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OBITUARY



André Hoekema (1940–2020)

I overcame myself, the sufferer; I carried my own ashes to the mountains; I invented a brighter flame for myself.

F. Nietzsche

I first met André on Saturday, September 1st, 2001. I visited him and his beloved wife Yolanda at their home in Bickerseiland, Amsterdam, after attending the inaugural MARE Conference organized by Maarten Bavinck. I saw him for the last time on Sunday, December 1st, 2019 in his nursing home at Haarlem, thanks to the kindness of his brother Jan, his friends Theo Konijn and Trudi Frankhuizen, and my old friend Erik Weiffenbach. I assured him I was going to return in the spring of last year, but the pandemic prevented me from fulfilling my promise. Unfortunately, he passed away on November 16th, 2020, so I am left with only these hesitant words to honour an outstanding scholar, mentor and friend.

Since the Commission on Legal Pluralism is a fairly young and small academic community with close intergenerational ties, I see no reason in providing a detailed account of André's scholarly achievements. I will only refer to those related to his engagement with Latin American legal anthropology. Fortunately, professor Rob Schwitters has already written an obituary underscoring his contributions to legal sociology and anthropology, his role as concerned citizen, and his humanist approach to higher education.¹

It will be enough to remember that André studied law and sociology at Utrecht University, where he obtained his doctorate in 1972 with a dissertation on petty crime in the ports of Rotterdam. He then lectured for five years at the Free University of Amsterdam. In 1978 he started his forty-year career at the University of Amsterdam. There, he taught Sociology of Law and Legal Pluralism to generations of law students and social scientists, and between 1984 and 2014 graduated nothing less than 28 PhDs.

As professor Schwitters reminds us, André was a member of the pioneers that in the 1970s sowed the field of sociology of law in The Netherlands. Given the prevailing division of labour between legal sociology and anthropology at the time, he focused his research on transgression and sanction, bureaucratic decision-making, alternative forms of governance, and changes in formal regulatory regimes. Afterwards, under the influence of the perspective of legal pluralism and a sense of global justice, he became keenly interested in the livelihood of indigenous peoples, particularly in Latin America.²

As part of this human, political, and academic concern, Hoekema contributed in several fields. First, he published influential works widely used in the legal anthropological debates of the region and in the pleas for recognition and autonomy put

forward by the emerging indigenous rights movements. For example, in the analytical realm, his contribution to the debate on interlegality helped overcome dichotomic renderings of the relationship between official and indigenous normative orders. As he put it, interlegality should be analysed “both as a process and an outcome: a process of adoption of elements of a dominant legal order... and of the frames of meaning [of] these orders, into the practices of a local legal order and/or the other way around; or as the outcome of such process, a hybrid new legal order.”³ This framing was very influential in renewing the analytical tool-box of Latin American legal anthropology, as exemplified in the dissertations he supervised (see below).

In the political and constitutional field, his proposal that the full recognition of indigenous peoples’ rights and autonomy meant finally leaving behind the repugnancy clause typical of (neo)colonial law was presented in the 1997 International Congress of Americanists held in Quito, Ecuador.⁴ In his view, after the 20th century’s failed experiences of modernization and assimilationist policies, Latin American countries needed to come to terms with their social fabric, particularly with their ethnic and cultural diversity. But it was not only a matter of symbolically recognizing and celebrating difference. It was a question of redistributing power, be it economic, political or juridical.

Thus, in tune with the new Latin American constitutionalism of the last quarter of the 20th century, he proposed the implementation of an egalitarian formal legal pluralism (*pluralismo jurídico formal de tipo igualitario*). In this model, the monist state would no longer impose its will to indigenous legalities, authorities and fora. The new political-institutional arrangements demanded coordination, intercultural rapport, and a whole new *nomos*. In this contribution, the anthropological observer coalesced with the jurist. The outcome was a thorough and reasoned blueprint for the constitutional, normative, and administrative changes demanded by indigenous people. It was quite useful to indigenous peoples and subaltern communities, legal scholars, legal anthropologists, and activists engaged in the daily struggles for recognition and autonomy. And it also served as an input to the proposals for implementing strong versions of legal pluralism in our countries.

