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REFLECTIONS ON THE CREATION OF THE JEWISH LAW INSTITUTE AT TOURO

*Randy Lee****

ABSTRACT

Having interpreted the topic of our panel¹ liberally, what I want to talk about today is why Sam Levine, director of Touro's Jewish Law Institute, is here at the conference, or, to put it differently—why does Touro Law School have a Jewish law institute?"

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** The following talk was given at the 2022 Religiously Affiliated Law Schools Conference at Touro Law School. It was given in response to a tour of the Central Islip State Hospital Cemetery. The hospital is a mental health facility. The cemetery is populated by former patients of the facility who died while patients there. The portion of the cemetery that borders Touro Law School is the final resting place of Jewish patients, some of whom were survivors of the Holocaust. To preserve anonymity, the grave markers in the cemetery have no names, only numbers, many of which cannot be traced back to a name. The tour was hosted by Touro Law School's Jewish Law Institute.

¹ *Religion and the Practice of Law (II)*, The Past, Present, and Future of Religiously Affiliated Law Schools (Sept. 16, 2022) (Hon. Joseph F. Bianco, Jordi Goodman, Randy Lee, & Tiffany C. Graham, mod.).

I. INTRODUCTION

Let me begin by saying that the views I express are neither Touro's nor Sam's. Last night at dinner,² both Jordi Goodman and my wife insisted I should not even acknowledge them as my own.

What might motivate a law school to embrace a faith-based institute is not an easy question, even among religiously affiliated law schools. After all, most religiously affiliated law schools do not harbor such institutes. Indeed, awhile back, I was asked to help determine the feasibility of starting an “authentically-Catholic” law school. In response to this request, I began calling deans at existing Catholic law schools. The first dean I called told me that an “authentically-Catholic” law school was a terrible idea because no one would hire its graduates; the second dean insisted that no students would ever come to such a school.

At that point, I figured I could stop calling deans of Catholic law schools. I was now, however, puzzled. As Lucia Silecchia mentioned during the first day of the conference, even religiously affiliated law schools can see religion as a problem to be solved.³ Why?

Why are we so tempted to think that faith interferes with the practice of law, that faith inhibits one's ability to be an effective lawyer? And, in light of this concern, why would Touro Law School want to have a Jewish law institute?

To answer that question, I think one needs to first consider what Jewish law is to a Jew. Such consideration requires one to encounter *The Book of Nehemiah*,⁴ and, more specifically, the story of Ezra, the priest who read the law to the Jewish people.⁵

Seventy years into the Babylonian exile, King Artaxes gave Nehemiah, his wine cup bearer, permission to return to Jerusalem and to rebuild the Holy City.⁶ Thus, Nehemiah set off for his home—“the place of my fathers' sepulchers.”⁷ When Nehemiah arrived, however,

² Sept. 15, 2022 (the night before the panel presentation).

³ Lucia A. Silecchia, *Religion and Faculty Hiring*, The Past, Present, and Future of Religiously Affiliated Law Schools (Sept. 15, 2022).

⁴ *Nehemiah* (RSVCE).

⁵ *Id.* at 8:1-12 (RSVCE).

⁶ *Id.* at 2:6-8.

⁷ *Id.* at 2:3.

he found Jerusalem truly “[ay] waste” and “destroyed by fire.”⁸ The people were living in “disgrace.”⁹ The city, the wall, the Temple were all leveled, and no stone lay on top of another.¹⁰

Nehemiah, however, exhorted the people through the hand of God,¹¹ and under Nehemiah’s direction, the Jewish people rose up and began the process of rebuilding the city.¹² As the people were working in the vicinity of the Temple, they discovered the Book of the Law, the Law given to them by God.¹³

In response to finding the Book of the Law, Nehemiah set aside a day for everyone to gather.¹⁴ On that day, Ezra the priest read to the people the law.¹⁵ As he did so, the people began to weep.¹⁶ This weeping, however, was not the weeping that one might experience reading the tax code, for example.

The Jewish people wept for two reasons. First, they shed tears of awe: they wept because the law was to them so beautiful.¹⁷ Second, they shed tears of regret; they wept because they realized that if only they would have obeyed this beautiful law, none of this devastation would have happened, and they could have avoided so much suffering.¹⁸

As the people were weeping these tears of awe and regret, Ezra, the priest, told them to stop weeping and to change their tears of regret to tears of joy.¹⁹ Had that beautiful law not already proven that it could

⁸ *Id.*

⁹ *Id.* at 2:17.

