

## INDEX

*HB denotes Harold J. Berman*

- Abelard, Peter, 9
- Adams, Samuel, 138–39
- adjudication, 77–78, 81
- Adler, Mark, 32
- adoption, 106–07
- Agius J., 178–79
- America, *see* United States of America (USA)
- American language, 22, 46–47, 88–89
- American law
  - characteristics of, 146–49
  - constituents of, 133–34
  - courts of appeal, 168–69
  - HB's talks on, 3
  - historical development of, 134–42, 146–47, 148–49
  - historical method of legal analysis, 130–31
  - Soviet law, comparison with, 152–54
  - state constitutions, 142–43
  - state law, 133, 136–37, 142–43
  - United States Constitution, 140, 142–46
- American Revolution (1776), 10, 136, 137–42, 146–47
- analogy, 95–100
- anchor language in legal documents, 179–84
- ancient law, 126–28
- Anglo-Saxon origins of legal terms, 88
- aphasia, 50n.36, 99
- arbitration
  - alternative languages, 173–74
  - mistranslation, problems of, 180–83
  - time-limited translation, 168–69
  - translation, use of, 166–67
- Aristotle, 53, 70
- artificial languages, 55n.52
- artificial reason, 70n.21
- arts, language of, 62
- “as if” philosophy, 66, 68, 105
- assault (term), etymology of, 88
- assize (term), meaning of, 97
- Augustine, Saint, 114
- Babel, Tower of, 8, 54–55, 164
- Bacon, Roger, 52, 62
- Ball, Milner S., 30–31, 32, 84n.47, 85n.48, 92n.12
- Barfield, Owen, 97–98
- Beckett, Samuel, 159–60, 178
- Bentham, Jeremy, 8, 23, 25–26, 63, 65–69, 72, 73, 74, 81–82, 96, 110–11
- Berman, Harold J. (HB)
  - academic career, 1–5
  - communification, theory of, 16–17, 19–20
  - comparative legal studies, 16–19
  - holistic approach, 1
  - honors and awards, 4–5
  - interdisciplinary legal study, 13–16
  - language, functions of, 19–22
  - on language and law, 1, 34–35
  - linguist school, 31–34
  - religious beliefs, 160n.15
  - religious foundations of law, 6–12
  - rhetorical-humanistic school, 27–31
  - scholarly influences, 22–27
  - Soviet Union, visits to, 18–19

Cambridge University Press

978-1-316-61933-9 — Law and Language

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

Index

[More Information](#)

## INDEX

203

- world law, 5–6, 156n.11
- writings, 3–5
- Berman, Ruth, 6
- Billy Budd, Foretopman* (Melville), 36
- Blackstone, William, 135
- Bosnian language, 173–75, 177–79, 180–81
- Brandeis, Louis D., 89–90, 100
- Brđanin trial, 177–79
- Britton, Karl, 41–42n.18
- Brothers Karamazov, The* (Dostoevsky), 106
- Buber, Martin, 41
- burglar (term), etymology of, 88
- Burke, Edmund, 24–25, 123–24, 129, 139–40
- Burke, Kenneth, 22, 23–24, 26, 43n.20, 61n.60, 76
- Calabresi, Guido, 1
- Cardozo, Benjamin N., 13n.41
- Carroll, John B., 37n.5
- Cassirer, Ernst, 41, 90
- categorization through legal language, 78–80
- ceremonies, 61–62, 120, 151
- certiorari*, 165–66
- children, and law, 7
- China, 6–7, 159
- Christianity
  - categorization of disputes, 79
  - covenant, 75
  - jurisprudence, 114n.1
  - and law, 6–12
  - natural law, 117–19
  - and peace, 160–62
  - sacraments, 83
  - translation, 54–55, 164–65
  - unity of mankind, 158
- circularity, 66–67, 81–86
- claim (term), etymology of, 91–92
- codification of law, 24–25, 72, 116–17, 121
- Cohen, Saul, 26
- Coke, Edward, 14, 70n.21
- Cold War, 16–17
- Commentaries on the Laws of England* (Blackstone), 135
- common language
  - common expressions and symbols, 55–57
  - legal language as, 151–52, 154–58
  - and peace, 57–59
- common law, 133
- communication
  - and conflict, 48–52
  - language, role of, 45–47, 59–63, 150–51
  - and legal language, 21–22, 29–30, 69–76, 151–52
  - and peace, 150–51
  - in Russian, 47n.29
  - theory of, 16–17, 19–20
- community
  - and conflict, 48–52
  - in historical jurisprudence, 119–21
  - and language, 45–47, 59–63
  - legal language, functions of, 76–81
- comparative-historical method of law, 125–30
- comparative legal studies, 16–19
- conflict and language, 48–52, 57–59
- Constitutions
  - France, 145–46
  - Nigeria, 144–45
  - USA, 140, 142–46
- contract (term), meaning of, 88, 93
- contracts, as source of legal meaning, 77–78, 81
- conversation, 38
- conviviality, 20, 61–62
- ‘Court French’ of the EU, 33
- Cratylus, 53–54
- Croatian language, 173–75, 177–79, 181n.36
- Cuban Missile Crisis (1962), 16, 156–57
- custom as source of law, 94–95
- customary law, 94n.16, 126
- Dadras International and Per-Am Construction Corporation v. The Islamic Republic of Iran, and Tehran Redevelopment Company*, 183–84
- damages (term), etymology of, 88
- Dewey, John, 38, 39, 40

