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THE SYNERGISM OF LAW AND RELIGION†

JOSEPH W. BELLACOSA*

The problems of our society seem so relentless and insoluble. Our codices of law and our religious repositories are too often found lacking for the ultimate answers which tease, haunt and elude us. In fact, we regularly find law and religion in counterpoint, indeed as though they were mortal, inherent enemies. I do not use the word "religion" synonymously with "morality." Those words have very significant historical and metaphysical differences. Law and religion, however, are treated and perceived as adversaries locked in a permanent state of hostilities. In our culture and in our governmental structure we are constantly referenced to the metaphors of a wall of separation between the state representing law and the churches representing religion. Indeed, this metaphorical wall is painted as absolute, impregnable and high. Justice Frankfurter, writing on the subject in an opinion, helps us a bit in this metaphorical context by noting that "good fences make good neighbors."¹ Yet, that separation metaphor overall gives validity to the portrayal of these two in constant tension. Ideological, sociological, governmental and philosophical poles are staked out to prevent insinuation of the one into the other. Must this be so polemical? Can there be some harmony, some compatibility, some spirit of shared goals, indeed a synergism—which does not offend or sacrifice the sacred pillar of separation in our government?

Incidentally, I chose the title and theme of synergism, not to inflict a polysyllabic word on this audience but to force us to think freshly about this subject and even force us to turn to the dictionary and other books to pursue its meaning and implications. My central thesis is that there is a process of synergism in law and religion which can be articulated, without sacrificing one iota of the separation doctrine. Synergism is the coopera-

† This article is taken from a speech delivered at the Hillcrest Jewish Center in Jamaica, New York, in connection with the Brandeis Law Association Sabbath.

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¹ *McCollum v. Board of Educ.*, 333 U.S. 203, 232 (1948).

tive action of discrete agencies such that the total effect is greater than the sum of the effects taken independently.² A second definition is that it is the doctrine that human effort cooperates with divine grace into regeneration or salvation or goodness.³ Both definitions serve my purposes in unfolding a process which simultaneously and respectfully preserves and provides healthier understanding of the foundation principle of our wise Founders that "Congress [the State] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁴ This process has the potential to be a force for good, a positive, constructive force, which will not allow an insidious adversarial counter force to dominate and distract us.

The great commandments of our religions eventually lead to the realization of the need to treat all our brothers and sisters as we would ourselves, all of us being reflections of a good and caring Creator who is greater than we are. Some view this as simplistic, some with skepticism and even others with great cynicism, but I believe that some of its greatest beauty is in its simplicity. This is especially true in the application of this religious tenet to the weak, the disadvantaged, even to the pariahs and to our own enemies. As a matter of fact, applying it in those instances is the great test and the tough part of living out that religious principle. Pause now for a moment, please, and think of the synergies of that great fundamental religious law with secular law, and especially its further synergies with our constitutional law, which favors and protects the rights of the individual, of the downtrodden, of minorities, indeed of the rejected outcasts and malefactors of our society. Law and religion in synergies should thus both inspire us and direct us towards good in our society.

As an example of these thoughts, I share two short sentences from biblical readings I rendered these past two weeks in our little church in Guilderland, New York. From the Book of the prophet Daniel: "Those Who Lead the Many to Justice Shall Be Like The Stars Forever."⁵ And in the New Testament from the Apostle Mark, drawing on one of the great commandments of the Old Testament as well: "Love Your Neighbor as Yourself."⁶

As a law teacher for many years and as someone associated in a number of capacities with the courts of this state for many years, where a kind of teaching role continues—I have personally held to and tried to inculcate in others a particular philosophy of the importance of every

² WEBSTER'S NEW COLLEGIATE DICTIONARY 1198 (9th ed. 1983).

³ THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1967).

⁴ U.S. CONST. amend. I.

⁵ *Daniel* 12:3.

