

CHAPTER TWENTY THREE

LAW AND LITERATURE – *BATAVISCHGE GEBROEDERS* (1663)

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'In an age of disbelief it is for the poet to supply the satisfactions of belief'¹

Introduction: Why Law, Literature and Vondel?

In the 1970s a humanist renaissance took place in law and legal studies when the question as to what lawyers could learn from literature became the starting point for what is now called *Law and Literature*. In the course of the twentieth century, especially after the horrors of Nazi law unfolded, the positivist, rule-bound model of law typical of analytical jurisprudence came under attack. The same happened with the law's premises of objectivity and neutrality in the positivist legal tradition which championed the autonomy of law as a discipline. The underlying belief in the possibility of objective knowledge and value-free choices was severely questioned by developments in both society and science. The realisation that the formation of law and society is a reciprocal process made lawyers turn, or rather return, to the humanities. The acknowledgement that law is man-made inspired lawyers to explore the literary imagination, with interdisciplinary legal scholarship as a result.

Law and Literature traditionally has three axes. Firstly, there is 'Law as Literature', which claims that lawyers necessarily have to develop a feeling for language and literary style since language is their only tool. With language usage as a form of human behaviour, the central task of both law and literature is seen as a coming to terms with an author or speaker's claims of meaning. Put differently, legal as well as literary interpretation demands our active participation. Secondly, there is 'Law in Literature', which is primarily devoted to analyses of literary works with a law-related topic in a broad sense, ranging from questions

¹ Stevens, 'Two or Three Ideas', p. 259.

of justice to the portrayal of a lawyer-protagonist. It starts from the premise that our cultural heritage in the form of literary works holds up a mirror to lawyers as far as socio-legal and political developments and values are concerned, and shows the way in which others look upon law and the legal profession in action. Thirdly, there is the strand that addresses the subject of the regulation of literature by law, with topics such as parody, defamation, obscenity, copyright and the question, both legal and philosophical, of authorship.² By now fully institutionalised, with specialised courses in law schools, scholarly journals, and a proliferation of the topics of literary jurisprudence, *Law and Literature* belongs to the mainstream of contemporary legal theory.³

For purposes of contemporary interdisciplinary scholarship, the irony that should at once be noted is that the very process of the formation of autonomous disciplines did not come to a head until the late nineteenth century and was followed (at least for law) almost immediately by the demand for auxiliary disciplines such as statistics, economics and sociology by the legal realist movement of the early twentieth century, and, in the wake of these multidisciplinary ventures, by interdisciplinary fields as diverse as *Law and Economics* and *Law and Literature*. In short, interdisciplinary scholarship brings together two or more autonomous disciplines. This might seem paradoxical when we realise retrospectively that this development began almost immediately after the process of *Ausdifferenzierung* (differentiation) occasioned the rise of monodisciplinarity and the increased independence of national literatures from their respective literary histories – not to mention the coincidence with the rise of the nation-state and national legal systems.⁴

Elsewhere I have argued that it is high time to return to our European humanistic roots for the very reason that European scholars have hitherto largely concerned themselves with the academic work done in the US and the UK, whence the *Law and Literature* movement originates.⁵ Within the framework of this Vondel project, this reconsideration is

² 'Law as literature' is traced back to Cardozo, 'Law and Literature'. 'Law in literature' finds its origin in Wigmore, 'A List of Legal Novels' and 'A List of One Hundred Legal Novels'. For a full overview, see Gaakeer, *Hope Springs Eternal*.

³ For an overview of courses, see Gemmette, 'Law and Literature', and 'Law and Literature: Joining the Class Action'. US-based journals are *Law and Literature*, *Yale Journal of Law and the Humanities* and *Legal Studies Forum*; UK-based is *Law and Humanities*.

⁴ The term is coined by Luhmann, *Ausdifferenzierung des Rechts* ('Differentiation of the Law').

⁵ Gaakeer, '(Con)temporary Law'.

relevant because the separation of fields of knowledge into disciplines had not yet developed into monodisciplinarity in the early modern period; law was seen as part and parcel of the humanities, and literary works operated as sources for law.

My claim, then, would be that it is high time we should return to the literatures of the early modern period. In the present essay, I will focus on the work of two canonical Dutch authors: the humanist and lawyer Hugo Grotius (1583–1645) and the poet and playwright Joost van den Vondel (1587–1679). On the view that humanist jurisprudence in the Dutch Republic of the sixteenth and seventeenth centuries deserves more than just the attention of legal historians and that, conversely, literature deserves more than just the attention of literary theorists, I propose to investigate the reception of Vondel's play *Batavische gebroeders of Onderdruckte Vryheit* (*Batavian Brothers, or Liberty Oppressed*) informed by the *Law and Literature* movement to which I claim adherence.

Not only did Vondel experience the force of the law when it tried to subject and regulate his literary output, he also proved undisputedly polemical as far as his social engagement and literary consciousness were concerned when it came to the religious intolerance, self-interest or corruption of political leaders. Vondel's engagement, for instance, is exemplified in the fate of his 1625 tragedy *Palamedes*, an allegory intended to condemn the legal murder by biased judges of the Grand Pensionary Johan van Oldenbarnevelt. Oldenbarnevelt was decapitated after a spectacular trial in 1619 in The Hague, on the pretext that he had been bribed by the then arch enemy Spain. For *Palamedes* the Court of Holland charged Vondel with the abuse of poetic licence, resulting in a prohibition of the play and the payment of a three-hundred-guilder fine. The law took hold of Vondel once more with his 1646 play *Maria Stuart*, which dramatised the historical events in England in the year 1587. Although the play had been published anonymously, Vondel's publisher Abraham de Wees was ordered to pay a one-hundred-and-eighty-guilder fine. Finally, a more obvious political statement was the open condemnation of the verdict of the judges in the Oldenbarnevelt case in *Geuze-vesper of Zieken-troost voor de vier-entwintig* (1631).⁶

⁶ My view is informed here by Witsen Geysbeek, 'Vondel', pp. 58 and 77; Calis, *Vondel*, p. 12, and Porteman and Smits-Veldt, *Een nieuw vaderland voor de muzen*, pp. 357 and 386.

In short, Vondel's life and works are of interest to two of the aforementioned strands of *Law and Literature*: 'the regulation of literature by law' and, given its double 'mirror of society' perspective, 'law in literature'. This interest should be all the more acute since both in literary and cultural studies generally, and *Law and Literature* specifically, the debate on the canon is in full swing. Within this debate, seventeenth-century (Dutch) literature deserves our attention if only for the reason that there are parallels to be discerned in the formation of the identity of Europe, then and now, with the integration of immigrants like Vondel as a case in point. Furthermore, the topic of foundational narratives is one already initiated in *Law and Literature* for the formative period of the US, so it would make sense to do the same for European countries. For the purpose of this chapter, my focus is on the wide range of interpretations of *Batavische gebroeders of Onderdruckte Vryheit* that concern themselves with the historical background of the concept of sovereignty and the rule of law that Vondel supposedly intended to draw the audience's attention to.

Batavische gebroeders: *General Background*

Vondel's biographer Piet Calis contends that Vondel was immersed in the ideological struggle of his days: both his plays and his (satirical) poetry show a deliberate socio-political engagement with the public cause. Especially after the *Palamedes* trial literally brought home to him what it meant to be prosecuted, not just for what one believes but also for what one writes, Vondel found inspiration in the turbulent events that mattered in the lives of his contemporaries. In taking up urgent seventeenth-century issues, Vondel became prototypical of a new type of authorship.⁷ His literary works helped form public opinion. They were all the more able to do so, I would say, because Vondel was at the same time clearly influenced by a tradition of societal critique that was illustrative of the period of the Eighty Years War between the Low Countries and Spain. In this period the ideological imagery in literature shifted from predominantly biblical metaphors, with both William

⁷ Calis, *Vondel*, pp. 147 and 372–75. See also Sellin, 'Michel le Blon and England, 1632–1649', for an example of Vondel's political engagement shown in his dedication of *Leeuwendalers* (1648) to Michel le Blon, one of the architects of the 1648 Peace of Westphalia.

of Orange and his son Maurits depicted as David struggling against Saul or Goliath, to the deliberate creation of what has come to be known as the Batavian Myth, the foundational narrative for the republican form of government the Provinces wanted established as a bulwark against any princely usurpation.⁸ Vondel fits the bill with his first play, *Het Pascha* (*Passover*, 1612). When the play was published in book form, Vondel added a verse entitled ‘Vergelijkinge van de verlossing der kinderen Israëls met de vrijwording der Verenigde Nederlandse Provinciën’ (‘Comparison of the Delivery of the Children of Israel With the Liberation of the United Provinces of the Netherlands’), with the Egyptian pharaoh as Philip II and William of Orange as Moses.⁹ Vondel again conforms to a literary trend with *Batavische gebroeders*, a contribution to the Batavian Myth that underlines his subsequent development.

