Nine American

Jewish Thinkers

Milton R. Konvitz

Nine American Jewish Thinkers

Books by Milton R. Konvitz

Author

On the Nature of Value
The Alien and the Asiatic in American Law
The Constitution and Civil Rights
Civil Rights in Immigration
Fundamental Liberties of a Free People: Religion, Speech, Press, Assembly
A Century of Civil Rights
Expanding Liberties
Religious Liberty and Conscience
Judaism and the American Idea
Torah and Constitution: Essays in American Jewish Thought
Nine American Jewish Thinkers

Editor

Bill of Rights Reader: Leading Constitutional Cases
First Amendment Freedoms: Selected Cases on Freedom of Religion, Speech, Press, Assembly
Judaism and Human Rights
The Recognition of Ralph Waldo Emerson
Emerson: A Collection of Critical Essays (with Stephen E. Whicher)
The American Pragmatists (with Gail Kennedy)
Freedom and Experience (with Sidney Hook)
Essays in Political Theory (with Arthur H. Murphy)
Aspects of Liberty (with Clinton Rossiter)
Law and Social Action: Selected Essays of Alexander H. Pekelis
Education for Freedom and Responsibility by Edmund Ezra Day
Liberian Code of Laws; Liberian Code of Laws Revised; Liberian Law Reports

Nine American Jewish Thinkers

Milton R. Konvitz

First published 2000 by Transaction Publishers

Published 2017 by Routledge

2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

711 Third Avenue, New York, NY 10017, USA

*Routledge is an imprint of the Taylor & Francis Group,
an informa business*

Copyright © 2000 Taylor & Francis.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Notice:

Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation

Library of Congress Catalog Number: 00-037388

Library of Congress Cataloging-in-Publication Data

Konvitz, Milton Ridvas, 1908-

Nine American Jewish thinkers / Milton R. Konvitz.

p. cm.

Includes bibliographical references and index.

ISBN 0-7658-0028-4 (alk. paper)

1. Jewish philosophers—United States—Biography. 2. Jewish judges—United States—Biography. 3. United States. Supreme Court—Biography—History. 4. Rabbis—United States—Biography. 5. Jews—United States—Intellectual life—20th century. 6. United States—Civilization—Jewish influences. 7. United States—Biography. I. Title.

E184.37 .A153 2000

973.04'924'0099—dc21

00-037388

ISBN 13: 978-0-7658-0028-2 (hbk)

For Mary

“Many waters cannot quench love,
neither can the floods drown it.”

—Song of Songs

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

“Now let us go forward, whether we shall give
glory to another man, or he to us.”

—Homer

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Contents

Introduction	1
Part 1: Philosophers	
1. Horace M. Kallen	7
2. Morris Raphael Cohen	23
3. Sidney Hook	41
Part 2: Jurists	
4. Louis Dembitz Brandeis	63
5. Benjamin Nathan Cardozo	85
6. Felix Frankfurter	105
Part 3: Rabbis	
7. Leo Jung	123
8. Robert Gordis	137
9. Jacob B. Agus	147
Index	165

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Acknowledgments

Grateful acknowledgement is made to the following publishers or publications for permission to reprint essays in this book, as follows:

New York University Press for the essays on Horace M. Kallen and Morris Raphael Cohen from *The Other New York Jewish Intellectuals*, Carole S. Kessner, ed. (1994), and the essay on Jacob Agus from *American Rabbi: The Life and Thought of Jacob Agus*, Steven T. Katz, ed. (1996).

Prometheus Books for the essay on Sidney Hook from *Sidney Hook: Philosopher of Democracy and Humanism*, Paul Kurtz, ed. (1983).

B'nai B'rith for the essay on Louis D. Brandeis from *Great Jewish Personalities in Modern Times*, Simon Noveck, ed. (1960).

Theodor Herzl Foundation for the essay on Benjamin Nathan Cardozo that appeared in the May/June 1999 issue of *Midstream* and part of the essay on Leo Jung that appeared in the August/ September 1993 issue of the magazine.

American Jewish Congress for the essay on Robert Gordis that was published in *Judaism*, Winter 1993 issue.

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Introduction

As the captives sat by the waters of Babylon, they asked, "How shall we sing the Lord's song in a foreign land?" In a score or more of centuries, by the waters of many lands, Jews have asked this question. In the twelfth century in Spain, Judah Halevi cried that though he lived in the West, his heart was in the East.

Today, as I write these words, a Jew is poet laureate of the United States, by appointment of the Library of Congress. As he sits by the waters of the Potomac, Robert Pinsky does not mourn that his heart is in the East and does not ask, "How shall I sing the Lord's song in a foreign land." Though he has not forgotten Jerusalem, with Walt Whitman he believes that the "United States themselves are essentially the greatest poem." How can the greatest poem not be the Lord's song?

