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TRIBUTES

THE CONVICTION OF THINGS NOT SEEN: A TRIBUTE TO HAL BERMAN

*Frank S. Alexander**

*Faith is the assurance of things hoped for, the conviction of things
not seen.*

—Hebrews 11:1

These words, contained in a short letter we know today as Hebrews, were written (at least from the perspective of Harold Berman) just a few years ago. The first part of this description of faith, “the assurance of things hoped for,” does give any of us much problem I suspect, as we are all filled with hopes for tomorrow. It is the second half of this description of faith, “the conviction of things not seen,” that is most problematic for us today. If I can’t feel it, or see it, or smell it, or hear it, or taste it, I have real doubts about it. Now I’m not speaking about the assertion that “Yes, Virginia, there is a Santa Claus,” for anyone who has tried to assemble a child’s Big Wheel at 2:00 a.m. on the morning of December 25th when the package says “Easy to Assemble—No Tools Required” must have faith in something. Nor am I thinking of my children’s fascination with the Easter Bunny and Easter egg hunts, though I have always been puzzled by what rabbits and eggs have to do with each other.

* Professor of Law, Emory University School of Law. Substantial portions of this tribute were presented as an address honoring Harold Berman’s Lifetime Achievement Award from the *Journal of Law and Religion* in 1994, available at http://www.hamline.edu/law/jlr/berman_tribute.html.

The “conviction of things not seen” is the gift Hal Berman gave to me over the past thirty years, during which I was privileged to be his student, his colleague, his attorney, and his friend. As Hal taught me, this conviction of things not seen has three parts: first, an open and inquiring mind; second, a courage to assert and to accept; and third, a sense of gratitude.

An Open and Inquiring Mind

It is neither my purpose nor my intent to offer a scholarly critique of the extensive scholarship of Harold J. Berman. An exhaustive bibliography of his works is itself daunting to read, for it contains 25 books and over 400 articles. Instead, my hope is simply to share but one perspective on the impact Hal Berman had on so many.

On one of his many trips to Martha’s Vineyard, where he went each summer to refresh his body, mind, and spirit, Hal was walking along a path in the woods when a large frog jumped in front of him. To Hal’s astonishment, this frog began to speak and said, “Sir, please help me. A thousand years ago a witch cast a spell on me. If you will kiss me, I will do anything you want. I will turn into a voluptuous maiden; I will make you great lawyer; I can even make you the Dean of the finest law school in the country! Just free me from 1000 years of hopping around Europe, England, and this new world.” With a gleam in his eye Hal reached down, carefully lifted this frog, and put it in his pocket. The frog cried out, “Wait, what are you doing? Don’t you want what I have to offer?” To that Hal responded, “Why would I want those things when I can have a talking frog who can tell me what actually happened over the last 1000 years?”

When I arrived in Cambridge more than thirty years ago flush with idealistic passions of the anti-war movement and the civil rights movement, I went to the Divinity School asking questions of what faith has to do with law, and what faith and law have to do with justice. One of the first things I was told was the story of the student who, twenty years earlier, had asked the same questions. Upon going to Harvard Divinity School in the mid-1950s this student asked, “What does this study of ancient texts have to do with justice?” The reply was, “If it is justice you are interested in, go to the Law School.” Upon entering the Law School this student asked his professor what the rule against perpetuities had to do with justice, and the professor replied, “If it is justice you are interested in, go to the Divinity School.”

That particular student did not accept either answer. That student, William Stringfellow, found at the Divinity School a mentor and friend in the form of James Luther Adams. At the Law School, Bill Stringfellow found a friend and mentor in a Soviet and international law specialist, Hal Berman. As a result of these conversations (in which there was often less than agreement, I might add), Hal did what few other American law professors were willing to do in the 1950s: he turned with an open and inquiring mind to the relationship of Christianity, law, and justice, publishing an essay entitled *The Influence of Christianity upon the Development of Law*.¹

Twenty years later, when I began wandering the halls in Cambridge and sharing my frustrations about Harvard Law School with Bill Stringfellow, Bill suggested that I go to meet Harold Berman, who, he said, might be sympathetic to my questions (though he added, in only the way Bill could, that “I don’t think he’s got his theology quite right”).

I was fortunate to discover that Hal had just published some lectures he had given in a little volume entitled *The Interaction of Law and Religion*.² Hungry for something that would draw connections between law and religion, I devoured this text and found that it fed me, though I did not agree with all he said in it. My heart did sing, though, when I read his words, “As law without religion loses its sanctity and its inspiration, so religion without law loses its social and historical character and becomes a purely personal mystique.”³ Three years later, during my last year in law school, the state of Utah executed by firing squad the first person to be put to death by the government in over a decade. Distraught and dismayed, a group of us circulated a petition to students and faculty alike asking everyone to gather to discuss what could be done. Of the entire Harvard Law School faculty, only two professors joined us for discussions that day in Harkness Commons: Erwin Griswold (former dean and, at that time, professor emeritus) and Harold Berman.

A few months later, my wife and I were blessed with the birth of our first son. Hal and Ruth Berman took time from their numerous other commitments and obligations to join us at his baptism. When I think of Hal, the person who studied and wrote of Soviet law and of international trade, of the Gregorian

¹ Harold J. Berman, *The Influence of Christianity upon the Development of Law*, 12 OKLA. L. REV. 86 (1959). This article was part of a larger symposium on Christianity and Law in which both William Stringfellow and Marcus Barth also participated.

² Harold J. Berman, *THE INTERACTION OF LAW AND RELIGION* (1974).

