



# Law and Language

*Effective Symbols of Community*

HAROLD J. BERMAN

Edited by JOHN WITTE, JR.

CAMBRIDGE

# LAW AND LANGUAGE

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By

HAROLD J. BERMAN

*Emory University*

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## LAW AND LANGUAGE

Completed in 1964, Harold J. Berman's long-lost tract shows how properly negotiated, translated, and formalized legal language is essential to fostering peace and understanding within local and international communities. Exemplifying interdisciplinary and comparative legal scholarship long before they were fashionable, it is a fascinating prequel to Berman's monumental *Law and Revolution* series. It also anticipates many of the main themes of the modern movements of law, language, and ethics.

In his Introduction, John Witte, Jr., a student and colleague of Berman, contextualizes the text within the development of Berman's legal thought and in the evolution of interdisciplinary legal studies. He also pieces together some of the missing sections from Berman's other early writings and provides notes and critical apparatus throughout. An Afterword by Tibor Várady, another student and colleague of Berman's, illustrates via modern cases the wisdom and utility of Berman's theories of law, language, and community.

HAROLD J. BERMAN (1918–2007) was the Robert W. Woodruff Professor of Law and Senior Fellow at the Center for the Study of Law and Religion, Emory University. He was also James Barr Ames Professor of Law, *Emeritus*, at Harvard Law School. A scholarly giant in the fields of Soviet law, international trade, legal history, legal philosophy, and law and religion, he published 25 books and 450 articles.

JOHN WITTE, JR., is Jonas Robitscher Professor of Law, Alonzo McDonald Distinguished Professor, and Director of the Center for the Study of Law and Religion at Emory University.

For my children,  
Stephen, Jean, Susanna, and John



## PREFACE

"I need to get back to that book. It's just sitting there gathering dust. I just can't find the time." That was Harold J. Berman in September, 1982. We were sitting in his office at Harvard Law School, where I was getting my next assignment as his research assistant. The book in question was the *Law and Language* text that you are now holding. "Hal" (as Professor Berman was affectionately known) had completed a first draft of the book in 1964, but he just could not finish it. He had been writing and lecturing feverishly in the interim on Soviet law, international trade, legal philosophy, and legal history, and was always fighting deadlines. I asked him if he wanted me to take a crack at the "Law and Language" manuscript. "No, no, we have other things to do," he replied memorably. "We have the Reformation to conquer!" Then he handed me the first of many research assignments on the influence of the Protestant "revolutions" on the Western legal tradition – a topic that absorbed both of us for the next quarter century.

Hal never did find the time to get back to the "Law and Language" manuscript, and I never got the chance to work on it either – until recently. After we moved from Harvard Law School to Emory Law School in 1985, the manuscript disappeared, somehow lost in transit. Hal and I looked for it a few times after we both were at Emory, but he eventually gave up. He had many more books and articles to write, many more deadlines to fight, and of course "the Reformation to conquer."

When he died in 2007, I became Hal's literary executor, and spent many pleasant months digging through the veritable mountains of papers he left. Only near the end of that literary excavation did I come upon his old manuscript on "Law and Language." It was sitting in a rusty old filing cabinet in his unheated garage, buried under some old rags and newspapers. Mold, mildew, and mice had all done their best to be sure the manuscript would never be found. But there it was, still readable, and still unfinished.

It has been a special privilege to be able to finish my late great mentor's old book and to publish it in modern critical edition. The book is a creature of its time and place – America in the 1960s. It reflects concerns over the Cold War, the violent student protests and union strikes, the rise of Marxism in the academy and McCarthyism in Congress. It talks easily of the gradual senescence of legal realism and legal positivism, and prophesizes grandly about the rise of world law and a new interdisciplinary legal studies movement. But the book is also a timeless statement about the intricacies of legal translation, transmission, and transplantation over time and the essential role and power of law and legal language in building culture and community both locally and globally. It's written in a buoyant and accessible style, which typifies a lot of Berman's writing, especially in this period of his career. Its main themes and recommendations about law and language are as relevant in our day as they were half a century ago when Hal wrote them – even if we now have fancier tools and terms of comparative hermeneutics, literary theory, legal philology, and semiotics to describe them.

