

The Role of One Religiously Affiliated Law School

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John Garvey has set us all to thinking hard about institutional pluralism—the ways in which there may be value (or not) in diversity among, as opposed to within, law schools. Viewing American law schools through that lens, one obvious sort of diversity is between those institutions with a religious affiliation and those without one. For two decades, I have taught at Yeshiva University’s Benjamin N. Cardozo School of Law, one of the nation’s two law schools that is part of a university with a Jewish affiliation.¹ I will offer some thoughts about both the general question of religious schools and the potentially fraught question of what it means, or might mean, to be a Jewish law school in particular.²

The undergraduate program at Yeshiva University includes a genuine religious education. The students study Torah in the morning and pursue a standard, secular college curriculum in the afternoon. Every student (though not every professor) is Jewish. Even with regard to the undergraduate programs, there is some debate as to whether the commitment to Jewish

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1. The other is Touro College’s Jacob D. Fuchsberg Law Center in Central Islip, New York.
2. The working title of this article was the overbroad “The Role of Religiously Affiliated Law Schools.” The final title is a highly self-conscious shift from the general to the particular. One reason among many is this: generalizations about “religious” institutions do not necessarily apply to Jewish institutions. Judaism is a religion; but it also has elements of cultural and (quasi-) racial identity that are generally absent or far more dilute in other sects. For that reason, a law school (or a state) might be “Jewish” without being especially “religious”—at least in some ways for some people. Many people who are not very, or at all, religious have a powerful and unhesitating Jewish identity. Accordingly, one could imagine a Jewish law school that was not a religiously affiliated law school. These are complicated questions that I set to one side for purposes of this article.

education is sufficiently strong.³ But while one can quarrel with the details, the undergraduate program is unmistakably Jewish. The University's professional schools—law, medicine, psychology, and social work—are quite different. By design, they are essentially secular institutions with a religiously diverse faculty and student body. It does mean something that Cardozo is part of a Jewish University, but less than many outsiders (including potential applicants on internet discussion boards) often assume.

One of the better-known lines from the play *Beyond the Fringe* is Jonathan Miller's statement he was not really a Jew, "I'm just Jew-ish; I don't go the whole hog." In that sense, Cardozo is (merely) "Jew-ish." And as one seeks to identify the attitudes and abstractions that "Jew-ish-ness" entails, it turns out that there are many such law schools. Accordingly, at the end of the day I do not think that by virtue of their religious affiliations the Cardozo Law Schools of the world are important contributors to the sort of systemic strength and synergies that can flow from institutional pluralism within the legal academy as a whole.

I. What Might a "Jewish" Law School Look Like?

Invoking institutional pluralism assumes differences between law schools that go beyond facilities, location, the quality of food in the dining hall, logos, and a few specialized courses. All, or almost all, religiously affiliated law schools offer that sort of superficial diversity; the question is whether they can, do, or should offer something more profoundly different. In this section, I discuss what that might mean, and conclude that at least the law school I know best is not, and should not be, religious in a strong sense.

A. Where Is the Hyphen in "Jewish Law School"?

An "ill educated man" is not the same thing as "an ill-educated man";⁴ a swift-sailing ship differs from a swift sailing ship. So, is a "Jewish law school" a law school that is Jewish, or a school of Jewish law? There are schools that teach Jewish law (*halakha*) and only Jewish law; they are called yeshivas, or theological seminaries. It is perhaps stating the obvious, but no ABA-accredited law school, whatever its affiliation and however "religious," is or has set out to be religious in this sense. This does not mean they are not religious at all, but the fact that the basic corpus being studied at religiously affiliated law schools is not religious dilutes their status as "religious" enormously.

Even if the education is not and cannot be directly and exclusively about the religion, religiously affiliated schools might make some gesture in this direction by offering specific courses and workshops in the legal topics involving the religion. This Cardozo certainly does. We generally offer about

3. See generally Naomi Schaefer Riley, *God on the Quad: How Religious Colleges and the Missionary Generation are Changing America* 95-113 (St. Martin's Press, New York, 2005).

4. See Henry W. Fowler, *A Dictionary of Modern English Usage* 256 (Oxford, 2d ed., New York, 1965).

half a dozen courses in Jewish law every year.⁵ One professor is a rabbi and holds a Ph.D. in philosophy but does not have an American law degree. The Center for Jewish Law and Contemporary Civilization hosts visiting scholars, runs classes for graduate students in Jewish studies separate from the law school curriculum, sponsors a regular reading group, puts on conferences, and issues publications. Thus, there is a tremendously rich subculture of Jewish studies and Jewish scholarship. I don't think there is another law school with as much activity in the area of Jewish law as at Cardozo, and that is not an accident.

