A Review: The Interaction of Law and Religion

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INTRODUCTION

In 1971 at Boston University, Harold J. Berman, Story Professor of Law at Harvard Law School, delivered four lectures in the series of Lowell Lectures on Theology. This book is comprised of those lectures with an introduction, postscript, and annotations. One would hope that Berman's analysis of the interaction of law and religion would provide insight into an area which is often neglected by modern jurisprudents. Unfortunately, it does not.

Those who are members of the legal profession as well as those who are not, are aware of the fact that the legal system does not always function properly. In the eyes of many, the legal system has failed to achieve its important goals of resolving conflict and creating channels of cooperation in the society. Berman recognizes the problem, which he calls "the massive loss of confidence in law—not only on the part of law-consumers but also on the part of law-makers and law-distributors" (page 21). He attributes society's loss of faith in law to the fact that law has become "...shorn of its mystique and its authority in the grand design of the universe" (page 40). Obviously, Berman's concept of the nature of law is much different than that of the legal positivists of his generation.

Certainly it can be argued that law, like religion and language, springs from the common spirit of the people, living and working together in society. But Berman goes farther than this. When he says that we must revive our sense of sanctity in law and when he writes of law's "mystique and role in the grand design of the universe," he is in fact talking about concepts of natural and divine law. No doubt it might reaffirm our faith in law if Moses would reappear with tablets in hand, but that seems unlikely. It is just as unlikely that in an age of skepticism, a secular society can learn to respect and love the law by returning to the notions of natural and divine law. It is true that religion and law serve important functions in society, and it is equally true that in contemporary America many have lost respect for both. Yet it is fallacious to assume, as Berman does, that because each share common elements, one can reinforce the other.
In essence, what Berman proposes as a solution to the loss of confidence in law and religion is little more than a prophesy that if we somehow recognize that law and religion need each other, if we “bring law into relationship with other processes of community life” (page 117), then people will reacquire faith and a sense of sanctity in law. The term he uses to describe this new way of looking at law and religion is “synthesis”, which he defines in the following way:

For law, synthesis means, in part, a new era of reaching out to other disciplines and other professions and other social processes—to sociology and economics and political science, to medicine and business management, to poverty and race and international relations, to literature and art and religion (page 115).

Surely we do need to recognize the need for the legal profession to draw from other disciplines and study, to see law as part of a society in which law, like other institutions, has a working and changing role to play. We have become a society of specialized skills, specialized institutions, specialized study. In the academic world we concentrate on smaller and smaller areas of research and study so that we often fail to see the relationship and inter-relationship between various disciplines. In law school, for example, we are rarely reminded that law and religion, like other institutions created by societies of men, often manifest the same characteristics, the same history, and the same problems as all social institutions. Law students study the law as if it operated in a vacuum, with little attention to the religious, social, economic, and political forces that shape it. Berman is clearly correct when he says we must learn to see the relationship and interrelationship between all institutions of society. But this is not the real answer to the problems facing the legal system today.

The problem with Berman’s analysis is that while much of what he says is true, it is much too simple to say that a new way of looking at law is the answer to revitalization of law. Those who are challenging the institutions of law and religion, as they are challenging the political, economic, and class systems in America, are doing so because they lack confidence in the ability of those systems to achieve their proper goals, to retain their vitality while growing and changing to meet new situations and new problems. It would be foolish to propose that there is any simple answer to the problems of American institutions, or indeed any simple cause. But the solution does not lie in coaching us to reaffirm a respect and faith in law because it is divine, sanctified, or mysterious. It is of little help to us in a world of social, economic, and racial conflict to talk about inspiration and sanctity in law. Only when people believe that law is reasoned, compassionate, and just will they regain confidence in the legal system.

We face an uncertain future—a future in which the world grows smaller and its people must learn to live with great diversity in language, culture, and religion. We have entered a new period of history when nations will have to resolve conflicts knowing that unlimited war, and its potential for the complete destruction of the planet, is no longer a viable solution to conflict. For this reason, it is critically important that we encourage respect for and faith in law—law which will allow us to deal with conflict and social change without resort to violence and the threat of destruction not only to our society, but to the world itself.
Berman says that for law to function properly, people must feel that it has meaning and direction. If law has lost its meaning and direction, it is because people have lost faith in its ability to function in a fair and effective manner. What Berman has proposed as a solution to the loss of confidence in law and religion in contemporary society is no real solution at all. Calling for a new way of looking at law and religion is not the answer to the problems facing the legal system today. The solution lies in reforming and developing the legal system so that it will be able to function effectively in a society faced with infinitely profound and complex problems. Only then will people reacquire the faith in law that Berman wants.