Orangist-dominated government.[55] In the specific context of the immediate aftermath of a momentous political moment, the anxiety of the Orangist and Chief officer Athlone – one of the alleged targets of the parody – is understandable. Immediately following the Patriot revolt of 1787 in the Low Countries, the parody of Utrecht as Babel in *Ismaël* no. 8 in 1788 was proven to have the power to provoke and was perceived as threatening by the local government.

Is there such a thing as free speech in the late eighteenth century when it comes to parody, just before it became a fundamental right in the Netherlands and many other European countries? Perhaps to modern readers, the most surprising statement in this controversy came from the prosecutor *and* targeted victim of the parody: Chief Officer Athlone. He was a self-declared advocate for the freedom of speech (and he spoke directly to the freedom of the press: "*Vrijheid der drukpers*"). Even Visch explicitly admitted that he did not disapprove of censorship as such, if the consequences of libels were harmful to government officials and fellow citizens. Use and abuse of free speech was, and might still be, a delicate balancing act.

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