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In Memoriam David J. Bederman (1961-2011)

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IN MEMORIAM
DAVID J. BEDERMAN (1961–2011)

By Bernard H. Oxman*

As the *American Journal of International Law* began to plan a yearlong series of essays in honor of its centennial and that of its parent organization, the American Society of International Law, one member of the Board of Editors stood out as the obvious choice to help launch the series with a review of a hundred years of scholarship in the *AJIL*. That person was David Bederman.¹

He was certainly well prepared for the task. He held an A.B. degree from Princeton, awarded with highest honors; an M.Sc. from the London School of Economics, awarded with mark of distinction; a J.D. from the University of Virginia School of Law, where he was elected to the Order of the Coif and served as Research and Projects Editor of the *Virginia Journal of International Law*; a diploma from the Hague Academy of International Law; and a Ph.D. from the University of London, having been advised on his thesis project by William Butler, James Crawford, and Rosalyn Higgins. He spent a year as a legal assistant at the Iran–United States Claims Tribunal and thereafter worked as an associate at Covington & Burling in Washington before joining the Emory faculty in 1991. He was a tenured (later chaired) professor at Emory University School of Law and had visited at NYU, Osgood Hall, and Virginia.

He had seemingly limitless energy, boundless curiosity, and astonishingly diverse interests. He was a prolific scholar, while also serving as counsel in a large number of cases involving international law and related issues. Summing up the contributions of a life cut all too short, the *Atlanta Journal-Constitution* reported that “[o]ver a 20-year span, Dr. Bederman taught 4,000-plus students in 15 different courses, wrote 12 books and 125 scholarly articles, gave 80 public lectures and held three prestigious visiting professorships, and was counsel of record in 52 federal court cases, four of them before the U.S. Supreme Court.”² In the *AJIL* alone, in addition to his centennial essay³ and the lead article that appears in this issue,⁴ he published three lead articles, two shorter essays, nine case reports, one review essay, and ten book reviews.

David’s love of the scholarly enterprise is evident in his writings. His occasional use of the first person is no mere matter of voice, but rather a way of taking the reader with him on a fascinating journey of inquiry and discovery.

* Co-Editor in Chief.

¹ See David J. Bederman, *Appraising a Century of Scholarship in The American Journal of International Law*, 100 *AJIL* 20 (2006) (reprinted by the American Society of International Law in *A CENTURY OF INTERNATIONAL LAW: AMERICAN JOURNAL OF INTERNATIONAL LAW CENTENNIAL ESSAYS* 20 (2007)).

² <http://www.ajc.com/news/dr-david-bederman-50-1256481.html>. The *AJIL* published reviews of five of David’s books. Ronald J. Bettauer reviewed *INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENT, 1975–1995* (co-authored with Burns H. Weston and Richard B. Lillich, 1999) at 94 *AJIL* 810 (2000); William Allan and Thomas K. Grant reviewed *INTERNATIONAL LAW IN ANTIQUITY* (2001) at 97 *AJIL* 218 (2003); Robert Y. Jennings reviewed *THE SPIRIT OF INTERNATIONAL LAW* (2002) at 97 *AJIL* 725 (2003); Geoffrey Watson reviewed *INTERNATIONAL LAW FRAMEWORKS* (2001) and similar works at 99 *AJIL* 932 (2005); and Steve Charnovitz reviewed *GLOBALIZATION AND INTERNATIONAL LAW* (2008) at 105 *AJIL* 616 (2011).

³ *Supra* note 1.

⁴ 106 *AJIL* 271 (2012).

David's broad perspective endowed him with the capacity to perceive the international system as a whole. His remarkable ability to organize, explicate, and engage with a wealth of diverse topics in a coherent way was evident in the clarity, wit, and elegance of his sophisticated book introducing the reader to international law.⁵

His joy in exploring the history of international law and his mastery of the techniques of intellectual and legal history were well established. Tackling just one century of scholarship in just one journal was unlikely to overwhelm him. His interest in legal history was already evident in his first article in the *AJIL* in 1988, for which he was awarded the Deák Prize by the American Society of International Law.⁶ In 2001 alone, David published an article on treaty interpretation by Grotius and his followers,⁷ as well as two books that challenged students of international law to reach back further than Grotius, much further to the classical antecedents of international law.⁸ He believed that such an effort, while its own reward, would potentially reveal both historical roots and, more significantly, enlightening sources to inform our understanding of international law as we know it today.