Initially, Vondel had high hopes for the role of the princes of Orange, although he denounced Maurits’s role in the Oldenbarnevelt case. After Maurits’s death, it was generally expected that the stadtholder – the title for the lieutenant-governor of the Dutch republic – Frederick Henry, William of Orange’s youngest son, would end the war with Spain. Between 1626 and 1632, Vondel contributed a series of songs in praise of Frederick Henry. When the stadtholder recaptured the city of Den Bosch in 1629, Vondel, in a poem entitled *Zegezang* (*Paeon*, 1629), admonished him to be a true defender of the freedom of conscience because that was the only way in which to be a true apostle of liberty.¹⁰ When Frederick Henry died on 14 March 1647, his son William II succeeded him. Soon a conflict arose when the province of Holland tried to curb the military power of the stadtholder-captain-general with its plea for a strong reduction in military expenses. In 1650, however, after the complete failure of an expedition to Brazil, the six other provinces resolved to give William II full authority to do whatever was deemed necessary to maintain law and order. A deputation of the States-General and the prince sent to all the larger cities in the Republic was refused by Amsterdam. William II gave the Frisian stadtholder Willem Frederik orders to march on Amsterdam. The assault failed, but the damage to the prince’s reputation was done. When William II died shortly after,

⁸ See Spies, ‘Verbeeldingen van vrijheid’, pp.141–58, for the initial projection of the Low Countries’ woes on Old Testament heroes.

⁹ Calis, *Vondel*, p. 77, endnotes omitted.

¹⁰ Porteman and Smits-Veldt, *Een nieuw vaderland voor de muzen*, pp. 359–61.

Vondel wrote an acerbic poem, *Vertrouwing voor de onnozele en bedroefde Ingezetenen van Hollandt, over de doodt van zyne Hoogheit Prins Willem II, Stadhouder en Kapitein der Vereenigde Nederlanden* (*Consolation for the Innocent and Saddened Inhabitants of Holland, on the Death of His Highness Prince William II, Stadtholder and Captain of the United Netherlands*), in which he cynically remarked that William II had released the people of the Spanish yoke in life, risking death in the name of liberty – ‘this is dying for liberty’ – whereas by dying he now released the people from the yoke he himself had become to them (‘You who in life liberated us from Spanish violence / And in death rid us of your own’). Vondel included an admonition to the people: ‘Safeguard the freedom of the nation / And adhere to the nature of the laws.’¹¹ No longer would Vondel support the cause of any stadtholder, or anyone from the House of Orange for that matter. From now on, he put his trust in the Grand Pensionary Johan de Witt. In 1652, Vondel reaped the fruit of true liberty. His attack on prince Maurits’s role in the trial and death of Oldenbarnevelt, *Palamedes*, was finally released for publication, even though it was not staged until 1663 or 1664, during the first stadtholderless era (1650–1672) when the House of Orange had lost its original prominence – even though the 1654 Act of Seclusion, in which Holland had declared that no descendant of William II would occupy any position held by his ancestors, had by then, in 1660, been retracted. In the very same period, so interpretation has it, Vondel repeated his stand against the House of Orange, which by now was allied to the English House of Stuart, fearing that the son of William II would try to grab full military and political power. It was in these circumstances that 1663 saw the publication of *Batavische gebroeders of Onderdruckte Vryheit*.

Vondel himself claimed that the play was inspired by, and a reaction to, a series of etchings by the Florentine artist Antonio Tempesta (d. 1630) entitled *Batavorum cum Romanis bellum* (1612), which depicted (the causes of) the revolt of the Batavians led by Claudius Civilis against the Romans (69 CE), and another series of paintings

¹¹ The poem is presented in Witsen Geysbeek, ‘Vondel’, pp. 80–82. The quotes are: ‘[D]it is voor de vrijheit sterven. [...] Die levend’ ons van ’t Spaensch geweld / En stervende van’t uw’ bevrijdde. [...] Bewaer de vrijheit van het lant, / En houdt de wetten in haer wezen.’

inspired by Tempesta¹² that had been commissioned for the newly opened Amsterdam town hall (with Rembrandt's famous portrayal of a one-eyed Claudius Civilis presiding over the conspiracy in the forest quickly removed in 1662 by the authorities when they understood its subversive intention).¹³ This can be deduced from his introductory remarks to the play in the dedication to Simon van Hooren, where he says:

'When I reflected on the revolt against the Romans, and the glorious deeds of the Batavians depicted in the etchings of Tempesta, and saw among the pictures one of the Roman stadtholders in his chair, with Julius Paulus drenched in blood and Nikolaes Burgerhart in chains to be deported to Rome, I resolutely desired that these histories, which had been rendered perfectly on the order of the Burgomasters, should adorn the gallery of our City Hall in a row; and an eagerness kindled in me to revive in a lively fashion the tragedy of these Brethren [...].'¹⁴

Earlier on, in *Inwydinge van 't stadhuis t'Amsterdam (Inauguration of the Amsterdam Town Hall, 1655)*, Vondel had already mentioned the Batavian revolt as a fitting subject for the gallery.¹⁵ In 1660, the aforementioned Simon van Hooren was Amsterdam burgomaster; he was also a deputy, a member of the executive of the province of Holland and Westvrieslant. To him, 'the safeguarding of freedom was entrusted';¹⁶ or so Vondel claims when offering him a play based on Tacitus's

¹² See Schöffer, 'The Batavian Myth during the Sixteenth and Seventeenth Centuries,' esp. p. 95, for Tempesta's etchings inspiring both the pageant held in Amsterdam to celebrate the 1648 Peace of Westphalia with 6 *tableaux vivants* about the Batavian revolt, and the four paintings for the new town hall. See Porteman and Smits-Veldt, *Een nieuw vaderland voor de muzen*, p. 586, for the idea that Vondel saw the etchings in the home of Cornelis de Graeff, the moving force behind the paintings on the Batavian revolt for the new town hall, who kept a copy of the Otto Vaenius adaptation of Tempesta's etchings in his library.

¹³ For a detailed discussion of the Rembrandt painting, *The Oath of Claudius Civilis*, see Alpers, 'Rembrandt's Claudius Civilis'. Korsten also highlights the relevance of the Rembrandt painting, *Vondel belicht*, p. 226; *Sovereignty as Inviolability*, p. 203.

¹⁴ 'Toen ick den opstant tegens de Romainen, en de doorluchtige daeden der Batavieren in de kunstige prenten van Tempeest bespiegelde, en, onder andere afbeeldingen, den Romainischen stadthouder op den stoel zag zitten, daer Julius Paulus in zijn bloet geveert lagh, en Nikolaes Burgerhart [i.e. Vondel's Dutch rendering of the name Claudius Civilis] geketent near Rome gevoert wiert; en mijn lust vast verlangde dat die historien, door last der Burgemeesteren treflijck geschildert, de galery van ons Kapitoel, op eene ry, moghten bekleeden; ontvonckte my een yver om levendigh te ververschen den treurhandel der Gebroederen [...].'

¹⁵ See also Duits, 'Tussen Bato en Burgerhart', pp. 204 and 209.

¹⁶ '[D]e wacht der vryheit bevolen wert.'

description of the Batavians in the Book IV of his *Historiae*.¹⁷ Significantly, Vondel already sets the scene in the dedication when he speaks of the Batavians as a free people who have entered into an alliance with the Romans, one which the latter brutally violated.

