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Foreword to the Conference: Louis D. Brandeis: An Interdisciplinary Retrospective

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CONFERENCE
LOUIS D. BRANDEIS: AN INTERDISCIPLINARY
RETROSPECTIVE
FOREWORD

*Samuel J. Levine**

On March 31-April 1, 2016, Touro Law Center and the Jewish Law Institute¹ hosted a national conference: *Louis D. Brandeis: An Interdisciplinary Retrospective*.² More than thirty judges, lawyers, and scholars, across a broad range of disciplines and hailing from across the United States, explored a variety of themes that included, among others: Brandeis's groundbreaking work as a lawyer and a scholar; his commitment to his Jewish heritage; his historic appointment to the United States Supreme Court; and his jurisprudence on the Court. In addition to the timeless quality of these themes, the timing of the conference was significant, taking place between the one hundredth anniversaries of Brandeis's nomination to the Court, in January of 1916, and his confirmation, in

*Professor of Law & Director of the Jewish Law Institute, Touro Law Center; Conference Organizer. I thank former Dean Patricia Salkin for her support and encouragement, and the faculty, staff, and students at Touro Law Center for their participation.

¹ See Informational Brochure, Touro College Jacob D. Fuchsberg Law Center, The Jewish Law Institute, <http://www.tourolaw.edu/JewishLawInstitute/jewish-law-institute> (last visited Jan. 29, 2017). Notably, the conference included presentations by two prominent members of the inaugural Jewish Law Institute Advisory Board, Judge Rick Haselton and Judge Kermit Lipez. See *Jewish Law Institute Advisory Board*, TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=1009> (last visited Jan. 29, 2017).

² See Conference Report, *Louis D. Brandeis: An Interdisciplinary Retrospective*, Touro College Jacob D. Fuchsberg Law Center (Mar. 31, 2016), <http://www.tourolaw.edu/JewishLawInstitute/?pageid=998>; Richner Communications, *Brandeis Talk at Touro Law*, THE JEWISH STAR (Jan. 13, 2016), <http://jewishstar.staging.communityq.com/stories/Brandeis-talk-at-Touro-Law,6727>. For videos of the conference presentations, see Conference Videos, *Louis D. Brandeis: An Interdisciplinary Retrospective*, Touro College Jacob D. Fuchsberg Law Center, (Mar. 31, 2016), <https://videos.tourolaw.edu/category/Touro+Law+Events%3ELouis+D.+Brandeis%3A+An+Interdisciplinary+Retrospective/42862991>.

June of 1916. The articles published in this Symposium Issue of the *Touro Law Review* provide a sampling of the papers presented at the conference, illustrating the variety of topics explored and the range of disciplines and perspectives represented.

The first day of the conference opened with a panel addressing Brandeis and the public good, approached from a number of academic fields. For example, Joel Goldstein, a constitutional law scholar who teaches a seminar on Justice Brandeis, considered the relationship between Brandeis's views of civic duty and pluralism,³ while Kenneth Elzinga, an economist, whose article is co-authored by Micah Webber, applied Brandeis's jurisprudence to contemporary antitrust law.⁴ The next panel, on Brandeis and privacy, was likewise comprised of scholars from different areas of study, such as Erin Coyle, who teaches mass communication law, and Susan Gallagher, a professor of political science, both of whom explored Brandeis's commitment to privacy through the prism of their respective fields.⁵

The conference continued with two panels on Brandeis and lawyers, which included presentations by scholars on legal ethics and the legal profession as well as practicing lawyers. Articles by John Dzienkowski,⁶ Susan Fortney,⁷ Katherine Helm,⁸ Randy Lee,⁹ and Judith McMorro¹⁰ look at multiple facets of Brandeis's career to develop insights into substantive, ethical, and strategic aspects of the

³ See Joel K. Goldstein, *Justice Brandeis and Civic Duty in a Pluralistic Society*, 33 TOURO L. REV. 105 (2017).

⁴ See Kenneth G. Elzinga & Micah Webber, *Louis Brandeis and Contemporary Antitrust Enforcement*, 33 TOURO L. REV. 277 (2017). Other panelists included Barry Cushman and Lance Liebman, and the panel was moderated by William E. Nelson.

⁵ See Erin Coyle, *Sunlight and Shadows: Louis D. Brandeis on Privacy, Publicity, and Free Expression in American Democracy*, 33 TOURO L. REV. 211 (2017); Susan E. Gallagher, *Privacy and Conformity: Rethinking "The Right Most Valued by Civilized Men"*, 33 TOURO L. REV. 159 (2017). Other panelists included Mark A. Graber and moderator Joan Foley.

⁶ See John S. Dzienkowski, *The Contributions of Louis Brandeis to the Law of Lawyering*, 33 TOURO L. REV. 177 (2017).

⁷ See Susan Saab Fortney, *Collaborative Divorce: What Louis Brandeis Might Say About the Promise and Problems?*, 33 TOURO L. REV. 371 (2017).

⁸ See Katherine A. Helm, *Louis Brandeis's Arc of Moral Justice*, 33 TOURO L. REV. 143 (2017).

⁹ See Randy Lee, *Louis Brandeis's Vision of Light and Justice as Articulated on the Side of a Coffee Mug*, 33 TOURO L. REV. 323 (2017).

