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De Sade as a Benchmark. Dutch Legal Actions Against Obscenity in Literature, Theatre and Film in the 1960s and 1970s

Klaus Beekman

In the twentieth century in the Netherlands, several literary trials took place. These concerned various types of texts, like novels, essays and letters. The most important ones concerned works which were held in high regard by critics in the literary field. W.F. Hermans, for example, was put on trial for insulting the Catholic community on the basis of the following passage in his novel *Ik heb altijd gelijk* (I'm always right 1951: 31): 'Catholics! That's the most filthy, rotten, retarded, crummy part of our people! Fucking like crazy! Multiplying! Like rabbits, rats, flies, lice. Not emigrating! But staying in Brabant and Limburg with pustules on their cheeks and rotten teeth from wolfing wafers!' The question was whether this passage itself was offensive and if so, whether the author was responsible for this statement of his fictional character in a legal sense. The court was of the opinion that the challenged passage should be considered within the whole of the novel and that the intention of the author had to be derived from the function of the passage within the text (Beekman and Grüttemeier 2005: 100–3). On these grounds, the judge decided not to proceed to a conviction. In subsequent trials too, like the one against Theo van Gogh in the 1980s, judges stated that the incriminated passage had to be considered within its context (*idem*: 106–7). In his essayistic publications he used expressions such as: 'What a smell of Caramel. Today they only burn diabetic Jews', with which he could have insulted the Jewish community. In this case too, the authorial intention was not of significant importance for the judgement. According to the judges, one primarily had to look at the intention as embodied in the text.

However, in some cases authorial intention did play an important role. The so-called 'Donkey trial' is an example. In 1966 Gerard Reve was charged with

blasphemy with regard to *Nader tot U* (Nearer to Thee), a collection of letters, and with regard to a letter he had published in a literary magazine, which reads as follows:

If God again catches Himself in the Living Substance, He will return as Donkey, only able to formulate a few syllables, misunderstood and maligned, and whipped, but I will understand Him and go to bed with Him immediately, but I put bandages around His little hooves, to ensure that I don't get too many scrapes when He flounders in the ejaculation. (*idem*: 80)

In his defence, the author emphasized that he wanted to write literature and that he felt free to propagate his own conception of God, without having the intention to defame the God of the Christians. Especially on the basis of this intentional argument, the author was acquitted (Beekman and Grüttemeier 2005: 82–91).

Until the 1960s, the criminal relationship between literature and law in the Netherlands seems to be marked by great benevolence towards literature. An appeal to the intention of the text and/or to authorial intention could free literature from prosecution. To achieve this, in the 1990s, one also referred to the literary character of a text, which would constitute its own reality. Legal proceedings were instituted against Pieter Waterdrinker, for example, because in his novel *Danslessen* (Dancing Lessons 1998) he could have insulted the Jewish community. In this case, the defence made an appeal to the coherence of the text, as well as to its character. The incriminated passage had to be considered within its context, and the text in its entirety should be seen as free from the reality outside. But this view, which is known as an autonomist conception of literature, was not shared by all courts. Acquittal was chiefly based on the premise that a passage should be viewed and judged on the basis of its place in the whole text (Beekman and Grüttemeier 2005: 169–78).

The juridical basis for the *exceptio artis* in the literary trials mentioned above can be found in the early twentieth century. In 1919 and 1920, a number of trials with regard to *De Hel*, a Dutch translation of Henri Barbusse's *L'Enfer* (The Inferno/Hell 1908), took place. The novel allegedly contained passages which were 'aanstootelijk voor de eerbaarheid' (offensive to public decency). However, the indictment was dismissed by the court, as well as by the Court of Appeal and the Supreme Court, with the view that the incriminated passages should be seen in their context and that one had to prove that the text as a whole is offensive. A work of art always has to be judged in its entirety, the argument goes. By taking this position, the Supreme Court, actually, recognized the special status of art.

The idea of the Supreme Court that a work of art had to be considered as an organism, a living creature, is in line with the so-called idealistic conception of literature, where form and content are considered to be a whole and the successful work of art as an organic unity, which transcends everyday reality, although from this reality elements could be lifted to a higher level (Beekman and Grüttemeier 2005: 63–5, 79; Grüttemeier and Laros 2013).