I have tried to preserve and present what Hal wrote, with minimal editorial intrusion. The manuscript had only partial footnotes and only for Chapter 1. I have provided citations to his undocumented quotes throughout, using his own library as much as possible to find the original sources. I have added further footnotes to direct readers to writings where Hal and other scholars he influenced elaborated certain key themes. In a few places where the text or argument breaks off, I have tipped in a passage from his other writings that elaborate the point, adding footnotes to explain what I have done and why. And I have added a Conclusion drawn from his other contemporaneous writings. But this book is, so much as possible, vintage Berman, 1964.

I owe a special debt of gratitude to Professor Tibor Várady, an LLM and SJD student of Berman at Harvard Law School from 1967 to 1970. After his studies, Tibor became a distinguished scholar of international and comparative law at Central European University in Budapest, where he was dean, as well as Cornell Law School and Emory Law School, where he taught regularly over the past two decades. Tibor was a generous friend and genial colleague to both Hal and me at Emory. He gave me invaluable advice on the preparation, production, and publication of this book. He also wrote the lovely Afterword that appears herein attesting to Berman's enduring insights into delicate issues of legal translation, especially in international tribunals. I thank him deeply for his generous cooperation and contribution.

I owe special thanks as well to Christopher Manzer and Andrew Stevens, two fine students in our Center for the Study of Law and Religion at Emory University, for their excellent work in helping to edit this book and in tracking down so many of the relevant sources and cross-references. My associate, Amy Wheeler, again did her magic in the production of the final manuscript and working with the Press. Our Center public relations director, April Bogle, did fine work with sundry Emory librarians to prepare a digital library of all Professor Berman's writings, which aided greatly the work of cross-referencing. And, Anita Mann, our Center business manager, did a superb job managing the Harold J. Berman Fund to support the work on the Berman digital library, this publication, and related publications and public lectures.

It has been a privilege to work with Finola O'Sullivan and Richard Woodham and their colleagues at Cambridge University Press. I appreciate their work in masterminding the production and marketing of this book and their earlier efforts to secure the valuable reviews of the preliminary incomplete manuscript.

I think Hal would have agreed with my decision to dedicate this book to his and Ruth's four children – Stephen, Jean, Susanna, and John.



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## Introduction

JOHN WITTE, JR. AND CHRISTOPHER J. MANZER

I should like to revive and revitalize historical jurisprudence, and I think the way to do it is with linguistic jurisprudence. History is group memory. Language is the record of history. Speech is the recording of the remembered past, and the envisioned future. I shall no doubt be scorned or ignored for the identification of history, speech, and law ... But not in all quarters. More and more people are now ready for this message.

Harold J. Berman (1966)<sup>1</sup>

Harold Berman is a giant, whose work defies the banalities of the age and allows us to take their measure. In a scholarly world drifting toward the particularistic exploration of "unique" contexts, Berman points in a different direction – toward holistic descriptions of entire systems of legal thought ... Berman's work, and especially his *Law and Revolution*, will endure when almost everything is forgotten. He is the only American who might be paired with Max Weber in the depth of his historical and comparative understanding of the remarkable character of legal modernity.

Guido Calabresi, Dean, Yale Law School (1996)<sup>2</sup>

### 1

Harold J. Berman was one of the great polymaths of American legal education, and taught for sixty years before his death in 2007. After completing his LLB and MA in History at Yale – interrupted by military service in World War II from 1942 to 1945 – he began his teaching career at Stanford Law School in 1947. From 1948 to 1985, he taught at Harvard Law School – for twelve years as the Joseph Story Professor of Law and Legal History, for sixteen more as the James Barr Ames Professor of

<sup>1</sup> Excerpts from Letter to his Dartmouth College mentor, Eugen Rosenstock-Huussy (May 28, 1966) (on file in the Emory Law Library Archives), see below, note 15.

