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Tributes to Robert M. Cover

Robert M. Cover was born in Boston in 1943. He received his B.A. from Princeton University in 1965 and his LL.B. from Columbia Law School in 1968. He taught at Columbia from 1968 to 1971 and was a visiting senior lecturer in law and American studies at the Hebrew University in Jerusalem from 1971 to 1972. In 1972 he joined the faculty of Yale Law School. In 1982 he was named Chancellor Kent Professor of Law and Legal History.

Professor Cover married Diane Bornstein Cover in 1967 and had a son, Avi, and a daughter, Leah. He is also survived by his brother, Arnold Cover, and his parents, Martha and Jacob Cover. The following addresses were delivered at the Memorial Service for Professor Cover at the Yale Law School on Sunday, September 14, 1986.

Guido Calabresi†

We are here to commemorate a life well led. We are here not so much to grieve (we need no special event or occasion for that) as to remind ourselves of those things that made Bob so special to each of us—that being reminded, we may all try to be better, more full of passion and compassion, more demanding of ourselves and understanding of others, and—most of all—less full of cant and hypocrisy, those twin temptations to which the academy is so prone.

I loved Bob because he was a wonderful, dear, and loyal friend, but I also loved him because he represented all that we strive to be. He was a superb scholar—there are none better: wide ranging, original, daring, a bit mad even, but always wise. And yet he knew how useless, how sinful scholarship is without character. He was a passionate activist. And yet he understood instinctively how destructive passion can be if it does not for-

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give and even love those individuals on whom it must—on whom it *must*—turn its fire. He was deeply devoted to his heritage. And yet he never let its great traditions exclude others, but made of them a light for all peoples and a searing criticism of injustice everywhere, within as well as without.

These qualities made him a wonderful teacher, of course. What made him even more was not only that he genuinely loved and supported his students but also that, since he did not have a pompous bone in his body, he never, ever patronized them.

He loved this school, with all its faults, because of its commitment to scholarship and decency, its abhorrence of rules, and its insane, but utterly wise, reliance on individual good will to keep it going. He understood immediately the anarchy and good faith that are essential to this place, and immediately made this place his own.

He was not falsely modest. That, like pomp, is an all too common academic sin. No, he knew full well how extraordinarily able he was. He just knew how relatively unimportant even *truly* great ability is.

I will miss all of these qualities of Bob more than I can express. But most of all, I think, I will miss his wry and always gentle sense of the absurd—the look, the smile, that told me again and again, “Don’t you see what nonsense, what vanity, it all is?” and at the same time was so understanding of why humans have to persevere in such vanities. It is that smile which I see, which I seek, when I ask how he would have dealt with an issue, a problem I face. It is that gentle smile which chides me even now and says, “That’s nice, but don’t overdo it.”

He was my friend. He taught me much much more than he ever knew. His life was cruelly short, but ultimately even that fact will fade, and what will remain, untouched and untouchable, in the words of the spiritual—“bright shining as the sun”—is a life supremely well led.

Michael J. Graetz†

I knew, of course, of Bob Cover’s first heart attack, and I know, in my mind at least—as we all do—that death may come to anyone at any time, but the suddenness of Bob’s death was such a shock. There are the plans for shared times ripped asunder, classes untaught, meals uneaten, conversations unfinished—so many things not yet begun. I had expected three

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and a half decades, not three and a half years, with Bob Cover, and to be robbed of that makes me immeasurably poorer and inconsolably sad. What a stunning loss to all of his family and friends. What an awesome blow to Leah, to Avi, and to Diane, who together were the core of Bob's life.

Bob Cover was such a special person. So many among us have failed to develop a clear vision by which to know ourselves, against which to measure ourselves. We are tempted to shape ourselves according to the society that contains us: to match our scholarship to today's vogue, to conform our professional and personal lives to the dominant fashions of the day, to allow our tastes for material comforts to determine our visions of right and wrong, to emasculate our sense of justice. Bob Cover did none of these things.

Bob had a remarkable and mature sense of himself. His system of values was fully developed. He was secure about where he stood and wholly unthreatened by the knowledge that there were realms best left entirely to others. He knew what parts of himself he could yield to the obligations of professional position, what parts to the entreaties of friends, and what greater part to save for his family, for those he truly loved—for Diane, Avi, and Leah.

Bob Cover seized life vigorously and in great variety. Bob's reactions to ideas, to people, and to things were uniquely his—often unpredictable and endlessly engaging. No person, for example, took greater delight in an excellent meal than Bob. Yet the laws of Kashrut were to be obeyed. So generally he kept kosher, but he insisted on abandoning those rules whenever they posed even a mild threat to friendship. "In a friend's house, you eat what is served," he said. "Friendship is more important."

Bob's connection to modern culture often seemed haphazard. Credit cards he understood fully; cameras detracted from the process of seeing. When our students in a seminar entitled "The Constitution and the Code" relabeled it "The Constitution and the Starship Enterprise," Bob was puzzled. "What," he asked, "is the Starship Enterprise?"

He knew, of course, of Bob Dylan and the Beatles, but the music of his generation seemed largely to have skipped him by. Perhaps, had he lived, this would not have been the case with the music of Avi and Leah's generation. He had little taste for it at first, though as in all things, he knew what he liked. He took instantly to Cyndi Lauper's "She Bop"—a song Bob described as the one that conjugated the verb "to bop." And not long ago he remarked at a law school faculty workshop that MTV—through its anarchy, its challenge to established values—gave him confidence that the First Amendment was alive and well.

Bob was even more firm in his views about books. He was as quick to

urge upon you Elmore Leonard, Rex Stout, or Bill James—all of whom he regarded as superb authors—as Robert Alter's *The Art of Biblical Narrative*. On the other hand, Bob maintained that many books worth beginning were not worth finishing and insisted that he had never met a British novel worth reading.

Bob was a loyal and forgiving man. Although he was quite bitter about a few trades, no one could take greater pleasure than Bob would have in the current nine-game first-place lead of the Boston Red Sox.

Bob had a marvelous sense of humor. He found great humor, not heroism, when he was required to respond recently, in filling out an application to become a member of the New York State Bar, that yes, he had been a party to litigation—*Cover v. New York State Bar*, his challenge to its loyalty oath.

Bob's scholarship provides ample, extensive, and ongoing evidence of his superb and subtle mind. His originality—even his quirkiness—emerges, as it did in conversation. I remember one class where we were discussing the constitutionality of federal and state subsidies to private schools, including private religious schools. To Bob, that posed no serious constitutional issue. Rather, he insisted, it is when the state itself engages in education—it is *public* education—that threatens the individual liberty guaranteed by the Constitution.

Memories of Bob teaching are among my most vivid, for Bob Cover was a teacher through and through. He approached the classroom—whether here or at Leah's school—with a great sense of adventure. For Bob the classroom was not a performance hall; conveying his knowledge or beliefs to others was only one, relatively small part of teaching. Teaching, to Bob, was a process of communal learning—the classroom a place where people with mutual respect learn together. Talmudic conversation was his model. He was willing to teach any subject, even taxation, as a way to learn it.