³ *Id.* at 78.

reforms and of the great revolutions, of Christianity and the nature of law, and who takes the time to attend the baptism of the child one of his thousands of students, I recall the words of the baptismal prayer we read that day: "Give [him] an inquiring and discerning heart, the courage to will and to persevere, a spirit to know and to love you, and the gift of joy and wonder in all your works."⁴

A Courage to Assert and to Accept

A conviction of things not seen requires more than an open and inquiring mind. It requires the courage to make connections where others see only barriers. Hal Berman has frequently gone where others would not dare go. In the early 1950s, much to the consternation of those who later became leaders of the CIA, Harold Berman insisted on traveling to the Soviet Union, where he was the first major figure to initiate discussions on the rule of law. On two occasions, separated by thirty years, Hal published essays attacking both Joe McCarthy and Ronald Reagan for their nearsightedness in equating the Soviet Union with the Devil.⁵ In the late 1970s, students at Harvard Law School (including myself) decided to take advantage of the newly enacted Freedom of Information Act and obtain copies of our files from the FBI and the CIA. We persuaded Hal to do the same thing. Whereas our files may have contained five pages, or even fifty pages, the files maintained by J. Edgar Hoover, the FBI, and the CIA on Hal were so extensive that they had to be delivered in crates, and even then many pages of many documents were "blacked out" in the name of national security.

The courage to assert, and to accept, in the case of Hal Berman, is a most unusual combination of clarity of voice, in-depth insights, and incredible naiveté in certain areas. Those of you who may have written in those substantive areas in which Hal had expertise are aware that he did not hesitate to criticize an article where was is inadequate or incorrect. I remember vividly during my second year in law school asking Hal to supervise my research paper on the relationship between Luther's formulations of the law and contemporary jurisprudence. After working for several months on this project, Hal read my initial draft and quite straightforwardly said, "But you've relied solely on English translations. What about the Latin, the German, the French

⁴ THE BOOK OF COMMON PRAYER 308 (Episcopal Church, 1979).

⁵ Harold J. Berman, *The Devil and Soviet Russia*, 27 AM. SCHOLAR 147 (1958), reprinted in HARVARD LAW SCHOOL BULLETIN, June 1958, at 3; *The Devil and Soviet Russia*, NEWSWEEK, May 9, 1983, at 8.

sources?” Not knowing a word of Latin or German, and hardly a sentence in French, I quickly decided to shelve that project for another day. But what fun I had six years later when I served as Hal’s attorney in the purchase of his new home in Atlanta. I could turn to Hal, with the stack of closing documents in front of him, and ask politely, “Are you ready to sign?” He had not a clue about the meaning of those technical provisions in the closing documents and was delighted to admit that he had not read them and wasn’t going to!

This courage to admit you do not know, and to accept help from others, is one of those things which lawyers, and law professors especially, seem to have a hard time understanding.

This person who refused to read the closing documents when he bought a new home is the same one who has given me permission to, and taught me how to, speak before my own students and say “Yes, I have faith, I believe in God, and I believe in the gift of law.” In one of his essays, Hal took the famous aphorism of Oliver Wendell Holmes, “[t]he life of the law has not been logic; it has been experience,”⁶ and modified it to be “the life of the law is not logic but Logos, and that Logos includes not only felt necessities, political and moral theories, and intuitions and convictions . . . but also a spiritual faith grounded in a larger experience, both psychological and historical.”⁷

A Sense of Gratitude

Hal’s open and inquiring mind, together with his courage to assert and to accept, was overlaid with his sense of gratitude. He, above all others, realized that everything he had and everything he did was a gracious gift from God. The gifts that we have are given to us by grace—grace just comes to us. Hal knew and understood that, for in all his teaching, his research, his writing, and his work with others, he approached life with a joy of gracious living and giving.

It was a great gift to me to be able to walk down the hallway and say to Hal, “Help me to understand Anselm’s credo, that ‘I do not believe in order that I will understand, but this I do believe, if I do not believe I shall never understand.’” Or, to ask Hal quite simply, “What is the meaning of ‘but’ in the final words of the Lord’s Prayer: ‘lead us not into temptation *but* deliver us

⁶ O. W. Holmes, Jr., *THE COMMON LAW* 1 (1881).

⁷ Harold J. Berman, *Law and Logos*, 44 *DEPAUL L. REV.* 143 (1994).

from evil'?" In both instances, Hal would stop whatever he was doing and share with me his analysis, his understanding, his faith.

Whether it was playing the accordion at law school parties, struggling to understand the politics at a faculty meeting, or reading the Declaration of Independence on the Fourth of July with grandchildren at Martha's Vineyard, Hal rejoiced in each moment of each day. His own gratitude is, in many ways, Maya Angelou's "Good Morning":

Hal was a man of music, ever perceptive to tones and tunes of many different instruments.

He was a man of humor, never afraid to laugh at his own mistakes.

He was a man of conviction, willing to venture where others refuse to go.

He was a man of humility, realizing that each new thought reveals mysteries yet unexplored.

He was a man of compassion, imbuing in others your passion for life.

He was a man of honesty, insisting on repaying debts long since forgiven.

He was a man of vision, sensing the future when the rest of us are locked in the present.

He was a man of vitality, just beginning to dance and sing when the rest of us were weary.

He was a man of grace, for whom each moment of life was a joy and a blessing.

Hal taught me the conviction of things not seen, of an open and inquiring mind, of courage to assert and to accept, and of gratitude.