The point of view formulated by the Supreme Court in the 1920s can also be found in the case of *Bob and Daphne*, a series of novels Han B. Aalberse published in the 1950s and 1960s. With regard to these books, the judge took the view that the passages which were said to be scandalous should be viewed in their context, to trace the intent of the text. The conclusion of the Supreme Court was that the books were more titillating than aesthetic. The novel *Liesbeth en de wereld van Bob en Daphne* (Liesbeth and the World of Bob and Daphne) was considered to be an offence to public decency in its entirety, also because it was not literary enough (Beekman and Grüttemeier 2005: 70–3).

The outlines concerning art sketched by the Supreme Court in the 1920s forced legal experts to clarify when exactly something can be called art. The discrimination trials, however, showed that jurisprudence avoids giving an explicit definition of art and literature. The pornography trials investigated by Ralf Grüttemeier and myself, gave the same impression, for example some trials that were instituted against *Fanny Hill* (*idem*: 60, 75). Research has shown that, although legal experts did not base their statements on explicit definitions, they did have a conception of literature which quite often turned out to have an idealistic character. In this essay the question of the use of literary concepts, in a more systematic way, will be raised again, also with regard to Dutch trials with respect to the sale and distribution of *Fanny Hill* in the Netherlands, in order to get a more specific answer to the question of which line legal experts follow in expressing their conception of literature.

In *Literatuur en moderniteit in Nederland* (Literature and Modernity in the Netherlands), a history of Dutch literature, academics argue that one of the characteristics of the 1960s was the blurring of the boundaries between mainstream and mass culture. According to the literary historians, *Schund* (Trash) was no longer considered to be taboo. As an example of a novel that teeters on the border of high and low literature, they mentioned *Ik Jan Cremer* (I, Jan Cremer) (Ruiter and Smulders 1996: 310–21). Some critics called it a modern form of literature, others labelled it pornography. Publishers too started to put the distinction into perspective, for example the editor of the novel: ‘What

we publish cannot be pornography, because we only publish literature' (Beekman 2010: 464). In those days one found this perspective quite often in publishing houses. Publishers specializing in pornography suggested that the anonymously edited novels could have been written by famous literary authors. On the other hand, publishers specialized in literature set up pornographic series (Beekman 2007: 226–30; Etty 2012: 176–91). In this light, the purchasing policies of the Dutch Royal Library also are telling. Initially, the policies were based on a dichotomy between high and low literature, but since the 1960s, when the contrast became less sharp, the library collected more and more pornographic texts, including 'pulp series' (Kuipers 2012: 203).

Apparently, starting from the 1960s, in the literary field – to speak in terms of Pierre Bourdieu – representatives of institutions, like the library, publishing houses and literary criticism, considered the distinction between high and low culture as less sharp than before. This raises the question whether in this period also in the legal field prosecutors and others dealt in a more flexible way with lower forms of art and were willing to apply *exceptio artis* to pornography. To what extent are there indications of systematic interrelatedness of changes in the literary field concerning pornography in the 1960s and the view on pornography of legal experts? If legal experts were following the changes in poetics or value ascription in the literary field, this would show the impact literary gatekeepers can have in the field of power. At the same time it would illustrate what Bourdieu calls the 'homology' between both fields, in which legal experts are part of the field of power, which as such is supposed to dominate the literary field (Bourdieu 1996: 367; Grüttemeier and Laros 2013: 204–5). Then, declaring low culture, like pornography, valuable, would also mean a departure from the dominance of the idealist aesthetics, which seems to have been dominant in the Dutch literary field from the Barbusse case up to the Reve trial. Are there any signs for a change in the poetics of the legal experts? Another question concerns authorial intention. Do legal experts use this as an instrument to give pornography more freedom? The last question concerns different forms of pornography: books, performances and films. Is it possible to identify a systematics of degree of *exceptio artis* in the prosecution of pornography?

To answer these questions, the following steps will be taken. First of all the political background will be sketched against which the trials concerning pornography in the 1960s and 1970s played, including the judicial policy from which prosecutors, judges, and others, condemned or defended alleged pornographic texts. Then two cases, in which booksellers stood trial, are

analysed. One case concerned *keukenmeidenromannetjes* (pulp novels) and the distribution of writings of de Sade, the other a translation of John Cleland's *Fanny Hill*. In a third step, performances that were considered to be pornographic are at the centre, especially *Oh! Calcutta!* The next part will be dedicated to only one case, *Blue Movie*, which turned out to have consequences for the censorship of other films. In conclusion, my questions posed earlier will be answered.