Batavische gebroeders: *Synopsis*

Batavische gebroeders is a classical play, in the sense that it consists of five acts and honours the concept of the unity of time, place and action. The tragedy comprises a single day, starting at sunrise and ending at sunset; the scene is set in Outleger, a Roman army camp; and the subject is the harsh treatment of the Batavian people by the Romans. The first act opens with a discussion between the Batavian brothers Julius Paulus and Nikolaes Burgerhart, of royal descent, about the trials and tribulations the people have to suffer from the stadtholder Fonteius Kapito who, contrary to the oath of allegiance between the Romans and the Batavians, forces the Batavian men to enlist in the Roman army. Burgerhart (l. 76) rhetorically asks, 'Who dares to resist this, or reason against it?'¹⁸ and elaborates on the position he takes, i.e. to remain silent and have the Krijghsraet (Council of War) deal with the complaint about this situation. At this point, their sister Heldewijn asks them for help in order to save her son Vechter from being taken away by the Romans. Concerned that the lament of Heldewijn and the other women about the Roman raid will make things worse, Burgerhart and Julius take refuge inside the house. When the Krijghsraet welcomes Fonteius back from a successful campaign in the second act, Fronto, the Roman official who is to accompany the captured Batavians, sows the seed of suspicion by claiming that the Batavian brothers are planning a revolt. Initially, Fonteius and the Krijghsraet are reluctant to believe Fronto's accusations. Their change of heart occurs, however, when in the third act, after an ongoing debate on the matter, Julius and Burgerhart are summoned to appear before Fonteius, and Fonto plays his trump card. When the Batavian brothers insist that they have not

¹⁷ Tacitus, *The Histories*, 4, 12 (tr. Moore): 'Julius Paulus and Julius Civilis were by far the most distinguished among the Batavians, being both of royal stock. On a false charge of revolt, Paulus was executed by Fonteius Capito; Civilis was put in chains and sent to Nero, and although acquitted by Galba, he was again exposed to danger under Vitellius owing to the clamour of the army for his punishment: these were the causes of his anger, his hopes sprang from our misfortunes.'

¹⁸ 'Wie durft dit stuiten, of met reden tegenstaen?' (WB 9, p. 905).

incited any revolt, Fonto brings up Vechter, who was discovered concealing himself in the woods, dressed like a milkmaid. Surely this is proof of the brothers' insincerity? Fonteius is now convinced and gives the brothers a choice: one of them is to die, the other to be sent to Rome. Walburgh, the brothers' mother, desperately tries to make Fonteius change his mind, but to no avail. The fourth act ends with the brothers drawing lots because they are unable to decide rationally who is to die; they both claim this 'honour'. Julius is destined to die and Burgerhart swears not to cut his hair until he has taken revenge for this outrageous Roman act. The fifth act opens with a full description by Fronto of Julius's decapitation, after which he suggests that Burgerhart should speedily be dispatched to Rome with Vechter as his shield bearer, to prevent the Batavians from organising a rebellion to liberate Burgerhart. The play ends with Fonteius provoking Burgerhart to the limit with seemingly friendly words: as a government official, he, Fonteius, is just doing his duty. In a final outcry, Burgerhart denounces the tyrant Fonteius and challenges him to a fight. This results in his being carried away in irons, or, as Burgerhart himself says, like a lion in a cage.

The Growth of the Batavian Myth

The idea and ideal of freedom discerned and constructed in the history of the Batavian tribe offered an incentive to trace back the seventeenth-century Dutch Republic's ancestry to these *Batavi*. This development was facilitated by the humanist rediscovery of classical texts on the subject, such as Tacitus's *Germania* and *Historiae*. In the early sixteenth century, Cornelius Aurelius' *Divisiechroniek* (1517) – a history of the provinces of Holland, Zeeland and Utrecht in the Dutch language that became authoritative for at least the next hundred years – further helped the Batavian cause. Also important was the fact that the Batavian theme was picked up by the Chambers of Rhetoric.¹⁹ When the uprising against Philip II started in the course of the sixteenth century, the need for a foundational narrative that legitimised picking up the sword against the king to whom allegiance was due, became acute. The exemplary performance of Claudius Civilis helped form the political and

¹⁹ See Schöffers, 'The Batavian Myth during the Sixteenth and Seventeenth Centuries,' and Spies, 'Verbeeldingen van vrijheid'.

patriotic story that in the first stage contributed the arguments for the just war against Spain. The historical narrative provided an emblem of heroism for William of Orange, and later on offered food for thought on the subject of the polity of the state and the form of sovereignty best suited to the Dutch situation. In short, the story of the Batavians generally, and that of Julius Paulus and Julius also known as Claudius Civilis in particular, gained political significance through the way in which it was adopted and, most importantly, adapted by Dutch writers until it became a *locus amoenus* in seventeenth-century literature with P.C. Hooff's *Baeto* (1617) and Vondel's *Batavische gebroeders* as cases in point.

Highly influential in the process was Hugo Grotius's 1610 contribution, *Liber de antiquitate reipublicae Batavae* (*Book on the Antiquity of the Batavian [= Dutch] Republic*), which was translated into Dutch as *Tractaet van de Oudtheyt vande Batavische nu Hollandsche Republieque*.²⁰ He provided the necessary ammunition for the argument that the government in the Dutch republic was prefigured in the Batavian past. Arguing that, '[...] the form of government which we have now, has not recently begun with us, but that the one which previously existed has become more visible', he claims that 'as long as there is no evidence to the contrary',²¹ it suffices to establish the similarity between the situation then and now. If 'then' is the situation among the Germans, with two estates of men, the princes and the people, and the government in the form of a council of the best men among them that 'possessed supreme power',²² the seventeenth-century present is, and should be, the same. Focusing on the form of alliance between the Batavians and the Romans, Grotius says: 'It is well known that there are two types of alliances: equal and unequal. An unequal alliance is one in which one people submits itself to another. An equal alliance is one in which both people retain their independence [...].'²³ It should come as no surprise, then, that the loyal people of the Low Countries, '[f]ollowing the example of their ancestors, who took up arms against the Romans who tried to secure dominion, [...] declared war on Alva [...].'²⁴ And, '[f]rom this

²⁰ For the purpose of this chapter, I have used the Dutch edition, De Groot, *De Oudheid van de Bataafse nu Hollandse Republiek*, ed. Molewijk, and the English translation, Grotius, *The Antiquity of the Batavian Republic*, ed. Waszink et al.

²¹ Grotius, *The Antiquity of the Batavian Republic*, ed. Waszink et al., ch. 1, pp. 51 and 55.

²² *Ibid.*, Ch. 2, p. 65.

²³ *Ibid.*, Ch. 3, p. 69.

²⁴ *Ibid.*, Ch. 6, p. 103.

time onwards, the sovereignty of the States, which had been much obliterated by the licence of the latest princes, was brought back to light and shone out brightly.²⁵ Grotius ends his tract with a detailed account of the way in which this exemplary form of government now functions in the Provinces, especially as far as internal affairs and military command are concerned. Because our ancestors instituted this form of government, '[i]t is now our duty, if we do not want to be ungrateful or imprudent, firmly to defend this form of government, which is urged by reason, approved by experience, and recommended by antiquity'.²⁶ And even though he later retracted what in retrospect he confessed was an embellishment of those features that could well be used to further his political cause,²⁷ the result was obvious, not only in that Grotius's contemporaries harked back to an imaginary and imagined Batavian past as an allegorical vehicle to contribute to contemporary issues but also, I would say, in that later interpretations of these seventeenth-century literary works keep returning to the foundational Batavian myth and thus confirm it as well.²⁸ And while there is good reason to do so, in the sense that literary narratives that function as a foundational myth provide both a topic of scholarly interest and offer a prism through which to interpret the literary works themselves, I will suggest below that this tendency also entails the risk of one-sidedness when it comes to interpreting the legal perspectives that can be discerned in the very same works, as can be seen in twentieth-century literary interpretations of *Batavische gebroeders* to which I will now turn. In short, focus on the Batavian myth also makes interpreters miss or neglect other aspects of legal interest.

All this seems to have been presaged historically. In the introduction to his anthology of early Dutch literature, when sketching important events in Dutch history, John Bowring names in one breath Vondel and the 'story of the old Oldenbarneveldt and of the hapless De Witts. The struggles in favour of civil and religious freedom, and their triumphant

²⁵ *Ibid.*, Ch. 7, p. 105.

