

## A TRIBUTE TO HAROLD J. BERMAN

*John Witte, Jr.\**

I first met Hal Berman twenty-five years ago, when I showed up as his terrified new research assistant. I last saw him in the hospital the week before he died. In the many years between those meetings, we spent much time together. We broke bread, and we broke archives together. We wrote books. We gave lectures. We led conferences. We argued. We hugged. We laughed. We cried. We worshipped and prayed together. Hal Berman was my great teacher, colleague, and friend—as he was for so many others.

On that final day together in the New York hospital, Hal and I relived some of these experiences. He was weak, and he needed regular sleep. So the day broke into blocks of conversation between his naps. In the first conversation, we just discussed the news from Emory and Atlanta that he was eager to hear, and we reminisced a bit. Then came a nap. In the second conversation, Hal evidently had decided to rehire me as his research assistant. For he began rattling off a list of books and articles I had to get for him, facts and quotes I needed to track down for him, memos I needed to have on his desk the next week, and more. And then, with great gusto, he began to tell me how we should craft the argument of his *Law and Revolution* series, volume three. In mid-sentence, there came a second nap. The third conversation was very different, more subdued. Hal wanted me to read him some poetry from T.S. Elliot, then a couple of pages from his favorite, *Moby Dick*, then some passages from Justice Clarence Thomas's new autobiography. "Just fascinating," "a remarkable man," he kept saying about Thomas. Then came another nap.

The fourth conversation was a long and deep reflection on faith and theology. Hal told me again about his remarkable conversion experience—seeing a vision of Christ on a night train in war-torn Europe. He told me about his wonderful life of faith with his wife Ruth and his family, and how much he loved them and would miss them. He told me about things he had done and left undone. I asked him, gingerly, if there was perhaps something we should

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bring together in prayer. “No, thank you,” he said buoyantly and graciously. “I have found my reconciliation.” Then came another nap.

When he fell asleep this time, however, it was different. He lay on his back and slowly a big smile crept over his face. He kept reaching straight up into heaven with both hands, grasping eagerly and mumbling excitedly about what he was seeing. His family and caretakers said he had done the same thing at home the last few days—seeing scrolls in the mirror, then books on the ceiling, which he sought to reach and to open. When he awoke from this last nap, Hal smiled and said, “I think it’s time for you to go. It will soon be time for me to go, too.” And then, with a big hug, we said our final goodbye.

This was just vintage Hal Berman on that last day—showing his faithful love for his family and friends, his youthful glee about life and literature, his relentless drive to study and learn, his trademark gift to transcend bonds and boundaries, in search of knowledge and reconciliation—even reaching into heaven itself for the same. Throughout his remarkable career, Hal’s great mind defied conventional categories and boundaries of text and tradition, language and culture, space and time. Until his last days, he moved easily from scroll to text, from Hebrew to Greek, from Old Testament to New in describing his identity and inspiration. Until his last days, his library was jammed full of literature of every sort, and his learning ranged widely from West to East, from Judaism and Christianity to Islam and Confucianism, from law and jurisprudence to theology, history, philosophy, science, and more.

Hal Berman had the remarkable ability to think above, beyond, and against his time. In the 1960s, the dominant Cold War logic taught that the Soviet Union was a lawless autocracy. Hal argued to the contrary that the Russians would always honor contracts and treaties that were fairly negotiated. His view prevailed and came to inform various nuclear treaties and East-West accords. In the 1970s, the conventional belief persisted that the Middle Ages were the dark ages, as the West waited impatiently for Enlightenment and modernization. Hal argued the contrary, that the medieval era was the first modern age of the West and the founding era of our Western legal tradition. This view is now standard lore. In the 1980s and 1990s, jurists fought fiercely over whether legal positivism or natural law or some other perspective was the best philosophy. Hal called for an integrative jurisprudence that reconciled these views with each other and with other perspectives on law. This view now prevails in a world dedicated to interdisciplinary legal study. And, in the past decade, with the world hell-bent on waging a clash of civilizations, Hal

called for a world law, grounded in global structures and processes, and universal customs and principles of peace, cooperation, and reconciliation. This view holds so much more promise than our current jingoism.

Hal based his views, in part, on a holistic theory of knowledge. “The era of dualism is waning,” he wrote triumphantly already in 1974, in *The Interaction of Law and Religion*. “We are entering into a new age of integration and reconciliation. Everywhere synthesis,” the overcoming of false opposites, is “the key to this new kind of thinking and living.” Either-or must give way to both-and. Not subject versus object, not fact versus value, not is versus ought, not soul versus body, not faith versus reason, not church versus state, not one versus many, “but the whole person and whole community thinking and feeling, learning and living together”—that is the common calling of humankind, Hal wrote.

Hal also based these beliefs in his own deep theology of reconciliation. Jewish and Christian theology teaches that persons must reconcile themselves to God, neighbor, and self. For Hal, building on St. Paul, this meant there can be “no real division between Jew and Gentile, slave and free, male and female”—or for that matter black and white, straight and gay, old and young, rich and poor, citizen and stranger. For every sin that destroys our relationships, he emphasized, there must be grace that reconciles them. For every Tower of Babel that divides our voices, there must be a Pentecost that unites them and makes them coherent.

Hal also based these beliefs in a providential view of history. Both Jewish and Christian theology teaches that time is continuous, not cyclical, that time moves forward from a sin-trampled garden to a golden city, from a fallen world to a perfect end-time. Hal’s grand view of evolution and revolution in history was rooted in this belief—that slowly all the peoples of the world would come into contact with each other and ultimately, after revolutionary struggle and even apocalyptic explosion, would seek finally to be reconciled with each other forever.

Each of us is given our time to help achieve this providential plan, Hal believed, and to move the world just a little closer to the peace and reconciliation that is promised. God gave Hal more time than most of us get. But Hal worked hard to give back all that he had been given and more. He lived his eighty-nine years to their very fullest, and he left a remarkable legacy and example for the betterment of the world and the enduring instruction of us all. It is easy to imagine him now, with the gracious luxury of eternity before

him—Socratically grilling the saints about eternal truths, studiously writing his new books in a heavenly library of infinite proportion, and patiently waiting to welcome Ruth and his other loved ones when they are ready to join him in his new home in the golden city.