

HAROLD BERMAN AT THE MOSCOW SCHOOL OF POLITICAL STUDIES

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I remember well Professor Berman's first lecture at a seminar at our School on May 27, 1996. He was telling young people from the Russian regions about the rule of law in the context of the Russian judiciary system. I also remember that the notion of the "rule of law" evoked the most questions from the audience. Seminar participants—members of regional and municipal legislature, executive officials, journalists, entrepreneurs—wished to know the difference between the "rule of law" and "dictatorship of the law," the latter being a widely discussed topic in the Russian political discourse.

I cannot reconstitute the exact responses from Professor Berman. It has been a long time since his first visit (Harold Berman's last presentation at the School, in July of 2006, was on general properties of the law in various world cultures). What I have retained is a surprisingly vivid impression from his speech, which later grew into an understanding of what he *wanted* to impart to his audience: "Young men, if knowledge of the law does not help you, turn to its meaning." For the meaning of what we perceive as democracy—this latter growing from recognition by the society of civic rights and freedoms—consists in protection of these rights and freedoms by *reconciling the law and religion*, rather than in any "dictatorship of the law." Indeed, the moral, and the more so religious moral, is absolute, but our attitude towards it must be reserved. Otherwise, we will never embrace civic freedom and personal responsibility. Morality as a universal law may only work when the society is conscious of the necessity to delimitate it by legal norms.

In this respect I would also like to emphasize the importance of *form*, that is, *how* laws and rules are observed to generate the very tissue of our lives. Religious law, political authority, prophets, or holy fools would not ensure a stable society without an established *form* of fair legal practice, but, conversely, laws may become the source of evil. As an example, the Russian Orthodox Church, which for a long time regarded the tsar as head of the

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church, failed to convert the authority of the divine law into the source of human law.

Professor Berman did not strive to popularize his discipline, but his unobtrusive, perfectly balanced lectures, made in beautiful, succinct English with a Russian phrase here and there, persuaded young seminar participants that there is in the world something of absolute value, in addition to what they already knew about the Russian life. He could speak in simple terms about lofty concepts and create an atmosphere of understanding in the seminar room: one is tempted to say he did it in a *classical* vein—and each time that made an indelible impression on the audience.

When we think about Harold Berman—myself and my wife Lena Nemirovskaya (Founder and Director of the Moscow School of Political Studies)—we never stop wondering at the youthful energy with which he covered the distance between Atlanta and Moscow every year—and for ten years—to attend our seminars. Usually dressed in a light-gray suit, he was always intent, friendly and open for conversation. He was a consummate example of civic and personal responsibility. Seminar participants knew and felt that he loved Russia, and his interest in this country went far beyond the occupations of a legal scholar.

We knew about his distant family ties with pre-revolutionary Russia, we knew that during World War II he served in the United States Army. Even then he was informed about Stalinist terror and repressions, but that did not affect his warm attitude toward contemporary Russia. Citizen of the world, he was convinced that apart from morality and the political realm where the mankind is torn by raging conflicts, there is, in the development of law, “a third element and that is the element of history, of group memory.” He believed that “our collective universal memory of the experience of the two World Wars is the historical foundation upon which the moral and political elements of the emerging law of mankind are being built.”¹

In other words, Harold Berman relied on ancient wisdom and believed that memory is a process of learning lessons of history. Thence, one may understand the law, he reiterated during the seminars, as language, as speech and not just a code of formal rules or manifestation of political authority. This is the only way to remove, through dialogue and discussion, the problems

¹ HAROLD J. BERMAN, FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION 331 (1993).

threatening our unity, including the most important problem—that of environment.

In Russia today, we are as yet unready for a serious discussion and a search for a unifying cultural foundation associated with civic enlightenment and modern education. In a world where wishes are not self-sufficient, we have to learn thinking about what we want. Culture, by definition, is not merely a summation of some lofty notions and values, if only because no values or achievements may provide guarantees in themselves. Culture builds up itself by virtue of personal spiritual effort. For us, Harold Berman has been and will remain an example of devotion to such culture. It is because we cannot be gods that we may act in a moral way, and it is because there is the entirety of guilt that we can be responsible—which means to be free.

I am confident that many alumni of the School, those who attended Harold Berman's lectures, would have found other words of gratitude and recognition. In these notes, I have tried to express our general impression from this outstanding man.

