Q & A with the Experts: Johan van der Vyver

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Q: What brought you to Emory?

A: In the late 1980s I was engaged with some fellow South Africans in meeting with people who were in exile at the time, members of liberation forces, to talk about the political future of South Africa, and we had a meeting in Washington, D.C. At that time I was also engaged in translating a legal philosophical work of a very famous Dutch philosopher, Herman Dooyeweerd, from Dutch into the English language, and one of the referees of my translation was John Witte. I called John Witte and said, you know, I’m coming to the United States, I have some time, if it makes any sense to you, then I could come down to Emory and we could talk about the translation. And so John invited me down. At that time at Emory there was a Professor Thomas Buergenthal, who’s now a judge in the International Court of Justice, whom I’d known from human rights circles. During my visit he invited me to spend a semester at Emory to do some teaching here. Professor Buergenthal then resigned from Emory, and Emory then asked me to come for an entire year in order to take these classes while they found an appropriate replacement. We did that in 1990 till 1991, and then at the end of that session, Emory offered me what they called an ongoing relationship, which means that I was to come here every second year to teach International Human Rights, and give them further opportunities of finding a proper replacement for Professor Buergenthal. But then finally in 1995 they offered me his position and offered me the I.T. Cohen Chair of International Law and Human Rights. I decided to accept that and so came permanently to Emory in 1995.

Q: And when does your association with the Center for the Study of Law and Religion date?

A: Well, I was part of it right from the outset. The very first major conference was on Christianity and democracy, and that was shortly after my visit that I spoke of before. John Witte invited me to be part of that exercise, so I was part of that particular conference and after that was involved in all the major conferences and ventures of the Center for the Study of Law and Religion except for one.

Q: What were your impressions of the Christianity and democracy conference?

A: The 1991 conference on Christianity and democracy was an extremely outstanding event. There were so many participants from all over the world, and the quality of the presentations was so, so good that it really stimulated me tremendously and made me tremendously proud to have
been part of that project. From it emanated some publications, and one can always look back at that as one of the great, great beginnings of John Witte’s association with the Center. I think that put his name on the map because one attributes to the success of John Witte that he produces the goods. I think that after that conference whenever John Witte wanted to organize something and had his mind set on some project, he would get the money for it because of his tremendous organizational skills and the great success with which he carries out these different projects.

Q: What impact has the Center had on the Emory community?

A: Well, let me begin by saying that the Center for the Study of Law and Religion is in my opinion the very best of its kind in the whole world, and I’ve traveled quite a bit, I’ve gotten engaged in other exercises in this field of law and religion. Wherever I travel, people know about the work of the Center, so it is well-marketed but particularly strikes people for the quality of the work that emerges from the Center. And that was from day one, from that very first conference we had on Christianity and democracy, so the impact of the Center for the Study of Law and Religion on the image of Emory is just outstanding throughout the world. And I think we owe a very great debt to John Witte and the Center and other people involved in the Center for putting Emory on the map and making it a household name in many parts of the world largely through the activity of the Center.

Q: How has your thinking changed since you became affiliated with the Center?

A: Well, in South Africa I always took a particular interest in the state claiming for itself an authority to try to impose certain religious scruples on the entire community, and that I found in conflict with basic Calvinistic principles known as the doctrine of sphere sovereignty, which basically says let the state mind its own business and the church will mind its, let the one not step into the field of the other. And this I found a valuable formula for thinking about church-state relations. It’s not quite separation of church and state because from that perspective I don’t think that church and state can be separated. I think there’s a strong symbiosis between law and religion, and coming to Emory in a new environment, in a new setting, with a new legal system different from constitutional values, I had to rethink quite a bit of my own critical perceptions that I had of the South African situation and try to apply that to the United States -- also becoming somewhat critical of the relationship between the church and state in the United States, which I also think is not quite the ideal situation, and particularly also believing that a constitution is probably the most unexportable commodity that any country has. When communism was abandoned in Eastern Europe, and again through my work with the Center I was exposed to that experience, it struck me that there was almost an urgency to imitate the American system of church-state relations, and that caused reaction in Eastern Europe. I don’t think it was properly suited for that part of the world with a different history and a different culture, and so the reaction that one experienced in Eastern Europe against the strict separation of church and state, the excess of freedom--I always thought was just trying to impose too much freedom too quickly. And so I have been critical of America trying to impose its perceptions of state-church relations on the rest of the world, or the rest of the world just wanting voluntarily to imitate that because I think that the way that you regulate these methods are deeply embedded in one’s culture and traditions, and cultures and traditions of different countries are different.
Q: Do you feel that the Center is sufficiently examining these kinds of issues?