- dialogue, 7–8  
*Dominique Guesdon v. France*, 169–70  
 Dostoevsky, Fyodor, 106  
 Dumbauld, Edward, 138  
 Duncan, H. D., 43n.20  
  
 eavesdropping, 99–100, 166  
 economics, 62  
 Edwards, Harry, 31  
 Ehrlich, Eugen, 130  
 Emory Law School, 2, 4  
 emotion, and language, 39–43  
 English language  
   anchor language, use as, 179–83  
   community amongst diverse speakers of, 61  
   etymology of legal terms, 87, 88–89  
   ICTY, use of translation, 176–79  
   vocabulary, 46–47  
 English law  
   American law, influence on, 134–37, 146–48  
   historical method of legal analysis, 130–31  
   Parliamentary supremacy, 136  
   peculiarities of, 123–24  
 English Revolution (Civil Wars and Commonwealth 1640–1660), 10, 138–39  
 English Revolution (Glorious Revolution 1688), 138–41  
 equity, 94–95, 109–12, 133  
 Esperanto, 55n.52  
 ethics, 70–76  
 etymology of legal terms, 87–92  
 European Union (EU), 33–34  
 exception to the rule, 109  
 exchange between speaker and listener, 38  
  
*Faith and Order: The Reconciliation of Law and Religion* (Berman), 3–4  
 families in law, 127–28  
 federal law of America, 133  
 fiction (term), etymology of, 106  
 fictions, *see* legal fictions  
*Finamar Investors Inc. v. The Republic of Tajikistan*, 172–73  
  
 foreigners, action by, 106  
 formality of legal language, 78  
 French language, 46, 87, 97, 169–70, 176–77  
 French law, 103, 131–32, 145–46  
 French Revolution (1789), 10, 138–41, 145–46  
 Freund, Paul, 99–100, 166  
 Fuller, Lon, 14, 38n.7, 74, 98, 107–08  
  
 Gadamer, Hans-Georg, 24, 64n.2  
 Gasset, José Ortega y, 114  
 German language, 46–47, 87, 97  
 German law  
   historical method of legal analysis, 130–32  
   judicial review of constitutionality, 145  
   Savigny's historical jurisprudence, 116–17, 121, 132  
 Gibbon, Edward, 63  
 Girdansky, Michael, 38n.9  
 Gorbachev, Mikhail, 2  
 Gratian, 8–9  
 Greek, 45–46, 47n.28, 58  
 Greenland, 47n.28  
 Greenough, J. B., 96–97  
 Griswold, Erwin N., 144–45  
  
 Hale, Matthew, 8–9, 70n.21  
 Hall, Jerome, 14  
 Hart, H. L. A., 25, 81–82  
 Harvard Law School, 1–2, 4, 34  
 hearing, language of the, 77–81  
 Hermogenes, 53–54  
 Hill, Jane, 22  
 Hindu, 87  
 historical approach  
   comparative-historical method of law, 125–30  
   historical jurisprudence, 116–25, 128–30, 132  
   language, character of, 43–45, 113–15  
 Hobbes, Thomas, 118–19, 137  
 Holmes, Oliver Wendell, Jr., 39  
 Hopi people, 45  
 Horace, 185

