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A JEWISH-SPONSORED LAW SCHOOL: ITS PURPOSES AND CHALLENGES

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I would like to address my remarks to two topics. First, I would like to explain the sense in which Touro is a religiously affiliated law school, and how the Jewish sponsorship of Touro is reflected in the functioning of the law school. Second, I would like to give you some specific examples of how Jewish sponsorship affects policy and also examples of issues that have arisen in our school because of Jewish sponsorship.

Let me turn to the first topic, the sense in which Touro is a religiously affiliated law school, and how that is reflected in the way in which the school operates. As you all probably know, Judaism is not a monolithic religion. There is no central authority or hierarchy within Judaism. Those who call themselves Jews may be Reform, Conservative, Orthodox, Reconstructionist, or ultra-Orthodox. Some branches of Judaism are universalistic and deeply involved in the affairs of the world. Other branches are extremely insular and sectarian. It has been said that if you bring two Jews together you are likely to get three different opinions.

And then there is the story of the Jew who, in the 1920s, traveled from a small Polish town to Warsaw. When he returned, he told his friends of the wonders he had seen. He said, "I met a Jew who had grown up in a yeshivah and knew large sections of the Talmud by heart. I met a Jew who was an atheist. I met a Jew who owned a large clothing store with many employees, and I met a Jew who was an ardent communist." "So what's so strange?" his friend said. "Warsaw is a big city. There must be a million Jews there." "You don't understand," the man answered, "it was the same Jew." Talk about polarity.

The Jewish religion reflects the diversity of these approaches. The founder and President of Touro College, Dr. Bernard Lander, is an Orthodox Jew. Many of the founding trustees also were Orthodox. Consequently the view of Judaism that affects the functioning of the law school is generally that of the Orthodox branch. Yet the mission of Touro College would be embraced, I believe, by a significant segment of the Jewish population.

Touro College does have a mission statement, and the mission statement indicates that it was established primarily to enrich the Jewish heri-

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tage and to serve the larger American community. 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." The twofold mission of Touro College and the law school 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 needs, what are we?

Now let me explain how the Jewish sponsorship of Touro actually is reflected in the functioning of the law school. As you know, the practice of Judaism involves the adherence to many rituals. The ritual generally observed at Touro is the ritual of Orthodox Jewry. The school observes the Sabbath. It closes on Friday afternoons before sundown and is closed all day Saturday. The school is closed on all Jewish holidays, and food served in our cafeteria, and at all events sponsored by the Law School, whether within the Law School or outside of the Law School, must be kosher. A mezuzah is mounted on the doorpost of every room in the school. The mezuzah generally contains a piece of parchment inscribed on one side with verses from Deuteronomy, and on the other side with words signifying the name of God.

Let me add, parenthetically, that our student population is about thirty percent Jewish and, of that number, a relatively small percentage are observant Jews. Our faculty is probably about seventy percent Jewish. In addition, the school, in order to ensure a sound education, does seek a generally diverse student body and faculty.

The Law School's Jewish sponsorship, however, is reflected in more than ritual. The school is committed to furthering the study of Jewish law and attempts to reflect, in all aspects of the curriculum, the ethical and moral teachings of Judaism. 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. We also are developing a Judaic book collection in our library. Touro was the moving force behind the creation of the AALS section on Jewish law, although we did that before we became a member and, consequently, none of our faculty members could serve as officers of the section.

Let me give you some examples of the issues that our *Jewish Law Reporter* and special programs in the law school have explored. Articles

have dealt with theological aspects of Jewish law, questions of property rights under Jewish law, contemporary marriage questions, artificial insemination in Jewish and American law, and the legislative power in the Jewish legal system. Symposiums held at the law school have dealt with the intervention of the American legal system in Jewish divorces; Jewish and American law perspectives on saving the group by sacrificing the individual; an international colloquium on Jewish law; Jewish tort law in a modern state; and Jewish, Israeli, and international perspectives on the rights to the disputed territories on the West Bank. As a condition of graduation, our students are required to take one of five or six courses that are part of our perspective requirement. These courses include jurisprudence, legal history, international law, and a variety of courses on Jewish law. Many of our students, both Jewish and non-Jewish, take the courses on Jewish law.

I believe that at Touro we have established an academic community where religious questions are taken seriously. At least that is the goal to which we aspire and, to a large extent, have reached. It is never out of place at our school to treat the legal, social, and moral questions that confront us from a religious perspective. To a large extent, the education provided at Touro is value oriented. There have been extensive discussions within the faculty, and even at a faculty retreat, as to the extent to which our education should be value neutral or value oriented. I believe that most of our faculty members do not hesitate to discuss the ethical and moral implications of various legal doctrines and legal approaches to different problems.

Turning to Michael Perry's provocative essay on the idea of a Catholic university, I think that much of the spirit of what he describes also characterizes Touro. As I mentioned before, Touro is an academic community where religious questions can be taken seriously. We also are a school where a nonconformist has his or her place.

The religious character of our school is expressed in the totality of what we do. It is not necessary, we think, or desirable, or even possible in a pluralistic society that each and every person be religiously engaged, so long as some significant representation of the religious point of view takes place. In addition, in the Jewish tradition at least, truth is derived from arguments pro and con, so that the presence of doubters, skeptics, and unreligious individuals participating in the debate should lead to a better and more convincing dialogue on religious questions.

Michael Perry's Catholic University, however, may be more open and tolerant than Touro. For example, it is highly unlikely that our Jewish Law Institute would be headed by other than an Orthodox Jew, and

that our courses in Jewish law would be taught by other than Orthodox Jews. Only those steeped in the Orthodox tradition are deemed to be knowledgeable enough to teach Jewish law. Moreover, as I will indicate in a few moments, there are some points of view that would not be welcome, and indeed would be prohibited in our institution.