For my analyses of the literary cases, I used the judicial archives of the *North-Holland Archives* in Haarlem (Netherlands) and for the ones concerning film, the Archive of the Central Commission for Film Censorship (*Filmkeuring*). For the investigation of reactions in the media, I have used the database *Historische Kranten* (Historical Papers) of the Royal Library (available online: *Kranten.delpher.nl* – all quotes from dailies and weeklies are from this site). For my sociological approach, I am indebted to Pierre Bourdieu and his theory of relational research between various fields and institutions, as well as to his terminology.

Judicial policy concerning pornography

In the 1960s and 1970s, several Ministers of Justice were very active when it came to pornography, whether they represented a Christian party, like A.C.W. Beerman (1959–63), Y. Scholten (1963–5), A.A.M. Struycken (1966–7) and A.A.M. van Agt (1971–7), or a Socialist one, like I. Samkalden (1965–6). Also under C.H.F. Polak, who was a minister on behalf of the Liberal Party from 1967 until 1971, a large number of pornography cases came to court, among others the trial of bookseller Gerrit Naujoks, which will be analysed later in detail. As a rule, the ministers defended their actions by saying that they were just following the law, which prohibits writings or images that are *aanstotelijk voor de eerbaarheid* (Hazeu 1972: 5).

Prosecutors who implemented judicial policy argued in the same way, but emphasized that an exception should be made for pornography with a literary quality. W.H. Overbeek, Chief Prosecutor of the District of Utrecht from 1955 to 1978, expounded his ideas on this in *Pornografie voor het gerecht* (Pornography in Court 1966). The purpose of this book was to clear up the misunderstanding that Justice tried to keep literary authors within the generally accepted morality. The relevant articles of the law only had to prevent the distribution of 'artistically worthless *schund*' (trash), so Overbeek (1966: 71). Justice

would only be allowed to take action against publications known as *pikante romannetjes* (spicy novels), which are characterized by gross descriptions of all kinds of sexual situations without any artistic value, publications that only want to titillate consciously (*idem*: 102–4, 108–9). So, according to Overbeek, it was possible to make a dichotomy between high and low art. The first is valuable, the second worthless and could be recognized by gross sexual descriptions and by the authorial intention to titillate and make money.

Later, Overbeek would lead a group of six prosecutors whose task was to achieve a clear judicial policy on pornography. The committee drew up guidelines for pictures and texts in specific publication media, such as ‘stories, letters, etc. in sex magazines, which are characterized by an accumulation of highly sexually charged situations’ (*De Telegraaf*, 15 October 1970). The report of the committee was sent to the district courts in October 1970. In a hearing, Overbeek again emphasized that the committee wanted to make an exception for art and literature. With regard to narrative categories he remarked: ‘In judging letters and stories we had to be careful not to touch art forms. Everything that has some literary value falls outside the standards, but short stories with a strong sexually loaded situation and the intention to create sexual excitement, of course, are punishable’ (*De Telegraaf*, 15 October 1970). When Overbeek was asked how to determine when indecent assault was at stake, he replied: ‘That you shiver for a moment. No, I never do that, I can’t afford it. If it were so, I have to put it off me, because it’s not a matter of what I think about it myself’ (*Leeuwarder courant*, 15 July 1971; *Limburgs Dagblad*, 16 July 1971). In other words, a legal expert had to work with a definition of art, without appealing to his personal idea of it.

Book publications and pornography

Prosecutors were particularly concerned with the distribution of ‘artistically worthless trash’, as Overbeek called it, and tried to make a distinction between spicy novels and eroticism in real art. At the same time, prosecutors tried to take into account that the view on pornography in society was changing. So, they had to deal with two unclear factors – the view on the phenomenon of pornography and the one on literature. The following cases will show how they tried to solve these problems.

In 1966, C. van Emde Boas, psychiatrist and sexologist, concluded that after the Second World War, liberalization of censorship in the United States, England

and Germany was increasing. At the same time he found that in the 1960s a crusade against obscene literature took place in these countries, for example against John Cleland's *Fanny Hill* (Van Emde Boas 1966: 49). After the first edition, in 1748–9, this novel had frequently been translated. Many translations, however, turned out to be adaptations. Passages were often omitted or changed. That in the 1960s many legal proceedings were instituted, especially in the United States and England, had to do with the fact that precisely in that period this novel was published as a cheap pocketbook and thus could more easily fall into the hands of young people (Riess 1967: 228–38; Ashbee 1969: 267–78; English 1977: 628–33; Kearney 1982: 66–9; Fuld 2012: 70).

