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### Symposium: Mission of a church-Related Law School - The Jewish Tradition

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## THE JEWISH TRADITION

HOWARD A. GLICKSTEIN\*

Life was much simpler 100 years ago. On November 5, 1886, Oliver Wendell Holmes Jr. spoke before the Harvard Law School Association in Cambridge, Massachusetts. There he gave his view of the mission of a law school: "I say the business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers."<sup>1</sup>

This somewhat one dimensional view of legal education was found deficient when a former editor of the *Duke Law Review* was forced to step down as President of the United States. Watergate spurred the ABA to amend its accreditation standards to require that law schools teach the "history, goals, structure, and responsibilities of the legal profession and its members, including the ABA Model Code of Professional Responsibility."<sup>2</sup> Law schools, however, have not dramatically increased their attention to moral and ethical issues.

About eight years ago, when I was being interviewed for the position of Dean of the University of Bridgeport School of Law, President Leland Miles posed a question to me — a question, he said, that had troubled him for some time. President Miles, an English professor and noted authority on Sir Thomas More, said he was concerned that lawyers and law professors only seemed interested in what was legal and not in what was just. He asked me whether I thought there was any place in a law school curriculum to teach students about justice. President Miles's concern is not far off the mark. Professor Richard Wasserstrom, in a 1984 talk to the Association of American Law Schools, observed that many students "appeared to be far more interested in and concerned about moral matters when they began law school than when they graduated"<sup>3</sup> — an observation which, I am sure, would be echoed by many law teachers. The problem continues to be studied and recommendations multiply.

Last fall, the ABA Commission on Professionalism, issued a report

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1. O.W. HOLMES, *The Use of Law Schools*, in SPEECHES BY OLIVER WENDELL HOLMES 30 (1913) (Nov. 5, 1886 address to the Harvard Law School Association).
2. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302(a)(iv) (1987).
3. Wasserstrom, *Legal Education and the Good Lawyer*, 34 J. LEGAL EDUC. 155, 160 (1984).

that included a number of recommendations directed to law schools. One recommendation urged that law schools "give continuing attention to the form and content of their courses in ethics and professionalism."<sup>4</sup> Law schools were urged to "weave ethical and professional issues into courses in both substantive and procedural fields," to consider supplementing courses in ethics and professionalism with a required summer reading list and with a film or video tape on ethics.<sup>5</sup> A second recommendation urged deans and faculties to "keep in mind that the law school experience provides a student's first exposure to the profession, and that professors inevitably serve as important role models for students."<sup>6</sup> The commission recommended that "the highest standards of ethics and professionalism should be adhered to within law schools."<sup>7</sup> A third recommendation was that law schools adopt codes of student conduct and report serious infractions of those codes to bar admissions committees.<sup>8</sup>

The moral and ethical dimensions of education are not only law school problems. Governor Mario Cuomo of New York has urged that moral values be taught in New York State public schools<sup>9</sup> and Secretary of Education William J. Bennett has entreated public school leaders to teach moral and ethical values that represent a community consensus.<sup>10</sup> The other day, a thirty million dollar gift was given to the Harvard Business School to support a program on ethics.<sup>11</sup> Norman Lamm, President of Yeshiva University has argued that colleges have a moral mission and has urged that "[a] modern university should not be spooked by the specter of sectarianism. It should encourage a moral climate that elicits respect for the human spirit, for honor, for law, for the pursuit of knowledge and love of learning, for the human capacity for self-transcendence."<sup>12</sup>

This increasing attention to the moral and ethical dimensions of education should pose a challenge to church-related law schools. If religiously sponsored law schools do not adhere to "the highest standards of ethics," if they do not "encourage a moral climate," if their curricula do not explore questions of justice and fairness, one can only wonder if there is any reason for the existence of such schools, other than economic. Church-related law schools are in the best position to demonstrate how law schools can do more than "teach law in the grand manner, and . . . make great lawyers."

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4. ABA Comm'n on Professionalism 16 (1986) (available in Touro College, Jacob D. Fuchsberg Law Center Library).