Yet two strong caveats are in order. First, lots of schools have courses in Jewish law and faculty members who are interested in the area. Law professors of many stripes have turned to and drawn from Jewish law.⁶ The AALS has a whole section devoted to Jewish law.

Second, this activity is not a necessary or automatic, let alone a defining, aspect of the education or intellectual life at Cardozo for either faculty or students. Someone for whom it holds no interest can remain blissfully unaware. The occasional Muslim, or Roman Catholic, or Lutheran, or utterly secular Jew shows up in "Introduction to Jewish Law," but they are only a handful. It is easy for someone who knows nothing about Judaism when they walk in the door at Cardozo to know next to nothing when they walk out three years later.

Perhaps a Jewish law school should require students to take a course in Jewish law. Yeshiva University's School of Social Work has a required course in "Jewish Social Philosophy." Might Cardozo do something similar? I can imagine it, but would not support it, and my guess is that such a view is unanimous on the faculty. Such a requirement would be inconsistent with the school's basic commitments, turn off some applicants, and for many be counterproductive, since force-feeding through a flat requirement often generates more resentment than insight.

B. A Thoroughgoing Integration of Judaism in the Curriculum?

Shy of a direct and exclusive study of Jewish law would be a commitment to the integration or infiltration of Jewish law (or theology or beliefs or values) with secular American law. Several Christian law schools have made their mission just such an integration, *mutatis mutandis*. So, the letter from the dean found on the website of the Regent Law School states:

What makes Regent unique among law schools approved by the American Bar Association is that we thoroughly integrate a Christian perspective in the classroom....As you consider attending a law school, I encourage you to think

5. For the 2008-2009 academic year, full-time faculty members are teaching Introduction to Jewish Law, Advanced Jewish Law (both fall and spring semesters), Jewish Law and American Legal Theory, and Jewish Law and Contemporary Legal Problems. An Israeli visitor is also teaching a 1-credit course on Maimonides.
6. See generally Suzanne Last Stone, In Pursuit of the Counter-Text: the Turn to the Jewish Legal Model in Contemporary American Theory, 106 Harv. L. Rev. 813 (1993).

about a legal education that recognizes the critical role the Christian faith should play in our legal system and your professional life.⁷

Or consider Liberty University, which has the following text about its mission on the website, accompanied by a picture of students praying in class:

Liberty University School of Law is founded upon the premise that there is an integral relationship between faith and reason, and that both have their origin in the Triune God. Thus, from this perspective, legal education that purports to prepare individuals to pursue justice should skillfully integrate faith and reason as a means to the formation of law and a just society....The vision of the School of Law is to see again all meaningful dialogue over law include the role of faith and the perspective of a Christian worldview as the framework most conducive to the pursuit of truth and justice.⁸

This is a very strong version of what it means to be a religious law school. I do not know to what extent day-to-day life at these institutions corresponds to the portrait on the website; website authors are not exactly Woodward and Bernstein. Perhaps this is more aspiration than reality. But my hunch is that the religious mission has a potent, omnipresent, defining role at these schools. Somewhat less ferociously, there has been extensive and serious debate among those at Catholic law schools generally, and Jesuit schools in particular, about whether such a thoroughgoing integration of religious precepts into the educational program can be pursued.⁹

Even as an aspiration, this vision of a religious law school is foreign to the Cardozo Law School. In part, this vision is simply inconsistent with having a religiously pluralistic student body and faculty, which is what Cardozo has always set out to do (on which more below).

But such a vision would be especially unlikely at a Jewish law school. Yeshiva University's law school is just not going to pursue the view that we should all be striving to renew a view of the United States in which the only valid understanding of law is that it is part and parcel of religious belief. This is for three reasons.

7. See "A Message from Dean Brauch," available at <http://www.regent.edu/acad/schlaw/dean/home.cfm> (last visited March 3, 2009). See also Jeffrey A. Brauch, *It Sounded Great in the Glossy Brochure ... So Where Is It? Carrying Out the Mission at a Mission Driven School*, 33 U. Tol. L. Rev. 1, 2 (2001) (describing Regent's "two vital aims" as "(1) To integrate biblical principles into the substance of the law we teach; and (2) To train and mentor students to bring a Christian perspective to bear on the way they live and practice law").

