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Chutzpah

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CHUTZPAH. By Alan M. Dershowitz. Boston: Little, Brown & Co. 1991. Pp. 354. \$22.95.

In *Chutzpah*, Alan M. Dershowitz¹ suggests that most Jews in America act as if they are second-class citizens: "Despite our apparent success, deep down we see ourselves as second-class citizens — as guests in another people's land. We worry about charges of dual loyalty, of being too rich, too smart, and too powerful. Our cautious leaders obsess about what the 'real' Americans will think of us" (p. 3).

The book asks, "is it possible for Jews to achieve normalcy in a 'Christian country' like America, or can that happen only in the Jewish state of Israel?" (p. 3). Dershowitz answers his questions in the form of a winding narrative that tells the story of his own life, with digressions into the details of some of his cases, the lives of his friends, and his views on a variety of subjects, ranging from anti-Semitism — the most persistent of his topics — to disputes within the American Jewish community, American foreign policy, and the First Amendment. Surprisingly, this book, which tackles subjects as far afield as anti-Semitism at Harvard University and United States immigration policy toward Soviet Jews, hangs together well.

Dershowitz writes in a personal and informal manner, very much as if he were in the room chatting with the reader. In this respect, he falls into a tradition of Jewish authors. In an introduction to an anthology of Jewish-American stories, Irving Howe wrote,

[Jewish stories] take on, among American Jewish writers, an additional tremor of feeling because they are linked to a belief or delusion that "we" have grown up under circumstances different from all others. In a good portion of American Jewish fiction, this belief can lead uncomfortably close to sentimentalism and self-indulgence, to say nothing of the tiresome bric-a-brac of local color.²

Dershowitz spices his narrative with much color, including the use of Yiddish words, that he thankfully defines, and the bric-a-brac of anecdotes. The reader who is interested primarily in Dershowitz' views of cases and legal issues may tire of the discussion of his family and professional life. Others will find the stories the most enjoyable aspect of the book.

For instance, Dershowitz tells the story of the time during his Supreme Court clerkship for Justice Arthur Goldberg that the Goldbergs invited him for a Passover seder. Dershowitz ate only kosher food at that point in his life, and the Goldbergs arranged for a catered kosher seder on his account without telling him. In attend-

1. Professor of Law, Harvard University.

2. Irving Howe, *Introduction*, in *JEWISH-AMERICAN STORIES* 8 (Irving Howe ed., 1977).

ance were the Vice President, other Supreme Court Justices, cabinet members, and foreign diplomats. Dershowitz canceled at the last minute in order to attend the holiday with his parents, and the Goldbergs were stuck serving the food, evidently quite inferior to Mrs. Goldberg's home cooking, to the distinguished guests (p. 61).

Chutzpah is also a trifle silly at times, such as the moment in which the author leaves a personal note to his mother to see if she has read that far into the book,³ or when he quotes the comedian, Lenny Bruce, on the difference between "Jewish" and "Goyish."⁴ These features make the book far more entertaining than one might expect the memoirs of a law professor to be.

To many American Jews, the issues addressed in *Chutzpah* are of major significance. Currently, the American Jewish community is struggling to define itself — is it primarily a religious community, an ethnic community, or some other aggregation of individuals with a shared identity?⁵ Many American Jews are concerned with the loss of American Jewish culture through assimilation. As Jews join the "white shoe" law firms that denied entry to Dershowitz (p. 51), as they intermarry at dramatic rates, as they move to predominantly non-Jewish neighborhoods, many wonder about the continued viability of Jewish identity in this country.

It is in this context of self-examination that Dershowitz presents us with his thesis that "American Jews need more chutzpah. Notwithstanding the stereotype, we are not pushy or assertive enough for our own good and for the good of our more vulnerable brothers and sisters in other parts of the world" (p. 3).

Chutzpah is the Yiddish word for what colloquial American English describes as *nerve* or *guts*; it means pushing the limits or boundaries of appropriate behavior. *Chutzpah* requires self-confidence and a brash irreverence. It frequently takes chutzpah to speak out and to make demands on others.

