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Harold J. Berman, Edited by John Witte, Jr., Afterword by Tibor Várady

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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.

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LAW AND LANGUAGE

Effective Symbols of Community

By

HAROLD J. BERMAN

Emory University

Edited by

JOHN WITTE, JR.

Emory University



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

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P R E F A C E

“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.

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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.