

HAROLD BERMAN—AN EMPATHY FOR DIFFERENCE THAT MADE ALL THE DIFFERENCE

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I met Harold Berman forty years ago. In 1967, I had the luck of being the first East-European LL.M. student at Harvard after World War II. This was an enviable position, but not an easy one. I came from a different world, and I needed understanding transcending cultural patterns and borders. I got from Harold all support that can be offered. He had a true empathy for difference, and with his guidance I started to perceive a transcultural and transnational existence as one of the many variants of normalcy. This perception gave me a chance to live the life I am living.

I took Professor Berman's courses on the Law of International Trade and on Soviet Law during my LL.M. year, and he later became my thesis advisor when I continued my studies at Harvard towards an S.J.D. I took his course on Soviet Law for two reasons. One of them—a somewhat selfish one—was to have at least one course in which I would have some comparative advantage. The other reason was to have a university course, which would confirm what I had only encountered in dissident talk, or in some Western publications—a criticism of the communist perception of law. The Soviet Law course offered more than I expected. At that time I was somewhat perplexed with some Western analyses of law in communist countries. The criticism, sorely needed in communist countries, sometimes turned out to be a deception because it criticized stereotypes relying on other stereotypes. Professor Berman's course was completely different. He had no preconceptions, he had a genuine interest in Soviet law, even some empathy for some of its positive traits, and hence, his criticism was fresh and persuasive. In Professor Berman's thinking, established schemes and common places of East-West discourse were brushed aside by genuine interest. His book *Justice in the USSR*¹ is probably the best book ever written on the Soviet legal system—and this was the book that was the easiest to espouse by critically minded people in communist countries; by those who had direct experience, who knew nuances, and who could only

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¹ HAROLD J. BERMAN, *JUSTICE IN THE USSR: AN INTERPRETATION OF SOVIET LAW* (1963).

accept criticism based on true understanding. Harold Berman's oeuvre became a metaphor.

I believe that the understanding of differences and immunity from stereotypes were the most characteristic traits of the scholarship of Harold Berman (and, I think I could add, of the life of Harold Berman). He has been active as a teacher and scholar over more than a half century. During all of these years he had a strong impulse to teach, but he also had an at least equally strong drive to learn. Some people, after establishing their mental coordinates, start brushing aside already in their thirties everything what does not fit into their established system of thinking. Harold was genuinely thrilled by any new thought and any new piece of information through the end of his life. Intellectually, he never ceased to be young.

Professor Berman had a passion for legal history. His historical approach had, however, a rare distinctive feature. He did not view history under the angle of one state, or one nation, or one religion, or one tradition. The hallmark of his approach to history was an understanding and appreciation of difference. This same appreciation of difference guided him in perceiving a new phenomenon in the making—World Law.

I had the privilege to co-teach his course on World Law at Emory. He was thrilled in sensing a new phenomenon. Looking for an anchor point he started from a strong conviction. Professor Berman believed in belief. But even with regard to belief, he gave credit to difference. In his words: "In a new era of global integration, world law must draw on the material and spiritual resources not only of the West but also of other cultures, and not only of Christianity but also of other world religious and non-religious belief systems."²

Since 1988, I have been coming to teach at Emory. Until 1997, it was every other year; since 1997, it was every Spring. During the months I spent in Europe, I was putting stories and thoughts aside. When I read or experienced something, which I thought Harold would find interesting (or important, or reflective, or provocative), I took a note. When I came to an idea, which I thought Harold could appreciate, I stored it, waiting for the opportunity to present it to Harold over a coffee after I got to Emory. Over the years, Harold has become a guideline, a criterion, in choosing facts and ideas which deserve further attention. Whether something belonged to the world of Harold Berman

² HAROLD J. BERMAN, *LAW AND REVOLUTION, II: THE IMPACT OF THE PROTESTANT REFORMATIONS ON THE WESTERN LEGAL TRADITION*, at xi (2003).

has become an important test. This will be the first year when I shall not be able to present to Harold what I stored for him during the past year. But, as long as I can, I shall keep collecting pieces of reading, of experiences and thoughts, keeping the same guideline. Harold will remain a criterion, a metaphor that indicates directions.

In the Preface of his first book on Law and Revolution, Harold quotes a few lines from the poem of Archibald MacLeish, *The Metaphor*. The first line of the quotation says: “A world ends when its metaphor has died.”

Now it is the task of all of us—students, friends—to keep the metaphor of Harold Berman alive.