- Hull, N.E.H., 15–16  
 Humboldt, Wilhelm von, 40–41, 51  
 Humpty Dumpty, 50n.34, 93  
 Hungarian language, 181–83  
 Hurst, Willard, 142–43
- Iakubinskii, Lev Petrovich, 38n.9  
 identity, and language, 183–84  
 Idiom Neutral, 55n.52  
 individuals in law, 127–28  
 inherent danger (term), 93–94  
*Interaction of Law and Religion, The* (Berman), 3–4, 15, 34–35, 41n.15  
 interdisciplinary legal study, 13–16  
 International Court of Justice (ICJ), 166–68  
 International Criminal Court (ICC), 166–67  
 International Criminal Tribunal for Rwanda (ICTR), 166–67  
 International Criminal Tribunal for the Former Yugoslavia (ICTY), 166–67, 170, 174–79  
 international law, 133, 154–56, 158–59  
 interpretation, 79–81,  
     *see also* translation  
 Ionesco, Eugène, 178  
 Iran–United States Claims Tribunal, 183–84  
 Islamism, 165  
 Italian language, 46, 87  
 Italian law, 131–32, 145
- Jakobson, Roman, 37n.5, 50n.36, 51, 52, 55–56n.53, 99  
 Jefferson, Thomas, 140  
 Jenks, Wilfred, 155  
 Jerome, Saint, 184–85  
 Jespersen, Otto, 50, 55n.52  
 Jhering, Rudolf von, 73n.23, 98  
 Judaism  
     categorization of disputes, 79  
     covenant, 75  
     dialogue, 8  
     HB's conversion from, 160n.15  
     time, 9–10  
     translation, role of, 54–55  
     unity of mankind, 158
- judicial legislation, 94–95  
 judiciary, 147–48  
*Justice as Translation* (White), 29
- Kant, Immanuel, 80  
 Karadžić, Radovan, 178  
 Keller, Helen, 40, 47  
 Kennedy, John F., 61, 157  
 Khrushchev, Nikita, 18–19, 157  
 Kittredge, G. L., 96–97  
 Kohler, Josef, 125  
 Krio language, 170–71
- language  
     commonalities between languages, 52–57  
     communication role, 45–47, 59–63, 150–51  
     and conflict, 48–52, 57–59  
     dialogue, 7–8  
     and emotion, 39–43  
     functions of, 19–22  
     historical character of, 43–45, 113–15  
     international law as common language, 154–56, 158–59  
     linguist school, 31–34  
     and meaning, 47, 115  
     and peace, 150–51, 156–58  
     as relationship-creation process, 36–39  
     of religion, 62  
     rhetorical-humanistic school, 27–31  
     scientism of, 41–43  
     social character of, 36–39, 43–45  
     and thoughts, 39–43  
     transitions between languages, 171–76, 183–84  
     *see also* legal language  
 language (term), etymology of, 96  
*Language of Judges, The* (Solan), 31–32  
*Language of Law, The* (Mellinkoff), 26–27  
*Language of Statutes, The* (Solan), 31–32  
 Latin, 45–46, 88–89  
 Latino sine Flexione, 55n.52

- law
  - comparative-historical method of law, 125–30
  - historical character of, 113–15
  - historical jurisprudence, 116–25, 128–30, 132
  - law for mankind, 158–60
  - meaning in different languages, 46
  - and religion, 6–12
  - teaching, 3
  - see also* legal language; legal positivism
- law (term), etymology of, 87–88
- Law and Revolution: The Formation of the Western Legal Tradition* (Berman), 3–4, 10–12
- Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Berman), 3–4, 10–12
- legal fictions, 67–68, 105–12
- Legal Imagination, The* (White), 28–30
- legal language
  - anchor language, 179–84
  - as common language, 151–52, 154–58
  - communification role, 21–22, 29–30, 69–76, 151–52
  - complexity of, 100–05
  - equity, role of, 109–12
  - formality of, 78
  - functions of, 76–81
  - historical character of, 113–15, 129–30
  - legal fictions, 67–68, 105–12
  - and legal positivism, 71–72
  - legal relationships, characterization of, 81–86
  - legislation, 77, 81, 109–12
  - linguist school, 31–34
  - meaning, transmission of, 69–76
  - neutral terminology, 64–69, 73, 74
  - and peace, 151–52
  - rhetorical-humanistic school, 27–31
  - translation of, 100–05, 163–65
  - see also* legal terms
- legal positivism
  - decline of, 13–15
  - and legal language, 71–72
  - Savigny's opposition to, 117–19, 125
  - vs. natural law, 5–6
- legal proceedings, 81–86
- legal profession, 148
- legal realism, 14
- legal terms
  - derivation, 87–92
  - equity, role of, 109–12
  - etymology, 87–92
  - interpretation of, 100–05
  - legal fictions, 67–68, 105–12
  - legislation, 94–95, 109–12
  - meaning, changes in, 95–100
  - technical meanings, 92–95
  - see also* legal language
- legislation
  - advancing law in line with society, 109–12
  - legal language, 77, 81, 109–12
  - legal terms, 94–95, 109–12
- legislatures, 136–37
- Lévi-Strauss, Claude, 15
- liability (term), etymology of, 88
- linguistics, 37n.5
- Llewellyn, Karl, 14
- Locke, John, 75, 138–39, 140, 141–43
- logic, 70–76
- Lying Down Together* (Ball), 30–31
- Machiavelli, Niccolò, 118
- Macleish, Archibald, 26
- Maine, Henry Sumner, 108, 109–12, 116, 125–30
- Malinowski, Bronistaw, 22–23, 36–37, 91
- Mannheim, Bruce, 22
- Marbury v. Madison*, 146
- maritime law, 133
- Marshall C. J., 146
- Marx, Karl, 8, 48, 128–29
- Marxism, 48–50
- Massachusetts, 137
- Mauthner, Fritz, 47n.28
- McAuliffe, Karen, 33
- McDowell, Gary L., 138n.5
- Melanchthon, Philip, 9, 71n.22
- Mellinkoff, David, 26–27
- metaphor, 96–98, 99–100

