

## ACADEMIC FREEDOM IN RELIGIOUSLY AFFILIATED LAW SCHOOLS: A JEWISH PERSPECTIVE

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The discussion today involves various aspects of academic freedom in religiously-affiliated law schools.<sup>1</sup> I speak today as Dean of Touro College, Jacob D. Fuchsberg Law Center, a Jewish-sponsored law school. The origins and mission of Touro College are relevant to my presentation.

Touro College was "established primarily to enrich the Jewish heritage and to serve the larger American community."<sup>2</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>3</sup>

This twofold mission of Touro College is epitomized in a paraphrase of Rabbi 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>4</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. 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.

An early Law School catalogue provided this rationale for an 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

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<sup>1</sup> Association of Religiously Affiliated Law Schools, Second Conference, Regent University School of Law, September 12-14, 1998.

<sup>2</sup> Touro College Self-Study: Prepared for the Middle States Assoc. of Colleges and Schools xi (Jan. 15, 1987) (available in Touro College, Jacob D. Fuchsberg Law Center Library).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 1.

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.

Touro College's goal to establish a law school was realized in 1980, when the Touro Law Center was founded. The Law Center is committed to the mission of Touro College, which mandates service to both the Jewish community and the broader community in its multi-ethnic diversity. The Law Center 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 food served in our cafeteria, and at all events sponsored by the Law School, whether within the Law School or outside the Law School, must be kosher. Touro provides an atmosphere in which observant Jews can feel comfortable and where their beliefs are treated with respect. At the same time, to insure that we are offering a sound education, the school seeks a diverse student body and faculty. The majority of our student body is not composed of adherents to the Jewish faith.

The first question raised today is whether academic freedom is infringed if efforts are made to integrate religion, faith, and morality in traditional law school courses. I doubt that there are too many law school courses where the discussion is confined strictly to "the law." Law teachers often will discuss, and frequently are encouraged to discuss, issues of professional responsibility and civility. Law students also have little difficulty guessing a law professor's views on political and social issues. In a religiously-affiliated law school, it seems appropriate to expect teachers to raise issues of faith and morality, particularly teachers who are of the same religious affiliation as the sponsors of the law school.

The extent to which issues of religion, faith, and morality might be injected into a classroom discussion perhaps depends on the diversity of the student body. At a law school such as Notre Dame, where the vast majority of the students are Catholic, discussing issues of faith and morality are likely to be generally accepted. At more diverse religiously-affiliated law schools, a discussion of issues of faith and morality might be considered a form of proselytizing. Of course, it all depends on how these issues are raised. Even in a more diverse school, students who enroll and faculty members who are hired, know the mission of the law school in advance. It should not come as a surprise or inhibit free and

open discussion if issues of faith and morality are discussed in traditional law school courses.

At Touro, we are considering a change in our name that would make it clear that a pervasive goal of our program is to stress issues of fairness and morality. Virtually all institutions of legal education in this country are called "law" schools. Law, however, is supposed to be the instrument of justice (the goal). It is worth pondering why law schools are named for the means—law—rather than the goal—justice. Perhaps we need more institutions of legal education that have an exploration of justice as the central focus of their program. The emphasis in most schools is to study "the law." To be sure, there is always some talk in law schools about justice, but this is not the central focus. Our new emphasis would not only be on what the law is but also what the law should be. We will look at issues of fairness, which inevitably involves discussions of moral choices. Instead of a "School of Law" we would become a "School of Justice." We would make it clear that our school was dedicated to training lawyers who would pursue the command of Deuteronomy: "Justice, and only justice, you shall pursue . . ."<sup>5</sup>

The second issue we are considering today is the right of faculty members to dissent from the particular views that prevail in a religiously-affiliated school. I believe the answer to this question rests heavily on the manner of the dissension. If questions are raised, and the debate involves rational argument in pursuit of the truth, dissension should be tolerated. It seems perfectly appropriate for a faculty member to raise contrary views in a law review article or at a faculty symposium. Leading a demonstration of one sort or another might be a different matter. In general, I believe that religiously-affiliated schools should be quite tolerant of dissent. Most adherents to the Jewish faith tend to be tolerant of dissent. Deeply imbedded in the study of Jewish law is the raising and answering of questions. In many issues of Jewish law there is a majority and a minority view. Obviously, dissent is expected and tolerated.

A third issue we are addressing today is dealing with faculty indifference to a school's religiously-affiliated mission. One way to avoid this problem is to make certain that some faculty members are hired who are thoroughly in favor of the religious mission of the law school and will promote it. For faculty in general, the relevance of the school's religiously-affiliated mission can be stressed on appropriate occasions, such as at a faculty retreat. Faculty attitudes toward the religious mission of a law school can also be influenced by the leadership of the dean and

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<sup>5</sup> *Deut.* 16:20 (New American Standard Version).

other administrators, just as appropriate leadership can affect faculty attitudes on many issues.

A fourth issue under consideration today is whether the teaching of religion in a law school undermines academic freedom. Those who seek employment or education at a religiously-affiliated school certainly should anticipate that there will be some manifestations of religion at the school. I believe it would be a violation of academic freedom, however, if all teachers were required to integrate into their course tenets of the school's sponsoring religion. This is not to say that all teachers could not be expected to raise moral and ethical issues in their courses. Even on that issue, I would favor a degree of tolerance in a religiously-affiliated school. Teaching separate courses dealing with religious issues, on the other hand, would not impinge on academic freedom.

The Touro Law Center is committed to furthering the study of Jewish law. The teaching of Jewish law is furthered through our Jewish Law Institute, and the inclusion in our curriculum of a number of courses on Jewish law. The Jewish Law Institute promotes scholarship in the field of Jewish law through its periodic publication, *The Jewish Law Reporter*, and through programs held in the Law School. The Jewish Law Institute, and Tel Aviv Law School, are the co-editors of *Diné Israel*, an established journal of Jewish law that includes articles written in Hebrew and English. The Law Center has developed a Judaic book collection as part of our library, and offers books on Jewish law to other law schools that are establishing courses in Jewish law. The Law Center was the moving force behind the creation of the AALS Section on Jewish Law, a section that offers a program each year at the meeting of the Association of American Law Schools.

At Touro, we also have an active Jewish Law Students group. Part of the mission of this group is to encourage Jewish law students to embrace their Jewish identity and to acquaint non-Jewish students with Jewish ritual and practices. Space is made available to Jewish law students for prayer and, in the new facility we are planning, we hope to have a chapel that will be open to students of all faiths.

The final question that we address today is the role, place and function of faculty who are not members of the sponsoring religious group, who are disaffected from that group, or who are not religious at all. I believe the same considerations apply here as in the case of faculty dissent. When faculty members are involved in activities related to the school, they should be expected to respect the views of the sponsoring religious group. Many, if not all, religiously-affiliated schools have faculty members who are not members of the faith of the sponsoring religion. There are many reasons why these faculty members may be at these schools, and among them, I am sure, is respect for the quality of the school and respect for the values the school promotes. It is appropriate for a relig-

iously-affiliated law school to expect its faculty members, and other employees, to show respect for the views and mission of the sponsoring religious group.

By the same token, religiously-affiliated law schools should respect the religious dictates of those of different faiths. I believe this is the practice among the religiously-affiliated law schools in this country. An atmosphere of mutual respect also helps to prepare law students for the ever-increasingly diverse world in which they will practice law.

Touro College, and its Law Center, is dedicated to furthering its dual mission—service to the Jewish people and to the community at large. These traditions and principles provide a framework for the Law School to approach the study of law and an analysis of its underlying moral goals. As a religiously-sponsored school, we cannot remain morally neutral.