²⁶ *Ibid.*, Ch. 7, p. 115.

²⁷ See Schöffers, 'The Batavian Myth during the Sixteenth and Seventeenth Centuries', p. 93, n. 33, for the view that Grotius dissociated himself from his earlier interpretation of the Dutch past in a letter to his brother dated 24 January 1643, and De Groot, *De Oudheid van de Bataafse nu Hollandse Republiek*, ed. Molewijk, p. 25.

²⁸ See also on the conditions for success of a myth, Tilmans, 'Aeneas, Bato and Civilis, the Forefathers of the Dutch'. Tilmans distinguishes four characteristics of a myth of origin as a historical narrative form, of which the third is important, 'a myth can only be successful if it has a function in society, that is, if it can be used as a means to convey a political or moral message' (p. 123).

results – the proud march of the Batavian republic in increasing influence and dignity – everything seems to have conspired to give interest to a literature and a language which have hitherto scarcely penetrated beyond their own natural and narrow bounds.’ No wonder then that Bowring sets the tone by including a part of *Batavische gebroeders*, the Chorus of Batavian Women that ends Act II.²⁹ In the 1829 sequel to this anthology, Bowring cautiously remarks that so far, ‘Vondel has been judged of by extracts, which are in every body’s mouth in Holland, rather than by any entire piece of composition, or by the whole of his writings,’ and he approvingly mentions Witsen Geysbeek’s contribution to the Vondel critique which aims at objectivity rather than ‘the *blind* idolatry with which Vondel has been worshipped in the Netherlands’³⁰ This remark is important for interdisciplinary studies as well, for it is indeed Witsen Geysbeek that offers a sobering admonition when, after having listed the plays, he speaks of interpretive insinuations with respect to the historical referentiality of Vondel’s plays. Of *Palamedes* he subsequently remarks that ‘[i]t does not surprise us that this tragedy, when it was brought out in the open, was greeted with much enthusiasm by those who were outraged by the political murder of Oldenbarnevelt; the play made the blood of this old and honest servant of the state splatter in the eyes of the power-hungry Maurits and his kin.’³¹ On the other hand, Witsen Geysbeek is surprised at the fact that the ‘play has never been of interest apart from its political impact,’ to the detriment of aesthetic valuations.³² It would seem that in Dutch academia he was alone in this view. To cite but one example: the 1837 eulogy of Lulofs, a literature professor at Groningen University, portrays Vondel as the lampoonist of Maurits and as a zealous defender of justice, liberty, and tolerance.³³ The perceived interrelation between literature and history, which was coined early on in the Vondel reception,

²⁹ Bowring and Van Dyk, *Batavian Anthology*, pp. 2–3, and 147–51, for the translation of the Chorus of the Batavian Women in Act II. Bowring must be credited for this translation. I have not found any other translation of (parts of) the play.

³⁰ Bowring, *Sketch of the Language and Literature of Holland*, pp. 40 and 127 (emphasis in the original).

³¹ ‘Het verwondert ons niet dat dit treurspel, bij deszelfs in het licht verschijning met geestdrift ontvangen werd door de genen die den staatkundigen moord van Oldenbarneveld met diepe verontwaardiging verfoeiden, en het bloed des afgeleefden eerlijken staatsdienaars den heerschzuchtigen Maurits en zijn believers bij elke gelegenheid in de oogen deed spatten [...]’

³² Witsen Geysbeek, ‘Vondel’, pp. 91 and 239–40: ‘[...] treurspel nimmer enig ander dan staatkundig belang heeft ingeboezemd’.

³³ My view is informed here by Simoni, ‘Lulofs to the Rescue’.

proved indicative of the interpretations of *Batavische gebroeders* in twentieth-century literary criticism. The predominant critical concern became the way in which the play allegorises actual historical events to which Vondel wished to draw attention in order to criticise contemporary politics.

Interpretations of Batavische gebroeders: A Short Overview

Lieven Rens offers the hypothesis that the sad plight of Julius Paulus and Nikolaes Burgerhart is modelled on the execution of Egmont and Hoorne, with Fonteius as Alva. To him this would explain why a number of references to the historical Batavian background in the play seem out of joint, i.e. why Vondel had his characters say things that do not fit the Batavian context as described by Tacitus. According to Rens, this is because the Batavian setting is a thinly disguised reference to what was recent history to Vondel: the oath of allegiance of the Dutch to the emperor Charles V and the revolt against the governor Alva, to whom Charles's son Philip II gave the right to start legal proceedings against anybody, with disregard for prior rights and privileges should the charge be insurrection against the authority of the sovereign.³⁴ Like many others after him and, in his case, in order to support his own thesis, Rens refers to Smit's 1962 interpretation of *Batavische gebroeders* as found in his Vondel study *Van Pascha tot Noah*, in which Smit claims that the play is a portrayal of a case of injustice with as its main themes aspects of 'change of fortune' (staetveranderinge) and wrongful administration of justice.³⁵

Smit is truly the spider in the Vondel web here, for he takes to task the historian Cornelissen's view, in the latter's 'Vondel en de vrijheid in 1663',³⁶ that *Batavische gebroeders* is a warning against the appointment of the son of William II, and he is himself in turn taken to task for this critique by later interpreters. To Smit, there is no evidence whatsoever in the play itself that justifies Cornelissen's view that Vondel intended the main topic to be 'repressed freedom' ('onderdruckte vryheit') rather than the fate of the two brothers. In Smit's opinion, the play is a tragedy on 'a change of fortune' – it deals with the vicissitude experienced by

³⁴ Rens, 'Egmont en Hoorne model voor de Batavische Gebroeders?'

³⁵ Smit, *Van Pascha tot Noah*, 3, ch. V5, pp. 233–81.

³⁶ Cornelissen, 'Vondel en de vrijheid in 1663'.

Julius Paulus and Burgerhart. Its main focus is on the unjustified way in which the tables are turned on the brothers by means of an unjust decision made by Fonteius in an unfair trial. As evidence for this reading, Smit points to Fonteius's final words in the play: 'Unruly fortune governs the state of the world / Thus we see how one thing rises, and another falls.'³⁷ In short, how fate in one day changes Burgerhart and Julius Paulus from autonomous royal princes into traitors who are respectively condemned to be sent to Rome and to die; this is the only interpretation possible that fits Vondel's development as a playwright if, given the legal theme, the dramatic counterpart *Adonias* is taken into consideration, as Smit is convinced that it should be.³⁸

Since Vondel only had the short paragraph in Tacitus on which to ground his plot, he could give his imagination free rein while at the same time having to make sure that he connected to the concept of the history of the Batavian people as it was then known by the general public, the source of which was *Tractaet vande Oudtheyt* (*Treatise on Antiquity*) by Hugo Grotius, a friend and author to whose historical and legal works Vondel had often turned. That he chose national subject matter is not remarkable given the fact that literary history, especially research on seventeenth-century drama, gives ample evidence that history plays feature prominently in periods of heightened national consciousness, and Vondel's lifetime in general – as well as the genesis of *Batavische gebroeders* in particular – is a case in point. Duits then gives a thorough description of the political constellation and of the change that Vondel's original allegiance to the House of Orange underwent, firstly by describing Maurits's role in the Oldenbarnevelt affair, and later on by describing the attack on Amsterdam by William II. In this context it is, or so Duits argues, no surprise that Vondel would want to warn against the dangers of the office of the stadtholder in the fledgling Dutch republic; when the office is held by the wrong person, he might attempt to usurp full and absolute sovereignty. Like Cornelissen before him, Duits reads the conjunction 'of' in the title as

³⁷ 'Het wilt geval bestuurt den weereltlijcken staet. Zoo zien we hoe't een op, het ander onder gaet.' (ll. 1869–70)

³⁸ To Henk Duits, on the other hand, it is Smit who is wrong and Cornelissen who is right. Duits's own dissenting reading takes offence at Smit's dismissal of the possibility that Vondel did indeed intend his play as an allegory of the then current threat of the appointment of a descendant of William II as stadtholder. Duits, *Van Bartholomeusnacht tot Bataafse Opstand*, esp. ch. 4. For a concise version of the argument, see Duits, 'Tussen Bato en Burgerhart'. Also of interest is Poelhekke, *Vondel en Oranje*.