The nine American Jews about whom I write in this book were not poets. They were philosophers, or jurists, or rabbis. They did not consider themselves captives sitting by the waters of Babylon, and though each of them, in his own private way, remembered Jerusalem, each in his own way sang the Lord's song and believed that the United States was the greatest poem, perhaps even the Lord's song.

Six of the persons about whom there are essays in this book are widely known and are readily accepted as American Jewish thinkers; namely, Horace M. Kallen, Morris Raphael Cohen, Louis D. Brandeis, Leo Jung, Robert Gordis, and Jacob B. Agus. One may, however, wonder how I have come to include essays on Sidney Hook, Justice Cardozo, and Justice Frankfurter, for they were not known in their lifetime to have made important contributions to Jewish life or thought. They are included because their work reflected essential Jewish values. Each in his own way dedicated his life to *tikun olam*, to the betterment of life and the advancement of human ideals. Justice Cardozo

and Justice Frankfurter each used his genius, his superior intellectual gifts in legal analysis and creative interpretation and insights in the interests of justice; and Sidney Hook applied his massive powers of intelligence, of reason and intellect, to the pursuit of truth and the enhancement of human liberty and righteousness.

The nine persons belong together as American thinkers. Their Americanism permeated all their thoughts. But how Jewish were they? This is a rather thorny question. If their Jewishness is defined by religion, then only the three rabbis and possibly Cardozo would qualify; the other five clearly belong in the nonreligious, or secularist, category. But I mention this differentiation only to brush it aside, for I see no great wall of separation that keeps apart the secularists from the religious Jews. In this complex world secularists often serve God more handsomely than do members of synagogues or temples. When the Supreme Court in 1954 (with Felix Frankfurter playing a key role behind the scenes) unanimously agreed to outlaw segregation of the races in public schools, was the Court's action secular or religious? When, in 1990, Congress passed the statute known as the Americans With Disabilities Act, that requires equality of treatment of handicapped persons, was the action secular or religious? Is a minimum wage act secular or religious? Is Medicaid a secular or a religious act? The lines of distinction are not merely blurred, they are no longer relevant. Horace Kallen wrote a book with the title *Secularism is the Will of God*. The title neatly summarizes a philosophy of religion, or a philosophy of secularism. For it is our religion that teaches us to transcend religion to do God's will.

The story is told of a pious Jew asking his rabbi: "We are taught that everything in life has its purpose but what possible use can be found in atheism?" "Ah!" said the rabbi; "atheism has a great purpose. For when you see a homeless man, you might say to him, not to worry, God will provide him with a home. Or when you see a man who is in need of food, you might say to him to wait for God will provide him with food. If you behave this way, you will be a great sinner. You must act as if there is no God. You must act as if you do not believe that God exists. You must provide shelter, you must provide food for the poor!"

A Jewish community that values its traditions has societies that are directed to meet every ethical obligation: it has a Hebrew free loan society, an organization that provides poor brides with dowries, a free

clothing society, a house that is a shelter for indigent travelers, and so on and on, organizations set up to take care of needs from birth to burial (including a free burial society). For Judaism teaches that God exists in order to teach us how to act as if God did not exist!

The Talmud records that the ancient rabbis of Yavneh had a favorite saying: "I am a creature of God and my neighbor also is his creature. My work is in the city and his is in the field. I rise early to my work and he rises early to his. But perhaps you may say that I do great things and he does small things. We have learned that it matters not whether a man does much or little, if only he directs his heart to heaven" (Berachot 17a). It is in the spirit of the ancient rabbis that I obliterate the distinction between the religious and the secularists who are included in these essays.

In a Hebrew poem that he wrote in the mid-nineteenth century, Judah Leib Gordon wrote, "Be a Jew in your tent, and a human being when you go out." But this advice is based on the idea that Judaism or Jewishness can be confined to a limited sphere; that Jew and Mensch are radically different beings; that one can be a Jew and not be a Mensch. Socrates, it should be ever remembered, prayed that the outer and the inner man be at one. The ideal of Torah u-Madda, Torah and secular learning, Judaism and secularism, does not contemplate a bifurcation of the Jew, but an enlargement, so that one's secularism is religious, one's religion is secularist.

I want the reader to know that six of the essays--those about the three philosophers and those about the three rabbis--are about persons who were my dear friends. I make mention of the fact with natural pride and satisfaction. I believe that one is justified to have concerned himself with the life and thought of persons whom he liked and loved, whom he admired and respected.

The division of the book into three parts reflects my own intellectual and religious interests. Philosophy and Judaism, however, unlike the law, could not be compartmentalized. They permeated all my other interests. They possessed not only my mind but also my heart. Perhaps this is why the philosophers and the rabbis stood in a special relation to me. They spoke to me not only with their minds but also with their hearts, and demonstrated to me how a person can direct his heart to heaven.

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>