¹⁰ *Ezra* 3 (discussing rebuilding of the Temple including the laying of the foundation) (RSVCE).

¹¹ *Nehemiah* 2:18 (RSVCE).

¹² *Id.*

¹³ *Id.* at 8:1.

¹⁴ *Id.*

¹⁵ *Id.* at 8:3.

¹⁶ *Id.* at 8:9.

¹⁷ *Psalms* 119:103-04 (RSVCE) (“How sweet are thy words to my taste, sweeter than honey to my mouth! Through thy precepts I get understanding; therefore, I hate every false way.”).

¹⁸ See *Nehemiah* 8:10-11 (RSVCE) (Ezra and the Levites calling upon the people not to “be grieved”); see also *Deuteronomy* 28:1-68 (RSVCE) (prescribing “Blessings for Obedience” and “Warnings against Disobedience”); *Psalms* 128:1-2 (RSVCE) (“Blessed is every one who fears the Lord, who walks in his ways! You shall eat the fruit of the labor of your hands; you shall be happy, and it shall be well with you.”).

¹⁹ *Nehemiah* 8:9-10 (RSVC).

build the Children of Israel from slaves in the land of Egypt into the greatest nation on Earth.²⁰ If this law had accomplished that, then most certainly this law could now take all that had been squandered and destroyed and make from it a new and better city.²¹

To a Jew, that is what Jewish law is; that is what Jewish law does. Jewish law builds and rebuilds; it saves, rescues, and restores. Jewish law protects and heals.²² As Allen Fagin said, it solves problems.²³ Touro has a Jewish law institute to communicate to its students that law can be—does not have to be—but can be, an instrument of great blessing.²⁴

A friend of mine represented a young man once whose life had grown so desolate that no two stones stood together in his life. Yet, somehow, that young man had been lifted out of that life into community college, into college, law school, and ultimately, beyond even the bar exam.

Unfortunately, that young man then discovered that the stains of his former life still hung sufficiently deeply on his current life that he might not be fit to practice law. The Bar needed a hearing to determine the young man's fitness and character. The Bar required a hearing to determine the young man's fitness to practice law. My friend handled that hearing, and my friend made it a never-ending hearing during which he insisted on calling witness after witness, all to testify that a beautiful city had been reborn in that young man's life.

Shortly thereafter, the Bar called my friend and told him his client had earned the right to practice law. When my friend heard that decision, he wept and told me that “every lawyer should have at least

²⁰ See, e.g., 1 *Kings* 10:23-24 (RSVCE) (“King Solomon excelled all the kings of the earth in riches and in wisdom. And the whole earth sought the presence of Solomon to hear his wisdom, which God had put into his mind.”).

²¹ See *Nehemiah* 8:10 (RSVCE) (“do not be grieved, for the joy of the Lord is your strength.”).

²² *Deuteronomy* 28:1-2 (NIV) (“If you will only obey the Lord your God, by diligently observing all his commandments that I am commanding you today, the Lord your God will set you high above all the nations of the earth; all these blessings shall come upon you and overtake you, if you obey the Lord your God[.]”).

²³ Allen Fagin, *Religion and the Practice of Law (I)*, *The Past, Present, and Future of Religiously Affiliated Law Schools* (Sept. 16, 2022).

²⁴ See, e.g., *Psalms* 119:1 (RSVCE) (“Blessed are those whose way is blameless, who walk in the law of the Lord!”).

one case in their career that makes them weep tears of joy.” They say that is what law does when it is done right.²⁵

Judge Joseph Bianco mentioned during his talk that he is both a judge and a deacon.²⁶ Sam Levine is both a rabbi and a former prosecutor. Many people might find that a curious combination—I never have. I have always seen this combination—rabbi and prosecutor—as two different expressions of the same vision of law: both rabbis and prosecutors use the law to take stones, lives in disarray, and build a new and more beautiful city.

Necessarily, prosecutors are people who encounter people with broken lives: victims, witnesses, defendants, and even, as Judge Richard Sullivan pointed out, parents.²⁷ So many broken lives, and good prosecutors are not just people who get convictions. They are people in whose presence those lives begin to get better.²⁸

When a prosecutor introduces him or herself to the court, they always say they represent “the people.”²⁹ Isn’t the defendant, the guy in the orange jumpsuit with “DOC” on the back, one of “the people”?³⁰ There is only one way that dual representation is not a conflict of interest.³¹ That is, if the prosecutor is there believing that, guilty or

²⁵ See *supra* notes 15-18 and accompanying text (Ezra the priest exhorting the people to turn their tears of regret into tears of joy in the presence of the Law of God).