⁶ *Mark* 12:31.

case no matter how mundane or routine. Why? Because behind each case there are individuals, real people, in turmoil and conflict who even over small things and minor disputes, have turned to the courts for respite and resolution. They are entitled, indeed they rightfully demand respectful, careful deliberation, what I call the dignity of their case and their persons. This legal philosophy, if I may call it that, rises synergistically from the deep roots of the great commandments of our religions. Law and religion in this respect live, work and thrive side by side in a cooperative calculus which produces a result greater than the independent and separate action of each.

I would like to try to illustrate this theme with two issues which vitally affect our lives and our values, as caring human beings and as people of responsibility. These issues are intertwined with our religious beliefs and our secular laws.

Closest to home—and I intend deliberately the play on words—is the problem of the homeless in our midst. Our laws do not do enough, recognizing that our resources are insufficient and clearly finite. Ironically and paradoxically, our laws often foster even greater problems in dealing with the homeless. Our deep respect and protection for individual choice and freedoms is one contributing cause for the phenomenon of the release of so many mentally ill or infirm onto our streets with no one to care for them or about them.

Synergistically with the government's efforts, but painfully, slowly and inadequately, our religious communities and congregations are awakening to their responsibility and to the challenge of directly aiding the homeless. The problem is that we fear for our personal needs and the preservation of self and property and our neighborhoods. So a kind of selfishness and misguided view of self-preservation and protectionism takes hold and we resist the beautiful and healthy synergism of law and religion which is striving to reach out and help these thousands of helpless human beings in our midst. You might say we miss a real opportunity to be simply graceful, beautiful and good. I would like to share with you an excerpt from a poem on this subject from a book called *Breaking Bread*⁷, a biography of Dorothy Day the founder of the Catholic Worker movement in New York City:

Ambassadors of God

People who are in need and are not afraid to beg give to people not in need the occasion to do good for goodness' sake. Modern society calls the beggar bum and panhandler and gives him the bum's rush. The Greeks used to say that people in need are the ambassadors of the gods. "To be God's Ambas-

⁷ PIEHL, *BREAKING BREAD* (1982).

sador is something to be proud of.”⁸

The needy are thus doing us a favor by allowing us to rise to greater heights as human beings and for that they deserve not an attitude of *noblesse oblige* but one of great dignity, respect and appreciation on our parts.

Much of the Mitzvot— the great collection of 613 by which Jews relate to God and to one another and to all other human beings— struck me as keyed to this principle of caring about and for others and the root reason for it— the obligation to and the recognition of the Creator’s will about how we should deal with others. Chief Judge Wachtler recently shared with me his book by Rabbi Abraham Chill, entitled *The Mitzvot*,⁹ so that I might better appreciate your essential belief tradition in this respect and to the synergesis between religion and state on this particular issue of homeless human beings.

I offer a second illustration, on the global or cosmic level— the threat of nuclear holocaust or more positively, the opportunity for nuclear disarmament.

Here again we find governmental policy, in the international sense, in a quandary about how to allow the process of synergesis between religion and state to help us. Unless nationalism versus internationalism, state versus individual, pacifism versus self defense can find common grounds and synergesis, as it painfully did on the issues of slavery and civil rights, we will fail here in the most definitive, profound fashion known to creation— or what is left of it. Would that the leaders of our nations recognize and order our affairs in the face of this harsh reality as they tried to do in Geneva in the past and must continue to try to do. The monumental nature and complexity of the issues must not freeze us into inaction. I also speak of international human rights, freedom for Soviet Jews, peace in the Middle East and the world and the end of Apartheid. This is quite a formidable agenda of tasks!

As I reflected on what I would say to you this evening and discussed it with others, I searched for how I could put words and ideas into even more concrete day-to-day terms so that my thesis might have greater meaning, so that its value could be tested and thus ultimately so that it might enjoy some receptivity, if found valid and useful. At first blush a seemingly odd literary reference came to mind. Herman Wouk’s recent best-seller, *Inside, Outside*¹⁰ is a delightful and hilarious description of the generations of Jewish immigrants. I enjoyed this book very much and learned from it as well. Yisroelke (I. David Goodkind) is the main charac-

⁸ *Id.* at 103.