Chutzpah urges Jews to exercise chutzpah on matters of concern to the Jewish community. The book's examples of such matters include

3. P. 50. Dershowitz may serve as a living rebuttal to those who dismiss the work of Sigmund Freud. Cf. SIGMUND FREUD, *FIVE LECTURES ON PSYCHO-ANALYSIS* (James Strachey ed. & trans., 1977).

4. P. 63. Dershowitz notes:

The quickest way to tell whether a place is inherently goyish is to look at the Jews who are prominent there. The Jewish professors at Harvard in 1964 were — with some exceptions — the most goyish group I had ever encountered . . .

It was not only their goyish dress — some of them looked like they were probably wearing tweed underpants beneath their British-tailored slacks. Nor did they "dress British and think Yiddish." They thought British too. Their Anglophilia — copied from Felix Frankfurter's — affected their mannerisms, their attitudes, their style of speech, their choice of metaphors, even their jokes.

P. 64.

5. DANIEL J. ELAZAR, *PEOPLE AND POLITY: THE ORGANIZATIONAL DYNAMICS OF WORLD JEWRY* 216 (1989).

debate about Israel, the status of Jews in foreign countries, and threats of anti-Semitism in the United States; the book surprisingly devotes little space to defining what constitutes an issue of concern to Jews. The recurring bogeymen are the leaders, past and current, of major American Jewish organizations, who generally take positions that are too cautious and more moderate than the views of most American Jews on issues such as American policy toward Israel or Russian Jewish emigration (p. 299). Dershowitz contends that these leaders, who are not chosen democratically, present a carefully moderated message to the American public, one less likely than the views of most Jews to offend gentiles (pp. 292-94).

Chutzpah suggests that Jewish organizations act this way because of the deep sense of insecurity that permeates the American Jewish community, an attitude reflected in the common expression that "Jews are merely guests in a Christian country." The leaders' attitude is that since America has been nice to Jews, why push it? This position, *Chutzpah* warns, is a dangerous one. Jews in other countries have tried hard not to offend, and with devastating results. Moreover, the desire to avoid causing offense or becoming a burden causes American Jews to neglect issues of vital concern: the community's past failure to press for immigration of Jews during the Nazi period illustrates his point well. Finally, Dershowitz portrays anti-Semites, whom he re-labels "Judeopaths," as an ever present danger in America (p. 123).

Three criticisms of *Chutzpah* warrant discussion. First, as an empirical matter, Dershowitz overstates the case that Jews tend not to make demands for Jewish causes. Second, the book does not provide a sufficient explanation as to why Jews feel like second-class citizens. Finally, Dershowitz may be wrong that an increase of chutzpah by Jews on behalf of Jewish causes will produce beneficial results. Indeed, it could produce a backlash of anti-Semitism.

The book never articulates a standard of measurement to test its hypothesis that Jews do not speak out for themselves sufficiently. The passage of the Jackson-Vanik Amendment in the early 1970s, for instance, linked trade relations between the United States and the former Soviet Union to improved emigration opportunities for Soviet Jews.⁶ Israel receives billions of dollars in American aid each year.⁷ Although both of these policies serve American interests — the former to induce improved human rights and the latter to preserve the existence of the sole democracy and strongest American ally in the Middle East — it would take chutzpah to suggest that these policies would

6. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (1975) (codified as amended at 19 U.S.C. § 2101-2487 (1988)).

7. See, e.g., National Defense Authorization Act For Fiscal Years 1992 and 1993, Pub. L. No. 102-190, 105 Stat. 1290 (1991).

have been enacted without considerable efforts on the part of American Jews.