For Bob, teaching and learning were not limited to the classroom. He was unwavering in his commitment to the students' shanties in Beinecke Plaza because he was confident about their educational value to the students and to the community as a whole. After Avi and Leah had spent some time there one day, Bob remarked that they had now at last had a genuine learning experience on the Yale University campus. And although he felt confident that he would abhor their politics, he was looking forward to welcoming the next group of students who would appear there—the process of education would continue.

Respect for others was the hallmark of Bob Cover's teaching, whether to the students in his class, to business managers in China, or at home at the Passover table.

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It was no accident that Bob became a teacher of law, rather than a teacher of, say, history or Chinese studies. For Bob Cover had an acute and abiding commitment to justice—a sense of justice forged early in his life in the courtrooms of Albany, Georgia, and fixed in the jail in Americus. He knew it is in law that the hope for justice resides, in the teaching of law that a sense of justice might be awakened and perhaps nurtured. Although he had a healthy regard for the value of theory, Bob was convinced that only by thinking and writing about justice, by teaching about justice, by creating and maintaining a just workplace, indeed by providing justice to its community and to society, could a law school claim to be great.

His sensibility about and commitment to justice pervaded Bob's life—and not only in the obvious places—his scholarship and teaching. His relationships with others were invariably just. Only love for family and friends—most especially love for Leah, Avi, and Diane—had a greater place in Bob Cover's life.

We have come together here today to remember Robert Cover. Despite its institutional quality, even its starkness, this is a fitting place. It is not Bob's first place, not his home, but this law school was one of Bob's important places. I think of him every time I enter this building. I search for his open door—I look, still hoping once again to glimpse his bicycle every time I step onto his hall. I always will. Bob's spirit, his good humor, his twinkling eyes, his ready ear, his unique and subtle intelligence, his compassion, his gentle patience, his open door have been such an important part of my few years here.

Arthur Leff's law dictionary reports that J.A. MacLachan "impiously but usefully" defined an act of God as "'that which no reasonable God would do.'" It is little comfort to know that Bob's death, as surely as Arthur's own, was an act of God. It does nothing to assuage the overpowering sense of loss. We shall all miss this wise and sweet and gentle man.

Barbara A. Black†

When you are asked to speak at such a service as this for a dearly loved friend, you think about what to say, and at some point you may realize, with great distress, that you are working at writing a speech. I don't want to make a speech about Bob. Bob himself was very good at not making

† Dean, Columbia University School of Law.

speeches when he spoke. He told stories, usually about storytellers and their stories; he was a born storyteller, and therefore a born teacher, and a born historian.

It was, of course, legal history that brought, or threw, us together. When we began our relationship Bob was, to me, an obviously up-and-coming young scholar in our mutual discipline. When it ended he was my kid brother. So I'll speak for a while about Bob, but I won't make a speech.

I did do a little legal-historical research of my own for today: Bob was, as you know, an alumnus of the Columbia Law School, and so I knew that there were people there who knew him when he was very young, and I thought there might be some pieces of paper as well that would tell me something about the twenty-two-year-old who came to Columbia in 1965. I asked my colleague Lou Henkin—to whom Bob was, I knew, very dear—just to say a bit about that young man, and Lou said:

He was very sweet, pink-cheeked, lovable, irreverent but never acerbic. When he disagreed with you, you loved him for it. Going from one side of the podium to the other without a moment in between, Bob was immediately accepted by the faculty as a colleague. He was close to the students, and, in the difficult days of the late sixties, defended the voice of freedom and reason in faculty councils.

Bob, then, in his early and mid-twenties, was Bob as I knew him later. And in documentary confirmation of this, I found some words of Bob's, written when he applied for admission to law school in 1965:

My scholastic achievements are perhaps most relevant to my ability to study law effectively. These achievements should be clear from my transcript and recommendations. I shall only state that I have always been what is considered a good student. I have made no extraordinary achievement in scholarship, but have relied on my natural abilities with intermittent work to maintain a fairly high scholastic average. Scholarship, however, is not my major concern. I am far more interested in the uses to which knowledge can be put than in the pursuit of knowledge itself. It is in the area of utilization of knowledge that my achievements have been, to me, most important if least tangible.

For the past several years my two major interests have been institutional change and character education. I view these two areas as prerequisites for the type of societal change that I would like to see brought about in the future.

I worked for nine months for the Student Nonviolent Coordinating Committee (SNCC) in Southwest Georgia. I cannot point to achievements that can be branded as my own, but I can point to

important achievements of the SNCC project of which I was a part. Two major breakthroughs were made in Terrell County, Georgia while I was working there. In November 1963, thirty Negroes registered to vote in Dawson, Ga.—more than twice as many as had registered in any one month previous to that time. In February 1964, more than fifty Negroes were registered in that same county, over forty on one day. These concrete achievements were the result of three federal injunctions, one bombing, the dangerous and difficult work done by my predecessors, and the work of a small group of people of which I was only one member. I can claim but a minute part of the achievement.

In March 1964, I worked as a local liaison with the National Sharecroppers' Fund in setting up the first conference of Negro small farmers and sharecroppers in southwest Georgia with representatives of federal and state agencies. The purpose of the conference was to familiarize local people with government programs from which they might benefit. Again, the achievement belongs to a group of people in which I was but one member.

My interest in character education has manifested itself in my job during the summer of 1964 as a senior counselor at Camp Ramah in the Poconos, a camp run by the Jewish Theological Seminary, and in my present job as a teacher in the religious school of the Princeton Jewish Center. It is difficult to even guess at the extent to which I have achieved success in my work as an educator. On entirely subjective criteria I would maintain that several youngsters have been positively influenced by their experience as my students or counselees.

On a more objective level I can relate one of the projects that I initiated and administered at Camp Ramah. Our unit of eighty children took part in a "work day" in which they painted, cleaned, and fixed up a community center in an underprivileged section of Scranton, Pennsylvania. The project consisted of orientation, work, workshops led by the social worker in charge of the center, and post-project evaluation. The campers began to realize the nature and extent of the problem of poverty in urban areas.

I apologize for the vagueness of this essay. However, you have or will have the measurements of all my relevant, measurable achievements. I have tried, here, to give some idea of my real concerns and of the way in which I have tried to achieve something in the realm of those concerns.

And then I found a document in further confirmation of the young Bob having been the Bob I knew. This was a document of particular significance to me. In explanation of that point, I must tell you first that Bob and I taught legal history together, and that one of the great things about teaching with Bob was that however disorganized (considerably) I was, he was more so; however close (very) I ran to deadlines, he ran closer (if not

beyond); if I lost (frequently) one document, he lost two. It was very relaxing and utterly endearing. Imagine, then, my reaction on reading this:

July 9, 1965
Admissions Office
Columbia University School of Law
435 West 116th Street
New York, N.Y.

Dear Sir,

I have received a memorandum to the effect that you have not, as yet, received my college card and photograph. Unfortunately, I have misplaced the card that was sent along with this memorandum. I do intend to enroll in the entering class of the law school in September of 1965. If this letter is not sufficient confirmation of my intention, please send me another card and I will send it back to you immediately. I am presently working away from home and do not have a suitable photograph. I can, however, have a photograph in your office within a week or ten days. Please accept my apologies for my carelessness in this matter.

Thank you very much.