Aware of the skepticism these utopian projects face, Hoekema appealed to an alternative ethnographic format to strengthen his argument on the need and feasibility of recognizing broad political and legal autonomy to indigenous polities. André and his dear friend Peter Oud, a Dutch film-maker and sociologist, embarked on a transcultural project aimed at documenting successful autonomic experiences in Russia, Bolivia, USA, and Panama.⁵

One last scholarly contribution I would like to highlight is a remarkable volume widely read in Mexico and all Latin America: *The Challenge of Diversity. Indigenous Peoples and Reform of the State in Latin America*, edited in 2000 by Willem Assies, Gemma van der Haar and André Hoekema.⁶ Interestingly, it was first published a year before in Spanish as *El reto de la diversidad. Pueblos indígenas y reforma del Estado en América Latina*.⁷ According to Cristóbal Kay, this was a pioneering book at the time because it used case-studies to document the challenges and dilemmas indigenous peoples and the states faced after the first wave of constitutional reforms (1980s-1990s) in the region.⁸

The second way in which André put his intelligence, human sensibility, and scholarship at the service of cultural justice was by investing his efforts in institution-building. His humble and dialogic attitude, and his command of at least five languages allowed him to establish a fluid and respectful intellectual exchange with his Latin American colleagues, among others. Interestingly, this personal quality made him the bridge between the Commission on Folk Law and Legal Pluralism (as it used to be called) and prominent Latin American legal anthropologists like Milka Castro, Esther Sánchez, and María Teresa Sierra. It was nowhere else than in Ghana, during the 1995 Symposium of the Commission, that a Chilean legal anthropologist, professor Milka Castro, and a Dutch scholar, André, conceived the idea of organizing a Latin American network of legal anthropology.


The idea bear fruit in the 1997 International Congress of Americanists that took place in Quito, Ecuador. There, the *Red Latinoamericana de Antropología Jurídica* (RELAJU) was established.⁹ Since then, RELAJU has “played a fundamental role in circulating regional scholarship on multicultural constitutionalism and innovative jurisprudence on indigenous rights between countries in the region.”¹⁰ Up to day, it has organized ten international congresses and is the only successful regional branch of the Commission.

Third, Hoekema lectured in more than ten Latin American universities, encouraging young scholars and students to pursue their call. Moreover, he not only dialogued with his Latin American colleagues but welcomed some of them as his doctoral students. As Schwitters rightly states, “It was never about him, but about understanding people and society.” And also, I might add, it was always about reaching out to the other, in this case the community of regional legal anthropologists. Hence, he invested his time, knowledge, empathy, and intellectual energy in graduating a cadre of distinguished Latin American and latinamericanist legal anthropologists like Esther Sánchez (Colombia),¹¹ Israel Herrera (México),¹² René Orellana (Bolivia),¹³ René Rosalía (Curazao),¹⁴ and Joris van de Sandt.¹⁵ As all his students can attest, André disliked hierarchy and preferred engaging in collegial and dialogic relations. Thus, in his roles as professor and advisor he also made a difference.

Finally, on a personal note, I remember André as a friend, advisor,¹⁶ and trekker. In all these fields he is a paramount figure for me. It was my wife and colleague, Patricia Urteaga, who introduced me to him. André contacted her when he came to Lima, Perú, as part of his project on documenting indigenous autonomic experiences (see footnote 5). Later, I became his student and from 2007 until 2016 we trekked along the Qaphaq Ñan (Inka trail), a monumental 60,000 kilometers pre-Columbian road system that crisscrosses the Andean mountain range. Now I realize we were not trekkers on those spectacular high plateaus and ravines. Beyond their geographic uniqueness, they are sacred landscapes embedded with deep cultural and historical meaning. Thus, we were pilgrims paying tribute to an enchanted world and to one of the most amazing accomplishments of Andean civilization.



These pilgrimages were a formidable physical and mental experience. Once, we caught each other weeping out of emotion and wonder when witnessing how the wind created whirlpools of clouds in front of the high peaks of the Cordillera Blanca. We just respectfully embraced each other. This kind of experiences created a shared spirituality that allowed us to develop intuitive forms of solidarity, humor and companionship. Along our treks we had the chance to meet, talk, and learn from the peasants and villagers who always generously provided us a roof or a meal. His empathy with them was immediate and those were the few instances in which I saw him overcoming his shyness and composure. André was a man of many worlds but he surely felt at home in his beloved Andean mountains. I did comply with my promise to trek with him until he decided to stop. Now I can promise him that I will keep pilgriming in the Andes. And he will be next to me.

