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THE LIFE AND WORK OF ROBERT COVER- ROBERT COVER'S SOCIAL ACTIVISM AND ITS JEWISH CONNECTIONS

*Stephen Wizner**

I remember the first time that I saw Bob Cover. It was 54 years ago, in the midst of the “War on Poverty,” during Bob’s first year as a student at the Columbia Law School. I was one of a small group of activist lawyers at the Center on Social Welfare Policy and Law, a law reform program funded by the federal Office of Economic Opportunity (OEO), housed at the law school.

One day, in the Spring semester of 1967, a very earnest, somewhat shy first-year law student appeared in our office and introduced himself as Bob Cover. He wanted to volunteer to assist us in our anti-poverty law reform efforts and asked to be given a research task. He said that he wanted to work on a major theoretical problem that we faced.

We were somewhat amused by the intellectual temerity and refreshing naivete of this first-year law student. We told him, somewhat hesitantly, that we were having difficulty developing a legal theory that would enable us to challenge arbitrary actions by local welfare departments in federal courts.

We were not surprised when we did not see Bob again for several weeks. We *were* surprised when he returned with a 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 set forth 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 underpinning for our campaign of welfare law test cases in federal courts. It was an intellectual *tour de force*, but more important, it seems to me in

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retrospect, was the personal commitment and idealism that powered that remarkable document.

Not long afterward, I was in Albany, Georgia, meeting with C. B. King, a veteran black civil rights lawyer who was our local counsel in a case challenging a Georgia welfare regulation that removed only black women welfare recipients from the welfare rolls during planting and harvesting seasons, and when there was a shortage of available black women to serve as domestic servants. King had gained national prominence as attorney for the Albany Movement, organized by the Student Nonviolent Coordinating Committee (SNCC). He recalled the SNCC workers, and in particular, the college students who had come down from the North to help desegregate the South. He talked about one student in particular, an earnest, polite Princeton undergraduate named Bob Cover. He told me that Bob had been arrested in a civil rights demonstration in Albany and spent weeks in jail, where he went on a hunger strike, and was beaten savagely by other prisoners.

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

How did Bob become a social activist? Judaism and its ethical values were central to Bob's life and work. There were Jewish connections to his social activism.

In the summer of 1960, Bob Cover was a 16-year-old high school student. His summer job, for which he was paid a total of \$100, was to assist Rabbi Joseph Lukinsky, the Assistant Rabbi and Youth Program Director at Congregation Kehillath Israel in Brookline, Massachusetts (and later a Professor at the Jewish Theological Seminary), in preparing educational programs and materials for the coming school year. Rabbi Lukinsky knew Bob and thought his Talmudic background from his studies in the High School Department of the Boston Hebrew College qualified him for the job.

Bob's summer work took place in the afternoons; the mornings were devoted to Talmud study in *hevruta* (study partnership) with Rabbi Lukinsky. Rabbi Lukinsky recalled that "...before the summer was over I had the distinct impression that I was no longer the teacher

but had become his *haver* (colleague); in some respects, he had become the teacher.”¹

A quarter-century later, in 1986, the year he died, Bob was still studying Talmud in *hevruta*, then with his friend Rabbi Jim Ponet, the Hillel Director at Yale. Bob’s life was literally encompassed by his study of Jewish texts.

Bob’s deep connections to Judaism were reflected in his family life, communal relations, teaching, scholarship...and in his social justice activism. Bob’s life and work were immersed in Judaism. Everything he did, including his social justice activism, had Jewish connections.

Bob was a committed Jew. He cared deeply about his family. He and his wife, Diane, maintained a Jewish home. Both of their children, Avi and Leah, were sent to a Jewish day school. An oversized set of the Babylonian Talmud occupied a prominent place on their living room bookshelves, together with an entire library of Jewish texts. Friday night Shabbat dinners at the Covers’ home, usually with guests, were joyous occasions of ritual observance, excellent kosher food, and stimulating conversation. Everyone participated, especially the children, in animated discussion of Jewish issues, education, and community events and personalities.

Every Saturday morning, he would stride into the synagogue, wrapped in his multicolored tallit, an oversized colorful kippah perched on his head, and a friendly grin on his face as he greeted the “regulars.” On Shabbat 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 was communal.

Bob defined his role as a teacher as membership in a community of students and teachers. Teaching was not a performance, but a relationship with students in which ideas were expressed and discussed and taken seriously, and teacher and students treated each other with respect and friendship. Bob taught civil procedure, but he also taught Jewish Law and a seminar entitled “Myth, Law and History,” in which biblical stories were studied and discussed.

