

'Éloges funèbres' Tim Koopmans

Tim Koopmans was sworn in as a judge at the Court of Justice in 1979. Although it had first appeared that this appointment would be his 'fin de carrière', things turned out differently. In 1990 he became Advocate-General in the Dutch Supreme Court, where he stayed until 1997.

At the Court, and I believe also elsewhere, he was feared by some, loved by others, admired by many and respected by all.

He was a man of wide reading and infinite intellectual and cultural curiosity. You might go into his office with some piece of work to discuss and, apart from giving you very cogent comments, Tim Koopmans would share with you his ideas about the US Senate hearing on the nomination of Robert Bork to the US Supreme Court, about the latest theatre play he and his wife Emmy had recently seen, about where to go for a fine dinner and a good glass of wine and about the role of the Catholic church in Poland.

His erudition and sparkling wit are vividly mirrored in his writings. These contain sharp analysis couched in elegant narrative. The language is very clear – in fact, very simple – language. Sometimes there is an ironic undertone. Almost always there are quotations, now and then less usual ones. In one of his many publications, one finds Roscoe Pound next to ‘Zazie dans le metro’ and Jeremy Bentham followed by a quote from a musical.

In an article written in 1996 about the architecture of the European Union, Tim Koopmans recalled an exhibition he had recently seen at the Rijksmuseum about the so-called ‘ugly period’ (“architecture and furniture from 1835 to 1895”). He described this as a period of stylistic eclecticism, where different styles – from neo-gothic to neo-rococo – were used when creating a single object. He feared that something equally ugly might happen to Europe.

Tim Koopmans could take a certain pleasure in disconcerting people. I think he did it mainly to provoke them; and essentially he expected to be contradicted. At hearings he was renowned for his piercing look and pointed questions. Within his chambers he was demanding, sometimes a little unpredictable. However, he gave his team a lot of intellectual freedom and his sense of humour was greatly appreciated. Although as his référendaires we could only guess at

this, I am certain that deliberations with Tim Koopmans were not very easy. He profoundly disliked superficial solutions and half-way answers.

After graduating in law at the University of Amsterdam in 1953, Tim Koopmans spent three years at the Bar before leaving practice to become legislative draftsman at the Ministry of Justice. During his six years in that position, he worked on a wide range of very different topics.

In parallel, he was working on a doctoral thesis which he defended cum laude in 1962. This was, I believe, his first 'honour'. Many others would follow: two doctorates *honoris causa*, two other important academic decorations and (from 1978 onwards) membership of the Royal Netherlands Academy of Arts and Sciences. In 1989 he became an honorary Bencher of Lincoln's Inn.

The topic of his doctoral thesis was the concepts of workman, worker and employee (werkman, arbeider en werknemer) as they were used in labour law and social security law – at the time, the use of these three terms was rather chaotic. It is striking how we see both labour law and legal concepts recurring as themes in his later work. In

particular, the way in which lawyers use concepts and how legal concepts can guide action was one of his favorite topics.

In the same year as he obtained his doctorate (1962), Tim Koopmans moved to Brussels to become legal advisor at the secretariat of the Council of Ministers of the then EEC. In 1965 he was appointed professor at Leiden University. He would stay there for some 12 years. That period included two years as Dean of the Leiden Law Faculty and one year on sabbatical leave at Trinity College in Cambridge. Some 20 years later, he would return to Cambridge as Goodhart Professor.

In Leiden, Tim Koopmans held a chair of constitutional and administrative law and focused on comparative law. In 1975 he concluded a comparative law project on the constitutional protection of equality. Equality in its many guises was another of his favourite subjects.

Partly, this was linked to his sense for social justice and his interest in legal principles as such. His 1982 essay on 'equal and unequal cases' (gelijke en ongelijke gevallen) is still very topical in the sense that he there discusses, drawing on examples from English, Dutch, US and EC case law, how to spot legally relevant differences in any particular

case (in other words, his analysis goes to the heart of the problem of comparability). Another fine piece, written in 1989, is entitled 'Equal Protection – The Social Dimension of European Community law'. As a judge at this Court, that was a dimension of EC law that he greatly helped to shape.