²⁶ Hon. Joseph F. Bianco, *Religion and the Practice of Law (II)*, The Past, Present, and Future of Religiously Affiliated Law Schools (Sept. 16, 2022).

²⁷ Hon. Richard J. Sullivan, *Religious Thought in Criminal Law Scholarship and Advocacy*, The Past, Present, and Future of Religiously Affiliated Law Schools (Sept. 16, 2022) (Judge Sullivan shared his experience seeing the father of a young daughter convicted and sentenced to a long term in prison. As guards led the father out of the courtroom in handcuffs, Judge Sullivan heard the little girl call to her father, “Bye, bye, Daddy.”).

²⁸ Randy Lee, *Fred Zacharias and a Lawyer's Attempt to Be Guided by Justice: Flying with Harry Potter and Understanding How Lawyers Can Prosecute the People They Represent*, 48 SAN DIEGO L. REV. 233, 242 (2011) (“[I]f justice means what it meant in the hands of Harry Potter—if justice, even when it uses force, seeks only to get all people who encounter it to a place from which they can obtain a future filled with hope—then justice would always seek to act in the best interests of those it touches.”).

²⁹ Abbe Smith, *Can You Be a Good Person and a Good Prosecutor?*, 14 GEO. J. LEGAL ETHICS 355, 356 (2001).

³⁰ Lee, *supra* note 28, at 242.

³¹ *But see id.* at 243-45.

innocent, the law seeks what is best for the defendant, and that the law still believes that the defendant can become a more beautiful city.³²

In all of this, I have probably lost my way so let me come back to my original question—*why does Touro have a Jewish law institute?*

I think the reason is that one day, the people who are Touro noticed a rusted fence just across from the law school, pried open its gate, stepped through the overgrown brush inside, and found themselves walking through a cemetery.³³ As they walked within that cemetery, the people who are Touro looked down on the ground, and when they did, they saw markers, markers without names, markers without dates, markers with just numbers. And when they saw these markers, they said to themselves what Judy McMorrow said to me when she saw those same markers—"Behind every one of these markers is a person";³⁴

a person lost to friends,³⁵
 a person lost to family,³⁶
 a person without a name,
 a person without even a lawyer who might have protected them.

In a town filled with lawyers, these people were without a lawyer who might have protected them from becoming a number.

Then the people who are Touro said, *Behind every law student is a person—How can we help that person be all the lawyer they were created to be?*

Who will lead our students through the rusted gate?
 Who will show them the numbers on the ground?

³² *Id.* at 242.

³³ Stewart Ain, *Numbers Mark the Graves at a Former Psychiatric Hospital's Jewish Cemetery*, NY JEWISH WEEK (DEC. 8, 2021), [HTTPS://WWW.JTA.ORG/2021/12/08/NY/NUMBERS-MARK-THE-GRAVES-AT-A-FORMER-PSYCHIATRIC-HOSPITALS-JEWISH-CEMETERY-FAMILIES-WANT-NAMES-AND-ANSWERS](https://www.jta.org/2021/12/08/ny/numbers-mark-the-graves-at-a-former-psychiatric-hospitals-jewish-cemetery-families-want-names-and-answers).

³⁴ Interview with Judith McMorrow (Sept. 15, 2022) (notes on file with the author).

³⁵ *Id.* ("At each funeral, the only ones there were myself, the guy who died and the gravedigger.").

³⁶ *Id.* ("Most of them were bereft of families," said Lerer, who in 2018 retired after 42 years as the Jewish chaplain at Pilgrim State and before that at Central Islip. "Many had been in the hospital for 40, 50 or 60 years, and they were the only ones left in their family.").

Who will point them towards the sign that marks the cemetery, that sign now weathered and defaced?³⁷
Who will translate for our students from the Hebrew, ‘a true friend is one that cannot be repaid.

And I believe, though I do not know and speak only for myself, that it was in that moment that the need for the Jewish Law Institute was realized here at Touro, and that is why Sam Levine is here.³⁸

³⁷ *The Central Islip Cemetery Restoration Project*, TOURO UNIV.: JACOB D. FUCHSBERG L. CTR., <https://www.tourolaw.edu/academics/1238> (last visited Jan. 25, 2023).

³⁸ For a discussion of the history of the asylum cemetery bordering on Touro Law School and on its relationship with the law school, see generally Louise Harmon, *Honoring Our Silent Neighbors to the South: The Problem of Abandoned or Forgotten Asylum Cemeteries*, 34 TOURO L. REV. 901 (2018).