8. See website of the Liberty University School of Law, "Our Mission," available at <http://www.liberty.edu/academics/law/index.cfm?PID=3813> (last visited March 3, 2009).

9. See, e.g., John M. Breen, *Jesuit Legal Education: A Critique*, 36 Loy. U. Chi. L.J. 383 (2005); Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. Tol. L. Rev. 171 (2001); Amelia J. Uelmen, *An Explicit Connection between Faith and Justice in Catholic Legal Education: Why Rock the Boat*, 81 U. Det. Mercy L. Rev. 921 (2004).

First, members of any minority religion—particularly, a tiny and historically persecuted minority—cannot be optimistic about the melding of religion and (secular) law. If we decide that, tracking the Liberty website, the path to “truth and justice” must involve the “worldview” of a particular religion, and it’s just a question of picking which one, well, that’s a prescription for disaster for Jews. Paradoxically, as a matter of first principles, there is not a strong Jewish commitment to the separation of church and state; to the contrary, the Jewish tradition, and modern debates in Israel, to a large degree support a strong linkage. Historically, however, Jews have been subject to non-Jewish governmental authority; in such a setting, of course, religion and state are seen as distinct.¹⁰

Second, under Jewish principles, halakhic law is not universal; it binds Jews and only Jews. And Judaism is not a proselytizing religion. Since Judaism does not seek converts, and makes no claim to universality, it would be nonsensical to argue for the “the critical role the [Jewish] faith should play in [the nation’s] legal system and your professional life.”¹¹

Third, precisely because there is a self-contained and independent body of Jewish law with its own educational institutions, insisting that studying American law through a Jewish lens is a bit like insisting that we study chemistry that way. It can’t really be done; they are two different fields.

So explicit Jewish principles, of law or of belief, are absent from the study of non-Jewish law at Cardozo. Which is what you would expect. A Jewish law school (as opposed to a Jewish-law school) is reflecting its principles, is “being Jewish,” when it leaves God out of the discussion of man’s law.¹²

10. Suzanne Stone identifies the separation of religion and politics as a Christian principle; in contrast, Islam and Judaism “begin with strong original visions of a unified religious polity in which the political authority both is subject to and enforces the divine law.” Suzanne Last Stone, *Religion and State: Models of Separation from Within Jewish Law*, 6 *Int’l J. Const. L.* 631, 632 (2008). That description of the “unified religious polity” sounds a lot like the Liberty or Regent mission statements, except it obtains only in a mythic past and, perhaps, in the state of Israel. It has nothing to do with Jews living in a non-Jewish state.
11. A self-protective caveat is in order. I am not an expert in Jewish law or religious belief. So I am very wary of saying anything too firm about either. Moreover, there are innumerable divisions within Judaism about what its tenets are and even who is a Jew. Hence the many, many Jewish jokes that are a variation on “three Jews, four opinions.” And Judaism is far less hierarchical than are most Christian sects, particularly Roman Catholicism. All of which means that my attempt to talk about the ways in which the Cardozo Law School is or is not “Jewish” is doomed, and not because I lack a sophisticated understanding and in-depth knowledge regarding Cardozo. One last observation: in this lack of expertise, I have good company on the faculty (and among the school’s five deans, only one of whom has been Jewish), which in itself says something about the nature of the institution.
12. See Russell G. Pearce, *The Jewish Lawyer’s Question*, 27 *Tex. Tech. L. Rev.* 1259, 1262 (1996) (noting the appeal for Jews of “the professional project of law,” in which the lawyer’s (or judge’s) group identity is irrelevant to their function as a (fungible) participant within the profession and observing that “[i]n a legal system where the participants acted on their person affiliations, rather than their duty to the legal system, we [i.e. Jews] would be losers”).

C. Producing Jewish Lawyers?

Perhaps a Jewish law school is a school that produces Jewish lawyers. But what does that mean? Within Jewish law the figure of the lawyer is almost nonexistent. The judge looms large, but in general litigants represent themselves, and lawyers are almost invisible—certainly not celebrated or heroic.¹³ So Jewish law offers little direct guidance on how to be a Jewish lawyer as such.

And like so much else, a more abstract understanding of how to be a Jewish lawyer, or how to be a Jewish lawyer outside the Jewish legal system, is contested. There is no standard view of what a Jewish lawyer is (other than, tautologically, a lawyer who is Jewish). Sandy Levinson has explored five possible meanings of that term, but inconclusively.¹⁴ The motto of the Haskalah movement was “Be a Jew at home and a man on the street,” which *would* have one set of implications for Jews who are lawyers; Martin Buber has criticized such a separation of the religious self from the professional self as “totally un-Jewish.”¹⁵ Now, the fact that it’s a hard question does not mean we should not try to answer it. (Throwing up one’s hands before a tough question would be “totally un-Jewish.”) If Cardozo was determined to produce “Jewish lawyers,” it could set about answering the question of what that is, and then act in accordance with its answer.