Sincerely yours,
Robert M. Cover

(If you are imagining that my reaction was to cry, you are right.)

If a scholar is learned, erudite, his scholarship will be learned, erudite; if a scholar is brilliant, his scholarship will be brilliant; if a scholar has a masterful command of language, his scholarship will be powerfully written. All scholarship, that is, inevitably reveals something about the scholar. But some more than most. Because Bob chose to write about those things that were of deepest concern to him, *his* work—his learned, erudite, brilliant, powerfully written work—is, more than most, eloquent of what was most deeply true about the person who was the scholar who did the writing. This was true of his first major work, the book that made him immediately an important figure in legal history, and even more true of his last. In the early book, made aware, as he tells us, of the complexity of moral choice, Bob poses and explores the dilemma of the anti-slavery judge, Captain Vere's dilemma, the moral-formal dilemma as he calls it. By the last writings, although still focusing on the role of judges, on the dilemma of judges, Bob was more clearly speaking about the dilemma of each and every one of us: To quote him somewhat out of context, "we must wade in to understand our own dilemma." Moreover, while in the earlier work understanding was the main object for Bob, and statement of his own position, of his own choice, is muted, in the later work Bob's position comes through loud and clear.

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Still, the message has been there, and the same, all along. It was there in the late sixties when, as Lou Henkin said, Bob spoke for freedom and reason. As Bruce Ackerman put it, when I asked him if he would care to put into words, for me to convey here, something of what he feels about Bob, "At all times he spoke with the same voice—passionate in its commitment to justice, resonant in its mastery of the deepest resources of the law." The voice, of course, was a profoundly radical voice; it was also profoundly sane. As Bruce also said, "In the best of times such a voice is irreplaceable. When the law is sounding a retreat from the great themes to which Bob gave his life, his silence speaks yet more eloquently to the rest of us."

Among legal historians, who counted Bob one of theirs, there is much sorrow. Next month the American Society for Legal History will hold its annual meeting in Toronto. At these meetings we counted on Bob to be there, and he often was. Most especially, the smaller circle of those of us who were Bob's close friends, who tended at meetings to stay together, to dine and drink together, to discuss papers together, to watch the World Series instead of going to receptions together, to swell (or constitute) the audience at each other's panels, we counted on Bob to be there, and for us Toronto will be the place where we share our overwhelming sense of loss—as, here in New Haven, Bob's Yale colleagues share their overwhelming sense of loss, with Bob's family and other friends.

I am deeply grateful to have been asked to participate, to have been allowed today to say a few words about my dear friend, Bob Cover.

Stephen Wizner†

I remember the first time I saw Bob Cover. It was exactly twenty years ago, in the midst of the War on Poverty, during Bob's first year of law school. A small group of activist lawyers were hiding out at the Columbia Law School, trying to change the world. They were called, somewhat grandly, the Center on Social Welfare Policy and Law.

One day a very earnest, somewhat shy first-year law student appeared in our office and announced that he had come to help us help the poor. He asked for a research task—something difficult—something we were struggling with. He didn't want just to go look something up. He wanted to work on a major theoretical problem we faced in our law reform effort.

† Director of Clinical Studies and Professor (Adjunct) of Law, Yale Law School.

We were a little amused by the intellectual temerity and refreshing naivete of this first-year student. We told him, rather dubiously, that we were having difficulty constructing a legal theory that would enable us to challenge arbitrary actions by local welfare departments in federal court. (Remember, this was 1966, before *Goldberg v. Kelly*.)

We were not surprised when we did not see Bob again for a week, or perhaps a little longer. We *were* surprised when he returned with a very long manuscript, entitled "Federal Judicial Review of State Welfare Practices." It was a creative analysis and synthesis of constitutional law, the Reconstruction Civil Rights Acts, and federal jurisdiction. It described what would prove to be a successful theory for overcoming the combined obstacles of exhaustion and abstention. It was to become Bob's Note for the *Columbia Law Review* and the major theoretical underpinning for our campaign of welfare law test cases in the federal courts. It was an intellectual *tour de force*. But more important, it seems to me in retrospect, was the personal commitment and idealism that produced that remarkable document.

Not long afterward, in Albany, Georgia, C.B. King, a veteran black civil rights lawyer, talked to me about Bob Cover. King had gained national prominence as attorney for the Albany Movement, organized by the Student Nonviolent Coordinating Committee. He recalled the SNCC workers, especially the students who had come down from the North to help integrate the South. He talked about one student in particular, an earnest, polite, Princeton undergraduate. Bob had been in Albany, Georgia as a SNCC volunteer. He was arrested in a civil rights demonstration. He spent weeks in jail, where he went on a hunger strike and was beaten by other prisoners.

King had been touched by Bob, by his sincerity, his unpretentiousness, and his courage. And Bob was inspired by C.B. King, a lawyer who viewed law as a moral force for achieving a just world. Bob often said that that experience in Georgia with C.B. King was a major influence in his deciding to become a lawyer.

In 1962 Bob was a nineteen-year-old sophomore at Princeton. Those were the days of compulsory chapel attendance, no student cars on campus, and the honor system. That year 700 members of Bob's class "bickered"—sought admission to Princeton's elite eating clubs. Two of the 700—Bob was not one of them—were not invited to join a club. The *Daily Princetonian* of December 17, 1962, contained what may have been Bob's first publication. It is well written, argumentative, ironic, infused with moral sensibility. It is about human dignity and community. Though it was written nearly twenty-five years ago, in it you can hear Bob's voice.

Our hallowed university presumes, in certain instances, to stand "in loco parentis," in the place of our parents. It appears that we Princeton "men" are as yet unable to make certain ethical and moral decisions on our own. We may not decide whether or not we shall go to church, drive a car, or cheat on tests.

However, it is not the purpose of this letter to dispute the right of the university to place these restrictions on us. Certainly, a great deal of our behavior indicates that it is advisable to treat us as boys rather than men.

Let us put all these considerations aside and proceed to the question of how good a parent the university really is. For, once the university pretends to stand "in loco parentis" as the caretaker of our morals, she must inevitably make a decision as to what she will superintend and what she will leave alone. It is in this decision that our new parent fails miserably.

Our parent tells us to go to church. But, if there is one precept about which practically every religion agrees, it is that consideration for and sensitivity to one's fellow man is of the utmost importance. Our parent, through the honor system, has set up a standard of intellectual integrity to which we must adhere. Yet, the intellect is not an end in itself. It is a tool for living in the world of men. Indeed, modern psychology and religion agree, if on no other point, on the assumption that an individual's personality is a sensitive phenomenon, delicately balanced and subject to easy bruising.

Now, isn't it fine that our foster parent is supporting such valuable things as religion and intellect? Isn't it a shame that our new parent refuses to recognize the consequences of religious and intellectual findings when applied to Princeton's social life? Religion teaches us consideration for our fellow man; psychology teaches us that the adolescent is extremely sensitive to peer group rejection. Moreover, anthropology and sociology have taught us that man can devise and has devised a variety of social systems which can either minimize or maximize the stresses on the individual.

Yet, we persist in a social system, the club system, which in 1962 rejected two individuals out of a group of more than 700 who bickered. Apply the findings of psychology to this case!