5. *Id.*

6. *Id.* at 19.

7. *Id.*

8. *Id.* at 20.

9. Hechinger, *Defining Values*, N.Y. Times, Oct. 21, 1986, at C9, col. 1.

10. *Id.*

11. N.Y. Times, Mar. 31, 1987, at D1, col. 3.

12. Lamm, *A Moral Mission for Colleges*, N.Y. Times, Oct. 14, 1986, at A35, col. 1.

Touro College, a religiously sponsored school, was "established primarily to enrich the Jewish heritage and to serve the larger American community."<sup>13</sup> The college's mission statement gives this definition of the "Jewish heritage": "The Jewish heritage embraces two fundamental components: a responsibility for its perpetuation and enrichment and a universalistic commitment to contribute to the building of a better society for all."<sup>14</sup>

This two-fold mission of Touro College is epitomized in a paraphrase of Hillel's teaching: "If we are not concerned with the enrichment and preservation of our own heritage, who will be? If we are concerned only with our own need, what are we?"<sup>15</sup>

Touro College was founded in 1970, and an early aspiration was the establishment of a law school. This was a natural development for a Jewish sponsored institution. Judaism is a law based religion. Professor Louis Ginzberg, a renowned talmudic scholar, wrote that "law is religion and religion is law"<sup>16</sup> and that Jewish Law is vital to Judaism and the Jewish people. Rabbi Robert Gordis observed that "[g]rowth is the law of life, and law is the life of Judaism."<sup>17</sup> The study of law is deeply rooted in the history of the Jewish people, and the development of Jewish Law has its parallels in the development of law in this country.

Jewish Law emanates from the Torah, the first five books of the Old Testament, called "the books of Moses" by Jews. In interpreting the Torah, the Jews had commentators. These were the scholars who were akin to our modern day law professors. They would participate in extensive intellectual debates with other scholars. The students of the law would watch, ask questions, and comment while they learned enough about the law and the style of debate to participate in these intellectual developments themselves. These discussions continued for 1200 years — from the fifth century before to the eighth century after the beginning of the Common Era. Over 2000 scholar-rabbis were involved in the 1200 year long seminar of oral debates, commentaries, and commentaries upon commentaries.

The Talmud — a collection of literature which contains the laws expanded from the Torah — emerged from these discussions. The Talmud is the product of generations of rabbinic scholars, and stands as the authoritative code of Jewish religious beliefs, practices, and observances.

13. Touro College Self-Study: Prepared for the Middle States Assoc. of Colleges and Schools xi (Jan. 15, 1987) [hereinafter *Self-Study*] (available in Touro College, Jacob D. Fuchsberg Law Center Library).

14. *Id.*

15. *Id.* at 1.

16. G. ROSENTHAL, *THE MANY FACES OF JUDAISM: ORTHODOX, CONSERVATIVE, RECONSTRUCTIONIST & REFORM* 108 (1978).

17. *Id.*

There is a parallel in the development of American Law. Our Constitution, which itself reflects principles of Jewish Law, has been interpreted and applied during the last 200 years by judges, legislators, and law professors who are our modern day secular rabbis. Our system of developing and studying the law is similar to the process followed in the development of Jewish Law. Touro, a college with Jewish roots, moved naturally to the creation of a law school, an institution so consonant with Jewish history and tradition. An early law school catalogue published by the college provided a rationale for the emphasis on Jewish Law:

This emphasis in the program of the law school is appropriate for two reasons particular to the law. In the first place, Judaism is a tradition consciously organized around a body of principles regarded as a system of law. Secondly, the Jewish legal tradition has never distinguished law from equity, but has always insisted that law must confront its moral goals directly. Those responsible for establishing the Law School are committed to the view that law is not and cannot be morally neutral, and they are concerned with the disparity between the code of ethics supposed to govern the profession of law, and the unethical practices frequently encountered in daily life. They believe, and hope, that introducing the Jewish legal tradition into American legal education can help to reinforce the moral progress of American society.<sup>18</sup>

This eloquent statement can be found in a catalogue issued by the college in 1974, at the time of the initial attempt to found a law school. It does not appear in the Law Center's recent catalogues. Apparently, Watergate's aftermath was short-lived.