David's love of history never waned. In 2010, he launched his inquiry into custom by reaching back even further, conceptually and chronologically, to preliterate societies. "All law begins with custom" is his final book's opening salvo.⁹

History informed not only David's work in international law and constitutional law, but one of the other joys of his professional career: the law and lore of the sea. He traversed the divide between public and private law by establishing himself as a recognized expert in the law of the sea and in admiralty, both of which he taught and wrote about.¹⁰ Ruth Wedgwood aptly observed that David had a boy's love of the sea and its wrecks. At least from afar. He peppered me with questions about my own experiences on board a submerged submarine. But he declined an invitation to visit the *Titanic*, explaining, "My idea of a sea adventure is going to the deep end of the pool."¹¹

As new technology began to enable enterprising private persons and firms to find and recover long-lost wrecks at sea and their contents, David worked to facilitate the endeavor and to shape the legal response. To this effort he brought uncommon, and uncommonly balanced and informed, sensitivity to the competing considerations that required accommodation—which included, as one would expect, uncovering, protecting, and disseminating the legacies of history as well as understanding the limits of what law can be expected to achieve. This sensitivity is evident in his scholarship on these matters,¹² in the many related cases that he worked on,

⁵ DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* (2001) (2d. ed. 2006; 3d. ed. 2010).

⁶ *The 1871 London Declaration, Rebus Sic Stantibus and a Primitivist View of the Law of Nations*, 82 *AJIL* 1 (1988).

⁷ David J. Bederman, *Grotius and His Followers on Treaty Construction*, 3 *J. HIST. INT'L L.* 18 (2001).

⁸ DAVID J. BEDERMAN, *INTERNATIONAL LAW IN ANTIQUITY* (2001); DAVID J. BEDERMAN, *CLASSICAL CANONS: RHETORIC, CLASSICISM AND TREATY INTERPRETATION* (2001).

⁹ DAVID J. BEDERMAN, *CUSTOM AS A SOURCE OF LAW* 3 (2010).

¹⁰ The connections between them are explored in two of David's last articles: *Law of the Land, Law of the Sea: The Lost Link Between Customary International Law and the General Maritime Law*, 51 *VA. J. INT'L L.* 299 (2011), and *The "Common-Law Regime" of Foreign Sovereign Immunity: The Actual Possession Rule in Admiralty*, 44 *VAND. J. TRANSNAT'L L.* 859 (2011).

¹¹ <http://www.law.emory.edu/about-emory-law/news-article/article/emory-law-mourns-the-loss-of-professor-david-bederman.html>.

¹² David J. Bederman, *Historic Salvage and the Law of the Sea*, 30 *U. MIAMI INTER-AM. L. REV.* 99 (1998); *The UNESCO Draft Convention on Underwater Cultural Heritage: A Critique and Counter-proposal*, 30 *J. MAR. L. & COM.* 331 (1999); *Rethinking the Legal Status of Sunken Warships*, 31 *OCEAN DEV. & INT'L L.* 97 (2000); *Maritime*

and in his unusual role as a director and then chairman of the board of Odyssey Marine Exploration.

As a former editor of the International Decisions section of the *AJIL*, I was delighted when David agreed to assume that position, especially since it would afford me the opportunity to work more closely with him. Suffice it to say that as the co-editor in chief responsible for supervising that department, I had little to do but watch with satisfaction as he expanded the geographic range of both the cases reviewed and the reviewers, all while carefully attending to the quality of the contributions. Ever attentive to the need to match the right person with the right case, David was also keen on offering opportunities to younger scholars.

There were sixty-five case reports published under David's editorship from the July 2008 issue through January 2012 issue, plus those he planned for the current issue. In the latter part of this period, David's battle with illness intensified. And so did his determination to maintain, and where possible also intensify, his scholarly work. For example, our last issue of 2011 contains his review of two books,¹³ our first issue of 2012 his own report on a case,¹⁴ and this issue his lead article.¹⁵ Just a few short weeks before he died on December 4, 2011, David and I were either on the phone or exchanging e-mail messages about plans for the case reports that appear in this issue. Never once did he complain. Never once did he lapse in attending to his duties.

He was indeed a gentleman and a scholar. The words that adorn the heroes of our intellectual and moral history grace the memory of David Bederman.

Philologus. Πολυμαθής. 𐀀𐀃𐀆.

Preservation Law: Old Challenges, New Trends, 8 WIDENER L. SYMP. J. 163 (2002); *Congress Enacts Increased Protections for Sunken Military Craft*, 100 AJIL 649 (2006).

¹³ 105 AJIL 839 (2011).

¹⁴ 106 AJIL 125 (2012).

¹⁵ *Supra* note 4.