

2012

Tribute: David Bederman

Johan D. van der Vyver
Emory University School of Law

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/elj>

Recommended Citation

Johan D. van der Vyver, *Tribute: David Bederman*, 61 Emory L. J. 1077 (2012).
Available at: <https://scholarlycommons.law.emory.edu/elj/vol61/iss0/20>

This Tribute is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory Law Journal by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

TRIBUTE: DAVID BEDERMAN

*Johan D. van der Vyver**

There is much that can be said about the academic excellence, practical skills, and general prestige of David Bederman within the legal fraternity. His résumé records the many achievements that attended his academic studies at Princeton, the London School of Economics, and the University of London, where he in 1996 received the Ph.D. Degree in Laws. His mentors in international law included outstanding scholars, such as my own good friend, the late Professor Richard Lillich of the University of Virginia. David's schooling in public international law included his participation in the public law sessions of the Hague Academy of International Law in 1986 and 1989, for which he received the highly prestigious Diploma of the Hague Academy of International Law. He published seven books and co-authored or co-edited five others. His long list of chapters in books, law review articles, book reviews, and essays reflects a productive output that would, or at least should, be the envy of any law professor. He often spoke at conferences and seminars. His professional affiliations and activities covered a broad and truly reputable spectrum that included serving in the executive councils of the American Society of International Law, the International Law Association, and the Institute for Transnational Arbitration. He served on the editorial boards of the *American Journal of International Law*, the *Journal of Maritime Law and Commerce*, the *Journal of the History of International Law*, and *Grotiana*, as well as the advisory board of the *American Journal of Legal History*. And much, much more!

David was also an outstanding teacher of law. And, as everyone should know, being that is not only dependent on academic degrees and diplomas, competence in the area of one's teaching, or wide-ranging practical experience. It also includes skills in conveying knowledge and good human relations. David is known to have been one of the very best and most popular teachers of law at Emory. Recognition for these qualifications and skills is evidenced by many exclusive awards, including the Faculty Excellence Award and the Distinguished Teaching Award that were bestowed on him in 2007. Students

* I.T. Cohen Professor of International Law and Human Rights, Emory University School of Law; Co-Director, World Law Institute of Emory University.

consistently testified to his excellence in class—and never failed to mention that he had an outstanding sense of humor.

His achievements in legal practice were also quite outstanding. He appeared as legal counsel in close to twenty U.S. Supreme Court cases, and at the international level, he served during the late 1980s as legal assistant in the Iran–United States Claims Tribunal established at the time to resolve a decade-long crisis in relations between the Islamic Republic of Iran and the United States of America that was sparked by the detention of fifty-two U.S. nationals at the American Embassy in Tehran in 1979 and the subsequent freezing of Iranian assets by the Jimmy Carter Administration.

But there was much more to David than just his academic achievements, teaching skills, practical experiences, and esteem within the legal fraternity. He was above all a good colleague and friend, and a dedicated family person. These qualities were clearly sparked by the family in which he grew up.

David was the son of Jolayne and Sanford Bederman, whom I got to know as a most loving family. Doctor Sanford Bederman (now retired) was a professor in geography at the University of Georgia in Athens, and he and his wife struck me as being most supportive (and proud) of David—their only child—in everything he did. They provided him with inspiration and opportunities to explore his interests and calling in life to the maximum. They served as a role model of the kind of family which David aspired to create—and did indeed create.

David met Lorre Cuzze in the Peace Palace in The Hague during his first enrollment at the Hague Academy of International Law in 1986. “When I met her,” David once told me, “I immediately knew she was the one for me.” Lorre provided David with the same kind of encouragement and support that he received from his wonderful parents. In addition, Lorre also served as a “domestic critic” of David’s academic writings and public presentations. She, too, is a law graduate, and having a strong personality and very special insights, she will not hesitate to put you on the right track.

And then, of course, there is Annelise, the only child of David and Lorre and the apple of her father’s eye. Providing her with a solid upbringing and opportunities in life has been a primary commitment of the Bedermans, and Annelise has given them abundant reason to be extremely proud and loving parents. With David as her role model, Annelise can look forward with confidence to a bright future.

What made David Bederman so special is not confined to the main focus of his academic career (public international law), but his very special interests in, and exposition of, what many might see as sideline issues. David was, to the best of my knowledge, one of only two American academics with highly specialized expertise in maritime law. In his inaugural lecture as the K.H. Gyr Professor of Private International Law, he fascinated the audience by telling them about the honor code that is meticulously upheld by pirates.

By offering a course in Roman law, David could penetrate the historical foundations of the very basic principles of the law as we know it today throughout the world. Sharing those insights with students at Emory represented a rare luxury in law school education that has come to be increasingly geared toward the art of practical lawyering—at the expense of a truly academic focus of scholarly endeavors centered upon history, theory, and systematics.

David's most recent publication is *Custom as a Source of Law*, the very notion of which hinges on the peripheral of juridical blasphemy in an Anglo-American environment with its predominant commitment to legal positivism. Custom is indeed a source of law in tribal communities, in some national legal systems, and in international law.

In developing communities of precolonial times, the law was entirely a matter of custom; and customs are even in this day and age upheld in plural societies, subject though to constraints aimed at upholding basic principles of justice and human rights. African customary law is very practical and reflects a profound sense of justice. For example, indigenous customs of African tribes do not include statutes of limitations, but if one has a complaint, one must immediately take action or else one's credibility will be questioned: "If the accused stole your cow last week," the tribal chief might say, "why do you only come to me now?" And did you know that the Venda tribe is probably the only community in the world that permits a marriage between a woman and a woman; and it has nothing to do with lesbianism? If a woman is of noble descent, and to avoid being exposed to the inferior status of women in African customary law, she can take wives for herself in order to acquire the status of a head of family equal to that of a man. She will not bear children, but her wives will be expected to have children for her (procreated by an *ukungena* nominated to do what it takes to make the wives pregnant). David, understandably, did not deal with such practical manifestations of African customary law because that was not the intent and purpose of *Custom as a*

Source of Law. Rather, he highlighted the transformation of customary law through contemporary statutes and court decisions, such as a law in South Africa that upheld the legality and enforceability of *lobolo* or *bogadi* (the payment of a bride-price), one that legalized existing and future polygamous marriages of Africans, and the judgment of the Constitutional Court of South Africa that proclaimed unconstitutional the system of primogeniture.

In South Africa, and in other countries, regional customs are also a formal source of law enforceable in courts of law, provided the conduct they prescribe or proscribe is regarded by members of the community as legally binding and that the custom is “well-established,” is sufficiently clear so that members of the community will know what is permitted and prohibited, and is reasonable and fair.

It is commonly said that customary international law is based on state practice of a cross-section of the international community of states based on a sense of obligation (*opinio iuris ex necessitate*). David uncovered the many complexities that attend the exact meaning and appropriate application of this rather simplistic perception of the making of customary international law, again bearing evidence of his critical insights into the pragmatics of foundational concepts of law.

Dealing with these quite distinct (yet related) manifestations of legally binding customs in a single volume is also a Bederman innovation!

David Bederman has done Emory proud. I am greatly privileged to have known and to honor him as an outstanding friend and colleague.