I do not know how Tom Shaffer characterizes Touro, but we may fit in both the Erastian and sectarian camps, and perhaps even the secular. As I have noted, we do support research and writing not generally of interest to other law schools, and we provide convenient opportunities for members of the sponsoring faith to worship. An essential mission of Touro is to perpetuate Jewish scholarship and the Jewish heritage. Touro is a comfortable place at which to be an observant Jew. At the same time, Touro is concerned with the greater society. Among the fundamental teachings of Judaism is a concern for the greater society. It is part of Touro's religious mission, a sectarian mission, to pursue a concern for the greater society. Touro has an obligation to itself as a Jewish institution, but simultaneously also must benefit the larger global community encompassing the non-Jewish and nonreligious persons and ideologies.

The duality of our mission, looking inward and outward, derives from the teachings of Rabbi Hillel that I mentioned a moment ago. Consequently, Touro, at its best, adhering to the principles of Rabbi Hillel, would be considered a sectarian school. If, however, you discount the concern with the greater society as sectarian, at the least we comfortably fit in the Erastian category. And to add to the complexity, I have no doubt that there might be some Jews who, in observing Touro, would conclude that we are a secular school—the same school, secular, Erastian, and sectarian, just like the Jew in Warsaw.

Now let me quickly mention some specific examples of how Jewish sponsorship affects policy, and what issues have arisen in our school because of our Jewish sponsorship.

Some years ago, an organization at our Law School called PILOT, which stands for Public Interest Law of Touro — it is an organization that promotes public interest law — released a newsletter that contained excerpts of articles from other publications. The theme of one of the articles was that circumcision was one of the earliest forms of child abuse. The article was a reprint. It came from a British publication — I think it was also a Jewish publication; the author of the article happened to be Jewish as well. The Orthodox students in our school were absolutely outraged by this article. The president of the college was absolutely outraged. Circumcision, as I am sure you all know, is a covenant

that Abraham made with God, and criticizing the practice is defiling a basic religious tenet. I met with some of our Orthodox students and it was very revealing, because I could see the pain that they were suffering. Just looking in their eyes I realized that the old adage, "Sticks and stones can break your bones, but names can never harm you," was not really true. Words — some written words—had really hurt and harmed them. And this was a very big issue in our school for a time. Most of the faculty felt that this was a First Amendment question, and the students could say things like this. Eventually this incident led to our developing a speech code that is somewhat like the codes that some other schools have adopted.

Another instance involved a student organization — I think it was a chapter of the National Lawyers Guild — inviting a speaker named Mohammed Mehdi. He was the head of an American Arab organization that has taken some very anti-Israeli and pro-Palestinian points of view. Some of his comments and statements could be construed as anti-Semitic. When I realized he had been invited, I knew what the president of the college would do. He would insist that Mr. Mehdi not be permitted to speak. I decided to take the heat for the president of the college. I told the students involved that the invitation to Mr. Mehdi would have to be revoked. This resulted in some nasty letters from the ACLU. As I recall, the ACLU had a program planned in our school that was canceled as a result of my action. When I was interviewed for the deanship of Touro, I was asked whether I would allow Farrakhan to speak at the law school. For some of the members of the college administration, this was a litmus test. Again, a very sensitive question. I do not know whether what I did in the case of Mohammed Mehdi was correct or not, but certainly the president, and I am sure the board of trustees, felt that it was the right thing to do. And it was something that had to be done.

One thing I always hoped would never cross my desk was a petition from students wishing to form a gay and lesbian student organization. Most Orthodox Jews strongly disapprove of homosexuality. One day I received such a petition. This was at the time we were aspiring to be a member of the AALS. The AALS membership requirements preclude discrimination based on sexual orientation. I also discovered that there was a New York City ordinance that prohibited discrimination by educational institutions on the grounds of sexual orientation. Although Touro Law School is located in Suffolk County on Long Island, the College's executive offices are in New York City. I thought it was very likely that the statute would be applied to us. This gave me a basis for recognizing the gay and lesbian student organization.

There are some other policies we have at Touro that I think reflect the religious tradition of our school. Touro does not have an up or out tenure policy. This has been of concern to the ABA, as well as to the AALS. The faculty supports this policy and so does the President of Touro College. The president's view is based, in part, on humanitarian reasons, which derive from his religious background. He believes it is inappropriate to place the kind of pressure on faculty members that results from an up or out policy. Individuals achieve at different rates and should not be forced to work under the pressure of a rigid up or out policy. Touro has fairly rigorous requirements for being retained year by year so that an unproductive individual is not automatically retained.

Another issue that President Lander has discussed with me, and which he also approaches from a humanitarian point of view, is the treatment of students who are academically dismissed. President Lander is disturbed that a student who is academically dismissed in his or her senior year and is subsequently re-admitted is not given credit for courses in which he or she did relatively well. Our current policy is to require students who are academically dismissed to apply for re-admission. Those who are re-admitted must begin with first semester courses with no credit for their prior work. President Lander finds it inequitable not to allow credit for previous passing work.

My remarks might give the impression that issues with religious implications are well settled at Touro; they are not. Our faculty is considering holding a faculty retreat devoted to the mission of the law school to discuss these issues some more. Questions about our Jewish mission come up periodically. Every generation must be re-educated. Although it does sound as though we are clear about what must be done to perpetuate the Jewish heritage at Touro, the issue is one that requires frequent reconsideration.