As I noted earlier, Touro College's mission derives from the teachings of Hillel. The mission statement mandates service to both the Jewish community and the broader community in its multiethnic diversity. The Law School provides a service to the Jewish community by providing an atmosphere where people may observe the Jewish faith while they pursue a legal education. The school's calendar is adjusted to accommodate the Jewish holidays so that people will not be placed in a position of attending school when an important Jewish holiday requires them to be at home or at the synagogue. The cafeteria at the Law School is kept kosher, and law school sponsored events are expected to respect the Sabbath and observe the laws of kashruth. Touro provides an atmosphere in which observant Jews can feel comfortable and where their beliefs are treated with respect. At the

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18. Touro College, Wang School of Law, 1975 Catalogue 12-13 (1974) (the name of the Law School was subsequently changed. See *infra* note 24).

same time, to insure that we are offering a sound education, the School seeks a diverse student body and faculty.

In order to fulfill its dual mission, the activities of the College are expected to be consistent with a variety of traditions and principles. Nine such traditions and principles are set forth in the College's description of its mission. I would like to describe these nine points and tell you what we are doing at the Law Center to implement them and what more I think we might do.

First, is "the perpetuation of traditional Jewish scholarship."<sup>19</sup> The Law Center furthers this aim in a number of ways. We are developing a Jewish Law Institute which will serve as a center for research, writing, and teaching in the field of Jewish Law. At present, under the auspices of the institute, we offer at least two courses in Jewish Law each semester. The institute also sponsors periodic lectures and has, for the past few years, offered a lecture on Jewish Law at the annual meeting of the Association of American Law Schools. A more extensive program of lectures and conferences is planned. For a time, the Institute issued a periodic newsletter which we hope to resume shortly. Recently, the Institute assumed joint editorship with Tel Aviv Law School of *Dine' Israel*, an established journal of Jewish Law that includes articles written in Hebrew and English.

The second principle set forth in Touro's mission is "a commitment to social justice for all elements of the community."<sup>20</sup> This is a commitment with deep roots in Jewish history. It was emphasized by the prophets and is embraced by most Jews. The founders of Reform Judaism, in a statement of principles adopted in Pittsburgh in 1885 declared that:

In full accordance with the spirit of Mosaic legislation which strives to regulate the relation between rich and poor, we deem it our duty to participate in the great task of modern times, to solve on the basis of justice and righteousness the problems presented by the contrasts and evils of the present organization of society.<sup>21</sup>

The Law Center seeks to implement this principle through activities not dissimilar to those found in many other law schools. We have clinical programs designed, in part, to assist disadvantaged persons, and we have plans to expand our clinical offerings. Our Student Bar Association and law fraternities direct some of their energies to serving the community in which we are located. Each summer, we award a number of Public Interest Fel-

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19. *Self-Study*, *supra* note 13, at 2.

20. *Id.*

21. G. ROSENTHAL, CONTEMPORARY JUDAISM: PATTERNS OF SURVIVAL 140 (2d ed. 1986).

lowships to students who take public interest jobs where they are paid little or nothing. Faculty members, in the classroom and outside, make clear that they are not neutral to issues of social injustice. They participate in many *pro bono* activities and, through their example, influence the conduct of our students. We have a commitment to affirmative action and seek out members of minority groups for our student body and faculty. In this way, the Law School as an institution demonstrates its commitment to social justice.

Our commitment to social justice also is reflected in activities that specifically affect Jews. Our Jewish Law Institute was a party to an *amicus curiae* brief filed in the United States Supreme Court on behalf of Jews who sought coverage under the provisions of the Civil Rights Act of 1866.<sup>22</sup> Among the activities we are contemplating for the Jewish Law Institute is an active role in legal issues which have a special impact on Jews.