But whatever the answer is, it is an answer for Jews. Perhaps the most basic challenge and recurrent topic of self-scrutiny for the undergraduate programs at Yeshiva University is how to blend the secular and religious, reflected in the University’s motto, “Torah Umadda” (roughly, “Torah and Science,” or “Torah and culture”).¹⁶ The undergraduate schools have an entirely Jewish student population and mission—to educate Jews. That is not the mission

13. See *id.* at 1264-66. Pearce explains:

The Jewish tradition...offers little specific guidance for the modern lawyer who practices in an adversarial system. Absent a developed or formal code of Jewish legal ethics, a Jewish lawyer may therefore adopt the values of the professional project without confronting any contrary religious authority directly on point to the lawyer’s role.

Id. at 1265.

14. See Sanford Levinson, Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity, 15 *Cardozo L. Rev.* 1577 (1993).

15. Martin Buber, *The Holy Way: A Word to the Jews and to the Nations* (1918), in *On Judaism* 112 (Nahum N. Glatzer ed., Schocken Books, New York, 1967). See also Norman Lamm, A Perspective for the Eighties (speech to Yeshiva College Alumni Association’s Golden Jubilee celebration) (May 20, 1979), available at <http://media.www.yucommentator.com/media/storage/paper652/news/2004/10/26/Yudaica/A.Perspective.For.The.Eighties-773433.shtml> (objecting that the Haskalah principle of “being Jews in one way and general citizens in another” was “no less unwise now that it was then”).

16. See Riley, *supra* note 34; Lamm, *supra* note 15.

of the university's professional schools. Precisely because a majority of our students are not Jewish, it would be not just pointless, but also inconsistent with Jewish principles, to insist that they become "Jewish lawyers" in any but the most abstract sense (which is the topic of Part III).

D. Censorship

Finally, a school could be religious in the sense that it controlled the messages given by its professors, guests, and students to ensure they were consistent with the content and interests of the religion. Some Cardozo students, and some outsiders, expect the law school to do this, by, for example, not giving a forum to public figures seen as anti-Semitic or anti-Israel. (Here again, one would find no unanimity of opinion as to either (a) whether such control over public messages was appropriate or (b) who would pass muster and who would not.)

Here a basic choice must be made. Does the religious affiliation trump fundamental values associated with mainstream legal education, including robust debate, mutual respect, and free speech? My own view, and I find it reflected at the institution at which I teach, is that at a law school the latter must prevail. Our fundamental mission is not the direct advancement of the interests of the Jewish people, even if we knew just what measures would further that goal. It is the academic, educational, and scholarly mission. The two rarely conflict, but when they do, the latter prevails.¹⁷

II. Serving Members of the Religion

If a Jewish law school is not religious in the strong sense, what other routes are there? One possibility is that it is a law school for (though not necessarily exclusively for) Jews. In this section, I discuss two ways in which that might be the case.

A. Educational Opportunities

One possible justification for any school associated with a particular group—whether defined by religion, race, politics, or whatever—would be that societal prejudices limit educational opportunities for members of the group. Such a justification had something to do with the creation of Yeshiva University's medical school, the Albert Einstein College of Medicine, which opened its doors in 1956 after almost a decade of planning. Through World War II, many American medical schools, including (and perhaps especially) the most prestigious, had at least de facto caps on the number of Jews they

17. Cardozo's current dean, David Rudenstine, has explored tensions between religious faith (which, for many, involves acceptance of certain beliefs for which there is no evidence, and the effort to impose such beliefs, or public policies based thereon, upon others) and the central underpinnings of legal education, which involve evidence, deliberation, and the bridging of differences. David Rudenstine, *Common Ground: Law Schools in American Life During the New Age of Faith*, 37 *U. Tol. L. Rev.* 143 (2005).

would accept.¹⁸ Yeshiva's medical school was in part an effort to provide more medical school spots for Jews.¹⁹

However, even if overcoming quotas was part of the back story, it was never part of the official mission of the medical school. At the time it was founded, the emphasis was entirely on the country's need for more doctors and the advancement of humanitarian ideals. And from the outset, the faculty and student body of the medical school have been nondenominational.

