

LAUDATIO: PROF. TIM KOOPMANS

TOM ZWART*

1. INTRODUCTION

ON the 3rd of September 1940, H.M. Queen Wilhelmina appointed Pieter Sjoerds Gerbrandy Prime Minister of the Netherlands in exile. Immediately thereafter, Gerbrandy went to No. 10 Downing Street to pay a courtesy visit to Winston Churchill. When he was led into his office, Gerbrandy greeted the British Prime Minister with the words: “Goodbye, Mr. Churchill”. To which Churchill replied: “What? Already?”

I recall this event, not to ridicule Prime Minister Gerbrandy. He was a great wartime Prime Minister and he became quite close to Churchill, who used to refer to him as “sherrybrandy”. And I have to admit that language-wise others have done worse. Thus, Irene Vorrink, our onetime Environment Secretary once introduced herself to her French colleagues as the ‘*Ministre de Milieu*’. Considering the traditional reservations the French government has regarding the Dutch drugs policy, this may not have come as a surprise to them at all.

The reason why I tell you this story is because of what happened next. Gerbrandy was so frustrated about his inability to communicate effectively in English, that he went back to his office, fired his Dutch secretary, and immediately hired a new one who only spoke English. In this way, he would be forced to pick up English very quickly.

This decisiveness and unconventionality do not only characterise Prime Minister Gerbrandy, but all so the ethnic group to which he belonged, *i.e.* the Frisians. The Frisians, who live in the Northern part of the Netherlands, are independent-minded, which is sometimes mistaken for stubbornness. Tim Koopmans has Frisian blood running through his veins. Those

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who want to understand him are wise to take his Frisian background into account.

Let me give you an example. In 1973 the Dutch Prime Minister-elect, the legendary Joop Den Uyl, spread the rumour that Tim Koopmans was his preferred choice of Minister of Justice. Den Uyl did so to test the waters and to see whether there was support for Tim's candidacy. The suggestion was very favourably received both by politicians and in the media, which meant that the position was Tim's to refuse. And that is exactly what he did. Since he was annoyed that no one had consulted him, he picked up the phone and made clear that he would not accept the post if it would be offered to him.

2. CONTRIBUTION TO ACADEMIA

Tim Koopmans has been and still is enjoying a highly distinguished academic career. In 1965, he was appointed to the General Legal Studies Chair at Leiden Law Faculty. He decided to devote his inaugural address to an issue of contract law.

His address was critically reviewed by a leading private law professor at the time, called Hijmans van den Berg, who felt that the young professor had taken an unconventional approach towards the topic. Tim sometimes jokes that that was probably the reason why Leiden moved him quickly to the Constitutional and Administrative Law Chair.

That may be true, but it did not keep Tim from engaging in private law discussions, nor from putting forward unconventional ideas. Thus, in 2008, he surprised many and shocked some traditional Dutch lawyers when he published an article in which he applied chaos theory to law. This preference for interdisciplinary excursions was undoubtedly fed by college life at Cambridge, where he went as a Visiting Fellow to Trinity College in 1976 and as the Arthur Goodhart Visiting Professor in Legal Science from 1999-2000.

The decision to appoint Tim to the Constitutional and Administrative Law Chair was a very fortunate one, because in that position he has made a major contribution to the field, especially in the area of comparative law.

In 1978, Tim published a book in Dutch called *Comparative Public Law*, which discusses constitutional and administrative issues in five countries, *i.e.* the US, the UK, Canada, France and Germany.

But the book is not only remarkable for the number of countries included in the comparison. In a sense it was a heresy. After all, the leading comparative law gurus Zweigert and Kötz had stated that it was impossi-

ble to compare public law systems because of the underlying moral and ethical differences between the societies concerned. By writing the book Tim Koopmans challenged this view, which is closely linked to Zweigert and Kötz's mistaken assumption that when comparing one has to look for similarities rather than differences. I think his Frisian independent-mindedness served Tim well on this occasion.

The book is also interesting because it is 90% comparison and 10% methodology. Usually it is the other way around. Progress in the area of comparative law has proven to be difficult because many scholars seemed to be paralysed by methodological doubts. Tim does not have such doubts.