Finally, apply the philosophy upon which the American tradition is based, the philosophy which states uncompromisingly the worth of the individual in a pluralistic society. Could we not, with all our academic knowledge of social structure, devise a better way to choose the people with whom we will eat our meals and share our parties?

But our mother remains silent. She recognizes the right of mere boys who are presumably incapable of deciding whether or not they may drive a car or go to church to pass judgment on their peers and to trample upon the sensitivities of individuals.

The passion for justice and the concern for how members of a commu-

nity ought to treat one another expressed in these eloquent words of a nineteen-year-old student were themes of Bob's life. Years later, at a political demonstration outside the Criminal Court building in Foley Square in lower Manhattan, a young Columbia law professor stood on the roof of a car, speaking into a battery-powered megaphone. It was Bob Cover, protesting the prosecution of black radicals on conspiracy charges.

And this was no isolated excess of youthful idealism. At Yale we saw the mature Bob Cover conducting a teach-in with students seeking divestment of University funds from South Africa, walking picket lines in support of Yale workers seeking better wages and working conditions, working with a group of law students trying to help the homeless in New Haven.

Bob had an abiding concern for community, for how individuals and groups express themselves and relate to each other. For him friendship was both a personal, intimate reality, and a metaphor for a good society and a just world.

Bob cared deeply about his family. He was a devoted husband and father, son and brother. Diane and Avi and Leah shared Bob's commitment to the family as loving friends who support each other and relate to one another with kindness and understanding. One had only to see Bob and Diane and the children together to appreciate the extraordinary possibilities of the family for developing and sustaining relationships of love and respect.

Friday night sabbath dinner at the Covers' home on Colony Road was a joyous occasion of ritual observance, excellent food, and good conversation. Everyone participated, especially the children, in animated discussion of Jewish issues, education, community events and personalities, and baseball. Bob was so happy in that setting, with Diane and Avi and Leah, sharing the special quality of their family with friends.

Bob was a committed Jew. He experienced fully the *halacha* and *ag-gadah*, the *nomos* and narrative, the myth, law, and history, the ethical aspirations, of the Jewish people. Every Saturday morning he would stride into the synagogue, wrapped in his multicolored prayer shawl, an oversized, colorful skull cap perched on his head, a huge volume of Talmud under his arm, and a friendly grin on his face as he greeted the "regulars."

On Saturday afternoons he would sit with a group of neighbors and they would study a page of Talmud together. Bob was no solitary religious mystic. His Judaism, like the rest of his life, reflected his concern for community.

Bob defined his role as a teacher at Yale as membership in a community, a community of students and teachers, workers and scholars. Teach-

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ing was not performance, but a relationship—an engagement—with students, in which ideas were expressed and discussed and taken seriously, and teacher and students treated each other with respect and friendship.

Membership in the University community meant more than teaching and scholarship. It meant engagement of the University administration in support of workers and students organizing to protest injustice in the workplace or evil in the world.

At the end of his life Bob was working on a sixteenth-century Hebrew text that recorded a dispute between the rabbis of Safed and the rabbis of Jerusalem over an attempt to reinstate the ordination of judges, which rabbinic tradition held would accompany the coming of the messianic age. The confluence of religion, law, and politics in this, Bob's last scholarly project, was a summation of his vision of law as a sacred art, a bridge from reality to a new world.

Bob Cover lived in this world, even as he dreamed of better worlds. He fought for social justice. He practiced loving kindness. He was a teacher and friend to all of us.

David Brion Davis†

On occasions like this we tend to divide a human life in accordance with the compartmentalizations of our society. We view Bob Cover as a teacher, a legal scholar, a historian, a friend, an activist, a father and husband, a Jew. While this approach allows us to see the rich multiformity of a man who was loved and esteemed in a variety of roles, we should also recognize the extraordinary integration and coherence of Bob's life. This wholeness or "sphericity," to use Emerson's apt word, stood as a challenge to an age when so many professional lives are fractured by indecisiveness in the face of competing obligations, desires, and demands. When I think of Bob Cover I think of the words "center," "centered," "centrality." His clear sense of priorities, ranging from his family to his teaching and scholarly investigations, rested on an almost physical grasp of the centralities of life. This anchor of assurance freed Bob from both the arrogance and the humility that arise from deep-rooted self-doubt. For many of us here, he himself became a center—a dependable source of wisdom, sanity, clear-minded judgment; above all, a model of what caring for other people really means.

† Sterling Professor of History, Yale University.

Bob Cover loathed hierarchical organization and especially the pretense that accompanies rank, office, and artificial distinction. For Bob the law was far too precious and central to human existence to be monopolized by legislators, judges, law firms, law schools, or a legal profession. Since law involves the most fundamental quest for norms, for determining the meaning of right and wrong, a quest for what he called a "juster justice," he was willing to assert that the Mennonite understanding of the First Amendment deserves equal or superior status to that of Supreme Court justices. Similarly, history for Bob was not simply another academic discipline, a distribution requirement for a well-rounded life. He knew that human life itself is incomprehensible without constant historical inquiry that leads to the interpretation and reinterpretation of the past.

Bob was an exemplary teacher precisely because he never dreamed of confining pedagogy within classroom walls. His social and political activism was an organic extension of his scholarship and intellectual beliefs. He never regarded his home as a compartmentalized retreat from the mental rigors of law school. He knew that the family is the seedbed of all education, religion, and law, the locus of our first discovery of what he termed "personal otherness." And it was this unfolding discovery of the implications of personal otherness that lay at the heart of Bob's quest for meaning in both law and life.

I could speak at length about Bob's professional skill and vision as a historian, but such a tribute would miss what was most important to him as well as to me. Perhaps I can best illustrate my point about integration and connectedness with a personal anecdote. My family and I have had the good fortune of sharing Passover seders with the Covers. The 1985 service at their home was especially memorable because it merged religion, law, history, pedagogy, and sociability in a free-ranging discussion of human slavery and freedom. In family rituals, as in his teaching, Bob subordinated external forms to the things that really mattered. This was a seder oriented to the children, to their expressiveness in Hebrew, and to the levity and word play of songs. But as a teacher, a legal scholar, a historian, a friend, an activist, a father and husband, and a Jew, Bob also sought to further everyone's understanding of the rich symbolism of the escape from Egyptian bondage.

Engaging everyone present at the table, Bob asked in his somewhat playful Socratic fashion what it meant to be a slave. In what does slavery truly consist? Were the Jews in Egypt really slaves? What did serving "with rigor" mean? Why didn't they rebel? Why, after fleeing with Moses, did some of the Hebrew murmur and wish they could return to the security of Egyptian bondage? What is involved in being free? Can we understand freedom without referring to slavery?

These are the kinds of questions that Bob posed. He also ventured into secular history, asking for other examples of enslavement and deliverance. Even the children, the older ones at least, caught some sense of Exodus as a paradigm of a recurring human experience. Without becoming pedantic, Bob touched on the symbolic and metaphorical meanings of slavery and redemption. A feast of celebration and remembrance also became an occasion for communal reflection on the meaning of freedom and hence the meaning of life. I was particularly impressed by the children's response to this discourse.