In the Netherlands, in 1964, different editions of *Fanny Hill* were on the market: three in English, one in Dutch, printed in Antwerp, and an expurgated version, also in Dutch. Mr J.F. Hartsuiker, a prosecutor, demanded that the publishers stop the distribution of the English editions, as well as the Dutch one printed in Belgium. Otherwise, he would take 'other measures' (*De Tijd*, 29 May 1964; *Nieuwsblad van het Noorden*, 29 May 1964; Hazeu 1972: 18). After this threat, the publisher, NV Keurboekerij, stopped the import of the Dutch translation of *Fanny Hill* (*Het Vrije Volk*, 30 May 1964). The threat of the prosecutor also immediately led to a fierce reaction in the press. Critics could not reconcile the threat with a trend which was determined by Eberhard Kronhausen and Phyllis Kronhausen, namely the assimilation of two categories, which Justice tried to keep apart: pornography and art, or 'obscene books' and 'erotic realism', as the psychologists called them in *Pornography and the Law* (1959): 'For the assimilation of the differences between porn and art, like those which have been determined in recent years by Mr and Mrs Kronhausen and others, a lot of time will be required again in the Netherlands' (*De Groene Amsterdammer*; *Friese Koerier*, 11 June 1964). The analysis of the next case will show how *Fanny Hill* fared in the second half of the 1960s in the Netherlands.

On 14 September 1967 the Amsterdam publisher Gerrit Naujoks was summoned to appear in court. He was charged with having in stock 149 copies of a Dutch translation of *Fanny Hill*, which he was going to distribute, 'knowing the content of the book, which was offensive against public decency'. On the sitting of 5 October the prosecutor, Mr H.E. van Renesse, explained his point of view: 'The text describes, for the most part, adventures in the sexual field of a young girl and mainly consists of detailed and penetrating descriptions of sexual acts, excesses and perversities.' According to him, the separate scenes, as well

as the complete text, and the intent of the text, made a case against the Dutch version of *Fanny Hill*: 'The text is in and by its parts together, in view of their interrelationship and intent, offensive against public decency'. On the basis of this argument, he demanded a suspended sentence of six weeks with three years' prison and a fine of 750 Dutch guilders.

When the accused was told that Mr Hartsuiker already in 1964 asked not to import the book from Antwerp, he answered to have interpreted this as a request only, and he said not to have known that the court in Breda and the one in Den Bosch, earlier, had considered this publication as pornography (Beekman and Grüttemeier 2005: 75). To the question what he thought about the 'detailed and penetrating descriptions of sexual acts, excesses and perversities', he answered by appealing to 'the literary and historical value of the work', and referred to de Sade, apparently assuming that by this comparison, he could provide evidence for its literary quality and that since the publications of de Sade were free for sale, this should also apply for *Fanny Hill*.

Whereas the publisher defended himself by appealing to 'the literary and historical value of the work', the prosecutor had his doubts about exactly these qualities. 'For fifty years, since the introduction of the obscenity laws of Regout, this is a joke', so Mr H.E. van Renesse, who further said: 'The literary value is zero: I have never read such lousy Dutch. If one would replace the words "horse and carriage" and "candles" by "car" and "lamp", nothing remains of the historical value either' (*Het Vrije Volk*, 6 October 1967).

At the sitting of 5 October, the president of the court adjourned the case against Naujoks for more detailed research, to get an answer to two questions concerning the translation by G.B. Revis: (1) 'did the sexual adventures of the main character in this translation get a stronger accent and are they described more extensively and in more detail?'; (2) 'Are reprints of the original edition at this moment in English speaking countries (especially England and the USA) free for sale or are they considered to be "pornography" by Justice, and/or is the distribution forbidden, or has it been prevented in any way?' (*Arrondissementsrechtbank* 1960–9). The answers to these questions played an important role in the deliberations of Mr Van der Waerden, the president of the court, to clear the accused of the charge on 19 October. Research had shown that the Dutch translation 'corresponds to a great extent with the content of the original text, which had been edited in 1947 in London and then had been left undisturbed by Justice, and that the sexual adventures of the main character did not get a stronger accent and were not described in a more extensive and

detailed way'. Furthermore, the president concluded, 'that the Dutch morals concerning what had to be considered offensive against public decency were strongly changing in the last few years'.