‘as exemplary of’, so that the play’s title and subsequently its plot should be read as the exemplary performance of the abstract concept of ‘onderdruckte vryheit’ (‘oppressed freedom’) by means of the story of Julius and Burgerhart’s change of fortune. In support of his claims, Duits offers ample textual evidence.³⁹ Furthermore, to him the evidence with respect to the inspiration Vondel found in the *Tempesta* etchings also goes to show that Smits’s view is incorrect: one of the etchings depicts the stadtholder Fonteius with Julius decapitated at his feet while Burgerhart is led away captive, and that is exactly the scene Vondel portrayed in Act V.

Lia van Gemert takes Duits’s side as far as the reference to the play’s title is concerned. In the same vein, she argues that the brothers’ passivity with respect to the Roman violation of the oath, which is understandable now that, in terms of rebellion, circumstances appear to be against them, enabled Vondel to focus on the role of the women. Heldewijn’s plea for her son’s safety and the Chorus of Batavian Women at the end of Act II suggest moral and political cowardice on the part of the brothers who cling to the oath, and to obedience. Together with Walburgh’s plea for legal justice rather than mercy for her sons (ll. 1401–78) which also predicts Vechter’s revenge should things go wrong for the Batavians, the women’s roles are important in that their clamour also helps raise suspicions of an approaching revolt in the eyes of the statesmen (*staetkundigen*) who duly report to Fronto. Thus the women stand for emotion, political insight and moral bravery. Van Gemert does not follow the reading proposed by Rens, Smit and Duits – on the basis of textual evidence that verses 1466–68, with their

³⁹ See for instance Duits, *Van Bartholomeusnacht tot Bataafse Opstand*, p. 260, his reference to verses 1673–74 spoken by Walburgh on the approaching execution of Julius Paulus, ‘Wy kussen zulck een schoone doot. Zy hanthaef ’t heiligh recht der Staeten’ which Duits takes to mean that Julius, as a representative of the States, has rightly defended the people’s legitimate rights against the tyrant, also known as stadtholder. In Julius’s speech, ll. 1743–44 ‘Stadtholders do not hesitate to cut off the head and crown of an ancient royal line on the filthy scaffolds of their court’ (‘Stadthouders schroomen niet op vuile hofschavotten / Een’ ouden koningsstam van hoofd en kroon te knotten’), Duits emphasises the plural noun ‘stadthouders’ and the noun ‘hofschavotten’ as evidence of Vondel’s intention to draw our attention to the scaffold on which Oldenbarnevelt died and to his own *Palamedes* (p. 262). Again, verses 1813–14 (‘To gain an empire is what a restless Caesar demands, / But to secure an empire is what an heir like Augustus seeks’ or ‘Het rijck te winnen eischt een’ Cezar, noit in rust; / Maer ’t rijck te veiligen, een’ nazaet als August’), refer to the then topical issue of authority and sovereignty, and Duits points to a reading of August as the *moderator reipublicae* who leads the people, and does so by gathering support from morally respectable people: Johan de Witt in 1663 (at 265).

reference to the walking stick Walburgh uses for support, resemble Vondel's earlier lines on Oldenbarnevelt – to the effect that the character of Walburgh is modelled on Oldenbarnevelt's wife. To her, Walburgh is Oldenbarnevelt himself who also did not ask for mercy but for the just application of the law.⁴⁰

The importance of the role of the women is also emphasised by Gerda Hoekveld-Meijer when she argues that the Chorus of Batavian Women in Act III represents the notion that the Republic did not owe its liberty to the Orange stadtholders but to the piety and decency of its people in the stadtholderless period. At the same time she offers yet another allegorical suggestion when she points to the similarities between the years 69 and 1660 CE. In Rome in 69, Vespasian and Vitellius fought for world dominance; in 1660, the question was whether the French King Louis XIV or the English King Charles II would rule the world. Should Charles II be the winner, this would mean the end of 'true liberty' in the Republic: William III would no doubt opt for allegiance to his uncle Charles II. In short, the country would be back to where it was under Stadtholder Maurits. To Hoekveld-Meijer, the first act already supports the reading that the Romans under Nero can be looked upon as the British under Charles II: 'Fonteius advances, following Tigelinus's trail / How wanton and greedy does he violate the borders of the Rhine / On both sides; a plague for young and old. / What woman remains unviolated?'⁴¹ Tigelijin then stands for Downing, Charles II's favourite, who came to The Hague in 1661 as an ambassador and joined the ranks of the Orangists.⁴²

In his seminal study of the representations of sovereignty in Vondel's works, Frans-Willem Korsten also agrees with Duits's view that *Batavische gebroeders* is a warning against the dangers of an all-powerful military leader. Along with Van Gemert and Hoekveld-Meijer, he claims an active political role for the women in the play. To Korsten, however, the women function as conceptual wrenches. In telling a different story, or by telling the story differently, they forcefully argue for alternative conceptions of sovereignty and liberty for the people.

⁴⁰ Van Gemert, 'Vrouwen voor vrijheid'.

⁴¹ 'Fonteius houdt voor aen het spoor van Tigelijin/ Wat geil en gierigh schendt hy d'oevers langs de Rijn / Van wederzijde, een plaegh, voor ouden en voor jongen / Wat vrou zit ongeschent?' (ll. 59–62).

⁴² Hoekveld-Meijer, *De God van Rembrandt*, esp. pp. 186–87. For Downing and the political situation, see Uit den Bogaard, *De Gereformeerden en Oranje tijden het eerste stadhouderloze tijdperk*, ch. 7 and 9.

Burgerhart is the exemplary freedom fighter, but the women are the intellect behind the enterprise.⁴³

Towards a Literary-Legal Study of Vondel: Some Suggestions

On the basis of the above survey I think it would be fair to say that, in twentieth-century literary studies, the interpretive focus on *Batavische gebroeders* has largely been on allegorical interrelation of the foundational Batavian myth and the concept of sovereignty to be espoused on that basis, i.e. ‘true liberty’, all of which is set against the background of the sociopolitical situation of the day. From the literary-legal position that I myself take, coming to the field of *Law and Literature* as both a legal theorist and legal professional, this leads me to the following observations and suggestions that together aim to offer a literary-legal research agenda and extend an invitation to those working in literary Vondel studies.

Firstly, I observe that this is a valuable point of departure from the point of view of legal and literary-legal studies, and coincidentally a timely argument for further interdisciplinary explorations in the civic tradition already in full swing in *Law and Literature*. Conceptually, however, we would do well to link further research on the subject to Robert Cover’s work, the central theme of which is, first and foremost, the conflict between law and other normative worlds and the position of the one that has to make judgments in that conflict. As Cover puts it in ‘*Nomos and Narrative*’,

We inhabit a *nomos*—a normative universe. We constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void [...]. The rules and principles of justice, the formal institutions of the law, and the conventions of the social order are, indeed, important to that world; they are, however, but a small part of the normative universe that ought to claim our attention. No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for every decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.⁴⁴

⁴³ Korsten, *Vondel belicht*, pp. 186 and 227; *Sovereignty as Inviolability*, pp. 131 and 203.

⁴⁴ Cover, ‘*Nomos and Narrative*’, pp. 4–5.

The consequence for law is that in the normative legal world, law and literature are inseparably related and that this relation is located in narrative when the concept of narrative is taken broadly, i.e. as the way in which all human experience finds its expression, and on the understanding that every narrative asserts its prescriptive point, its moral. Thus, as a methodology for jurisprudence, the narrative paradigm can be especially fruitful when the moral dimension of law is the topic of discussion.

For US foundational narratives, this idea is elaborated upon in two by now seminal works by Robert Ferguson, *Law and Letters in American Culture*, and Brook Thomas, *Cross-Examinations of Law and Literature*.⁴⁵ These works address the topic of the interrelation of the foundation of a nation and its literature, as well as the influence of law in the process, given the unity of law and the humanities in lives of the lawyers in the formative era when there was a strong emphasis on rhetoric, hermeneutics, and the classics. Research on the civic tradition has recently been augmented once more by Brook Thomas who, while ‘not claiming that law is the key that will unlock all of the mysteries of works of literature or that literature is the key that will open up a full understanding of the law’,⁴⁶ convincingly shows how the “the Founding Fathers of American literary nationalism” created a usable past for a nation that lacked one.⁴⁷ Thomas also shows the importance of a critical attitude towards the past, given the danger of reading teleologically and thereby preserving the very myth that is in need of clarification. A literary-legal interpretation is not supposed to be a denial of the rule of law either; it should dramatise various conflicts citizens subject to law have to confront, explore dilemmas, and interweave legal and literary analysis.