Bob's empathy and rapport with children provides the key to an understanding of what unified his life. Children loved and respected him because he was never condescending and because he took their interests, worries, ideas, and delights as seriously as any constitutional issue. Children knew he was one of those extremely rare adults who actually listens. They also knew that his attention was guided by love. And love was the binding force that integrated the diverse social roles, the many Bob Covers we knew. Scholarly works, he once said, "are but vanities without a life into which they fit." He paid tribute to Diane, Avi, and Leah for sharing and creating that life, and he affectionately welcomed those friends, students, and colleagues who sailed to his shore and discovered there a fresh continent of moral vision. It is that larger life, created by all our interactions with Bob, that brings us here; and that life will endure.

Tanina Rostain†

Rabbi Joshua Ben Prachia said: "Find yourself a teacher. Acquire a friend. And judge everyone with the scale weighed in his favor." In Bob Cover, we found a teacher. We discovered a friend. By his example, we learned to judge everyone with the scales weighed in her favor.

Being a student in a class taught by Bob Cover was a very special experience. He was not a performer; rather, he engaged us through his passion for intellectual inquiry, for justice, and for a better world. In the first lecture of American Legal History, he promised that we would "examine law as a bridge, the normative space between reality and the world we imagine we can build." He said, "we want to learn the gestures a committed person makes." With Bob we explored our commitments to law, to our community, and to a just life. He taught us how the law could serve

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the project of *tikkun olam*, the repair of the world, but also how the law often functioned to rigidify the divisions of a world in disrepair.

We were struck by Bob Cover's gentleness, his kindness, his integrity, and his humility. Bob never forgot what it is like to be a student. He welcomed and seriously entertained every possibility we had to offer. When a student asked a question, his usual response was, "That's a very interesting question!" Then, by his answer, he would show us how the question, which might have felt half-articulated to the student asking, opened up a new horizon of ideas. In his first-term procedure class, Bob would draw out the students who felt least comfortable with the unfamiliar assertive tone of lawyering. As a result, the atmosphere in his classes was open and relaxed. Every line of inquiry was available for exploration. The dignity he conferred on us, the respect with which he received us, made us feel like full participants in the intellectual undertaking upon which he had embarked.

During one American Legal History class, several students asked Bob about the role of women in early immigration to the colonies. The next day, after apologizing for his lack of knowledge and hasty research, he went on to devote a whole lecture to the subject. Bob Cover often apologized when he couldn't remember some fact or had not anticipated some question. This never ceased to amaze us, because of the breadth of knowledge and depth of vision he displayed.

Outside the classroom, Bob was sometimes difficult to approach because of his shyness—and ours. To engage him in conversation, we developed different techniques. One method was to mention Ted Williams. This never failed to elicit a passionate response: Bob would reel off Williams's on-base average for every year he played with the Red Sox. Another technique was to bring up the subject of restaurants and food. One side of Bob's personality that usually did not reveal itself was his tremendous affection for good food. Finally, you could always ask him how many miles he had recently ridden on his bicycle, which was usually parked in the middle of his office. While normally exceedingly modest about his achievements, such as the Ames prize, he was wont to engage in a display of bravado when it came to his Century rides. Steve Wizner somehow always managed to overhear these conversations and would stick his head inside Bob's office to invite him to go for a twelve-mile run.

We understood why Bob Cover had his office in the middle of the celebration of chaos that is the Yale Legal Services Organization. We knew that it was more than personal fondness for the wise-cracking individual who runs L.S.O. Bob conceived of his teaching as intimately related to L.S.O.'s project to acquaint us with the moral complexities that attend the commitment to legal practice in a world in disrepair. Bob taught us how

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the study of history serves the project of *tikkun olam*. Exploring the difficult choices with which committed persons of the past were confronted and learning their responses, their gestures, would prepare us to contend with the choices that a person who imagines a better world necessarily faces.

During one class of American Legal History, two years ago, we spent some time discussing Brandeis's concurrence in *Whitney v. California*. That is the opinion in which Brandeis appeals to the Founding Fathers' vision of democracy, and in particular, to their understanding of the centrality of free speech and deliberation for maintaining a free, democratic society. Clyde Spillenger asked Bob whether Justice Brandeis's view of history was not overly romantic, as Judge Bork had observed in a law review article. This is what Bob answered:

Of course [Brandeis's view of history is romantic] If your view of history isn't romantic, then there is no *reason* for history to have any instructive power whatsoever Why in the world would you then use history as authority? If you have a critical view of history Beard's view [that] the Founding Fathers were a bunch of money-grubbing people out for their own self-interest—why in the world would we then *care* what the Founding Fathers *wanted*? Why in the world should we then emulate them or in any way . . . view their acts as authoritative? We view the acts of history as authoritative precisely because we read into that history that part of the past which we choose to make authoritative, which we wish to emulate.

At the last meeting of our American Legal History class, Bob lectured in defense of Justice Murphy, who sat on the Supreme Court during the 1940's, and who was, to his mind, an undervalued judge. Bob's understanding of the significance of biography—or, as he called it, hero worship—emerges in this lecture. I think his words are worth repeating:

To my mind, in part, the question goes back . . . to "What would Brandeis have done?" . . . [T]his . . . goes to the realm of what the role of biography or hero worship is in this area. [It is] looking for wise people to think about. I don't think Brandeis was infallible, but I think he was committed and wise and I haven't found too many failings yet. Since I think he was committed and wise, and surely smart, it's . . . interesting to ask, would he have been with Frankfurter or Murphy in these things? Now Brandeis does often *write* more like Frankfurter. Brandeis does not typically . . . cut through and say, "It's a simple moral question." There's more of that in Murphy than there is in Brandeis. But Brandeis at his best—in *Whitney*, in the dissent in *Coronado Coal* that never got published,

. . . in the *Olmstead* dissent—there's a capacity for Brandeis to cut through . . . which Murphy really does pick up on.

I have the feeling that Frankfurter got enthralled with the rhetoric of self-restraint, which is an important part of Brandeis's judicial philosophy. Brandeis himself needed it, because he was such an active spirit It was hard for Brandeis to keep his nose out of anything, and that was true really as a judge as well . . . so he had to develop this spirit of self-restraint in some ways. But . . . for Brandeis it dropped off fairly naturally, one might say inconsistently, when points of value were at issue I think that that wasn't the case with Frankfurter and Jackson . . . they were terribly ambivalent about where they stood on *most* of the critical issues of their day. Murphy was not; Murphy did know where he stood; and there is in the development of the theories of judicial restraint in Frankfurter and Jackson an elaboration of a supporting philosophy for their own ambivalence.

What comes through to me from all this is that it really *is* important, in a fundamental way, where judges stand on these issues Critical intelligence is a kind of secondary characteristic that operates to implement commitments, that operates to understand the limits to them, that operates to qualify the complexity of the world so that you know that you're not alone and that there are people with other commitments, that all of that is part of your reality; it's all there. But it really is a *secondary* characteristic that comes into play from the point of commitment that you know and that you understand.

Like his hero Brandeis, Bob Cover was an active spirit. Like Brandeis, and like Murphy, he knew where he stood. He stood with justice. He stood with virtue. He stood with Local 34 when it demanded that the University recognize clerical and technical workers as full members of this community. He stood with us, his students, when we took a stance to protest the University's investments in South Africa.