- metonymy, 98–100
- Middle Ages, 5
- Milošević, Slobodan, 170
- Montenegrin language, 173
- Morgenthau, Hans, 154
- Mormonism, 165
- national legal languages, 113–15, 129–30
- natural law
  - American law, 141–42
  - revival of, 14
  - Savigny's opposition to, 117–19, 125
  - vs. legal positivism, 5–6
- Nature and Functions of Law, The* (Berman), 3
- New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, 171
- Nigerian Constitution, 144–45
- Novial, 55n.52
- obligation (term), etymology of, 88
- Occidental, 55n.52
- Of the Vocation of Our Age for Legislation and Jurisprudence* (Savigny), 116–17
- Ogden, C.K., 49n.33, 68
- Oldendorp, Johan, 71n.22
- Olivecrona, Karl, 82–83
- On the Teaching of Law in the Liberal Arts Curriculum* (Berman), 3
- ordinary language, 50n.35
- Oxford Handbook of Law and Language* (Tiersma and Solan), 31
- Paine, Thomas, 138–40
- Papal Revolution (1075–1122), 10
- peace
  - and Christianity, 160–62
  - and common language, 57–59
  - and communification, 150–51
  - international law, role of, 154–56, 158–59
  - language, role of, 150–51, 156–58
  - law for mankind, 158–60
  - legal language, role of, 151–52
- Pei, Mario, 41–42n.18, 53
- Pentecost, 8, 54–55, 164, 184–85
- Permanent Court of Arbitration (PCA), 166–67
- phonetics, 37–38
- plain language movement, 32–33
- poetry, 90–91
- Polanyi, Michael, 9, 41–42n.18, 43, 61–62
- Polish law, 131–32
- politics, 62, 70–76
- Posner, Richard, 31
- Pososhkov, Ivan, 82
- Post, Gaines, 125
- Pound, Roscoe, 14
- precedent, 94–95, 131
- primogeniture, 135
- privacy (term), 100
- privacy, right of, 89–90
- Promise of American Law, The* (Ball), 30
- property (term), etymology of, 88
- Protestant Reformation (1517), 10
- public opinion, 140
- Qur'an, 165
- rationalism, 41–43
- relationships, 36–39
- religion
  - American law, 134–35
  - common universal religion, 159
  - HB's beliefs, 160n.15
  - language of, 62
  - and law, 6–12
  - natural law, 117–19
  - translation, 164–65
  - United States Constitution, 141n.11
  - unity of mankind, 158
- rhetoric, 70–76
- rhetorical-humanistic school of law
  - and language, 27–31
- Richards, I. A., 49n.33
- Romans, 47n.28
- Rosenberger, W., 55n.52
- Rosenstock-Huessy, Eugen, 12, 19n.65, 34, 51, 55–56, 58, 58n.58
- rules, 72–75, 81
- Russia, *see* Soviet Union