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Notes

1. Rob Schwitters, In memoriam André Hoekema 1940 – 2020, 27.11.2020, in <https://www.uva.nl/shared-content/faculteiten/nl/faculteit-der-rechtsgeleerdheid/nieuws/2020/11/in-memoriam-andre-hoekema.html>
2. A sample of his writings in https://lib.uva.nl/discovery/search?query=any,contains,andre%20j%20hoekema&tab=Everything&search_scope=DN_and_CI_and_PURE&vid=31UKB_UAM1_INST:UVA&offset=0&ubaform-query=andre%20j%20hoekema&UBAtab=0
3. Hoekema, André 2005. European Legal Encounters between Minorities and Majority Culture: Cases of Interlegality. *Journal of Legal Pluralism* 51: 1-28, p. 11.
4. Like the classical piece by John Griffiths on What is Legal Pluralism? (1986), Hoekema's paper had a *subterranean existence* until it was published five years later. Hoekema, André 2002. "Hacia un pluralismo jurídico formal de tipo igualitario". *El Otro Derecho* 26-27, ILSA, http://www.ilsa.org.co/biblioteca/ElOtroDerecho/Elotroderecho_26_27/El_otro_derecho_26.pdf
5. Hoekema, André 1995. *Imágenes de autonomía: documentación audiovisual de experiencias con la autonomía de los pueblos indígenas. Los logros y fracasos en cuanto al reconocimiento de autonomía a los pueblos indígenas bolivianos*. Amsterdam,

- Universidad de Amsterdam, Facultad de Derecho, Depto. de Sociología y Antropología del Derecho. Oud, Peter and André Hoekema 2000. *Rulers of the Steppe: History and Present State of Tuva*. University of Amsterdam and European Initiative for Democracy and Human Rights. Oud, Peter and André Hoekema 1994. *A Sketch of Freedom*. Four short films on the Lummi and Quinault of the state of Washington, USA, and the Kuna and Ngobe in Panamá, <https://www.peteroud.nl/film%7Cvideo-page49414.html>
6. Amsterdam: Thela Thesis.
 7. Zamora de Hidalgo: El Colegio de Michoacán, 1999.
 8. Kay, Cristóbal 2016. Un homenaje a Willem Assies (1954-2010): reflexiones sobre su contribución a los estudios indígenas y campesinos. *Tabula Rasa* 25: 17-44, p. 36, n. 29.
 9. In its sixth meeting, both Milka Castro and André Hoekema were honored and recognized as the initiators of RELAJU. VI Congreso de la Red Latinoamericana de Antropología Jurídica, RELAJU, Bogotá, 2008, p. 5, <https://www.bivica.org/files/diversidad-etnica-cultural.pdf>. See Dossier especial sobre Pluralismo jurídico en América Latina en tiempos de crisis. Homenaje a André Hoekema. *Abya Yala*, Revista sobre Acesso à Justiça e Direitos nas Américas 5(1): 1-23, 2021, <https://periodicos.unb.br/index.php/abya/index>.
 10. Sieder, Rachel, Karina Ansolabehere, and Tatiana Alfonso 2019. *Law and Society in Latin America. An Introduction*. In: *Routledge Handbook of Law and Society in Latin America*, New York: Routledge, 1-21, p. 6.
 11. Entre el juez Salomón y el dios Sira: decisiones interculturales e interés superior del niño, doctoral dissertation, University of Amsterdam, 2006. UvA DARE https://pure.uva.nl/ws/files/4356457/39686_sanchez_totaal.pdf
 12. Unveiling the Face of Diversity: Interlegality and Legal Pluralism in the Mayan Area of the Yucatan Peninsula, doctoral dissertation, University of Amsterdam, 2011. UvA DARE https://pure.uva.nl/ws/files/1513990/91985_thesis_klein.pdf
 13. Interlegalidad y campos jurídicos: discurso y derecho en la configuración de órdenes semiautónomos en comunidades quechuas de Bolivia, doctoral dissertation, University of Amsterdam, 2004. UvA DARE <https://hdl.handle.net/11245/1.254784>
 14. De legale en kerkelijke repressie van Afro-Curaçaose volksuitingen: een case-study van het tambú, doctoral dissertation, University of Amsterdam, 1996. UvA https://lib.uva.nl/discovery/fulldisplay?vid=31UKB_UAM1_INST:UVA&docid=alma990011533600205131. According to one source, this was the first dissertation to be presented in Papiamentu, a Portuguese-based creole language spoken in Curacao (https://www.ecured.cu/Rene_Vicente_Rosalia).
 15. Behind the Mask of Recognition: Defending Autonomy and Communal Resource Management in Indigenous Resguardos, Colombia, doctoral dissertation, University of Amsterdam, 2007. UvA DARE https://pure.uva.nl/ws/files/1106989/47132_sandt.pdf
 16. El Derecho y la gestión local de agua en Santa Rosa de Ocopa, Junín – Perú, doctoral dissertation, University of Amsterdam, 2011. UvA DARE <https://hdl.handle.net/11245/1.393034>.