To determine the literary value of *Fanny Hill*, the judge compared the novel with modern literature and plays in which, according to him, increasingly, sexual passages did appear, but which were allowed to be published and performed, because of their overall 'literary value'. For the president this was a reason to proceed to acquittal. At the end of his verdict, he once again emphasized that it is impossible to insist that the novel is offensive against public decency, if one were to look at the text in its entirety and keep the potential reader in mind: 'One cannot say that this edition of *Fanny Hill*, which has not been illustrated and even does not have a titillating cover, considered as a whole, is offensive for people with a normal developed sense of decency.'

Not only with regard to *Fanny Hill*, but also in other cases an appeal was made to De Sade in order to free a publication from prosecution. Janna G. Hageman, for example, who translated *The Pearl*, which in 1969 was confiscated by order of Mr Hartsuiker because the Dutch translation contained offensive passages, also referred to de Sade for her defence: 'I omitted the sadistic passages, plus all those passages in which daughters have sex with their fathers. *Justine* by de Sade is full of sadistic passages and that is freely available now for years in our country' (*Het Vrije Volk*, 28 June 1969; cf. Beekman 2011: 140).

For prosecutors and judges de Sade had become a benchmark too, as the trial against G.W.R., a trader in second-hand books, shows. According to the prosecutor, Mr W.D. Meeter, the bookseller was guilty of distributing pornographic reading material. In an interview the prosecutor said he was aware of the fact that the boundaries of 'pornography' were shifting. But, as no one exactly knew to what extent such reading material was 'really harmful' especially for young people, he thought it would be wise to proceed carefully. He did rate the memoirs of de Sade, which were also sold by the bookseller, as possibly harmful reading material. He further remarked about de Sade that 'personally' he thought the memoirs 'were just annoying and even tedious'. However, he saw a difference between the work of de Sade and the two publications by others that were found in the possession of the bookseller. These he qualified as semi-literature and described them in pejorative terms as 'slechte keukenmeidenromannetjes' (bad kitsch novels). These novels did contain some erotic passages, although without a clear pornographic character. The material found caused the prosecutor, anyhow, to demand a fine of 400 Dutch guilders

or a month detention and the confiscation of the writings of de Sade (*Het Vrije Volk*, 20 March 1968).

The Rotterdam judge, however, did not follow the demands of the prosecutor. In his sentence of 2 April 1968 he only demanded a fine of 75 Dutch guilders or seven days' detention for the distribution of pornographic literature. For his sentence, the judge also used a literary value judgement. In contrast to the so-called bad kitsch novels, the judge considered the memoirs of de Sade not as pornography, 'because of their literary value and the changed social norms regarding the concept of *aanstotelijk voor de eerbaarheid*' (*Het Vrije Volk*, 2 April 1968).

In the Netherlands, the work of de Sade had not been freely available for a long time. Abroad, justice also had problems with his publications: in the 1950s Dutch papers still extensively wrote about the confiscation of his oeuvre in France (*De Tijd*, 12 January 1957). Even having a look at it in the Royal Library was no sinecure (Kuipers 2012: 192–4). This would not change until the beginning of the 1960s. Then, also the image of de Sade as a pornographer was changing. After Walter Soethoudt, a Flemish publisher, had placed a translation of his work on the market which could only be sold under the counter, Bert Bakker, a Dutch literary editor, published his complete works in the 1960s without serious problems (Leemans n.d.). The Dutch editor engaged famous translators, like Gemma Pappot, who took responsibility for *Justine* and who also published a book about him: *De markies De Sade* (The Marquis de Sade) (1967). At that time renowned literary authors and journalists dedicated articles and books to the Frenchman, like W.F. Hermans – the above mentioned author of *Ik heb altijd gelijk* – who wrote a famous essay about him under the title *Het Sadistische Universum* (The Sadistic Universe 1964). But also Rudi Kousbroek, Alfred Kossmann and, in Belgium, René Gysen drew attention to de Sade already at an early stage: *De slecht befaamde Markies De Sade* (The notorious Marquis de Sade 1961). In their essays, they argued that, on the basis of the sexual descriptions, de Sade's oeuvre can be classified as pornography. On the basis of a deeper level, however, it could be seen as philosophical literature. For his work would have been based on an idealist concept of literature and society. It was not de Sade's intention to titillate, the argument goes, but to show that in every human being a sadist lurks (see also Otterspeer 2012: 147–58). It is uncertain whether legal experts have been influenced in a direct way by these changed views on de Sade in the literary field. But considering the number of times they emphasized wanting to take into account the changed view on pornography in society in