<sup>2</sup> Jacket endorsement for Howard O. Hunter, ed., *The Integrative Jurisprudence of Harold J. Berman* (Boulder, CO: Westview Press, 1996). Dean Calabresi by this point had been appointed to the United States Court of Appeals for the Second Circuit.

Law. He also served as Founder and Director of Harvard Law School's Liberal Arts Fellowship Program in Law, Fellow of the Russian Research Center of Harvard University, and Member of the Legal Committee of the US-USSR Trade and Economic Council.

From 1985 to 2007, Berman taught at Emory Law School, serving as the first Robert W. Woodruff Professor of Law, a university professorship. He was also a Fellow in The Carter Center at Emory University, Founding Director of the American Law Center in Moscow, Founding Director of the World Law Institute at Emory Law School, and Senior Fellow of the Center for the Study of Law and Religion at Emory University. He was also co-founder of the *Journal of Law and Religion* and a member of its sponsoring organization, the Council on Religion and Law.

In the first three decades of his career, Berman's scholarly energies were focused on the Soviet legal system and the law of international trade. He developed several new courses, testified frequently before courts, commissions, and Congressional committees, and traveled regularly to Europe and the Soviet Union – fifty-five times to Russia alone. He spent the 1961–62 academic year at the Moscow Institute of State and Law, where he encountered, among others, a rising young star named Mikhail Gorbachev.<sup>3</sup> In the spring of 1982, he served as Fulbright Professor at Moscow State University. He produced a massive body of new writing in this early period. Of these writings, his *Justice in the USSR* (1950; rev. edn. 1963)<sup>4</sup> will long endure as a classic, as will several of his lengthy law review articles on the *lex mercatoria*.<sup>5</sup> Also important publications in this period,

<sup>3</sup> True story: it was the winter of 1982, with Brezhnev still in power in the USSR. Hal and Ruth had me over for dinner. After a few rounds of drinks, he stood up and announced grandly: "I have a prophecy to make. I predict that, in a decade, the Soviet Union will be revolutionized, and the leader of the revolution will be a young man I have been watching for a long time – Mikhail Gorbachev." Within a decade, *glasnost*, *perestroika*, and *demokratizatsiia* had become the watchwords of a new Russian revolution. See later Harold J. Berman, "Book Review of Mikhail Gorbachev, *PERESTROIKA: New Thinking for Our Country and the World* (1987)," *The Atlanta Constitution* (December 13, 1987): 12J; "Gorbachev's Law Reforms in Historical Perspective," *Emory Journal of International Affairs* 5 (Spring, 1988): 1–10; "The Challenge of Christianity and Democracy in the Soviet Union," in *Christianity and Democracy in Global Context*, ed. John Witte, Jr. (Boulder, CO: Westview Press, 1993), 287–96.

<sup>4</sup> Cambridge, MA: Harvard University Press, 1950, 1963 and New York: Random House, 1963.

<sup>5</sup> Harold J. Berman, "The Legal Framework of Trade Between Planned and Market Economies: The Soviet-American Example," *Law and Contemporary Problems* 24 (Summer 1959): 482–528; Harold J. Berman and George L. Bustin, "The Soviet System of Foreign Trade," in *Business Transactions with the USSR, The Legal Issues*,

for purposes of this book, were his exquisite translations of sundry Soviet laws – nearly 2,800 printed pages in English translation.<sup>6</sup>

In the first three decades of his career, Berman also developed a keen interest in bringing legal education into the undergraduate college – a different exercise in translation, now of professional legal language, concepts, and methods into something accessible to young students of the social, humane, and exact sciences. These pedagogical interests he distilled in two other signature titles, *On the Teaching of Law in the Liberal Arts Curriculum* (1956)<sup>7</sup> and *The Nature and Functions of Law* (1958; 6th edn., 2004),<sup>8</sup> the latter a standard text in American college courses on law. He extended this interest further in arranging a multilingual series of *Talks on American Law*, which started as Voice of America broadcasts. Here was yet another early example of legal translation and transmission – making the intricacies of American public, private, penal, and procedural law accessible to radio audiences throughout the Americas, Europe, Africa, Asia, Australia, the Middle East, and even the Soviet Union.<sup>9</sup>