In the inaugural address he delivered in 1998 to accept a Visiting Professorship at Utrecht School of Law, he explained why. In his address he referred to Sir Isaiah Berlin's essay on Tolstoy called *The Hedgehog and the Fox*. The title is a reference to a fragment attributed to the Greek poet Archilochus: "The fox knows many things, but the hedgehog knows one big thing." According to Berlin, writers and thinkers can be divided into two categories, *i.e.* hedgehogs, who view the world through the lens of a single defining idea, and foxes who draw on a wider variety of experiences and for whom the world cannot be boiled down to a single idea.

According to Tim, comparative lawyers who engage in system building exercises, like dividing jurisdictions into 'legal families', are hedgehogs. However, in order to bring comparative law forward, we need to behave more like foxes. Legal phenomena should be studied in relation to the society of which the jurisdiction is a part. For example, in order to fully understand French administrative law, one needs to get acquainted with French history, the French language, the French way of thinking, French politics and French private law and one has to be able to assess things from a French perspective.

Consequently, Tim favours the study of public law from a contextualist approach. For example, in 1970 he gave a fascinating lecture on how one could only understand the constitutional make-up of the Fifth Republic if one understood the personality of Charles de Gaulle and his impact on French constitutional law. His love of politics and culture, which covers literature, music and the performing arts, is a huge asset in this regard.

The third reason why the book was so impressive was that it did not engage in a country-by-country but an issue-by-issue comparison, which was completely novel and still rare to this day. The reason, of course, is that one has to know the systems inside out to be able to do this. And Tim is one of the few people who manages to fathom a number of systems all at the same time.

In 2003, Tim published *Courts and Political Institutions, A Comparative View*, which builds on the approach adopted in the Dutch book published in 1978, but is much more than an updated translation. As the author suggests in the introduction to the book, it has clearly benefited from his ripening as an academic and his judicial experience. The book is widely appreciated both by academics and students, no doubt because in addition to being the result of profound scholarship, it is a very attractive read.

3. CONTRIBUTION TO PRACTICE

Tim has not only been a distinguished academic, but he has also been a prominent practitioner. He was an attorney, a legal counsel at the Ministry of Justice, a Supreme Court Justice, a Judge in the Court of Justice of the European Communities and, last but not least, an Advocate General at the Dutch Supreme Court. I believe that that was the job he liked most, because it allowed him to give his own opinion and at the same time have an impact on the development of the law.

Leiden University professors have the tendency to practice what they preach. Professor Anthony van Leeuwenhoek was in need of lice for an experiment. He decided to keep his socks on for three weeks, *et voilà!* Professor Pieter van Mussenbroeck voluntarily underwent an electric shock caused by one of his own inventions and nearly died on the spot. Although Tim did not go as far as these illustrious colleagues, he has certainly proven that he belongs to this proud tradition. Thus, comparative law has been an important part of his work in legal practice as well.

This is exemplified by the advice he gave to the Supreme Court as an Attorney General in the so-called *Valkenhorst* case in 1994. The case concerned a woman who had grown up without knowing the identity of her father. Because of her mother's unwillingness to disclose her father's identity, she requested access to the records of Valkenhorst, an institution for unwed mothers where she had been born. In his conclusion, Tim observed that in Dutch law there was no written constitutional guarantee protecting the interest of the plaintiff to know the identity of her father. In his view, however, this interest derived from the unenumerated general personality right, which underlies the Dutch legal order. To back up this position, he relied on the case law of the German Federal Constitutional Court in which it had established an *Allgemeines Persönlichkeitsrecht*. Not surprisingly, the Supreme Court followed suit and recognised the existence of the general personality right.

4. CONCLUSION

A *laudatio* such as this cannot do justice to the richness of Tim Koopmans' career by far. And by focusing on his important contribution to academia and his impressive career in practice, one runs the risk of overlooking the most important aspect.

Tim has been a source of inspiration to generations of academics and students alike, both inside and outside the Netherlands, by showing them the beauty of the law. Both orally and in writing he succeeds in explaining the most complex topics in an attractive and engaging way. What he does is so entertaining that one would almost forget the scholarship and craftsmanship that went into it. Although he effectively stopped teaching in 1978, newly appointed professors keep referring to Tim as the person to whom they look up most. Not surprisingly, to students who have chosen law as their subject, but doubt whether this was the right choice, we give *Courts and Political Institutions* to read and the problem is solved. Tim is very accessible to students and young academics and he is eager to engage with them during seminars and conversations.

This tutorial role is amplified by his wife Emmy, who keeps in touch with the members of their extended academic family, and who through her love of literature, opera and the performing arts demonstrates that there is much more to life than law.