general, considering also the critical notes of sexologists, psychologists and literary authors concerning actions of the police against pornography they had received, and finally the fact that they began to use De Sade as a benchmark and put pornography into perspective by comparing it to modern literature and plays in the second half of the 1960s: considering all these arguments one only can conclude that legal experts must have been aware of the changed view on de Sade in the literary field.

Performances and pornography

An appeal to de Sade could provide acquittal, at least with regard to book publications. With regard to performances this was more complicated. The legal action against *Oh! Calcutta!*, which at the end of 1970 was staged in the Netherlands, will show this. *Oh! Calcutta!*, which contained many nude scenes, was labelled as ‘pornography’ after the performance in New York. Mr Hartsuiker, the Amsterdam prosecutor, first ordered the acting head of the Vice Squad to make a report on the performance and later decided to have a look himself. There was one scene he wanted to have cut: ‘Bang, bang, bang, I (almost) shot you!’ (*pief, paf, poef, ik schiet je [bijna] dood!*). This scene was about group sex of older married couples, who all had physical defects. According to Mr Hartsuiker this scene was ‘so coarse and would affect human dignity so deeply’, that he wanted it to be removed.

The prosecutor, ‘for the time being’, did not take further action against *Oh! Calcutta!*, although the show, actually, should have been prosecuted for *openbare onfatsoenlijkheid* (public indecency), according to Article 239 of the Penal Code. That he did not take steps had to do with the fact that in a similar case – *Erotisch Panorama* (Erotic Panorama) – the Supreme Court (*Hoge Raad*) had passed no final judgement. Meanwhile, he wanted to have people know what he thought about the show himself. Probably he was aware of the intention of Kenneth Tynan, the maker of the show, who said he had used ‘short parodies’ of Edward Albee and Samuel Beckett. Perhaps he also was familiar with the reviews, in which *Oh! Calcutta!* was characterized as ‘an ordinary persiflage on the system of swingers, key clubs and all kinds of underhandedness that goes with it’ (*Het Vrije Volk*, 29 December 1970; 24 June 1971; *De Waarheid*, 24 June 1971). For he said he had seen that the show had ‘partly a satirical and partly an ironic character’. But, apparently, the authorial intention for the prosecutor was less

important than the form of presentation, the level and the used language. In any case, he had no high impression of *Oh! Calcutta!*: 'I consider the artistic value low. The performances are rude, just like the language used.' To avoid the impression he would use his personal conception of art for a legal judgement, he at once added that here violation of Article 239 of the Penal Code was at stake.

When the show went into the country, problems arose again. The Mayor and Aldermen of Geleen, a small Catholic town, decided to prohibit the performance on the basis of the conception of art of the cultural committee of Geleen, which thought that the show 'is obscene and has low, if any, artistic quality' (*Limburgs Dagblad*, 16 November 1971; Hazeu 1972: 108, 112). The Dutch book edition of *Oh! Calcutta!* (Pleiter 1969), published in 1969, which included the incriminated scene, was not mentioned in the debates. It shows that Justice especially had problems with performances. This seems to be confirmed by the fuss about *Het buitensporige seksuele genie van Markies De Sade* (The Excessive Sexual Genius of the Marquis de Sade), a documentary theatre performance. The city council of Amsterdam and Breda forbade the performance (*Het Parool*, 31 January 1970). The Alderman for Culture in Breda gave a short comment on his decision. He had no objection if one were to read aloud from de Sade's work, he said. His objection concerned 'a performance based on quotations from de Sade' (*de Volkskrant*, 13 February 1970; *Het Vrije Volk*, 20 February 1970; Hazeu 1972: 84).

However, in the 1970s the views on visual presentations of pornography also changed gradually (Sorgdrager 2003: 90). The Mayor of Utrecht, for example, after consulting the prosecutor, decided not to prosecute. He had two arguments for his decision. First, he pointed out that the works of de Sade were freely available in the bookstore. His second argument concerned the intention of the text, as well as the authorial intention: the performance would not be 'intentionally' blasphemous and did not have 'the intention' to hurt religious feelings: 'The performance is meant to be a realistic representation of the peculiar views of de Sade' (*De Tijd*, 7 March 1970).