In the last three decades of his career – with *Law and Language* coming right at the transition point – Berman expanded his legal scholarship to include legal philosophy, legal history, and law and religion. He produced a series of path-breaking volumes, most notably *The Interaction of Law and Religion* (1974),<sup>10</sup> *Faith and Order: The Reconciliation of Law and Religion* (1993),<sup>11</sup> and his massive *Law and Revolution: The Formation*

ed. Robert Starr (Chicago: ABA Press, 1975), 25–75; Harold J. Berman, “The Law of International Commercial Transactions (*Lex Mercatoria*),” *Emory Journal of International Dispute Resolution* 2 (Spring 1988): 235–310.

<sup>6</sup> Harold J. Berman and James W. Spindler, eds. and trans., *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge University Press, 1966); Harold J. Berman and Peter B. Maggs, eds. and trans., *Disarmament Inspection Under Soviet Law* (Dobbs Ferry, NY: Oceana Publications, 1967); Harold J. Berman and John B. Quigley, eds. and trans., *Basic Laws on the Structure of the Soviet State* (Cambridge, MA: Harvard University Press, 1969); Harold J. Berman, ed. and trans., *Soviet Statutes and Decisions, A Journal of Translations I–V* (Fall, Spring 1964 – Summer 1969).

<sup>7</sup> Brooklyn, NY: Foundation Press, 1956.

<sup>8</sup> Brooklyn, NY: Foundation Press, 1958; with William R. Greiner and Samir N. Saliba, 6th rev. edn. (New York: Foundation Press, 2004).

<sup>9</sup> Harold J. Berman, ed., *Talks on American Law* (New York: Random House, 1961); Portuguese translation published in Rio de Janeiro, 1963; Arabic translation published in Cairo, 1964; French translation published in Paris, 1965; Spanish translation published in Chile and Mexico, 1965; Vietnamese translation published in Saigon, 1968; Japanese translation published in Tokyo, 1963 and 1969.

<sup>10</sup> Nashville, TN: Abingdon Press, 1974.

<sup>11</sup> Atlanta, GA: Scholars Press, 1993; repr. edn., Grand Rapids, MI: Wm. B. Eerdmans, 1996.

of the Western Legal Tradition (1983)<sup>12</sup> and *Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (2003).<sup>13</sup> The final volume of this series – on the American, French, and Russian revolutions – was on his writing desk when he died, along with a dozen articles in progress.

Berman left a scholarly legacy of 25 books and 458 articles, book chapters, and book reviews. These writings were collectively published in twenty-one languages; a few of his books are still being translated, and this new book will deserve translation, too. A comprehensive collection of his writings and some of his correspondence from 1948 to 1985 are included in the “Red Set” of faculty publications in the Harvard Law Library.<sup>14</sup> Digital and hard copies of all his (published and unpublished) non-book writings from 1938 to 2007 are available through the Emory University Libraries.<sup>15</sup> His work continues to be mined and cited with alacrity in the main fields that he worked. This new book on *Law and Language* will provide a further window, if not gateway, into his writings and the development of his legal thought.

Berman taught some 8,000 law students at Harvard and Emory, more than 300 of whom have become professors, in at least 33 countries. His students and colleagues honored him with three *Festschriften*,<sup>16</sup> and three law journal symposia are dedicated to his work.<sup>17</sup> He was a member of both the American Academy of Arts and Sciences and the Russian Academy of Sciences. He received more than a hundred prizes and awards for his scholarly achievements, including the prestigious Scribes Award from the American Bar Association, and honorary doctorates from the Catholic

<sup>12</sup> Cambridge, MA: Harvard University Press, 1983.

<sup>13</sup> Cambridge, MA: Harvard University Press, 2003.