- Russian language, 46, 47n.28, 47n.29, 87, 171–73  
 Russian Revolution (1917), 10
- sacraments, 83, 91  
 Sapir, Edward, 22, 23, 37n.5, 44  
 Saussure, Ferdinand de, 37n.5  
 Savigny, Friedrich Carl von, 23, 24–25, 108, 116–25, 128–31  
 Schleyer, J. M., 55n.52  
 scholarship, communifying language of, 62–63  
 Schomburg J., 175  
 Schooten, Hanneke van, 115n.3  
 science, 41–43, 46, 56–57, 97–98  
 semantics, 37n.5, 37–38  
 Serbian language, 173–75, 177–79, 181n.36  
 Serbo-Croatian language, 173–74  
 Šešelj trial (*Prosecutor v. Vojislav Šešelj*), 174–75  
*Sheppard's Touchstone of Common Assurances* (Sheppard), 101  
 Sierra Leone, language of, 170–71  
 silence, 36–37  
 Silving, Helen, 55–56n.53  
 Simmel, Georg, 38  
 Smith, Adam, 63  
 Smith, Joseph, 165  
 Snow, C. P., 62  
 Soboleva, Anita, 71n.22  
 social character of language, 36–39, 43–45  
 sociology of law, 114, 125–30  
 Solan, Lawrence, 31–32, 34, 80n.39  
 Solzhenitsyn, Alexander, 8  
 Soviet Union  
   American law, comparison with, 152–54  
   Communist Party, 143  
   Criminal Code, 103  
   Cuban Missile Crisis, 156–57  
   HB's studies, 2–3, 16–19  
   HB's visits, 18–19  
   international law, 154–55  
   law of, 5, 152–54  
   science as a class phenomenon, 56  
   translation problems following dissolution, 171–73  
   USA, relations with, 156–57, 159  
   speak-listen, 19–20, 38, 41, 44–45, 150  
   speech, 58, 156–58  
   Stanišić, Jovica, 178  
   statutes, language of, 103  
   Stevandić, Nenad, 178  
   Story, Joseph, 8–9  
   Stygall, Gail, 32–33  
   Suez Crisis (1956), 154  
   Swift, Jonathan, 100  
   syntax, 37–38
- Tadjikistan, 172–73  
 tautology, in legal language, 66–67, 81–86  
 terminology, *see* legal terms  
*The People of the State of New York v. G. Smith*, 170–71  
 Thomas Aquinas, 118  
 thoughts, and language, 39–43  
 Tiersma, Peter, 31–32, 89n.4  
 time, and translation, 167–69  
 title to goods, 107  
 tradition, role of, 21–22  
 transitions between languages, 171–76, 183–84  
 translation  
   anchor language in legal documents, 179–84  
   difficulties presented by, 165–71  
   entitlement to, 174–76  
   EU law, 33–34  
   HB's work, 17  
   at the ICTY, 174–79  
   Jerome, Saint, 184–85  
   of legal language, 100–05, 163–65  
   and meaning, 29–31, 176–79  
    mistranslation, problems of, 176–79  
   role of, 53–55  
   Soviet Union, dissolution of, 171–73  
   time limits, 167–69  
   Yugoslavia, dissolution of, 173–76  
   *see also* interpretation
- trespass  
   cattle trespass, 135–36  
   legal fiction, 108  
   meaning of, 88, 89, 93  
 trover, 107  
 Tunkin, G. I., 154–55

Cambridge University Press

978-1-316-61933-9 — Law and Language

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

Index

[More Information](#)

## INDEX

209

- United Nations (UN), 155, 159
- United States of America (USA)
  - Bill of Rights, 140–41, 144–45
  - Constitution, 140, 142–46
  - Continental Congress, 141
  - courts of appeal, 168–69
  - Cuban Missile Crisis, 16, 156–57
  - Declaration of Independence, 137–42
  - Declaration of Rights, 137–38
  - Internal Revenue Code, 103
  - The People of the State of New York v. G. Smith*, 170–71
  - Soviet Union, relations with, 156–57, 159
  - Supreme Court, 140, 143
    - see also* American language; American law
  - Usener, Hermann, 90
  - USSR (Union of Soviet Socialist Republics), *see* Soviet Union
  - Uzbekistan, 172–73
  - Várady, Tibor, 33, 55n.51
  - Viehweg, Theodor, 71n.22
  - Volapuk, 55n.52
  - volk (term), 120n.20
  - Waismann, Friedrich, 45–46
  - Warren, Samuel, 89–90, 100
  - Weber, Max, 8, 128–29
  - Western legal tradition, 10–12
  - White, James Boyd, 28–30, 36n.2, 41n.17, 59n.59, 80n.39
  - Whorf, Benjamin Lee, 22, 23, 45, 54, 151
  - Wittgenstein, Ludwig, 24
  - world law, 6, 156n.11
  - worship, *see* religion
  - Yugoslavia
    - dissolution of, 173–76
    - ICTY, 166–67, 170, 174–79
  - Zamenhof, L. I., 55n.52