⁹ RABBI A. CHILL, *THE MITZVOT: THE COMMANDMENTS AND THEIR RATIONALE* (1974).

¹⁰ H. WOUK, *INSIDE, OUTSIDE* (1985).

ter, and what he and the author taught me through the literary devices and themes of this novel is that many of the fundamental laws of state, culture, tradition and religions meld occasionally and become as one. That law, as I detected it in this book's underlying message, is the respect and love between members of families, the father with his son Yisroelke and the son Yisroelke, in turn, with his daughter. This value, which we have all experienced, manifests itself and transcends all the conflicts, disappointments and difficulties which also afflict all families at one time or another in greater or lesser degrees. What I see here again is the synergesis process at work.

An important cautionary point—synergesis can fail or worse it can operate in a manner to produce evil. We must be especially vigilant in this respect lest law and religion in some awful unholy alliance, as we have seen happen historically, be turned against us to produce the fiercest horrors of all, holocaust or genocide or religious war. I speak of synergesis as a wholesome, healthy, positive force in our society.

It is my hope that as lawyers, judges, rabbis, ministers, officials, priests, indeed simply as citizens and members of the congregation of the Hillcrest Jewish Community, bound to one another in an endless quest for goodness and excellence, that we will each and all enjoy a synergesis of these two foundation pillars of our society, law and religion.

What this ultimately comes down to is an embrace and a choice of values. Judge Cardozo, addressing the Jewish Institute of Religion in his piece entitled "*Values*," described this in the parable and poem of the Danish astronomer Tycho Brahe who charted the heavens. Brahe's new King had advisors who concluded this was a waste of time and money and talent. Cardozo first recites Brahe's poem about the value to future generations of his counting and charting the stars:

Yes, I still hope in some more generous land
To make my thousand [stars] up before I die.
Little enough, I know—a midgets work.
The men that follow me with more delicate art
May add their tens of thousands; yet my sum
Will save them just that five and twenty years
Of patience, bring them sooner to their goal,
That Kingdom of the law I shall not see.
We are on the verge of great discoveries.
I feel them as a dreamer feels the dawn
Before his eyes are opened.¹¹

With that taste of a much longer and beautiful poem Cardozo then adds this prose narrative and interpretation:

The submergence of self in the pursuit of an ideal, the readiness to spend oneself without measure, prodigally almost ecstatically for something intuitively apprehended as great and noble, spend oneself one knows not

¹¹ B. CARDOZO, *Values: The Choice of Tycho Brahe*, in *SELECTED WRITINGS OF BENJAMIN CARDOZO: THE CHOICE OF TYCHO BRAHE* (M. Hall ed. 1947).

why—some of us like to believe that this is what religion means.

Let us not make the blunder of supposing that to live in communion with these ineffable values of the spirit, to spend oneself utterly in sacrifices and devotion, is a lot reserved for a chosen few, for an aristocracy of genius, for those that will be ranked in history among the mighty or the great. . . . To the glory of our humanity, the lowly equally with the mighty may be partakers in this bliss. . . . They had made it in humbler forms, by love, by gentleness, by sweetness, by devotion, by sacrifice of self. . . . We may not always have been conscious of its beauty. The end comes, and behold it is illuminated with the white and piercing light of the divinity within it. We have walked with angels unaware.¹²

These beautiful words mask hard lessons to follow but they are certainly worth following. I close with a favorite quote from the Jesuit philosopher and theologian, Teilhard de Chardin, who puts this all in fine focus in "*Toward The Future*" and tells us why it is truly worth living by these rules:

"After harnessing the ether, the winds, the tides, and gravitation, we shall harness for God the energies of love. And, on that day, for the second time in the history of the world, man will have discovered fire."¹³

That is synergism.

¹² *Id.*

¹³ T. DE CHARDIN, *TOWARD THE FUTURE* 86-87 (R. Hague trans. 1975).