Tim Koopmans' interest in equality can also be explained, I think, by the fact that equality is a tool par excellence to limit and control the exercise of power. That goes hand in glove with another important theme in his work: the relationship between judicial power and political power. In 1988, for instance, he made a wonderful contribution to the debate on this relationship entitled, 'The roots of judicial activism'. However, in 1979, the year in which he was appointed to the Court of Justice, he had already published another very memorable piece, 'De polsstok van de rechter' – 'The Judge's Fen Pole'.

A fen pole is used in particular in Friesland, a northern part of the Netherlands where Tim Koopmans' parents came from, as a tool to jump over ditches – sometimes, rather large ditches. This publication addresses the question of the extent to which a judge can use, in particular, legal principles to bridge a gap left by an inactive legislator or by procrastinating politicians in order to deal with pressing societal

problems. Tim Koopmans' conclusion was that the judge can jump pretty far and can even get the legislator moving. However, he also warned that the practicability of the fence should not be overestimated. Political waters are often deep and the bottom of the ditch can sometimes be glutinous mud. The analysis is pure, quintessential Tim Koopmans: as he writes, he puts everything, including his own views, into perspective.

This brings us to another of Tim Koopmans' core professional interests: his great curiosity as to how society might develop and what that meant for the law. More precisely, how could lawyers help to detect and then address emerging problems in society? His analysis was never limited to the mere set of legal rules under examination: it extended to the political, social and historical context. By taking this broader context into account (and usually also by looking at comparisons abroad), Tim Koopmans often discerned unexpected connections and presented new perspectives on the problem.

In his inaugural lecture on accepting the Belle Van Zuijlen honorary chair at the Utrecht Law Faculty (Belle van Zuijlen is better known outside the Netherlands as Madame de Charrière), Tim Koopmans described his preferred working method: that of the fox. Although he

paid all due respect to ‘legal hedgehogs’ (the lecture in question was delivered more than ten years before Ronald Dworkin published ‘Justice for hedgehogs’), Tim Koopmans himself preferred to sniff around and draw on a rich variety of experiences. His advice to comparative lawyers was, indeed, precisely along those lines: do not just read about foreign law, but read ‘around it’, talk about the broader context with others, explore the reality beyond the law, because that is the best way to grasp and understand any legal system – whether foreign or your own. In a footnote to that inaugural lecture, Tim Koopmans recalled the valuable discussions that he had had with his colleagues at the Court of Justice about their different legal systems and the context in which each of those operated.

All these diverse elements – comparative law, historical and political insights, the relationship between the branches of government, societal change – are the ingredients of two admirable books, ‘Vergelijkend publiekrecht’ (‘Comparative Public Law’ – the second edition appeared in 1986) and ‘Courts and Political Institutions’ (2003).

It is not difficult to imagine just how much Tim Koopmans contributed to the Court (and I have, indeed, already hinted at

this). But I should add that, although his main fields of academic interest were labour law, constitutional law, comparative law and indeed European law, Tim Koopmans was in fact a brilliant generalist. His sharp analytical mind identified the key issues of any case, no matter how complex and no matter what the area of law. His knowledge, intellectual rigour, creative thinking ('judicial inventiveness', he called it), combined – as it was – with a healthy dose of realism and a clear sense for what was feasible earned him admiration and respect.

He was both a natural at legal craftsmanship and a man who stood far above the technicalities of the law, someone with vision about how the law could or should develop. Let me give a small, specific example. In 1991, he argued that judges at the Court of Justice should be selected, from amongst the candidates proposed by the Member State governments, by an authoritative body consisting of 'the most senior members of the bench in each of the legal systems of the Member States'. Nearly 20 years later, the Article 255 committee was created by the Treaty of Lisbon.

When Tim Koopmans left the Court of Justice in 1990, Ole Due, the then President of the Court, called him an idealist, sometimes even a dreamer. I think that, in using the latter epithet, President Due was

probably referring to Tim Koopmans' belief in social progress and the role law can play furthering it. Whether dreamer or idealist, we remember here today a man of powerful imagination and a unique person. We do so with great appreciation and as far as I am concerned – but I think I am not the only one - with affection.

Thank you.

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Sacha Prechal