Listen to the words of his former student Tanina Rostain, who is now a law professor at Georgetown:

¹ Joseph Lukinsky, *Law in Education: A Reminiscence with Some Footnotes to Robert Cover’s Nomos and Narrative*, 96 YALE L.J. 1836, 1837 (1987).

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.... With Bob we explored our commitments to law, to our community, and to a just life. He taught us how the law could serve 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.... Bob Cover was an active spirit...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.²

For Bob, membership in the university community meant more than teaching and scholarship. It meant engagement of the university administration in support of workers seeking better wages and working conditions, and in support of students organizing to protest injustice in the world.

Judaism permeated much of Bob's legal scholarship, including his essay in the *Journal of Law and Religion* in which he set forth the Jewish basis for his own social justice activism. There was a deep connection between his legal scholarship and his social activism. Both were motivated and informed by his Judaism, his education, socialization, and acculturation as a Jew, and his life-long study of Jewish texts. Bob described himself as having been "graced with a deep and abiding religious background."³

A motif that runs throughout the Jewish texts in which Bob was immersed is the obligation to engage in socially responsible behavior, in *gemilut hasadim* (acts of lovingkindness) and *tikkun olam* (repair of the world). A central theme of the Torah, the Prophets, and the Writings is "justice," understood not in the Greek sense of harmony, but rather as righteousness and the doing of good deeds. The Hebrew

² Tanina Rostain, *Tribute to Robert Cover*, 96 YALE L.J. 1713-14, 1716 (1987).

³ Robert Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J.L. & RELIGION 65 (1987).

word for justice (*tzedek*) and the Hebrew word for charity (*tzedakah*) are from the same Hebrew root.

In Jewish texts the People are repeatedly admonished to be kind and generous to the stranger, the widow, the orphan, and the poor. Doing justice is an obligation commanded by God.⁴

The idea of commandments (*mitzvot*) that impose obligations on individuals to pursue justice permeates Jewish thought, engendering what Bob characterized as “a Jewish jurisprudence of the social order.” In Bob’s words,

The basic word of Judaism is obligation or mitzvah....[E]verything was given at Sinai. And, of course, therefore, all is, was, and has been commanded—and we are obligated to this command....Indeed, to be one who acts out of obligation is the closest thing there is to a Jewish definition of completion as a person within the community.⁵

Bob distinguished the Jewish, obligation-based approach to social justice from the rights-based social contract approach in these words:

[A]s I scan my own—our own—privileged position in the world social order and the national social order, as I attend the spiritual and material blessings of my life and the rather obvious connection that some of these have with the suffering of others—it seems to me that the rhetoric of obligation speaks more sharply to me than that of rights. Of course, I believe that every child has a right to decent education and shelter, food and medical care; of course, I believe that refugees from political oppression have a right to a haven in a free land; of course, I believe that every person has a right to work in dignity and for a decent wage. I do believe and affirm the social contract that grounds those rights. But more to the point I also believe that I am

⁴ See, e.g., Exodus 2:20-26; Deuteronomy 16:20; Isaiah 58:2-9; Amos 5:21; Micah 6:6-8; Jeremiah 7:1-7; Psalms 82; Proverbs 21:3 and 31:8-9.

⁵ Cover, *supra* note 3, at 66-67.

commanded—that we are obligated—to realize those rights.⁶

Social justice activism was an essential part of Bob Cover's life. As a counsellor in a Jewish summer camp Bob created a project for his young campers that involved painting and renovating an inner city community center that served disadvantaged children. As a college student at Princeton he protested discriminatory practices of the eating clubs that excluded some students from acceptance. Later he joined the Student Nonviolent Coordinating Committee and traveled to the South to support the Albany (Georgia) Movement in voter registration, and organizing the first ever meeting of Black sharecroppers with representatives of the federal Department of Agriculture.

Social justice issues such as these motivated and informed Bob's life to the very end. Speaking out at political demonstrations, conducting teach-ins with students seeking divestment of the university from apartheid South Africa, walking picket lines in support of university workers seeking better wages and working conditions, joining with law school clinic students in a project to help the homeless, were all part of Bob's activist life. He moved his law school office from the academic wing to the clinic so that he could be closer to the social justice activities of clinical faculty and clinic students.

I had the privilege of knowing Bob Cover as a friend and colleague from his first year of law school at Columbia in 1967 to his untimely death in 1986. We occupied adjoining offices in the Yale Law School clinic where students and clinical faculty members often benefitted from his wisdom.

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 unique law teacher, legal scholar, social justice activist, and human being.

⁶ *Id.* at 73-74.