Film and pornography

In 1964 Hella Haasse, a famous Dutch literary author, was nominated to become a member of the *Centrale Commissie voor de Filmkeuring* (CCFK, Central Committee for Film Censorship). The invitation came from J.C. Schuller, who from 1963 to 1977 was chairman of this committee. He knew Haasse from other

advisory bodies. Haasse groped in the dark as to why exactly she was approached. She supposed Schuller asked her because she was someone 'without a political or religious background', because she was an author and, probably, because she was a woman (Du Mée and Boost 1971: 78).

The Committee for Film Censorship consisted of at least sixty members, who were appointed by the Minister of the Interior on the advice of the executive committee of the CCFK. Members had to reflect the main ideologies of the Netherlands, such as clergymen (Roman Catholic or Protestant), members of the judiciary (judges), teachers, doctors and people who were involved in youth problems (*Filmkeuring*: 9). The chairman and secretary were appointed by the Crown. The censorship of individual films was carried out by subcommittees of five members. The films had to be approved in advance, on the criterion of 'admissibility'. Age limits were used to decide on admissibility. In addition to this, the CCFK could decide that films could be shown only after certain cuts had been made. In fact, it was the CCFK's job to determine whether a film was contrary to public order or decency.

Thanks to Hella Haasse, we know which criteria were used in the subcommittees, namely 'the motives', or authorial intention of the filmmaker, 'the effects on ourselves and on other potential viewers', and, not least, the quality of the film. Haasse herself especially had eyes for 'the composition', the structural coherence of a film, which she explained from her profession as a literary author. Reasons for her to ban a film or to have it cut were sadism and masochism. But she wanted to make an exception for those sexual actions which were presented 'on the level of de Sade', she said. In other words, if a pornographic film had been brought to a higher level and the erotic passages had attained a function within the whole, according to her, it had to be approved (*idem*: 78–9). From this point of view, Haasse also looked at the Dutch film *Blue Movie* by Wim Verstappen and Pim de la Parra, which should have had its premiere in 1971. On 24 May, however, the Board of Film Censorship concluded that the movie, which tells the story of a young man who, after leaving prison, ends up in a society in which sexual freedom reigned, was not permitted for public display, 'because depiction of certain scenes and the showing of parts of pornographic films and scenes in this movie are in defiance of decency' (Verstappen 1971: 4). So censorship took place on the basis of certain components with which the film had been constructed. In the USA, by the way, the movie was confiscated, as well as in Belgium, in Surinam it was banned after two inspections, and in Germany, where it was shown under the title *Das Pornohaus in Amsterdam*

(The House of Porn in Amsterdam), the so-called *Freiwillige Selbstkontrolle* (Voluntary Self-Control) saw to it that some small cuts were made.

In a comprehensive report, in which he asked for re-examination, Verstappen argued why his film had to be approved. His main argument was that the movie, falsely, was labelled 'pornography' because it only had the intention to titillate. According to Verstappen (1971: 5) the intention of the movie was 'to comment on specific contemporary developments'. This external intention of the filmmaker fully corresponded with the internal intention of the movie, which gave 'clear and evident arguments' for this view. To clarify what the intention exactly was, Verstappen used a sociological essay of Simon Vestdijk, a famous Dutch literary author: *De toekomst der religie* (The Future of Religion). According to Vestdijk, in the Netherlands a new religion (read: ideology), with a new sexual morality, had come into being. In the 1960s, one was finished with the morality of marriage, based on Christian ethics. But the newly acquired sexual freedom led to new sexual difficulties, because the brake of the morality of marriage was missing. So, in making *Blue Movie*, Verstappen would have used a mimetic-ethic conception of art. 'From the movie speaks a very strong moral and social preoccupation', so Verstappen (1971: 8).

