

HAROLD BERMAN AND SOVIET LAW: FROM ITS CHALLENGE TO THE WEST TO DISSOLUTION

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Hal Berman's expansive intellectual life had many facets. This tribute focuses on one of them, his work as the preeminent scholar of Soviet law and in particular, on one part of that facet, his activity as Soviet law imploded. His entry into Soviet law in the 1940s required a boldness that is hard to appreciate in the twenty-first century. The Cold War and its domestic counterpart, McCarthyism, are now so far forgotten. Perversely, many Americans then were deeply suspicious of anybody who showed an interest in learning about our Soviet adversary. Even at Harvard Law School, there were doubts. The then-Dean, Erwin Griswold, reported: "Somewhat fearfully, I proposed [Berman] to the Harvard Law School faculty. I expected that there would be opposition on the ground that teaching Russian law was 'too far out.'"¹ Suspicion was equally dark in the Soviet Union, where investigation of their law was deemed akin to espionage. With cheerful determination, Hal pushed the project forward. He wrote prodigiously; the Harvard Law School Hollis Catalogue lists dozens of items published by him before 1990, most of them on Soviet law or on relations between the two systems, such as East-West trade. Personal contact was more difficult. Finally, in 1961–62, Hal and Ruth were able to stay a year in Moscow. That took quite a bit of arranging.² Cyrus Eaton, a Cleveland industrialist who took a serious interest in trying to diminish tensions between the two countries, held a reception for Khrushchev. Griswold, a fellow Clevelander, wrangled an invitation for Hal to the reception, and in the receiving line, Hal, in his fluent Russian, asked the Chairman for access to Moscow. The chairman told an aide to arrange it, and off they went. One thing they had to do before departing was to rent their house; somebody recommended a promising young instructor in Harvard's psychology department named Timothy Leary. Leary, in his haze of LSD and

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¹ ERWIN N. GRISWOLD, *OLD FIELDS, NEW CORNE, THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY LAWYER* 159–60 (1992).

² *Id.* at 160 n.9. Griswold also exercised his good offices to obtain a dispensation from the Catholic bishop of Massachusetts, so that Hal's students could read Communist texts that were on the Index. *Id.* at 225–26.

psilocybin, managed to wreck the interior of the Berman home. After their return, Ruth invited a group of faculty wives to tea; she had to warn them to walk carefully in the foyer so as to avoid the ceremonial hole that Leary and his friends had chopped in the floor. Thus Hal became acquainted with American litigation practices when he returned.³ Perhaps that experience helped Hal take part in Russian litigation on behalf of the holders of Arthur Conan Doyle's literary property.

Quite suddenly, the formidable Soviet system dissolved into Glasnost and Perestroika, and Soviet law threatened to implode. This was an opportunity for Hal. Like no other American, he had the knowledge and the connections to help with the transition to Western rules. He gathered a group of us to go to Moscow and teach capitalist law. He had to overcome all sorts of bureaucratic obstacles. There were severe challenges in gathering the funds to get us there—and defending those funds from impoverished Russian officials who had all sorts of uses for it. The logistics were formidable; we lived in a run-down dormitory and worried about both the toilets and the elevators. The food was still at the collective-farm level of quality (except for a meal provided to us by the monks at the fabled Zagorsk monastery). Vodka did flow freely and one found oneself avoiding toasts. Under Hal's guidance, we did see glorious cultural treasures—the Pushkin Museum, the Kremlin, and the Winter Palace. Hal was even more energetic and outgoing in Moscow than in Cambridge—Russian is a language that eases the projection of enthusiasm. Teaching was a challenge. The young Moscovites had been trained to think of the act of two persons getting together to buy goods low and sell them high as a conspiracy to profiteer—which would get you five years of reeducation in Siberia. Now they had to adjust to the idea that it was a legitimate partnership. The first Russian law on corporations was drafted by lawyers who could not bear to use the term “capital” for the account in the lower right corner of the balance sheet; they called it “the social account” instead.

Hal drew me into a return engagement in 1993. We saw a Moscow that was changing rapidly. While professors were on starvation salaries, a new capitalist class was rapidly forming. You could see them at the Audi dealerships and the front seats at the opera and ballet. Some of the students in this class had worked with Western corporate lawyers and had learned enough to ask probing questions. After 1993, the process of displacing Soviet law with

³ See ROBERT GREENBERG, TIMOTHY LEARY, *A BIOGRAPHY* 115–37 (2006), for a description of the ambience in that house.

capitalist law picked up speed. Many other American and European lawyers who were specialists in such fields as corporations, securities law, intellectual property law, and so forth moved in. Hal realized that his work was no longer critical to the transition process, and that his old field, Soviet law, had nearly vanished. That was when he took the opportunity to shift his attention to his other long-term interest, law and religion in an historical perspective. There, he produced, in a relatively short time and at an age when most scholars have ceased to expend such efforts, an impressive body of work. Others will comment on that corpus.