We have lost Bob Cover. We can be thankful that our lives were touched and changed by his. When we struggle with the difficult choices that the future holds in store for us, we will be able to ask ourselves, "What would Bob Cover have done?"

Owen M. Fiss†

It began in the summer of 1974, when I was supposed to move from Chicago to Yale. No fool, I spent that summer in Washington, D.C., working on the impeachment. It was Irene who was in New Haven, unloading the crates, trying to convince the kids of the wonders of New Haven by discovering a new pizza restaurant each night, and living in the Covers' third-floor apartment in Davenport College until our house was ready. Bob was teaching at Georgetown that summer, and one evening I took a break from my work to meet the Covers for ice cream and a walk. Diane was with us and graciously feigned some interest in the conversation. Leah was not yet born, but Avi was there in his stroller. He made no pretense. He fell asleep the moment Bob and I started talking about what must have seemed the most boring of all subjects: procedure.

The walk was long and directionless. We must have covered every inch of the Washington Mall, ten times over. Initially, the conversation focused on the impeachment. Our immediate project was to revise the traditional first-year procedure course, and Bob, the true iconoclast in this endeavor, played with the idea of building a new course out of the proceeding then closing in on Richard Nixon. It didn't seem to matter to Bob that the presidential impeachment process had not been used for over a hundred years and probably would not be used for another. Nor did it seem to matter that an impeachment proceeding is the most rarefied form of legal practice imaginable and professionally involves only a dozen or two lawyers in the entire nation. We paused, however, because we were both suckers for the "great case." Our preferred teaching method was to dwell on a single case for a long, long time (some say for an entire semester), using a single fact situation and a single legal encounter to explore the deepest and hardest issues of the law. The Nixon impeachment had not yet produced that kind of case, but the welfare rights movement had. We soon hit on *Goldberg v. Kelly*, and when we did, meta-procedure (as the students named it, to distinguish it from real procedure) was born. That was 1974.

Our last conversation, just a few days before his death, was also on procedure. We had changed our meeting place from the Washington Mall to the streets of New Haven. Bob was wearing his favorite academic attire—a tee shirt, blue shorts, and those funny little bicycle shoes. There was ice cream, though this time only I indulged (I know I failed Bob miserably when it came to one of his passions, baseball, but I listened attentively and responded appropriately whenever he went on about

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Haagen-Dazs Vanilla.). Diane and the kids were not with us this time, but they were very much part of the conversation. Bob seemed to have committed to memory the camp letters from Leah and Avi. He relished each detail and understood that the closing lines of their letters, "Take me home," simply meant "Don't enjoy yourselves too much." Laughing, we sketched in our minds a *New Yorker* cartoon to do the kids' ploy justice. Bob also spoke of how truly special the past two weeks had been with Diane, not that he didn't miss the children, which he truly did, but he never realized, so he said, how much fun it would be to be able to go to the movies any night of the week, or to go out to dinner with friends on the spur of the moment, etc.—the great indulgences of a modern marriage. Not completely certain about the import of the "Take me home" sentences and whether the kids would consider another summer at camp, he wondered aloud how he and Diane might be able to recreate those two weeks. Drawing on my vast experience (my children are just a little older), and having learned to cope with my middle daughter's latest summer adventure, I told him not to worry: After camp, there would be Santa Cruz.

Bob had a very strong sense of priorities and relevance. Diane, Avi, and Leah occupied most of the conversation, and his love for his family informed everything he did and said. But we had gotten together to discuss procedure and managed to spend a few moments on the subject. Judith Resnik joined the collaboration a few years back, and the three of us were readying a casebook for publication. For the most part, this meant shrinking 8,000 pages of material down to about 1,000 (although one helpful colleague, knowing full well what editing meant for us, suggested that we could save a lot of time by selling each copy of the book with luggage wheels.) The most plausible candidate for editing was a massive school desegregation case involving Coney Island. Over the years, *Coney Island's* position in the book kept changing, and so did its length. In this draft, *Goldberg v. Kelly* was Chapter 1 and *Coney Island* Chapter 2, but *Coney Island* had grown to about 300 pages, and there were five other chapters to account for. I was, of course, the problem, since I have been long committed to that now desperate task of trying to convince unsuspecting first-year students that *Coney Island* is the ordinary, typical lawsuit.

Judi had given up on me. She knew I was hopeless and dispatched Bob on the most delicate and difficult of diplomatic missions: He was supposed to convince me that we should take a sentence, or maybe two, out of Judge Weinstein's opinion. Obviously, no analytic point was in jeopardy, but knowing Bob's weak spot, I pleaded with him: Could you imagine? A generation of law students who knew nothing of the cooling sea breezes of Brighton Beach or the fishing fleet of Sheepshead Bay? He looked at me

sideways, with that knowing, impish smile, and we moved on to other subjects.

No casebook ever served a more sublime purpose. My life with Bob filled the years between these two summer walks, the first in Washington in 1974 and the last in New Haven in July 1986, and it revolved around, of all things, a casebook. We were trying to find a way to share with our students some of the excitement we felt for procedure and, for that matter, the law. The setting of our conversations shifted, from the streets to our offices to the corridors of the law school to the faculty lounge and then on to Rudy's for a gourmet lunch (tuna fish and a slice of onion, amidst the pinball machines, Pacman, and the afternoon "soaps"), but no matter what the place, Bob's brilliance and creativity broke through.

Like any truly creative spirit, Bob played with ideas. He was forever trying new things out, and though, as he would be the first to admit, some of his ideas were quite zany, everything Bob said and wrote startled and amazed me. I was never quite sure when he was going to turn the world upside down (as when he turned "redundancy" into a virtue), or when he would breathe life into tired technicalities (as he did when he started talking about "the hermeneutics of jurisdiction"), or when he would make reference to some remote and learned text (like MTV). His ideas were always provocative, insightful, and totally original. To work with Bob was to experience the special pleasures of being a student again, but now to have the world's greatest teacher as your friend. Sometimes I would pinch myself.

Bob was also uniquely passionate and uniquely committed. The time he spent in Albany, Georgia in the early 1960's as part of the civil rights movement was important to him, and he was quite proud of it—at times I did not know which he regarded as the greater badge of honor, the three weeks in jail or the Ames prize, but he wore all his badges modestly. Now and then he would speak of his time with SNCC in Georgia, but not very often, and then always in a casual, self-denying manner. Sometimes a group of students happened to find out about it and would press him for the war stories. Others of us might have seized the moment, but Bob put them off, saying that he was just a kid then, many students had been part of the movement, it was no big deal, etc. Occasions sometimes arose, however, when he just had to speak, in class or in print or on the streets, as with the Local 34 strike or the South African protests. Then the depth and intensity of his commitment became apparent to all who listened.