A: I think if we look at the future in the field of law, religion, church, state, there are several problems that are going to be with us for many years to come. If you look at international instruments on freedom of religion or belief, you will find the problems that emerge from the principle of the right to change one’s religion or belief. There are many of the mainstream religions of the world, including Islam, including orthodoxy, even Roman Catholicism to some extent and other religions that do not believe that one has the right to change your religion or belief, and while that is a principle enunciated in international instruments but not upheld in practice, that is a problem that one will have to look at much more closely.

The second problem that I think is going to require quite a bit of attention is the relationship between church and state. I think the final word has not yet been spoken, at least on the international level, because there are still too many countries left in the world where the separation of church and state or sphere sovereignty of church and state is not clearly appreciated, and where the state would claim for itself the right to impose a religion on an entire community, or even religions wishing the state to do that. If you have a religious minority in any such country, they are being marginalized and discriminated against, and so this is a problem of which we haven’t even remotely seen the end of the solution. In the future we will have to pay much more attention to looking at this.

And the third that I might mention is what is known as the right to self-determination of religious minorities in different societies, which is a basic principle of international law but is also not upheld in all the countries of the world, even in many countries of the world. I think this might be the first next project that the Center for the Study of Law and Religion would want to tackle, which is very imminent. So to put it in a nutshell, there are so many problems left in the field of law and religion, church and state that the Center still has a long, long way to go ahead of it and many new ventures that are begging to be further explored.

Q: Would you say that the Center is especially positioned to take on these issues?

A: So far all of the projects that the Center has undertaken have been done with such great significance and involving so many people from all over the world, and so that if you were to ask me who would be best equipped to tackle any of these projects in the future, I would without any hesitation say the Center for the Study of Law and Religion. It is in my opinion the best of its kind in the whole world, it is the best equipped to do that, and it has the leadership to achieve positive results academically and otherwise.

We are talking about these problems on the academic level, but one also hopes that through doing that, something of it will filter through into actual practice. I might also say that through my experience working with the Center, I’ve always been surprised how people with the most divergent religious views, if they come to the point of conversation, find how much we have in common. I think that we are inclined to emphasize the differences between this or that religious perception, but they are so much in common that we can build upon in order to create good relations and in order to explore the solution to these problems in much greater depth.
Q: What is your impression of the impact of Harold J. Berman on the Center?

A: Before I came to Emory I never met Professor Harold Berman. I shouldn’t admit this, but I didn’t know of his existence, to be frank, but having met him at Emory it was just admiration from day one. The energy that emerges from him and what he has meant for the reputation of Emory University because he in his own right is a world-famous figure, and it is a great asset for Emory to have such a person upon our faculty. Over the years I came to work closer and closer with him so that he and I are now co-directors of the World Law Institute of Emory University, planning a very, very big conference for next month, and it was such a great pleasure to work with him, and doing that to learn of his tremendous insights and evaluation of religious values. He’s a man that is personally, deeply religious. The example that he sets is inspiring to others and this is to his personal life and not only to his academic work. His academic work is outstanding. It is amazing that a man of his age can still be so tremendously productive. I’ve also sat in some of his lectures. He’s from time to time asked me to lecture to his students, and just seeing the admiration that the students have for this great man and what he can convey to them through his world knowledge, his experience, his insights, but also his humility as a deeply, deeply religious Christian, and so I’ve found him a great, great inspiration and again I want to emphasize working with him as co-director of the World Law Institute of Emory University is one of the greatest privileges that I can imagine any person could have had.

Q: What role do you see for the Center regarding Asian religions?