<sup>14</sup> Harvard Law School Library, Collections, The Red Set, (accessed January 1, 2013), [www.law.harvard.edu/library/special/collections/red\\_set/index.html](http://www.law.harvard.edu/library/special/collections/red_set/index.html)

<sup>15</sup> Emory Libraries, EmoryFindingAids, Harold J. Berman Papers, 1938–2007, (accessed January 1, 2013), <http://findingaids.library.emory.edu/documents/L-027/>; Zotero, Harold J. Berman Collection, (accessed January 1, 2013), [https://www.zotero.org/harold\\_j\\_berman/items](https://www.zotero.org/harold_j_berman/items).

<sup>16</sup> John Witte, Jr. and Frank S. Alexander, eds., *The Weightier Matters of the Law: Essays on Law and Religion in Tribute to Harold J. Berman* (Atlanta, GA: Scholars Press, 1988); William E. Butler, Peter B. Maggs, and John B. Quigley, Jr., eds., *Law after Revolution: Essays on Socialist Law in Honor of Harold J. Berman* (Dobbs Ferry, NY: Oceana Press, 1988); and Hunter, *Integrative Jurisprudence*.

<sup>17</sup> “A Conference on the Work of Harold J. Berman,” *Emory Law Journal* 42 (1993): 419–589; “The Foundations of Law,” *Emory Law Journal* 54 (2005): 1–376; “In Praise of a Legal Polymath: A Special Issue Dedicated to the Memory of Harold J. Berman (1918–2007),” *Emory Law Journal* 57 (2008): 1393–469.



University of America, the Virginia Theological Seminary, the University of Ghent, and the Russian Academy of Sciences. The newly dedicated Harold J. Berman Library in the Center for the Study of Law and Religion at Emory University houses some of his personal books and effects. The Harold J. Berman Lecture Series at Emory Law School offers regular lectures on the many legal topics that Berman long championed.

## 2

Throughout his long career, Berman had the remarkable ability to think above, beyond, and against his times. In the 1950s and 1960s, the dominant Cold War logic taught that the Soviet Union was a lawless autocracy. Berman argued to the contrary that the Russians would always honor contracts and treaties that were fairly negotiated.<sup>18</sup> His views prevailed and came to inform various nuclear treaties, trade agreements, and East-West accords. In the 1970s and 1980s, the conventional belief persisted that the Middle Ages were the dark ages as the West waited impatiently for Enlightenment and modernization. Berman argued the contrary, that the medieval era was the first modern age of the West and the founding era of our Western legal tradition.<sup>19</sup> 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 better legal philosophy. Berman called for an integrative jurisprudence that reconciled these views with each other and with other perspectives on law.<sup>20</sup> This view now prevails in

<sup>18</sup> See sources above, note 5. See further Harold J. Berman, "The Challenge of Soviet Law," *Harvard Law Review* 62 (December 1948 and January 1949): 220–65, 449–66; "The Law of the Soviet State," *Soviet Studies* 6 (January 1955): 225–37; "Suggestions for Future US Policy on Communist Trade," *Export Trade and Shipper* 35 (July 16, 1956): 11–12; "Negotiating Commercial Transactions with Soviet Customers," *Aspects of East-West Trade, American Management Association Report No. 45* (1960), 68–75; "The Dilemma of Soviet Law Reform," *Harvard Law Review* 76 (March 1963): 929–51; "Law in American Democracy and Under Soviet Communism," *New Hampshire Bar Journal* 5(3) (April 1963): 105–13; "Soviet Law Reform and Its Significance for Soviet International Relations," in *Law, Foreign Policy and the East-West Detente*, ed. Edward McWhinney (Toronto: University of Toronto Press, 1964), 3–17; "Law as an Instrument of Peace in US–Soviet Relations," *Stanford Law Review* 22 (1970): 943–62.

<sup>19</sup> This is the central thesis of his *Law and Revolution* series.