Bob began his academic career in the midst of the Vietnam War, and turned to slavery and the abolitionist movement, the subject of *Justice Accused*, not as an idle academic exercise, but as a way of understanding the judicial response to draft resistance. His first article was a review of a

book on the slavery period by Richard Hildreth, entitled *Atrocious Judges: Lives of Judges Infamous as Tools of Tyrants and Instruments of Oppression*. Bob's career as a law teacher roughly coincided with the tenure of Warren Burger as Chief Justice, and Bob ended his career on the same note with which he began: *Violence and the Word*. In January 1984 we appeared together on an AALS panel on constitutional interpretation, and I doubt I will ever forget Bob's opening sentence, or its pitch or intensity (which, of course, he later blamed on me and my rhetorical excesses): "Warren Burger is a violent man." Bob found the last fifteen years of Supreme Court history to be "disgusting," to use a term he often used to express disapproval—one of the few that he would have allowed me to repeat in public—and he saw the decisions of the Burger Court as a fair indication of what could be expected from the judiciary. The Warren Court was something of a miracle.

Bob's passion was part of our collaboration and shaped that peculiar scholarly endeavor, too. It no doubt accounted for his constant plea that we give the students only *Goldberg v. Kelly* and ignore the intervening fifteen years of Burger Court due process decisions, which, in effect, reduced *Goldberg v. Kelly* to a formal vestige of another era. Bob's passion was remarkable and, together with his brilliance and creativity, constantly infused the collaboration with a special excitement and made it the great intellectual adventure that it was. But there was another quality of Bob's that was probably even more remarkable and even more essential to the collaboration. That was the way he handled disagreement. Bob not only tolerated and respected disagreement, but oddly enough, seemed especially engaged by it. Like Hannah Arendt and Michael Walzer and the other great theoreticians of participatory democracy, Bob took a rare and unusual pleasure in disagreement, not because he was cantankerous—quite the opposite—but because he recognized plurality as the essential feature of the human condition.

There was much upon which we agreed. We were both drawn to procedure because it raised grand theoretical issues in a tough, technical context and thus seemed to embody the essential tension of the law. We also agreed on the aims of the first-year course and the kind of material to which we wished to expose our students. We even shared some basic political values. *Goldberg v. Kelly* was no accidental hit; for us, it was the culmination of the Golden Age of American Law. No collaboration can survive without this kind of fundamental agreement, but the truth of the matter is that we also disagreed, sometimes passionately, as anyone knows who sat through a faculty meeting, who wandered into the faculty lounge when we were trying to bring *The Structure of Procedure* to completion, or who happened to read *Nomos and Narrative*. There is, to be sure, an

egalitarian streak that runs through both our work, but there is also a difference, as important a difference as that which divided SNCC and the Department of Justice in the 1960s. Of course, the casebook format is more congenial to disagreement than an article—trying to write an article together that spanned *Nomos and Narrative* and *Objectivity and Interpretation* would have required us to defy the law of the excluded middle. But even so, a casebook requires decisions and choices—what to include or exclude, how best to present an entire body of law, and what to say about the material in the notes and commentary. Collaboration involves extending, developing, and refining what two people share in common, but on a day-to-day basis, it also requires resolving differences.

Some people manage disagreement by giving in. Not Bob. Indeed, I can't remember a single instance when Bob compromised a point or position simply for the sake of going forward (my "flexibility" is well known). What Bob did, however, was to listen, carefully and patiently, and then to build on what we shared in common. Sometimes I would think we were at different ends of the earth, but, according to Bob, we weren't really that far apart. Bob brought to these arguments the intellectual gifts I spoke about before, his brilliance, creativity, and immense learning, and though they always dazzled, he was careful never to overwhelm—he gave me room to breathe and to think. Sometimes he even went so far as to respond to himself, by formulating the argument I wanted to make or should have made. His words were precise, and instilled with such an integrity and advanced with such a gentleness as to turn every argument into a conversation. The initial difference was often resolved, but even when it wasn't, when I turned to leave and walk away, I silently replayed the conversation in my mind and often felt, deep, deep inside, that maybe Bob was right.

Surrender was, of course, possible, but with Bob that was a little tricky. Early this spring, Judi, Bob, and I met in New Haven to go through the casebook once again, and a disagreement arose over a technical issue involving TRO's (Does the issuance of a show cause order transform the TRO into a preliminary injunction?). This was an area I was supposed to know something about, and though I tried to ride my authority, both Bob and Judi remained unconvinced. A few weeks later, in the midst of the South African protests, Bob called late one evening to discuss the application for a TRO that was being prepared for the students who were suspended. He wanted me to join that application, and as he went over the legal papers that were being drafted, the same technical issue arose again. This time, however, remembering the sense of uneasiness with which I ended the previous conversation, I had the good sense to surrender: "Anything you decide is fine with me. Just sign my name." Others would have

moved on from there, but not Bob. He seemed a little disappointed. It was well after eleven, but he seemed to want to continue the discussion, in a relaxed and casual way, as though we had stumbled upon one another in the corridor early one morning (in most instances that meant the day—Bob was the greatest schmoozer in the history of the Yale Law School). On the technical TRO issue, Bob still thought I was wrong and was quite clear about that, but he knew I attached great importance to the point, and he wanted to make sure I was totally comfortable with the way he resolved it. I promised to review the papers the next morning.

In speaking of our collaboration and the remarkable qualities Bob brought to it, I have drawn on my personal experiences and shared with you the intimacies, so to speak, of our relationship. But since *Goldberg v. Kelly* meant all things to us at all times, my hunch is that these experiences are not personal to me but are common experiences. Bob was not a public person, in the sense that he did not thrust himself upon you; he started new relationships slowly and shyly. But the truth of the matter is he had lots of collaborators—Steve Wizner, Michael Graetz, Barbara Black, Judith Resnik, Alvin Klevorick, Peter Schuck, Barbara Underwood, and Leon Lipson—all exploring one aspect or another of *Goldberg v. Kelly*, though sometimes under the heading of Jewish Law, Organizational Structures of Procedural Systems, American Legal History, Human Capital, etc. There were many, many sides to Bob, maybe more than to any other member of the faculty, but it was always the same Bob—not just brilliant, but a rare and remarkable combination of passion and tolerance. His love for disagreement, and his unique capacity to see beyond it and to respect those with whom he disagreed, even passionately, were evident to his colleagues and students and formed an essential part of their relationship with him. I also believe that this particular facet of his character and personality is the key to his scholarship and, for that matter, his entire jurisprudence. Bob distrusted the state and proclaimed himself an anarchist—in, as he put it, the classical sense—because of the state's capacity to close off argument and to impose its view through the use of force. In that sense, judges *are* people of violence.

Bob's death is a loss we all share. It will be felt in the lecture halls and in the law journals of the nation. Procedure, or for that matter any subject that might have engaged him, will never be what it could have been. Anarchism never had a more eloquent spokesman. But however great these losses are, and they truly are great, they seem trivial compared to the losses suffered by those who knew the joys of his presence and by those who loved him. In the days since his death, I have often thought of our times together—those long, aimless walks and the ice cream. These were the grand moments of academic life, conversations about ideas that we

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believed truly mattered, infused and inspired by a love that brought to our work a certain playfulness.

I know I am supposed to be grateful for what I had, for those ten or twelve years, and I am. But I wanted them to go on and on and on—maybe not forever, for that would be asking too much, but at least long enough for us to grow old together, for there to be another decade or two of long walks, and for me someday, somehow to find that strength I needed but always seemed to lack, until it was too late, to tell Bob all that he meant to me.

