LAUDATIO: PROF. TIM KOOPMANS

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I

IT IS strange: there is no personal relationship between the man we are going to honour this evening and the speaker. In this respect, other members of our Group would undoubtedly be in a much better position than me.

My direct knowledge of Tim Koopmans consists only of seeing him, a silent and impressive elderly gentleman, in our meetings year after year. If someone asked me to tell an anecdote about him (something usual in this sort of events), I could recollect only this: a few years ago, I was chairing one of the debates; there was a rather long waiting list to take the floor; when Koopmans' turn finally arrived, he declined to speak, probably because it was too late. Then, in order to encourage him to let us know his opinion, I said in an inappropriately colloquial way: "Don't be modest". He replied simply: "I am not a modest man".

The lack of any previous acquaintance, however, provides the observer with distance and perspective. And this is not a bad position in order to appreciate intellectual and professional achievements. "You will know them for their works" is, after all, a Gospel's message.

II

Tim Koopmans is an eminent Dutch lawyer. This seems a trivial starting point, but it is not so. The Netherlands has one of the greatest legal traditions in Europe. Perhaps it is less visible than that of large countries, such as Germany or France, not to speak of the common law. But, even if the Dutch legal community is not particularly eager to advertise itself, the truth is that it is the result of an outstanding heritage of scholarship dating back to the 16th century. The Dutch contribution to a phenomenon as in-

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fluential as modern natural law was decisive, as was its contribution to the expansion of Roman law outside our continent. More recently, the Netherlands has been able to produce a brand new Civil Code, a Herculean task that many consider unachievable in our time. In addition, it is remarkably open to foreign cultures, and consequently hostile to parochialism.

The reason why I mention this is that, even if it is always difficult to become a national legal glory, it is surely a bit more difficult in a country like the Netherlands.

III

Our man studied law at the University of Amsterdam and, after a short period as a practitioner, he served as a clerk at the Ministry of Justice and later at the Legal Service of the Council of the European Community. In 1962, he obtained his PhD at his *alma mater*, with a dissertation on Labour Law. And in 1965 he was appointed Professor of Constitutional and Administrative Law at the University of Leiden.

He belongs to a generation of lawyers that was deeply influenced, in Koopmans' own words, by the change of the "psychological climate" produced by the constitutional reform of 1953-56. As a consequence of Indonesia's access to independence, the position of treaties within the Dutch legal order had to be modified. This led to an amendment of Arts. 93 and 94 of the Constitution. It is not clear to what extent the drafters were aware of what they were doing, but the fact is that they established the principles of direct effect and supremacy of treaties. Shortly afterwards, the Supreme Court (*Hoge Raad*) started to check the conformity of statutes with respect to human rights agreements, thus introducing what the French would label as *contrôle de conventionalité* many years later. This form of diffuse review of legislation, in which the yardstick is not the Constitution but the international treaties on human rights, favoured the emergence of a less legalistic mentality. It was replaced by a strong commitment to personal autonomy and procedural guarantees.

IV

Tim Koopmans was called to the Supreme Court in 1978. Apparently, about half the members of the Dutch highest judicial body are not promoted from lower courts, but are appointed among practising lawyers and law professors. It seems to me a wise rule.

His stay at the Supreme Court was short, because in 1979 he was appointed judge at the European Court of Justice, where he remained until 1990. The '80s is a classical period of Community jurisprudence, in contrast with the previous heroic or foundational age. Let me simply mention some landmark decisions: *Hauer* (1979), or the protection of fundamental rights as general principles of Community Law; *Cilfit* (1982), or the judicial duty to refer questions for a preliminary ruling; *Luisi e Carbone* (1984), or freedom to provide services; *Von Colson* (1984), *Marshall* (1986) and *Fratelli Costanzo* (1989), or the efficacy of directives; *Parti écologiste* (1986), or the reviewability of parliamentary measures. These are well-known examples of how fertile the Luxembourg Court's case law was in that time. There is, however, a judgement of that period which, in my opinion, deserves to be mentioned as one of the most important in the whole history of European integration: it is *Foto-Frost* (1987), that declared the lack of jurisdiction of national courts to control the validity of Community legislation, thus affirming the monopoly of the European Court of Justice to strike down regulations, directives and decisions. Needless to say, this is a basic tool to insure the effectiveness and uniform application of Community Law. Tim Koopmans was there.

After two terms in Luxembourg, he went back to his country, where he served as Advocate General at the Supreme Court for eight more years, until his retirement in 1997.

V

If anyone wonders if there is intelligent life after retiring from twenty years at the highest judicial functions, let him (or her) look at Tim Koopmans. He has not devoted himself to the pleasures of private life, only occasionally appearing in public to receive the well-deserved homage of admirers; nor has he concentrated only in high-profile official bodies and advisory boards, even though he has taken part in some of them, such as the committee set up to investigate the Dutch involvement in the invasion of Iraq. No. He went back to real teaching as guest professor at several universities (Utrecht, Ghent and Cambridge) and, above all, he returned to his old love for Comparative Constitutional Law.

At this point, I would like to make a commercial break: in 2003, Koopmans published an extraordinary book under the misleadingly modest title of *Courts and Political Institutions*. (Perhaps he is a modest man, after all.) This book should be read by any person interested in the subject. It contains a comprehensive analysis of major constitutional problems, on

the basis of the historical experience of four undoubtedly influential countries: the United Kingdom, the United States, France and Germany. Koopmans' familiarity with these four legal systems and the relevant literature is astonishing, but what makes his book really original is that he tells a story. It is not a systematic and impersonal textbook, but the author's personal account of how four countries have answered the most important constitutional questions.

There are two aspects of this book that reveal something about Koopmans' personality. One is that he does not hide his admiration for the United States and, perhaps more surprisingly for a man coming from northern Europe, also for France. This shows certainly an independent and enlightened spirit. The second aspect to which I would like to draw your attention is that Koopmans always combines a genuine concern for the historical and sociological factors that underlie constitutional and administrative problems with a remarkable rigour in legal analysis. In a time when intellectual confusion is too frequent among lawyers, he still thinks that it is possible to differentiate between legal reasoning and political and moral argumentation. In order not to be naif about the law, one needs not be cynical: here is the proof.

Tim Koopmans has a true curiosity about different human responses to similar needs. Interest for diversity is a defining characteristic of the real comparatist. He has written about his surprise when, being a child from Amsterdam, he was brought in a trip to the Ardennes: he discovered that sometimes the land is not flat. His inclination for comparison would not have been stronger if he had travelled through the Alps!

Let me finish. Sir, your being a member of our Group is an undeserved privilege for all of us. Your presence here helps to make us a bit better. Thank you.