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Abstract

A brief tribute to the late Johan van der Vyver a legendary anti-apartheid and human rights scholar in his native South Africa, and a leading professor of law and religion, comparative law, and international law at Emory University.

Keywords: Johan van der Vyver, human rights, law and religion, anti-apartheid, international law, South Africa

In Memory of Johan D. Van der Vyver (1934-2023)

John Witte, Jr.¹

Johan David Van der Vyver, legendary human rights scholar and anti-apartheid activist, died on May 22, 2023 in Pretoria, South Africa. He was 89, and had remained a full-time scholar and teacher through the spring semester 2023. He served as the I. T. Cohen Professor of International Law and Human Rights, Senior Fellow in the Center for the Study of Law and Religion, and former Senior Fellow for Human Rights at The Carter Center of Emory University.

Johan was born and raised in South Africa, and educated at the University of Potchefstroom where he began his law teaching career in 1958. He soon became a professor of law, and served from 1972-1974 as dean of the law faculty. He taught and wrote at length in the fields of property law, family law, the law of persons, church-state relations, legal science, and legal philosophy. He produced several leading texts on these topics, in multiple editions, some of which are still in print. In the 1970s, he added human rights to his scholarly repertoire and teaching. He took up this topic as a visiting scholar and lecturer at Columbia, Michigan, Harvard, and the Institute for Advanced Legal Studies in London, yielding a massive LL.D. dissertation on *The Juridical Meaning of the Doctrine of Human Rights* (1974).

This new human rights work, however, soon landed Johan in trouble with both the conservative churches of his community and the apartheid state of South Africa. Many local Protestant churches thought human rights to be a dangerous product of Enlightenment liberalism and individualism, which Bible-believing Christians should firmly reject. Johan argued powerfully and patiently to the contrary, that human rights are God’s gifts to human nature, which should be enjoyed and exercised by every

¹ This text is adapted from my dedication to Johan in John Witte, Jr., *The Blessings of Liberty: Human Rights and Religious Freedom in the Western Legal Tradition* (Cambridge University Press, 2021), xiii-xv.

human being, regardless of color, class, confession, or sexual orientation. The apartheid state, in turn, reserved human rights to the white elite, leaving vast portions of South African society trapped in dire poverty, illiteracy, and oppression with little legal recourse or protection. Johan risked much in speaking out against these racist and apartheid policies using the spotlight of human rights to expose the grave injustices that these state policies inflicted. He was soon rejoined, rebuked, censored, demoted, and then dismissed from his deanship at Potchefstroom, and eventually forced to leave the university and take up a law professorship at the University of Witwatersrand, in Johannesburg.

While now a pariah in some conservative religious and political communities, Johan became a powerful antiapartheid voice in South Africa and a champion of human rights and democratic reform, which he defended on robust philosophical and jurisprudential terms. Starting with his *Seven Lectures on Human Rights* (1977), he wrote several pathbreaking books and articles in this field and led workshops and lectures around South Africa and well beyond. In 1976, he flew to New York City and walked in without appointment to the Ford Foundation offices, asking them to support the burgeoning human rights movement in South Africa. They supported this effort generously, and in 1979 Johan organized the first great international human rights conference in South African history, hosting it in the glorious city of Cape Town. There he helped introduce the world to a still regional hero at the time, Archbishop Desmond Tutu. Throughout this time, he argued constitutional cases in the South African courts on behalf of racial, ethnic, and religious minorities. And he remained one of the legal architects, along with his many students and a growing body of coworkers, of the antiapartheid efforts and then the constitutional reform movements of South Africa in the later 1980s and early 1990s.

Johan's work attracted the attention of the leading human rights scholar at Emory Law School at the time, Professor Thomas Buergenthal, the first I.T. Cohen Professor of International Law and Human Rights at Emory. Buergenthal had survived the savagery of Auschwitz as a youngster, had risen to leadership as a law professor and dean, and would go onto a brilliant judicial career first on the Inter-American Court of Human Rights and then on the International Court of Justice in the Hague. Recognizing Johan's courage and promise, Buergenthal introduced him to President Jimmy Carter, who had established The Carter Center of Emory University. In the early 1990s, President Carter invited Johan to make regular visits to Emory, and then in 1995 appointed him as a senior fellow at the Carter Center, the same year the law school appointed him to the I. T. Cohen Professorship to replace the now freshly-appointed Justice Buergenthal.

My colleagues and I in the Center for the Study of Law and Religion saw the power of his mind, heart, and work, too, and we drew him into our Center's projects. From the early 1990s on, Johan and I worked side by side directing our Center's series of international projects on democracy, human rights, and religious freedom. We ran several international conferences together and Emory and abroad, and we coedited two massive volumes on *Religious Human Rights in Global Perspective* (1996) and several

later journal symposia and anthologies on religious freedom, church–state relations, proselytism, children’s rights, and more.

In addition to this work on law, religion, and human rights, while at Emory Johan added yet another thick layer to his scholarly work: what were for him the new subjects of public international law, international humanitarian law, the laws of military conflict, and international criminal law. He followed his trademark method of learning by doing, as he took each of these topics and wrote voluminously on each of them while creating new courses, seminars, and public lectures. In this past five years, he produced six capstone books on all these international law topics. Indeed, he sent in corrected galleys to his final book on *International Human Rights* before leaving for the final time to his South African home in early April.

Johan remained a quiet giant in the legal academy with high standing around the globe for his brilliant contributions to many fields of legal study, captured in 25 books and 400 articles. He stood at distinguished lecterns on every continent, save Antarctica; in the last five years alone he traveled to India, China, Morocco, Ghana, Kenya, Norway, Belgium, Bulgaria, Singapore, Chile, and various cities in North America and South Africa to give lectures and attend conferences. He insisted on teaching a full load of courses throughout his time at Emory, never once taking a sabbatical, while flying back and forth to South Africa between semesters and each summer. On some of these recent trips back to his native land, Johan finally got his just due from his South Africa as well. He was decorated with all manner of academic awards, tributes, and citations, including an appointment as Professor of Law Extraordinaire at the University of Pretoria. In sublime acts of sweet justice, the University of Zululand gave him an honorary doctorate for his courageous advocacy for black South Africans, and eventually his own alma mater, the University of Potchefstroom, gave him an honorary doctorate for his courageous prophecy to white South Africans.