In addition, the law school simply cannot tell the same story. Quotas were never the issue in law schools that they were in medical schools (law firms are a different story), and Cardozo only opened its doors in 1976, by which time Jewish quotas had really disappeared from American higher education. Jews have done well in the law. They have done particularly well in the legal academy. And my sense is that members of other religions, though not as disproportionately represented in the profession, have also not been consciously excluded, so no religiously affiliated law school can be justified in this way.²⁰

When Yeshiva founded its medical school, the *New York Times* reported:

Although founded under Jewish auspices, the new school is nondenominational. Both students and faculty are selected solely on the basis of scholarship, character and ability, without regard to race, creed, or national origin. Students in the first class are from widely varying racial and religious groups and from all parts of this country and abroad.

As Dean Kogel has said, students are expected to have "a background of broad liberal education as a safeguard against irrational prejudices and suspicions of other races and cultures."²¹

18. See generally Edward C. Halperin, *The Jewish Problem in U.S. Medical Education, 1920-1955*, 56 *J. Hist. Med. & Allied Sci.* 140 (2001); Leon Sokoloff, *The Rise and Decline of the Jewish Quota in Medical School Admissions*, 68 *Bull. N.Y. Acad. Med.* 497 (1992).
19. See Halperin, *supra* note 18, at 160 (quoting one early supporter as stating that "a Jewish sponsored medical school is a powerful force that will go a long way towards destroying racial and religious bigotry...and combat existing quota systems so prevalent in many medical schools").
20. I do not know what percentage of Cardozo's student body is Jewish. My guess is that it is comparable to the Jewish population at other law schools in New York City. Applicants do not always realize this; cruising the law school discussion boards, as I sometimes do, one bumps into a dishearteningly large number of threads about whether a non-Jew can attend Cardozo at all or, more often, whether a non-Jew would be comfortable surrounded by so many Jews. There is more than a whiff of anti-Semitism in some of these discussions.
21. Howard A. Rusk, *Dedication at Yeshiva: An Analysis of the Role Einstein College of Medicine Will Play in Nation's Health*, *N.Y. Times*, Oct. 23, 1955, at 46.

The quote from the dean hints that the medical school was hoping to draw students who would not hate each other generally, and, perhaps, would not hate Jews in particular. And it implies a very contemporary hope that a diverse student body would help inculcate those values. I think everyone at Cardozo and Yeshiva University would endorse those two paragraphs today, and they are normatively inconsistent with religious exclusion or the privileging of one religion over another.

B. Accommodation of Religious Belief and Practices

While most religiously affiliated schools are not limited to, or designed to create opportunities for, members of the religion, they are in general comfortable places for observant members of that religion. The reasons are in part abstract or psychological—the institutional commitment legitimates and mainstreams points of view that might be outliers elsewhere, requiring veiling or justification. And they may be intensely practical, by making it easier to adhere to religious strictures than is the case in a more secular institution. Both are true at Cardozo.

The first is hard to quantify. In general American law schools are not hot-beds of anti-Semitism; I think observant Jews can be comfortable at most law schools. That is certainly true of the law schools in New York City.

The second involves all the ways that Cardozo is visibly (which may be a synonym for “superficially”) a Jewish school. We close early on Fridays and are closed all day on Saturdays; I cannot go to my office on Saturday even if I want to. We close for all sorts of Jewish holidays—not just Rosh Hashana and Yom Kippur—and we are really closed; it’s not just that classes are cancelled. Our spring vacation is always scheduled to occur over Passover. So in some years we have thirteen weeks of classes, then our mid-semester break, and then a final week of classes followed by exams. There is a mezuzah on every door (except those of certain individual faculty members who view their offices as their own, not the university’s, and have removed them, which they are allowed to do). All food served in the cafeteria and at law school events is kosher, and kosher is strictly defined—the rabbis at the university have a very short list of approved caterers. At graduation, the benediction is always given by a rabbi and we close the ceremony with the Israeli national anthem, the *Hatikva*. The YU seal, which appears here and there (though not on Cardozo’s stationery), contains a Torah scroll and Hebrew text. The inter-school moot court competition we host takes place on Thursday, Friday, and Sunday; no arguments on Saturday (which among other things means that observant Jews from other schools are disproportionately represented among the competitors). A seminar room is reserved for afternoon prayer and equipped with prayer books, and a small minyan gathers there every day. The maintenance staff constructs a *sukkah* for Succot.