For British law and literature of the Stuart era, the subject of the fictionalisation of law, or *mythopoesis*, has recently been taken up by Elliott Visconsi.⁴⁸ His aim is to show how poets and playwrights such as Milton and Dryden helped fashion the nation. To him, Dryden (for example) ‘attributes to the poet an equitable function, seeing the outstanding writer of epic or tragedy as unusually well-qualified to interpret the founding intentions of law and polity, and to grasp the

⁴⁵ Ferguson, *Law and Letters in American Culture*; Thomas, *Cross-Examinations of Law and Literature*.

⁴⁶ Thomas, *Civic Myths*, Preface, p. i.

⁴⁷ Thomas, *Civic Myths*, p. 20, endnote omitted. Also of interest is Pether, ‘Comparative Constitutional Epics’.

⁴⁸ Visconsi, *Lines of Equity, Literature and the Origins of Law in Later Stuart England*.

universally valid thesis behind the facts and circumstances of a historical narrative of origins.⁴⁹ Visconsi's suggestion that emotional identification is central to most early modern models of political obligation may be of interest for further research on the narrative ethos of early modern writers, when law and literature are integrated in a cultural moment, as is the case in Vondel.

To summarise this point, in *Law and Literature* the focus is on the dominant narratives and ideologies as portrayed in literature and law, as well as on alternative narratives, and in this sense *Law and Literature* is a site of critique. Current literary Vondel studies augur well for further inquiries into the theme of civic aspects of law and literature, but need a broader view: one more informed by legal history and theory. More work could be done in comparative literary interpretations conjoined with literary-legal jurisprudential insights, by literary and legal scholars in closer cooperation than has generally been the case thus far. How, for example, does the literature of a period further exercise the public imagination? On this view, Blair Worden's recent study on Milton would suggest a comparative study of Lucifer in Milton and Vondel, the historically salient issue of religious dispute being present in both authors' works.⁵⁰

In doing so, the need to address issues on the plane of a methodology for interdisciplinary undertakings becomes acute. For, secondly, from the point of view of law, the focus in literary Vondel studies is one-sided in its insistence on the allegorical aspects concerning liberty and sovereignty in *Batavische gebroeders*. While my literary self agrees with Korsten when he claims that the question as to whether Vondel had actually read Hobbes and other legal-political philosophers of his days is not important, as a lawyer I think that an exception should be made for Grotius's influence on Vondel in view of the idea of literature as a mirror for law, if only to involve legal historians in this form of research as well. For example, little is made of the fact that later in life Grotius distanced himself from the Batavian myth he himself helped create. Both this mystification and the fact that the history of the House of Orange as liberators of the Low Countries was relatively short have not been discussed from a legal point of view.

⁴⁹ Visconsi, *Lines of Equity, Literature and the Origins of Law in Later Stuart England*, p. 37.

⁵⁰ Worden, *Literature and Politics in Cromwellian England*.

Thirdly, these observations may also lead to further research on the theme of the *auctoritas poetarum*, the authority in matters of truth and fact that the humanists ascribed to poets as much as to philosophers and scholars. On this view, further inquiry might also be made into the unity of law, literature, and historiography – a unity that was presumed to exist then and has become a consideration in interdisciplinary studies today – which has its roots in the Aristotelian view of fiction as ‘the thing that may happen.’ The Aristotelian opposition of *mythos*, understood as narrative, to *logos*, as dialectical discourse, is of interest when it comes to the fictionality of Grotius’s Batavian treatise itself. It would seem that evidence of the Batavian past, whether fictional or not – *ut poesis historia?* – leads to contradictions that Grotius is incapable of resolving logically, hence his response in the form of a narrative of foundation.⁵¹ While fictions are not lies,⁵² it may be of interest for both literary and legal scholars generally and those specialising in the field of *Law and Literature* more specifically, to pay more detailed attention to literary and legal belief systems and the way in which similar concepts generate different outcomes in different disciplines.⁵³ This also suggests a joint effort to address the broader theme of the dominant epistemology and history of ideas of a period.

This strand in research could be taken together with yet another, fourth, perspective that I think could fruitfully be incorporated for methodological reasons: that of the similarities and differences in literary and legal hermeneutics. What is paradoxical and striking, at least to a lawyer, in the interpretations of the allegorical tendencies in Vondel, is that so much is being made of the authorial intention. In his conclusion on *Batavische gebroeders*, Henk Duits (for example) claims that Vondel must have had a special meaning with this play. Given the circumstance that the Burgerhart motif as developed in plays by other authors always points to the later phase of the Batavian revolt, *Batavische gebroeders* must for this very reason be about the threat of William III becoming sovereign. Duits’s claim, then, that the Batavian past was alive and kicking to Vondel, and that the audience had to know the ins

⁵¹ See Eyffinger, ‘De relatie van recht en letteren in leven en werken van Hugo de Groot’, p. 21. See also Duits, *Van Bartholomeusnacht tot Bataafse opstand*, p. 17.

⁵² See also Thomas, *Civic Myths*, p. 11, referring to Wolfgang Iser’s idea that fictions are not lies (Iser, *The Fictive and the Imaginary*).

⁵³ My view is inspired here by Bal, *Travelling Concepts in the Humanities*, with its central argument that interdisciplinarity should seek its heuristic and methodological basis in concepts rather than in methods.

and out of the political scene in order to understand the author's intentions for the anti-Orangist plot, is highly speculative given the additional information that he offers. The play was performed only three times, so that only an elite group may have had occasion to take note of Vondel's intention. Duits's speculation that much must have depended on the players' performance in practice, i.e. on their knowledgeable internalisation of precisely that intended meaning, raises the lawyer's eyebrows when it comes to factual evidence to underpin the argument. A reading through the writerly *persona* has hazards of its own that should be addressed rather than silently overlooked. If the lawyer's astonishment and the literary scholar's position in such matters are mutually provoked, then the discourse on the interpretive positions that we take in law and literature can be furthered for mutual benefit.

Much more attention should therefore be paid to the importance of the 'turn to interpretation' in law and the social sciences made on the basis of Clifford Geertz's influential *The Interpretation of Cultures* and *Local Knowledge*. The subject of intentionalist hermeneutics as contrasted to the interpretive method of 'plain meaning' together with allegorical interpretation once again addresses questions of the function of fiction that may prove viable for the development of literary-legal studies. Not to mention the salutary, if not always workable (at least for law), influence of deconstructive hermeneutics, by now *de rigueur* for quite some time in the critical strands of legal theory, such as *Critical Legal Studies* and *Feminist Legal Studies*, a working knowledge of which would be beneficial for interdisciplinary studies. This may inculcate, if not methodological consensus, then at least methodological consciousness of the (im)possibilities and specifics of the proposed cooperation. Consider, for example, the concept of culture, the recent development of which in contemporary literary studies has already generated *Cultural Studies*,⁵⁴ and consider the need for sobering awareness of what Jack Balkin has unsentimentally called the movement of invasion or colonisation in interdisciplinary settings with the disciplines involved either as invaders with expansionist policies or as turncoats,

[...] interdisciplinarity results when different disciplines try to colonise each other. If the takeover is successful, work is no longer seen as interdisciplinary; rather, it is seen as wholly internal to the discipline as newly

⁵⁴ Mooij, 'Interdisciplinariteit', pp. 18 and 23.

constituted. Interdisciplinary scholarship, then, is the result of an incomplete or failed takeover.⁵⁵

Being mutually informed about these issues and developments can work as an antidote to blind spots on both sides of the interdisciplinary venture and thus stimulate truly joint literary-legal enterprises.