Another important argument Verstappen put forward was the coherence of the movie. He used a structural criterion to argue that removal of the 'documentary moments', or pornographic fragments, from *Blue Movie*, would mean that the society to which it referred could not be recognized. By removing these fragments, the film would lose its function as 'social comment' (*idem*: 12). In fact, he criticized the idea of the board to reject the film on the basis of some fragments. He argued that this is also legally reprehensible, because Dutch jurisprudence with regard to pornography says that 'one should never pay attention to the character of fragments extracted from a work of art, but only to the character of the work as a whole' (*idem*: 15). On the basis of his authorial intentions and the coherence of the movie, Verstappen concluded: 'This movie, on an artistically considerably high level, deals with some problems with regard to liberalization of sexual morals in the Netherlands, which can be seen in daily life' (*idem*: 15).

The plea Verstappen made had the desired effect. On 28 July, the Board of Film Censorship approved the movie at second stage and decided it was permitted for persons of eighteen years and older. One of the members of the board was the above-mentioned Hella Haasse. The report of re-examination shows that the board largely accepted Verstappen's intentional and structural

criteria. The board accepted his argument that flashes of ‘pornographic’ material had been incorporated ‘in a functional way’, that the movie ‘as a whole defends an intelligent and thoughtful, i.e. *not* obscene and only physical approach to sexuality’, as well as the argument that ‘cutting would weaken the intention of the makers, i.e. showing that so-called sexual freedom contains a lot of danger’ (*idem*: 17). The board of re-examination not only used a structural and intentional, but also a pragmatic argument, to borrow a term of M.H. Abrams (1974): in *Blue Movie* ideas on morality with regard to sexuality were brought up for further discussion. Actually, the board, using an idealistic conception of art, accepted the artistic concept of the filmmaker.

Although some critics believed that Verstappen’s intentional arguments were only used in a strategic way, namely to get approval, most of them reacted positively to the re-examination (Dronkers 1971: 38–9). Especially because, as Peter van Bueren, a well-known film critic in those days, wrote, ‘the Board of Film Censors pays less attention to what has been shown, than to the intentions of the filmmaker’. They also welcomed the decision of the Board of Film Censors to no longer use ‘the criterion of centimetre’, i.e. measuring the quantity of nudity, but was willing to examine a fragment within the entire movie (*De Tijd*, 30 July 1971). According to the film critics, but also according to the board of re-examination, the approval of *Blue Movie* made it possible that *Flesh* by Andy Warhol, after having been rejected six times, was finally also released in the Netherlands (*De Telegraaf*, 22 September 1971; *De Tijd*, 15 October 1971).

Conclusion

In the Netherlands, under the rule of Christian, as well as socialist and liberal Ministers of Justice, prosecutors frequently took action against pornography in the 1960s and 70s. The prosecutors seemed to have more problems with performances and films than with book publications. This had to do with the premise that performing sexuality was more harmful than an appeal to the imagination of the reader. The policy concerning pornography was based on a theoretical distinction between high and low art. In practice, however, this dichotomy caused difficulties. The prosecutors did not want to rely on their own conception of art, but they did not have a well-described definition either. The dichotomy ran up against still another problem. Views on morality in society were changing. Sexologists, psychologists and writers talked about this to politicians

as well as to lawyers. Meanwhile, in the literary field a lot was changing too. Literary novels were published and plays performed, with scenes one only knew from pornographic works. At the same time literary essayists defended de Sade, who had previously been put aside as a pornographer, on the basis of the deeper layers in his work, i.e. as a philosophical literary author. Legal experts also began to consider him as a literary author and even used him as a benchmark. So, the distinction between high and low art actually was removed.

It is hard to prove that legal experts took their view on de Sade directly from the changed view in the literary field. But it seems quite likely. Legal experts began to consider de Sade's works as a higher form of pornography in the same period, and they had themselves been guided by the social acceptance of erotically charged modern literary novels and plays. So, in the second half of the 1960s, there were changes on the level of theories of literature in the legal field, which seem to have been triggered by the rise of corresponding poetics becoming dominant among experts in the fields of literature and the arts. That pornographic texts and films were considered to be valuable by literary experts and members of film censorship committees does not mean that the time of idealist aesthetics was over. Just like writers and critics in the literary field, literary experts attached value to the unity of a work. In both fields, novels and films were judged on the basis of their organic coherence. Structural coherence was by far the most important standard concerning texts. With respect to performances, but especially to film, authorial intention also mattered greatly. From the end of the 1960s, a work which had previously been put aside as pornography, whether it was a book or a movie, was increasingly acquitted after prosecution, often via de Sade, on the basis of the artistic criterion that it was layered and did not transcend everyday reality, but rather said something about society.

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