All of this means that Cardozo is a very comfortable place for observant Jews, who are relieved of making the sorts of choices and sacrifices they confront in the American mainstream. This is an important role for the school

to play. Christian schools do not serve an equivalent function, I think, since the practical obligations of Christian religious observance are (a) less intrusive and (b) more reflected in the general culture. Yet, while this is an important role for Cardozo to play, it is not an essential one, as is made plain by the rate at which observant Jews turn down Cardozo to go to higher-ranked institutions, a rate which, it would appear, is not really different than the rate at which their non-observant and non-Jewish counterparts do the same thing.

Moreover, these characteristics do not make Cardozo (or Touro) Jewish in a profound way. First, while they mean Cardozo is a comfortable place to be an observant Jew, everyone at Cardozo is determined that it not be an uncomfortable place for those who are not Jewish. And it is not. Second, I suspect these artifacts of Judaism have little or no meaning for those who are not Jewish. They are curiosities, occasionally inconvenient ones, but not defining features of the law school.

III. A Secular Education Informed by Religious Values?

If a religiously affiliated law school is not of religion, or for religious adherents, perhaps it might be informed by values that inhere in the religion. These values would be wholly capable of being endorsed by, and reflected in the lives and actions of, atheists. That is, the secularized tenets, or secular counterparts of religious tenets, might shape the education offered. Again, this could be true of any religion, but I will focus on ways in which it is arguably true at Cardozo.

A. The Centrality of Law in the Jewish Tradition

It is sometimes said that Cardozo's very existence reflects the fact that law lies at the heart of Judaism. Surely the centrality of law in the Jewish tradition goes far to explain why a Jewish university should have a law school. But it really tells us nothing about what sort of law school it should have. And the fact that the animating tradition places law in a central position does not distinguish Yeshiva University's law school from any other university's law school. In any university, law will be central at the law school. So this is really a proposition about how a law school fits within the university, but is not a basis for distinguishing religiously affiliated law schools from any others.

The same point can be made of two other aspects of the "Jewish tradition" –its commitments to scholarship and to excellence. Here, too, these values are hardly unique to Judaism. One would hope to find such commitments at any law school. Indeed, the move of legal training from the law office into the university, and the continued shift over the last century toward an increasingly academic approach to law within law schools, reflects a general

commitment to a scholarly approach to legal training. The idea was never that the best practical training of lawyers could be found in the university; rather, it was that law is or should be a learned profession, that lawyers should learn systematically rather than haphazardly, and law was an appropriate topic of scholarly inquiry. If these are Jewish values, then we are all teaching at Jewish law schools.

B. Torah Lishmah

Torah Lishmah (roughly “the study of Torah for its own sake”) is both the title of a book by Yeshiva University’s former president and current chancellor, Norman Lamm, and a central Jewish value.²² Indeed, it is often observed that of the 613 *mitzvot* (commandments) the most important is study. Rabbi Lamm has said that Cardozo reflects Jewish values in its commitment to study for its own sake, de-emphasizing the “trade school” angle and the instrumental value of a legal education and emphasizing the less practical, more theoretical inquiries and the simple joy in learning.²³

No law school, by definition, can be entirely devoted to study for study’s sake. As a professional school, law school is an instrumental education for almost all of its students; they come to law school with a goal that is quite separate from personal enrichment, general insight, or the joy of learning. Nonetheless, I think there is something to this idea at Cardozo, which displays a bent toward abstraction and theory. One of the things we try to do is move students away from their instrumentalist view of legal study, to convince them that they get something out of their three years separate from the piece of paper that lets them sit for the bar exam that lets them practice law.

However, Cardozo is not unique in this. Most law professors are interested in study for study’s sake, and aim to inculcate some such enthusiasm in their students. While there has been, of course, some MacCrate Report-style push back, over the years the legal academy in general has become less focused on producing lawyers. Law school is treated by the professoriate (sometimes to the dismay of students) less as a means to an end and more as an end in itself. Furthermore, while Cardozo is, by law school standards, a theory-oriented school, I would be hard pressed to say that this is because it is part of Yeshiva University.

22. Norman Lamm, *Torah Lishmah: Study of Torah for Torah’s Sake in the Work of Rabbi Hayyim Volozhin and his Contemporaries* xi-xiv, 190-98 (Ktav Publishing, Hoboken, NJ, 1989).
23. See An Interview with President Norman Lamm, *Cardozo Life*, Spring 1999, available at <http://www.cardozo.yu.edu/life/spring1999/lamm/>.