¹⁰ See Judith A. McMorro, *Moving from a Brandeis Brief to a Brandeis Law Firm: Challenges and Opportunities for Holistic Legal Services in the United States*, 33 TOURO L. REV. 259 (2017). Other panelists included Anita Bernstein and Robert F. Cochran, Jr., and the panels were moderated by James Altman and Bruce Green.

practice of law. The final two panels of the day, dedicated to the topic of Brandeis and the courts, included remarks from both scholars and sitting judges. From among the presentations, Larry Zacharias, an interdisciplinary legal scholar, offered a substantive analysis of Brandeis's opinions in railroad accident cases,¹¹ while Judge Kermit Lipez, of the United States Court of Appeals for the First Circuit, drew in part on his own experiences as an appellate court judge to explore Brandeis's approach to judging and the judicial decision-making process.¹² The first day of the conference closed with a reception in the Law Center's Judaica Room, which houses the Touro Gould Law Library's Abraham Goldstein and Lillie Goldstein Judaica Collection,¹³ as the focus of the conference turned to connections between Brandeis and Judaism.¹⁴

The start of the second day of the conference continued on the theme of Brandeis and Judaism, through both a panel discussion¹⁵ and a keynote address by Russell Pearce,¹⁶ whose article is co-authored with Adam Winer and Emily Jenab.¹⁷ A lunch keynote

¹¹ See Larry Zacharias, *Justice Brandeis and Railroad Accidents: Fairness, Uniformity and Consistency*, 33 TOURO L. REV. 53 (2017).

¹² See Kermit V. Lipez, *Solving a Mystery: Justice Brandeis' Approach to Judicial Decision-Making*, 33 TOURO L. REV. 91 (2017). Other panelists included Judge Rick Haselton, Robert Pushaw, and Steve Winter, and the panels were moderated by Rodger Citron and Patricia E. Salkin.

¹³ See Informational Brochure, Touro College Jacob D. Fuchsberg Law Center, The Abraham Goldstein and Lillie Goldstein Judaica Collection, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=728> (last visited Jan. 29, 2017).

¹⁴ As part of his remarkable legacy, Louis Brandeis was the first Jewish Supreme Court Justice and a leading Zionist. Accordingly, the reception in the Judaica Room included a presentation by Hasia R. Diner, addressing a number of interrelated topics revolving around the title: "Brandeis, the Great Jewish Migration, and Progressivism."

¹⁵ Panelists included Felice Batlan, Rabbi Meir Soloveichik, Adam Winer, and moderator Deborah W. Post.

¹⁶ This keynote address was also the Spring 2016 Jewish Law Institute Distinguished Lecture. See Informational Brochure, Touro College Jacob D. Fuchsberg Law Center, The Jewish Law Institute Distinguished Lecture Series, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=725> (last visited Jan. 29, 2017).

¹⁷ See Russell G. Pearce, Adam B. Winer, & Emily Jenab, *A Challenge to Bleached Out Professional Identity: How Jewish was Justice Louis D. Brandeis?*, 33 TOURO L. REV. 335 (2017).

For additional material on Brandeis's connection to Judaism and Zionism, including his support for the Intercollegiate Menorah Association, which published *The Menorah Journal*, see Samuel J. Levine, *Louis Marshall, Julius Henry Cohen, Benjamin Cardozo, and the New York Emergency Rent Laws of 1920: A Case Study in the Role of Jewish Lawyers and Jewish Law in Early Twentieth Century Public Interest Litigation*, 33 J. LEGAL PROF. 1, 25-26, 153-56 (2008). A few weeks before his nomination to the Supreme Court, Brandeis delivered an address to the Chicago Bar Association, shortly thereafter published under the title "The

address was then delivered by Edward Purcell, a leading scholar on Justice Brandeis,¹⁸ who examined Brandeis's constitutional opinions as a springboard for a broader consideration of the nature of American constitutionalism.¹⁹ Finally, the conference closed with a panel on yet one more area of Brandeis's legacy, his dedication to free speech. Elizabeth Todd Byron provided historical context for Brandeis's views,²⁰ while Fred Lawrence, whose presentation touched on many of the themes of the conference, explored the ongoing relevance of Brandeis's free speech jurisprudence.²¹

Taken together, the articles in this Symposium Issue of the *Touro Law Review* provide a wide-ranging survey of the life, work, and abiding impact and influence of Louis D. Brandeis. The articles demonstrate that, one hundred years after his appointment to the United States Supreme Court, Brandeis remains a central figure in our understanding of American law and society, deserving of our continuing attention, consideration, and close study. Moreover, as the conference illustrated, Brandeis's multifaceted career is suited for examination and exploration through the perspectives of a variety of disciplines. As such, the proceedings of the conference, captured in this Symposium Issue of the *Touro Law Review*, will serve as an important resource for future scholarly endeavors dedicated to Brandeis's remarkable life and legacy.

Living Law." See Louis D. Brandeis, *The Living Law*, 10 ILL. L. REV. 461 (1916). Notably, although the article does not cite Jewish sources, Brandeis employs religious imagery, such as a reference to Alexander Hamilton as "an apostle of the living law," and the title of the article evokes the biblical characterization of the Torah as a "tree of life" or a "living tree." *Id.* at 12. See *Proverbs* 3:18.

¹⁸ See EDWARD A. PURCELL, JR., *BRANDEIS AND THE PROGRESSIVE CONSTITUTION: ERIE, THE JUDICIAL POWER, AND THE POLITICS OF THE FEDERAL COURTS IN TWENTIETH-CENTURY AMERICA* (Yale Univ. Press eds. 2000).

¹⁹ See Edward A. Purcell, Jr., *The Judicial Legacy of Louis Brandeis and the Nature of American Constitutionalism*, 33 TOURO L. REV. 5 (2017).

²⁰ See Elizabeth Todd Byron, *A Progressive Mind: Louis D. Brandeis and the Origins of Free Speech*, 33 TOURO L. REV. 195 (2017).

²¹ See Frederick M. Lawrence, *The Continuing Vitality of Louis D. Brandeis's Free Expression Jurisprudence*, 33 TOURO L. REV. 131 (2017). Other panelists included Vincent Blasi, Rene Knake, and moderator Kent Greenawalt.