Another, my fifth, suggestion is one that is provoked by what I would claim is a certain disregard within literary interpretations of *Batavische gebroeders* of philosophical studies of Vondel's inspiration for the play. Coming to mind here is Vandervelden's study *Staat en recht bij Vondel* ('State and Law in Vondel').⁵⁶ Cited approvingly by many when it comes to the concept of sovereignty, the road directed by Vandervelden has not been much travelled since. To a lawyer, this comes as a surprise, for it is on the plane of legal-philosophical issues that the scope of literary-legal studies may be broadened. For example, more work could be done on the influence of Grotius's legal views on Vondel, especially, again, given the interrelation of literature, historiography and law. To this end, Grotius's *De iure belli ac pacis* (*On the Law of War and Peace*) is more of interest than his Batavian tractate. In it, Grotius offers his thought on what has since then come to be regarded one of the most important leading principles of civil and international law: *pacta sunt servanda*, contracts should be honoured. Vandervelden has convincingly shown the influence on Vondel of *De iure belli ac pacis* and Grotius's other famous law book *Inleidinghe tot de Hollantsche rechtsgeleertheyd* (*Introduction to Dutch Jurisprudence*). It would be interesting to read *Batavische gebroeders* through the prism of Vandervelden's view that Vondel's works are a testament of the spirit of his times: he, too, partook of the quest for certainty, the search for causal relations and foundations of belief that was characteristic of his own war-stricken and religiously divided age.⁵⁷

It may be argued, for instance, that Julius Paulus and Burgerhart's reluctance to violate the conditions imposed by the treaty with the Romans by means of which sovereignty is transferred should be read in the sense that it is the Batavian community that can decide to revolt against the Romans.⁵⁸ On this view Burgerhart's long hesitation before

⁵⁵ Balkin, 'Interdisciplinarity as Colonization', p. 952.

⁵⁶ Vandervelden, *Staat en recht bij Vondel*.

⁵⁷ See Toulmin, *Cosmopolis: The Hidden Agenda of Modernity*.

⁵⁸ I am referring to the *pactum subjectionis* in the Hobbesian sense, see ll. 809–12: 'The power of princes consists / In appearance and outward bearing: / For to prevent

he takes action may be deemed a moral if not a political flaw. The same holds for his attitude towards Fonteius in the final scene. However, it can also be regarded as springing from his justified desire of honouring the contract made between Batavians and Romans as equals. The fact that one party, the Romans, violates the pact⁵⁹ need not mean that he, Burgerhart, should do the same. This would degrade him, and that is what he desperately wants to avoid. Furthermore, legally as well as politically, it would also be unwise, in that it would give the Romans ammunition to initiate a war against the Batavians. As Grotius says in the Prolegomena to *De iure belli ac pacis*, paragraph 15: 'Again, since it is a rule of the law of nature to abide by pacts [*stare pactis*, my addition] (for it was necessary that among men there be some method of obligating themselves one to another, and no other natural method can be imagined) out of this source the bodies of municipal law have arisen.'⁶⁰

All characters, or so Vandervelden argues, are driven by a desire for either law or justice as they perceive it. This is clear from the 'trial scene' in Act III and Walburgh's plea for her sons in Act IV, in which a moral tone and cogent legal arguments are forcefully combined. Coming to mind here are verses 984 and 985 – in which the Krijghsraet say '[c]onjecture does not lead to justice / Only clarity and evidence do', to which Fonteius responds that '[i]n the interest of the state, conjecture may suffice'⁶¹ – and verses 1409–12, where Walburgh says that mercy is only requested for criminals; in other words, she does not ask for mercy

them going astray, / The people holds them in cramped constraint.' ('Der vorsten maght bestaet / In schijn en uiterlijck gelaet: / Want om niet af te dwaelen / Bepaelt haar 't volck in enge paelen.')

⁵⁹ ll. 230–32: '[...] a growing host of tyrants / Suppresses freedom, and spares neither honour nor oath [...]' ('[...] een aenwas van tyrannen / Verdruckt de vryheit, en ontziet noch eer noch eedt te schenden. [...]').

⁶⁰ See De Groot, *Het recht van oorlog en vrede*, tr. Lindemans. For the English translation used here, with the Prolegomena, see <http://www.lonang.com/exlibris/grotius/> <accessed 10 January 2009>, and for one without the Prolegomena, *On the Law of War and Peace*, tr. Campbell [1814, repr. 2001], see <http://socserv.mcmaster.ca/econ/ugcm/3ll3/grotius/Law2.pdf> <accessed 10 January 2009>. One wonders whether Vondel may also have been inspired by another breach of trust and contract, the 1646 incident in which it came to public knowledge that Frederick Henry was involved in a plan to marry the French *dauphin* to the Spanish *infanta*, for purposes of resolving the conflict between France and Spain. The province of Catalonia would then be exchanged for the southern part of the Lower Countries and Mazarin had offered Frederic Henry to swap Maastricht for Antwerp via the envoy D'Estrades. Frederick Henry pretended not to be involved when things came to light, but the suspicion of a plot remained.

⁶¹ 'Men recht op geen vermoên, maer klaerheit en bewijzen'; 'Men mag om staetbelang oock rechten op vermoên.'

on behalf of her sons because the stand they take is justified. In fact, one might argue that the whole of the play is law in action, that it is a court session in which opposite points of view are being taken agonistically. There is the dramatic tension in the debate on the choice between resistance and maintaining reticence, the Aristotelian dialectics of *deliberare* and *agere*: the women versus the brothers and Fronto versus Fonteius Kapito in the early phase, Fonteius versus the Krijghsraet later on, Walburgh confronting Fonteius, and the final clash between Fonteius and Burgerhart that ends the play.

Playing the devil's advocate one might, on the one hand, argue that the plea for liberty for the brothers and the Batavians – with liberty also equating to wanting what is reasonable – simply means asking for what has been agreed upon between them and the Romans (*pacta sunt servanda*), and what the *bona fides* requires. In short, what is asked for is justice in the (somewhat circular) Grotian sense of being the virtue of the will to do what is legitimate, with legitimate meaning 'in conformity with the law'. On the other hand, however, the Aristotelian idea that tragic conflict is not, or not only, the duality of good and evil, but rather the conflict embodied in the protagonist himself leads me to the observation that Burgerhart is such a character.⁶² The dictates of his conscience seem more important to him than the question of what is to be done under the circumstances; they are more important to him than intellectual judgments. On this view, it may be argued that Burgerhart's main flaw is that of *hamartia*: he cannot get beyond his self-conceit and exclusive interest his own integrity. Unsupportive of the Batavian women, his sister and mother included, he opts for silence in order not to arouse Roman suspicion, and this mistaken way of acting follows from his *hamartia*, his character flaw of being stuck in what he deems is right, and that leads to catastrophe.

I would suggest yet another line of research, namely a more thorough exploration and discussion of the moral-formal dilemma perceived in *Batavische gebroeders*, for this, I would argue, lies behind Burgerhart's *hamartia*, and connects the play to one of the topics of ongoing debate within contemporary 'Law in Literature', in which Sophocles' *Antigone* and Herman Melville's *Billy Budd, Sailor* feature

⁶² See (for example) Spies, 'Argumentative Aspects of Rhetoric and Their Impact on the Poetry of Joost van den Vondel'.

prominently.⁶³ Basically, the moral-formal dilemma arises if a character is confronted with what he regards as a choice between applying the law against what his conscience dictates him, or following one's conscience, or what one deems to be the right thing to do, i.e. having one's moral view prevail over the dictates of the law. Put differently, it is also the conflict between 'the will to form', the one-sided attachment to what external demands order one to do, and a contextual interpretation of the same external demands. Comparable to Captain Vere in Melville's *Billy Budd* and both Antigone and Creon, who are each in their own way adamant with respect to their view of what justice and law demand, Burgerhart is stubborn in clinging to his idea of honouring the treaty with the Romans, *pacta sunt servanda*, without looking at what would be best for his people under the circumstances. In other words, and paradoxically perhaps, here we find the dialectics of an interpretation of his legal character or *ethos*, whereas in literary interpretations the focus is predominantly on his sense of justice – which is, incidentally, also rather narrowly defined, at least from the point of view of legal philosophy. What Burgerhart sorely lacks, and what the women reproach him for, is insight into the true demands of the situation; he lacks *agnitio* (recognition) in the Aristotelian sense, or as Vondel put it, 'herkennisse'. This may well be linked fruitfully to the observation that in the play the women stand for practical wisdom, they see what must be done and thus can be the agents for a break in the action, a *peripeteia*, not incidentally a role that women have fulfilled in literature since Homer had Andromache and Hecuba voice their desire for peace in the *Iliad*.