C. Ethics

Perhaps the most obvious way in which a religious affiliation might be felt within a law school is through a commitment to high ethical standards. Abiding by moral precepts is a sort of secularized version of religious belief, or the importation of central religious precepts in a stripped down form into a nonreligious setting. Consider Yeshiva's mission statement. The University's slightly PR-firm flavored catch phrase is "bringing wisdom to life." So the mission statement identifies the ways in which Yeshiva does so. For undergraduates, this has everything to do with the Jewish religion:

We bring wisdom to life by combining the finest, contemporary academic education with the timeless teachings of Torah. It is Yeshiva's unique dual curriculum, which teaches knowledge enlightened by values, that helps our students gain the wisdom to make their lives both a secular and spiritual success.²⁴

But for graduate students, it has everything to do with ethics:

Yeshiva brings wisdom to life by not only teaching the knowledge and skills to be highly accomplished scholars and professionals, but by teaching the ethical and moral values that will make them truly admirable people. It is our dual emphasis on professional excellence and personal ethics that gives our graduate students the wisdom to succeed in both their professions and their lives.²⁵

Thus, religion falls by the wayside, or is domesticated into ethics, or values. That is the secularized version of belief. And indeed, an insistence on the importance of ethics is a recurrent theme of religiously affiliated schools' self-descriptions.

24. Yeshiva University Mission Statement, For Undergraduate Students, *available at* <http://www.yu.edu/MissionStatement/> (last visited March 3, 2009).

25. *Id.*, For Graduate Students. Similarly, here is an excerpt from the President's message on the Touro website:

In keeping with our mission to advance understanding of the relevance of the Jewish tradition to the study of modern legal systems, we seek to illuminate as well as to educate; to encourage students to aspire to the highest ethical values; and to develop lawyers who enhance practical knowledge with perceptive judgment.

Touro Law Center web site, "College President's Message," *available at* http://www.tourolaw.edu/about/why/college_presidents_message.asp (last visited March 3, 2009). (The Touro dean's message makes no reference to the school's Jewish connection.) The President continues in a Kronmanian vein:

We realize that lawyers are increasingly being called into policy-making roles in world government, business, and economics, so we make it our highest priority to instill in our students a sense of moral responsibility to those they serve. We will, therefore, continue to dedicate ourselves to these purposes and to sustain an educational program that inculcates in our students and graduates a lasting commitment that reaches beyond their vocation into the world at large.

Id. Cf. Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press, Cambridge, 1993).

Here again, however, religiously affiliated law schools have not exactly cornered the market. The ABA generally, and its Standards for Legal Education in particular, both of which are decidedly secular in nature, match any law school for at least the rhetorical emphasis on the importance of ethics in legal education. Suppose the ABA were no longer to require all accredited schools to ensure coursework in professional responsibility. It is possible that religiously affiliated law schools would be more likely to retain the professional responsibility requirement than others, but I am not sure. And at bottom that does not really matter: the course is an ABA requirement because the profession is wed—at least in principle and rhetorically—to the ethical practice of law. Perhaps the ABA and the profession do so in order to protect lawyers' reputations and business rather than out of conviction—PR as PR—whereas those at religiously affiliated law schools “really believe it.” But I don't know how to prove that, and I doubt the meaningfulness of talking about the sincerity or core beliefs of institutions as opposed to individuals.

Around the time Cardozo and Touro were founded, *Tradition* magazine ran an article entitled “What Should a ‘Jewish’ Law School Be?”²⁶ The author argued that “[t]here should be at least two aspects to the Jewish character of a Jewish Law School”: an emphasis on the historical development of the law and, of course, an emphasis on ethical issues, including scrutinizing secular law for its ethical adequacy.²⁷ Accepting that these inquiries are fundamental characteristics of Jewish thought, they are hardly foreign to mainstream legal education. And the overlap with how law is taught in general becomes clearer when the author gets to specifics. For example, he says that in a constitutional law course, judicial review should “be subject to the test of ethical outlook. Is judicial review an improper substitution of minority or elitist rule for majority or popular rule? Is it an appropriate safeguard for the tradition of historical institutions? Is it an abandonment of government self-determination by the people involved?”²⁸ Yet exactly those questions are raised every year in non-Jewish law schools across the country. Like Monsieur Jourdain, who was surprised, and delighted, to discover he was speaking prose, so might all constitutional law professors be struck to learn that all along they have been taking the Jewish approach to *Marbury v. Madison*.

