

REVIVIFYING THE FIELD OF LAW AND RELIGION

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It is now widely recognized that the last forty years have witnessed a significant revival of moral, political and legal philosophy. In the first half of the twentieth century, the emphasis in philosophy and culture was on science, epistemology, and the philosophy of science; by comparison, normative domains had gone into eclipse, with ethics being largely written off as a domain that was ultimately rooted in matters of taste and subjective values, and with regard to which many believed rigorous thought was not possible. But beginning in the 1960s and 1970s, during the central years of Harold Berman's professional life, and often in or near the corridors where he worked, a normative renaissance occurred. One thinks in this regard of the famous Hart-Fuller debate launched in the late 1950s and continuing in subsequent decades, which rejuvenated the field of jurisprudence. Also seminal were works of moral and political philosophy from the 1970s: John Rawls's *A Theory of Justice* and the response posed by Robert Nozick's *Anarchy, State and Utopia*. This normative ferment spread out in a variety of directions: extending classical deontological and teleological theories, contributing to the rise of virtue ethics, and energizing the law and economics, critical legal studies, and feminist movements.

It is against this background that Professor Berman's work in the field of law and religion should be understood. Where others were reasserting the legitimacy of normative inquiry in more secular settings, he helped re-legitimize parallel developments in the field of law and religion. He was not only a titan in this field, but a field-maker *par excellence*. His work, both at Harvard and at Emory, at the Center for the Study of Law and Religion, did so much to found and build and has been of immense significance.

One particularly significant context in which his influence was felt was in the Law and Religion Section of the American Association of Law Schools. This Section was organized at about the same time that Professor Berman's

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book *The Interaction of Law and Religion*¹ was published. I was a member of this Section almost from the beginning, serving as its secretary from 1981 to 1985 and as its chair from 1985 to 1987. If *Interaction* helped explain and make credible the grounding of the Section, *Law and Revolution*² helped remind legal scholars of the depth and magnitude of the phenomena that constituted the subject matter of the Section's activities. Professor Berman was a constant adviser and friend to those working to build and expand the Section and its influence in legal academia.

Turning to more direct encounters, in March of 1993, I had the opportunity at the invitation of a committee of what was then the Supreme Soviet in Russia to put together a conference on emerging legislation dealing with religion in Russia. Professor Berman agreed to attend, along with a number of other significant scholars in the law-and-religion field. His dual expertise in Soviet law and in law and religion added both luster and credibility to that initial conference. In the years since, the Center that I now direct has sponsored, co-sponsored, or otherwise assisted with over forty conferences in former Soviet space along similar lines. These have reached hundreds of scholars and officials (both national, regional, and local) charged with implementing religion policy in that vast domain. The initial conference helped forestall problematic legislation in the religious freedom sphere for at least four years in Russia, and the ensuing conferences, both before and after Russia's 1997 legislation, have helped ameliorate implementation of the 1997 law that could have been much worse. Professor Berman's participation at the beginning helped launch this activity and set the standards.

In 1994, a number of colleagues working on international religious-freedom issues entered into a collaborative arrangement with Emory, DePaul, Catholic University, and BYU to bring a group of law-and-religion experts to the United States and "share" them so that we could pay international travel costs once, having the benefit of their participation in several events on our various campuses. Of the events in that conference series, the Emory event was no doubt the most illustrious. There, our foreign participants for the most part simply had the opportunity to listen to the truly remarkable conference at Emory in October 1994, which led to the two volumes on *Religious Human Rights in Global Perspective*—volumes that have set the standard for work in

¹ HAROLD J. BERMAN, *THE INTERACTION OF LAW AND RELIGION* (1974).

² HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (1983).

this area ever since.³ Professor Berman was, of course, one of the major luminaries at that conference. He was one of the “magnet” figures that helped attract everyone else. Our foreign participants that year—mostly from Eastern Europe—were also able to participate in conferences at Catholic University and DePaul, as well as at BYU, and in subsequent years Columbia and Baylor Universities joined in similar collaborations. At the time, we at BYU thought that the 1994 conference series would simply be one in a series of general comparative law conferences that we had been holding for several years. But the 1994 event was so successful that we have held similar conferences every year since, and this has provided a core set of events that led to the foundation of our own Center. The result of these efforts over the years has been to bring over 700 experts and government officials from nearly 100 countries into contact with each other and with some of the leading thinkers on law and religion from the U.S., Europe, and around the world. The involvement with Emory and with the leadership provided by Professor Berman and others at the Emory Center has been critical in terms of setting standards and providing practical models at what for us was an important formative stage.

My point in describing the foregoing events in some detail is to help document some concrete examples of just how widely Professor Berman’s influence has been felt. My purpose is to attest in a small way to the influence his long shadow has cast at other institutions around the United States and abroad.

But, of course, Professor Berman will be missed not only for his influence and leadership in what started as an emerging field and has now become a critical issue on international agendas everywhere. We will also miss his warmth, his ability to help others see issues more clearly, and his generosity in lending his stature to support the work of others. I remember him once telling me how, as a boy in school, when others were singing, “Onward Christian Soldiers,” he and some friends changed the lyrics to sing, “Onward Jewish Soldiers.” Time brought change, conversion, perspective, and deep respect for the views of others, whether at home or abroad. He deeply understood the need to “beat . . . swords into plowshares,” and he has done much to help people of faith around the world understand deep principles that contribute to our ongoing and imperfect struggles to learn that most urgent of all lessons.

³ RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES (Johan D. van der Vyver & John Witte, Jr. eds., 1996); RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES (John Witte, Jr. & Johan D. van der Vyver eds., 1996).

He was a person who could speak within and across religious traditions, with a spirit and geniality that persons of all religions would do well to emulate.