At the same time, it is precisely Burgerhart's indecision that makes identification with his dilemma possible. Dramatically, when the choice is being made for him when Fonteius decides to send him to Rome after having executed Julius Paulus, his final break with his principle of obedience to the demands of the original alliance with the Romans – his obedience to a secular leader as a matter of fact – exemplifies what the women have tried to bring about before: that he should exercise prudence rather than formally apply the law. Only at the end of the play is he granted *anagnorosis*, the final recognition of the truth. Is it too late

⁶³ For a seminal text on the moral-formal dilemma, see Cover, *Justice Accused*, esp. pp.1–7. See also Verheul, 'Herman Melville and the Moral-Formal Dilemma'.

or just in time for further action? Burgerhart's mirror image here is Fonteius Kapito whose tragedy is that he has to enforce the law and thus be obedient to law as much as Burgerhart, though in a different way. Consider, for example, verse 416 where Fonteius says, 'We are executors of his will', or verse 891, 'I acknowledge we also bear the name of guardians of the state', and his cognitive dissonance in verses 1815–17, 'my Lord, excuse us, and learn to bear your grief. / We can do no less than mourn your great sorrow. / That blow came from Rome, not from our will'.⁶⁴ The same goes for the *Krijghsraet* too, as verses 1473–75 show: 'Illustrious princes, whom a Nero's empire befits, / Do condone the war council, justified to execute the commands / of the Stadtholder (he orders it)'.⁶⁵ Those coming to literary-legal studies from the legal side of things will therefore benefit from a reading of the play informed by literary insights pertaining to the function of dramatic action, since this topic is unfortunately not part of the legal curriculum.

For my final, seventh, suggestion, I return to the topic of Grotius's influence on Vondel for the very reason that law 'goes European'. Following Korsten, further research may be done on the importance of Grotius for Vondel on the concept of the polity of the state on the basis of another play. In 1635, Grotius wrote *Sophompaneas* (*Joseph at Court*) in Latin. Vondel translated his friend's work within a few weeks, and this translation was often performed as part of Vondel's own Joseph trilogy. This is important, because in *Sophompaneas* Grotius has Joseph voice a new political arrangement for Egypt identical to the one Grotius had in mind for the Dutch provinces. This is another example of literature as a mirror of society. Combined with my first suggestion for further research on constitutive fiction(s) and my third point on the fictional aspect of law and literature, this opens up the possibility for a further sophistication of the strand of 'Law in Literature' as discussed above, in the form of attention to the law of fiction in both law and literature and to the fiction of the enterprises of law and literature themselves. As the examples of *Sophompaneas* and the foundational

⁶⁴ 'Wy zijn uitvoerders van zijn' wil'; 'k Beken wy draegen oock den naem van staet-behoeders'; '[M]yn heer, ontschuldigh ons, en leer uw leed verdraegen. / Wy kunnen min niet dan uw' grooten rou beklaegen. / Van Rome quam die slagh, en niet by onzen wil.'

⁶⁵ 'Doorlichtste vorsten, wien een rijck van Nero past, / Verschoont den krijghsraet toch, gewettigt om den last / Des stedehouders (hy gebiedt het) uit te voeren.'

narratives in the American civic tradition suggest, law can originate from works of literature. The way in which law is depicted in a literary work may be influential or formative when it comes to developing law in its institutional, ordering garb of norms, rules, and statutes. In other words, law *in* literature can be studied not only for its descriptive aspect – an indication of how the law is perceived by those external to it – but also for its prescriptive aspect.⁶⁶ If we take this line of thought one step further, we can also say that an investigation of how fiction itself works in law and in literature is strongly suggested for the whole field of *Law and Literature*. To this end, law would indeed benefit from a cross-examination by literature, both at the level of law's fictions in its language of concepts and the level of the fiction of the story of law told as part of a broader culture.

As far as the latter is concerned, and to return once more to Grotius, not only with his thought on the principle of *pacta sunt servanda*, but also with his ideal of bringing about *pax, unitas* and *humanitas*, Grotius's contribution is that he aimed to subject warfare to legal rules in *De iure belli ac pacis*, and thus tried to contribute to peace. Connected to this is his proposal for an integrated view of Christianity and classical views and precepts – with Cicero prominently present – with which he hoped to contribute to a certain unity in the diversity of opinions of his times, a way to regulate social conflict on many planes which I think we should take as paideic with respect to contemporary attempts at establishing unity and solidarity in Europe.⁶⁷

Not only does this line of thought pertain to the quest for certainty but also to the development of law in the European Union. Brook Thomas is quite right when he claims that 'the increased fluidity of national boundaries does affect citizenship'.⁶⁸ Obviously, in our days, since we can no longer afford to attach totemic significance to national literatures and legal systems and/or jurisprudences of national identity, given the overarching influence and power of the supranational level within the European Union, an interdisciplinary and historical approach can nevertheless enhance our knowledge and understanding

⁶⁶ A literal example of the latter can be found in numerous works of American literary realism, such as Frank Norris's novels *The Octopus: A Story of California* and *The Pit* (1902), and Upton Sinclair's novel *The Jungle* (1906), which resulted in the codification of the Pure Food and Drug Act.

⁶⁷ See Eyffinger, 'De relatie van recht en letteren in leven en werken van Hugo de Groot', p. 21.

⁶⁸ Thomas, *Civic Myths*, p. 1.

of our national past and (that of) our partners in the treaty that is the European Union while at the same time providing a space in which cultural translation can take place. Such an approach also leaves ample room for methodological integration and collaboration on the subject of a literary-legal methodology. If Habermas is right when he claims that a political culture is more important and influential cement for society than a shared language on the basis of ethnic or cultural origin,⁶⁹ we lack an overarching discussion of European sovereign power so far, i.e. one comparable with the discussions on national sovereignties, while at the same time we have to acknowledge that ongoing globalisation, the internet and other technologies make for tensions of various kinds as territorial boundaries dissolve. 'Gens semper Batav(or)um, nec inhospita Musis', Grotius wrote, and Witsen Geysbeek took this as an epigraph for his critical literary biography. In discussing law in the context of the original national communities that form Europe, we would indeed do well to be hospitable to the muses, Batavians that we all are.

Further Reading on the Topic of Law and Literature

Works pertaining to the relation between law and letters in the foundation of the polity

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- Carta, Paolo, 'Humanisme juridique du XXe siècle', *Laboratoire Italien*, 5 (2004), 13–37.
- Cau, Maurizio, 'Hans Kelsen et la théorie de l'État chez Dante', *Laboratoire Italien* (5:2004), 125–50.
- Ferguson, Robert A., 'We Do Ordain and Establish: The Constitution as Literary Text', *William and Mary Review*, 29 (1987), 3–35.
- Pech, Thierry, *Conter le Crime: Droit et littérature sous la Contre-Réforme* (Paris: Champion Slatkine, 2001).
- Soifer, Aviam, *Law and the Company We Keep* (Cambridge, Mass., and London: Harvard University Press, 1995).
- Suretsky, Harold, 'The concept of ideology and its applicability to Law and Literature studies', *ALSA Forum*, 5 (1981), 29–39.
- Thomas, Brook, *American Literary Realism and the Failed Promise of Contract*, (Berkeley: 1997).

⁶⁹ Habermas, 'Citizenship and National Identity', p. 264.

Some general studies in Law and Literature

- Beekman, Klaus and Ralf Grüttemeier, *De wet van de letter: Literatuur en rechtspraak* (Amsterdam: Athenaeum-Polak & Van Gennep, 2005).
- Biet, Christian, 'L'empire du droit, les jeux de la littérature', *Europe*, 4 (2002), 7–22.
- Cau, Maurizio, and Marchetto, Giuliano, 'Droit et littérature', *Laboratoire Italien*, 5 (2004), 7–12.
- Dolin, Kieran, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007)
- Ost, François, *Raconter La Loi: aux sources de l'imaginaire juridique* (Paris: Odile Jacob, 2004).
- Posner, Richard, *Law and Literature: A Misunderstood Relation* (Cambridge, Mass.: Harvard University Press, 1988, revised edition 1998).