D. Service

The value, and arguably the obligation, of service to others is a central part of Jewish teaching; if anything, it is an even stronger part of the Catholic tradition. So, for example, religiously affiliated law schools often point to

26. Lawrence A. Kobrin, What Should a “Jewish” Law School Be?, 14 *Tradition* 3, at 15 (Spring 1974).

27. *Id.* at 16-19.

28. *Id.* at 19.

their clinical programs as manifestations of their religious identity. Yet, as John Breen has written, “[i]f clinical education is the heart and soul of Jesuit identity, then Harvard, Texas and UCLA are excellent “Jesuit” law schools, to say nothing of Pepperdine and Cardozo.”²⁹ In short, as with regard to the central role of ethics, the religious emphasis on service does little to distinguish among religious schools or between religious and secular schools.

V. Conclusion

Basic structural factors dictate that most religiously affiliated law schools are not “religious” in the strong sense. First, the curriculum, by the nature of the enterprise, is not religious in a narrow sense. Second, the faculty includes many who either are adherents but nonobservant or not adherents at all.³⁰ Third, so does the student body.³¹ These factors are present in a setting characterized by (a) the tradition of thinking, and to some extent working, for oneself, (b) embedded difficulties in top-down dictates (insert here the obligatory “herding cats” metaphor), (c) principles of academic freedom, and (d) general problems of agency costs. And, on top of that, for many schools a distancing from sectarian education is necessary to qualify for government funding. Put all that together, and a law school that is religious in the strong sense will be a rare creature indeed.

Accordingly one would expect most religiously affiliated law schools to have a rather modest vision of what that means. And so they do. On one count, slightly out of date, there are forty-eight religiously affiliated law schools in the United States, of which thirty-seven are “functionally secular,” seven occupy a

29. John M. Breen, *The Air in the Balloon: Further Notes on Catholic and Jesuit Identity in Legal Education*, 43 *Gonz. L. Rev.* 41 (2007-08).
30. On the centrality of faculty hiring to advancing a law school’s mission, especially its religious mission, *see* Richardson R. Lynn, *Mission Possible: Hiring for Mission in a Vague World*, 33 *U. Tol. L. Rev.* 107 (2001). Pepperdine’s law school asks faculty candidates to complete a questionnaire that, among other things, asks the applicant to “discuss the extent and nature of your interest in and ability to contribute to” the University’s Christian philosophy and purpose. *Id.* at 109 & n.10. Dean Lynn observes that while the law school “welcomes faculty members from other denominations and faith traditions” than the Church of Christ, “our experience is that professors who are not active in their own faith cannot be relied on to support the mission of a religiously affiliated law school over time.” *Id.* at 110 n.11. A religiously affiliated law school whose faculty is essentially indistinguishable with regard to religious commitments from a wholly secular law school simply cannot reflect or further that religion in any meaningful way.
31. I would mention one other factor that seems relevant in the case of Cardozo, and, I would think, for schools such as Touro and Georgetown: namely, a geographic separation from the main university campus. Cardozo is the only part of the university at its location; the main campus is almost ten miles to the north. So it is a sort of a colony; traces of the mother country are evident, but no one would confuse Martinique for France. Cardozo would “feel more Jewish” if it was surrounded by the rest of Yeshiva University instead of Greenwich Village, NYU, and the New School.

middle ground, and only four are truly “sectarian.”³² A two-decade old survey by Rex Lee, a strong advocate for religiously affiliated schools, reached a similar conclusion.³³ For the various reasons set out above, one would particularly expect a Jewish law school to fall in the “functionally secular” category.

The Cardozo School of Law is a place where observant Jews are not just comfortable (which they may also be at non-Jewish institutions) but where those observations are as simple as possible, where those with an interest in Jewish law will find extensive opportunity for study and enrichment, and where those with no background may learn a little bit about Judaism. One can also perceive a more dilute or abstract Jewish influence in important institutional commitments and approaches. Yet in general those are so widely shared in the academic community that their “Jewish” character is largely, though not entirely, coincidental.

So I am tempted to say that all law professors are speaking prose, and doing so at Jewish law schools, and my own law school cannot, by virtue of its religious affiliation, contribute to the sort of meaningful diversity and institutional pluralism that Dean Garvey seeks to celebrate and enhance.

32. Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 *Stan. L. Rev.* 1859, 1864 (1993).

33. Rex E. Lee, *The Role of the Religious Law School*, 30 *Vill. L. Rev.* 1175, 1177-78 (1985) (reporting that few religiously affiliated law schools have given “any explicit consideration” to incorporating religious values into the overall curriculum).