<sup>20</sup> See esp. Harold J. Berman, "Toward an Integrative Jurisprudence: Politics, Morality, History," *California Law Review* 76 (1988): 779–801; and elaboration in *Faith and Order*, 239–310. See analysis in Peter Teachout, "Complete Achievement: Integrity of Vision and Performance in Berman's Jurisprudence," in Hunter, *Integrative Jurisprudence*, 75–98. Already in his 1958 edition of *The Nature and Functions of Law*, 25ff., Berman had

a world dedicated to interdisciplinary legal study. And, in the 2000s, with the world hell-bent on waging "a clash of civilizations,"<sup>21</sup> Berman called for a world law, grounded in global structures and processes, and universal customs and principles of peace, cooperation, and reconciliation.<sup>22</sup> This view holds so much more promise than the jingoism and jihadism of the past decade and more.

"First it was Russian law, then it was Western law, now it is world law. What's next, cosmic law?" This is how Professor Berman's beloved wife, Ruth, once summarized (with a blend of exasperation and astonishment) the stages of Berman's storied and storied legal career. There is keen insight in this statement. For Berman, every legal system – even the budding legal system of the world – must ultimately be founded upon cosmic commandments and contemplation, divine examples and exemplars. Berman has long prophesied that those legal systems that build on immanent and material foundations alone will fail. The spectacular failure of the Soviet legal system in the later twentieth century was ample vindication of his insight into the essential religious foundations of law.

Berman repeated this message in China, too, when in 2006, as a still energetic 88-year old, he gave a series of lectures on law to packed houses in a dozen universities. One of his Chinese respondents asked whether one needed to believe in God in order to have a just legal order. "It would certainly help!" Berman quipped immediately. "But no," he went on diplomatically:

You don't necessarily have to believe in God, but you have to believe in *something*. You have to believe in law at least. If you can't accept God, then just focus on the law that God has written on all of our hearts.

formed his basic, three-part analytical framework for jurisprudence, combining natural law, legal positivism, and historical jurisprudence.

<sup>21</sup> Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

<sup>22</sup> Harold J. Berman, "Law and Religion in the Development of a World Order," *Sociological Analysis: A Journal in the Sociology of Religion* 52 (Spring 1991): 27–36; "Law and Logos," *DePaul Law Review* 44 (Fall 1994): 143–65; "The Tri-une God of History," *The Living Pulpit* (April 1999): 18–19; "World Law in the New Millennium," *Twenty-First Century* 52 (April 1999): 4–11 (in Chinese); "The God of History," *The Living Pulpit* (July–September 2001): 27; "Integrative Jurisprudence and World Law," in Manuel Atienza et al., *Rechtstheorie: Theorie des Rechts und der Gesellschaft: Festschrift für Werner Krawietz zum 70. Geburtstag* (Berlin: Duncker & Humblot, 2003), 3–16; "The Holy Spirit: The God of History," *The Living Pulpit* (April–June 2004): 32–33; "Faith and Law in a Multicultural World," in Mark Juergensmeyer, ed., *Religion in Global Civil Society* (Oxford University Press, 2005), 69–89; "World Law: An Ecumenical Jurisprudence of the Holy Spirit," *Theology Today* 63 (October 2006): 365–74.

Even children intuitively sense this law within us. Every child in the world will say, "That's *my* toy." That's property law. Every child will say, "But you *promised* me." That's contract law. Every child will say, "It's not my fault. He hit me first." That's tort law. Every child will say, too, "Daddy said I could." That's constitutional law. Law ultimately comes from our human nature, and our human nature is ultimately an image of God.<sup>23</sup>

Such views reflect, in part, Berman's life-long effort to integrate his religious faith with his legal learning. In his chapel talks delivered in the Harvard Memorial Church over the years, Berman contrasted "the wisdom of the world" with "the wisdom of God." The wisdom of the world, he declared, "assumes that God's existence is irrelevant to knowledge, and that truth is discoverable by the human mind unaided by the Spirit." Jewish and Christian wisdom, by contrast, "seeks God's guidance ... in order to discover the relationship between what we know and what God intends for us." Knowledge and intellect are "intimately connected with faith, with hope, and with love." "God does not call us to be merely observers of life; rather he calls all of us – even the scholars in all that we do – to participate with him in the process of spiritual death and rebirth which is fundamental religious experience."<sup>24</sup>