James Ponet†

We have heard words spoken about Bob Cover, and we have heard words that Bob Cover spoke. What remains for us is to hear words that Bob heard, words that spoke to him deeply. Bob and I spent some time seeking to grasp the complex implications of the following text, which we studied the day before he died.

To understand this somewhat opaque piece from the Babylonian Talmud, it is necessary to know the following:

1. There is a biblical law that forbids wearing clothing made of a combination of linen and wool, which combination is known as *shaatnez*.
2. The talmudic rabbis made a clear and interesting distinction between legislation that was biblical—i.e., divine in origin—*Mitzvot Mid'Oraita*, and legislation that was rabbinic—i.e., human in origin—*Mitzvot Mid'Rabbanan*. The relationship between these two modes of legislation informs the following selection from tractate *Berachot* (19B).

Rav Yehudah taught in the name of Rav, “If a person discovers that his clothes are woven of *shaatnez*, linen and wool, he must immediately remove them even if he is in a crowded marketplace.” What is the reason for this? Answer: “In the presence of God, human wisdom, understanding, and prudence count for nought” (Proverbs 21:30). Wherever divine authority is spurned, no respect is paid even to a teacher.

But consider the following rabbinic dictum: “Great is human dignity since it actually overrides a biblical prohibition.” Does it actually override a biblical prohibition? Should we not rather apply the rule, “In the presence of God, human wisdom, understanding, and

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prudence count as nought"? And, in any case, what specific biblical prohibition might be overridden in deference to human dignity?

Rav Bar Shaba answered this question for a group of students in the presence of his colleague, Rav Kahanna. Human dignity, he explained, overrides the biblical prohibition against disobeying the judges, cited in the Book of Deuteronomy (17:11), "You shall act in accordance with the instructions given you and the ruling handed down to you; *you must not deviate from the verdict that they [the judges] announce to you either to the right or the left.*"

The students laughed at Rav Bar Shaba, for they could discern no reason why this biblical prohibition might bow to human dignity more than any other. If a judge teaches a biblical law, they reasoned, surely no one is permitted to transgress it (Rashi, ad. loc.).

Rav Kahanna rebuked them, "A great man has spoken. Do not laugh at him! All the rabbis have understood their right to legislate as deriving precisely from this biblical prohibition. Yet when rabbinic legislation is challenged by the claims of human dignity, the rabbis always give priority to human dignity."

Bibliography of Robert M. Cover

BOOKS

- PROCEDURE (Mineola, N.Y.: Foundation Press, forthcoming 1988) (with O. FISS & J. RESNIK).
- THE STRUCTURE OF PROCEDURE (Mineola, N.Y.: Foundation Press, 1979) (with O. FISS).
- JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS (New Haven: Yale University Press, 1975).

ARTICLES, COMMENTS, AND TRIBUTES

- Social Security and Constitutional Entitlements: A Half-Century of Court Decisions*, in T. MARMOR & J. MASHAW, *SOCIAL SECURITY IN CONTEMPORARY AMERICAN POLITICS* (Princeton Univ. Press, forthcoming 1988).
- Bringing the Messiah Through Law: A Case Study*, in *NOMOS XXX: RELIGION, MORALITY, AND THE LAW* (R. Pennock & J. Chapman eds., forthcoming 1988).
- The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role*, 20 *GA. L. REV.* 815 (1986).
- Violence and the Word*, 95 *YALE L.J.* 1601 (1986).
- Arthur's Words*, 94 *YALE L.J.* 1848 (1985).
- The Folktales of Justice: Tales of Jurisdiction*, 14 *CAP. U.L. REV.* 179 (1985).
- Court Has High Aim, Bad Plan on Bias*, *N.Y. Times*, July 11, 1983, at A15, col. 1, *reprinted as Supreme Court's Stand on Discrimination: High Aim, Poor Arc*, *L.A. Daily J.*, July 18, 1983, at 4, col. 3.
- The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 *HARV. L. REV.* 4 (1983).
- The Origins of Judicial Activism in the Protection of Minorities*, 91 *YALE L.J.* 1287 (1982).
- The Left, the Right and the First Amendment: 1918–1928*, 40 *MD. L. REV.* 349 (1981).
- The Uses of Jurisdictional Redundancy: Interest, Ideology and Innovation*, 22 *WM. & MARY L. REV.* 639 (1981).
- In Memoriam: *Arthur Allen Leff*, 7 *YALE J. WORLD PUB. ORD.* 1 (1980).
- Dispute Resolution: A Foreword*, 88 *YALE L.J.* 910 (1979).
- Your Law-Baseball Quiz*, *N.Y. Times*, Apr. 5, 1979, at A23, col. 1.
- Dialectical Federalism: Habeas Corpus and the Court*, 86 *YALE L.J.* 1035 (1977) (with Aleinikoff).
- For James Wm. Moore: Some Reflections on a Reading of the Rules*, 84 *YALE L.J.* 718 (1975).

Who Can Keep a Secret?, 216 NATION 292 (1973) (with Underwood).

Establishing the Federal Jurisdiction in Actions Brought To Vindicate Statutory (Federal) Rights When No Violations of Constitutional Rights Are Alleged (pts. 1 & 2), 2 CLEARINGHOUSE REV. 5 (1969), 3 CLEARINGHOUSE REV. 7 (1969).

Habeas Corpus and the Military (N.Y. Draft and Military Law Panel, 1968).

Federal Judicial Review of State Welfare Practices, 67 COLUM. L. REV. 84 (1967).

BOOK REVIEWS

The Framing of Justice Brandeis, NEW REPUBLIC, May 5, 1982, at 17 (reviewing B. MURPHY, THE BRANDEIS/FRANKFURTER CONNECTION (1982)), reprinted in N.Y.L.J., July 7, 1982, at 2, col. 1.

NEW REPUBLIC, Jan. 14, 1978, at 26 (reviewing R. BERGER, GOVERNMENT BY JUDICIARY: THE TRANSFORMATION OF THE FOURTEENTH AMENDMENT (1977)).

Legal Tensions in the Politics of Freedom, 2 REVIEWS AM. HIST. 529 (1974) (reviewing T. MORRIS, FREE MEN ALL: THE PERSONAL LIBERTY LAWS OF THE NORTH, 1780-1861 (1974)).

70 COLUM. L. REV. 1475 (1970) (reviewing ST. GEORGE TUCKER, BLACKSTONE'S COMMENTARIES (1969)).

68 COLUM. L. REV. 1003 (1968) (reviewing R. HILDRETH, ATROCIOUS JUDGES: LIVES OF JUDGES INFAMOUS AS TOOLS OF TYRANTS AND INSTRUMENTS OF OPPRESSION (1856)).

MISCELLANEOUS

Roman Law, 1 ORIM 25 (Autumn 1985) (poetry).

Legal Modes of Interpretation: Principled, Political or Nihilistic?, Panel on Law and Humanities, 1984 AALS Annual Meeting, San Francisco, Jan. 7, 1984 (with S. Fish, O. Fiss & R. Weisberg) (tape available from AALS).

Federalism and Administrative Structure, 92 YALE L.J. 1342 (1983) (summary of paper presented at Yale Law Journal Symposium on "The Legacy of the New Deal: Problems and Possibilities in the Administrative State").