A: A few years ago I became marginally involved with efforts of a group of Christians in China to try to persuade their government to adopt a law on religious freedom. The background to this was that China had just signed, not yet ratified but signed, the International Covenant on Civil and Political Rights. So these groups of young Chinese believers thought that this was an appropriate time to convince the Chinese government to adopt a law on religious freedom, and so they came to Baltimore and met with some people from the United States and I was included in that particular gathering. I also had to make a presentation, and by the way my presentation, the essence of it was if you want to sell a law on religious freedom to the Chinese government, don’t follow the American model because that would be too much freedom too soon. If you come from a background where the state controls religion and you suddenly want to take every bit of control away from that government, then they’re not going to accept your proposals. At the time I proposed to them to look at the new law on religious freedom of Poland, which guarantees lots of freedom, a great deal of autonomy for religious institutions but still under some state control, and that is kind of the first step towards a regime of freedom of religion or belief. Now I’m no longer engaged in that particular venture but that has provoked in me an interest in what is happening in China, and I think that is a world that is vacant for the Center of the Study of Law and Religion to go into, to make contact with this group and other groups, and to try to expand the whole problem and interest of law and religion in that particular community. And I mention this former involvement with the Chinese people just to show that there are people in China who would really appreciate tremendously some initiative of the Center in their part of the world in addressing the kind of problems which they confront in looking at state-controlled, state repression even, of religious freedom.
Q: Do you see the Center taking a more activist role on the issue of religious liberty in China?

A: I think an institute like the Center for the Study of Law and Religion begins their exercise through academic discourse because we are an academic institution and are primarily interested in the academic side of law and religion, church and state. But by talking about that, studying, holding conferences, and publishing, the message goes out, and this message impacts on the lives of people. So even though you might say we want to remain academic, that’s not possible, because if you are truly academic and if you are truly doing your work well as the Center has been doing so far, then it really has affected the impact on the lives and on the institutions of the communities where they work and which they study. So from academic interests, tactical implementation to influence upon the hearts and minds of people is not worlds apart, it is very closely related.

Q: Can you elaborate on what you think needs serious reconsideration in the American system?

A: Given my South African background, I’ve always been inclined to be excessively critical of the Establishment, and I think that in South Africa for good reason. When I came to the United States I also found much that can be criticized, also in the field of church-state relations. I don’t think that the United States Supreme Court has found a clear answer to the relationship between law and religion, church and state, and this is borne out by the fact that almost every new appointee to the U. S. Supreme Court uses the very first opportunity that they get to rewrite the principle, to put a difference nuance on the principle that should govern law and religion, church and state within the United States. And I think that is so because the present system proceeds on the false premise that law and religion can be separated. If you start on a false premise, then you end up with all kinds of anomalies, contradictions, which the next Supreme Court judge tries to remedy by rewriting the principle, by rewriting the quote versus lemon test of state-church relationships. And so this is a wonderful field of study for the United States, the system or the idea of separation of church and state has been applied to good ends, but I think sometimes also in a way that is subject to criticism. This is something that again coming to the United States opened a whole new field of inquiry to me and to my own inquisitive mind.

Q: How do you feel about the American position on the International Court?

A: I am extremely critical of the point of view advocated by the United States in regard to the International Criminal Court. I was part of the Rome Conference and so I saw the American delegation in action and I know that the one thing that the United States insisted upon was a right of veto, of prosecution of American nationals in the International Criminal Court, and this came to be known as American Exceptionalism. The American delegation always tried to explain why the United States should be treated differently from any other country in the world, and the international community would not buy that. But what is even worse is that the insistence of the American government on writing a clause into the statute of the ICC that would give it a veto of the prosecution of American nationals was successful in the sense that the United States can preclude the prosecution of any American national in the ICC simply by conducting a bona fide investigation into the allegation of wrongdoing. If they’ve done that, came to the conclusion that
there’s no probable cause, don’t proceed with the prosecution, that’s just fine. The ICC cannot step in and prosecute. It’s only if it turns out that the United States is unwilling or unable to prosecute that the ICC can step in. So the United States simply wouldn’t take yes for an answer. That I find most unfortunate because the contribution that the International Criminal Court can make in order to prevent atrocities committed by political leaders in the world, I think, is tremendous and for the United States to try to undermine the Court, I think, is most unfortunate.