Early on, Berman made clear that dialogue was essential to our relationships with God, neighbor, and self, and that language was an essential sinew of all our relationships. God is a God of words, Berman believed, drawing on the Bible. "In the beginning was the Word, and the Word was with God, and the *Word was God*," reads John 1. "In the beginning God created the heavens and the earth," Genesis 1 reads. And He did so by speech: "And God *said*, 'Let there be ...' is how each day of creation starts. When it came to the creation of men and women, it was by dialogue, by conversation, first among the members of the Trinity, then between God and humanity: "Let *us* make man in our image, after our likeness," the Trinitarian God says to its members. And thereafter, God walked and talked with the man and the woman whom he created, though he talked with no other creature. For Berman, humans, created in the image of God,

<sup>23</sup> This is based in part on my memory of a conversation with Professor Berman after his return from China. These same sentiments are conveyed in a newspaper article about this trip. See Meredith Hobbs, "Translating Western Law into Chinese: Emory Professor Harold J. Berman toured China, speaking to halls packed with Chinese students," *The Daily Report* 117 (Fulton County, GA) (June 1, 2006): 1.

<sup>24</sup> Berman, *Faith and Order*, 319–22.

are given the capacity for language and dialogue with each other and with God.<sup>25</sup> In a 1969 sermon in Harvard's Memorial Church he proclaimed:

If we see Christianity as a dialogue which God has initiated with man, I think we can see that Christians are called to transform this dialogue into a dialogue also among men, in which we are brought into relationships with each other, so that we share common convictions, undertake common tasks, and recognize a common authority ... All life is a great conversation, a discourse, a speaking together, which goes back to the very beginning, to God Himself.<sup>26</sup>

Dialogue was key, in Berman's view, to teaching and reaching reconciliation, and for building community both locally and globally. Both Jewish and Christian theology, he reminded his church listeners, teach that persons must reconcile themselves to God, neighbor, and self. For Berman, building on St. Paul, this meant that there can be "no real division between Jew and Gentile, slave and free, male and female"<sup>27</sup> – or, for that matter, black and white, straight and gay, old and young, rich and poor, citizen and sojourner. For every sin that destroys our relationships, 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 understandable to all.<sup>28</sup>

Such spiritual sentiments could shackle the narrow-minded. They liberated Berman from conventional habits of mind and traditional divisions of knowledge. He challenged Max Weber, Karl Marx, and Jeremy Bentham for their separation of fact and value, is and ought.<sup>29</sup> He criticized Alexander Solzhenitsyn for his contradistinction of law and morals, law and love.<sup>30</sup> He fought against the divisions of the very world itself into East and West, old and new, developed and undeveloped. His favorite

<sup>25</sup> Berman and I sometimes did devotions together, and I remember spending weeks discussing the meaning of these quoted statements, which in his view said a lot about the dialogical nature of God.

<sup>26</sup> See Conclusion herein, p. 161.

<sup>27</sup> Galatians 3:28, Ephesians 2:14–15, Colossians 3:10–11. See also John Witte, Jr., "A New Concordance of Discordant Canons: Harold J. Berman on Law and Religion," *Emory Law Journal* 42 (1993): 523–60, at 531.

<sup>28</sup> See sources in note 22, and Tibor Várady's Afterword herein.

<sup>29</sup> See Berman, *Justice in the USSR*, 15–24; *Faith and Order*, 239, 280; *Law and Revolution*, 538, 546. For criticisms of Bentham, see his unpublished (but available in Emory Law School Library archives), "World Law and the Crisis of the Western Legal Tradition," *The William Timbers Lecture, Dartmouth College, Hanover, NH*, April 21, 2005.

<sup>30</sup> See Berman, *Faith and Order*, 314, 381. For similar criticisms of Emil Brunner, see Berman, *Interaction*, 81–91.