The third principle is "belief in the value of education for the betterment of the individual and society."<sup>23</sup> As applied to the Law Center, we are concerned that the graduates we produce will have learned more than techniques for passing a bar examination and will conduct themselves as lawyers to better society. I am certain this is a concern that is present at virtually every law school. At the Law Center, we try to emphasize that our students are being trained for a profession where they will be called upon to play a wide variety of roles and be in positions where they can have a significant impact on public policy. Our catalogue notes that in establishing the Law School the Trustees of Touro College directed that "the work of the School should be rigorous and jurisprudential in orientation. The latter emphasizes the essential need for a grounding in the theory of law, if one is to be a professional rather than a reciter of dated rules."<sup>24</sup> But defining the ingredients of being a "professional" is an issue which is and will continue to be a subject much debated in law schools and among lawyers.

Richard Wasserstrom, in his talk to the Association of American Law Schools, explored the role of legal education in producing the "good lawyer." He noted that within legal education there is a dominant conception of successful legal education and hence a prevailing conception of the good lawyer. That conception is that: "[l]egal education, when it is done successfully and well, will produce graduates who will be good lawyers, technically proficient in, at, and with the law. . . ."<sup>25</sup>

Wasserstrom posited another view of the "good lawyer":

Suppose the conception were that law graduates, if they had

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22. Shaare Tefila Congregation v. Cobb, 107 S. Ct. 2019 (1987).

23. *Self-Study*, *supra* note 13, at 2.

24. Touro College, Jacob D. Fuchsberg Law Center, 1986 Bulletin 9.

25. Wasserstrom, *supra* note 3, at 156.

been educated soundly and well, would have and display a deep and abiding attachment to and concern for the moral worthiness and rightness of all that they do, of whatever they choose to do as lawyers, and a corresponding sense of responsibility for the justness and goodness of the legal system that their skills and training equip them to understand and to utilize.<sup>26</sup>

He added that this conception of the good lawyer also was lacking because it tended to identity all morality and goodness with justice. The best conception of the good lawyer should include as parts of goodness "benevolence and compassion" as well as "supererogatory acts and especially admirable lives."<sup>27</sup>

The notion that legal education should be concerned with "moral worthiness and rightness," with "benevolence and compassion," certainly is foreign to the conventional thinking about legal education. Most law teachers seek to avoid any appearance that they are attempting to indoctrinate their students. As Roger Cramton has noted: "Our indifference to values confines legal education to the 'what is' and neglects the promise of 'what might be.' It confirms a bias deeply ingrained in many law students — that law school is a training ground for technicians who want to function efficiently within the status quo."<sup>28</sup>

Even at a religiously sponsored school such as Touro, faculty members question their appropriate role. Should their teaching be value free? Should they tell their students what they think about the public policies underlying particular legal issues? Do they undermine a rigorous atmosphere in the classroom if they discuss issues of justice and morality? And will students even listen to discussions of questions of justice? After all, it is not on the bar exam.

At Touro, as well as at most law schools, there is much to be done to insure that the education we are providing will lead to the betterment of those we are educating as well as society.

The fourth principle embraced by the Touro College mission statement is "reverence for law and its preeminence in the establishment of a just society."<sup>29</sup> Touro College demonstrated its reverence for law through the creation and support of the Jacob D. Fuchsberg Law Center. At Touro, and I know this is the case at most law schools, the curriculum covers more than what the law was and is. In virtually ever class there is a discussion of what

26. *Id.* at 158.

27. *Id.* at 161.

28. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 262 (1978).

29. *Self-Study*, *supra* note 13, at 2.



the law should be. Such discussion invariably involves the consideration of the fairness of a law or body of law. Many of our faculty have been employed in public interest positions. Their dedication to promoting a just society is reflected in their teaching. It also is reflected in such law school programs as our Public Interest Fellowships which I already have described.

The fifth principle embodied in the college's mission is dedication to "a tradition of scholarship and academic excellence."<sup>30</sup> Since this also is a tradition embraced by the accrediting agencies, it is one we seek to follow at the Law Center. Among our students, academic excellence is being rewarded through a significant allotment of our financial aid funds to merit scholarships.

A sixth goal the college seeks to further is "a sensitivity to ethical concerns in all social interactions."<sup>31</sup> Like virtually every other law school, we have a course in professional responsibility which focuses on legal ethics. All too often, law schools confine the consideration of ethics to one course. Students generally perceive such a course as of little importance and give it less priority than other courses. A far better approach is to integrate ethical considerations into all courses. If this is done effectively, students will understand that in almost all aspects of their roles as lawyers they will be required to face and resolve ethical questions.

Ethical concerns at Touro go beyond the consideration of legal ethics in the classroom. We have tried to create a community where students and employees will feel that they are listened to and treated fairly and where faculty members will be encouraged to act with civility toward each other. Roger Cramton has noted that:

[T]he development of ethical attitudes is probably more affected by the hidden curriculum than by the formal curriculum: the example of teachers and administrators in the handling of issues and people; the implication by students that matters *not* included in the formal curriculum are unimportant to lawyers; and the powerfulness of the student culture in affecting attitudes toward grading, examinations, competition, status and "success".<sup>32</sup>

Perhaps in some senses we are trying to emulate that aspect of the Jewish heritage that places great emphasis on the family. The Jewish family is considered an important facet in the survival and perpetuation of Judaism. The family represents the nurturing environment that is necessary for the creation of a "complete person." While a similar environment in a

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30. *Id.*

31. *Id.*

32. Cramton, *supra* note 28, at 253.

law school might or might not aid learning, it is likely to produce lawyers who are sensitive to the variety of concerns that their clients will bring to the professional relationship.

The seventh purpose the college seeks to fulfill is "an identification with Israel as a Center of Jewish heritage and culture."<sup>33</sup> The Law Center has looked to Israel as a source of enlightenment on issues of Jewish Law. Israeli law professors have taught at our school, and we present lectures by Israeli legal scholars and lawyers. We are pursuing the establishment of a semester abroad program in Israel which will give our students the opportunity to interact more readily with Jewish legal scholars. Until the time such a program is established, we are seeking to provide our students with the opportunity to take not-for-credit trips to Israel and to become acquainted with the legal and governmental systems of Israel. Finally, we have offered comparative law courses where aspects of contemporary Israeli Law have been considered.

The eighth goal of the college is to promote "involvement in civic life as professionals or responsible members of the community."<sup>34</sup> This is a goal that many law schools would endorse. At Touro, in evaluating faculty members for reappointment, promotion, and tenure, some attention is paid to the contribution of the faculty members to professional or community organizations. Many of our students, particularly the part-time students, are active in civic life, and many of our student organizations seek involvement with community concerns and issues.

The ninth and final goal of the college is to promote "a sense of international community and interdependence of societies."<sup>35</sup> As I have noted, we work closely with the Israeli legal community. We encourage our students to participate in overseas summer law programs. We offer courses in international and comparative law and are planning to publish a journal of international law. Recently, we received a grant which will permit us to establish an advocacy center on behalf of Soviet Jews. The center will deal with the plight of Jews who remain in the Soviet Union as well as problems encountered by Soviet Jews who have settled in the United States. In January, I spent nine days in the Soviet Union on a mission on behalf of the Long Island Committee for Soviet Jewry. While there, I spoke with nearly fifty refuseniks. I have reported to the faculty and student body on my trip and believe that this venture has helped enhance within the Law School a sense of international community and interdependence of societies.

Touro College, and its President, Dr. Bernard Lander, are dedicated to implementing a comprehensive set of principles and traditions as a means of

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33. *Self-Study*, *supra* note 13, at 2.

34. *Id.*

35. *Id.*

furthering the college's dual mission —service to the Jewish people and to the community at large. These traditions and principles provide a framework for a law school to approach the study of law so that we “confront its moral goals directly.” As a religiously sponsored school, we cannot remain morally neutral.