Instead of empirical data, Dershowitz provides anecdotal evidence of Jews failing to speak out on behalf of Jewish causes. This effort, however, is undermined by the extensive attention accorded in the book to Jonathan Pollard, a Jewish-American client of Dershowitz who provided American military secrets to the Israeli government and whom the American Jewish community condemned as a traitor to the United States.⁸

The Pollard case is an unnecessary distraction because American Jews lack any particular interest in coming to Pollard's support over the issue of his conviction and life sentence. Sentences should always be fair, but the fact that Pollard is Jewish and was spying for Israel does not make the severity of his sentence a Jewish issue. The book never explains what it is about Pollard that makes his sentence a matter of concern to Jews. Indeed, the discussion betrays an implicit assumption in the book that the positions that Dershowitz defends are matters of Jewish concern. A notable exception to this assumption concerns the separation of church and state, in which Dershowitz acknowledges dissension among Jews. He tackles head on the position of orthodox (in the religious sense) and neo-conservative (in the political sense) Jews, who favor state support of parochial education for Jews as well as Christians. The book argues that state support for parochial education is only a step in the Christian Right's efforts to "Christianize" the public schools (p. 204). Here, Dershowitz acknowledges that there are Jews with *chutzpah*; his quarrel with them is substantive.

Nowhere is Dershowitz more convincing than when he discusses the failures on the part of the American Jewish community during the Holocaust. Perhaps the book's most horrifying anecdote concerns Justice Felix Frankfurter, a Jew and a confidante of President Roosevelt, who during the Second World War, at the request of the Polish ambassador, met with a Polish refugee who informed him of the genocide occurring to Jews in Nazi-occupied Poland. Justice Frankfurter said "I cannot believe you" and did nothing with the information.⁹

Dershowitz writes, "Frankfurter did not want to be regarded as one of those soft-hearted Jews who put Jewish lives before the Ameri-

8. The book correctly identifies the sore spot in the Jewish psyche over the case, the concern that Jews will be perceived as having dual loyalty toward Israel. While not defending Pollard's acts, the book focuses instead on the injustice of his sentence of life imprisonment: *Chutzpah* informs the reader that the average sentence given to those who spy for U.S. allies is less than five years. P. 287.

9. P. 281. For a discussion of this and other incidents of inaction by prominent Americans, both Jews and non-Jews, see DAVID S. WYMAN, *THE ABANDONMENT OF THE JEWS: AMERICA AND THE HOLOCAUST, 1941-1945*, at 315-30 (1984).

can war effort. He did not want to endanger his valuable credibility with the president over an issue of Jewish sentimentality" (pp. 281-82). While not a historian, Dershowitz does fail to mention significant evidence to the contrary. For instance, in April of 1934, Frankfurter visited Palestine. While visiting Jerusalem, he wrote to President Roosevelt, "[t]his is a most exciting land — its beauty is magical and the achievements of the Jewish renaissance almost incredible. Someday I should like to tell you about it all, and when you are through with the White House, in 1941, you must journey to Palestine."¹⁰ Frankfurter also corresponded regularly with Justice Louis G. Brandeis from 1920-1941. He frequently received letters from Brandeis concerning the condition of Jews in Palestine,¹¹ and in 1933, the first year of the Nazi regime, on the condition of Jews in Germany.¹² Frankfurter also wrote publicly on Palestine at least twice.¹³

Recent scholarship suggests that the efforts of the American Jewish community to save European Jews were much more widespread than had been thought previously.¹⁴ Nonetheless, Dershowitz writes persuasively of the outrageous position of prominent Jewish Americans such as Joseph M. Proskauer, the attorney and former judge, who headed the American Jewish Committee. Proskauer once stated, "[f]or Jews in America, *qua* Jews, to demand any kind of political action [against the policies of Nazi Germany] is a negation of the fundamentals of American liberty and equality" (pp. 294-95).

Dershowitz clearly has a point. Jewish leaders *have* failed to speak out for Jewish issues. In exploring why this is so, *Chutzpah* offers its own hypothesis — that Jews feel like second-class citizens and, therefore, do not exercise their rights to speak out — without exploring competing theories, such as that most Jews do not share the Dershowitz personality and zest for provocation. Is Dershowitz, ensconced with tenure and thus immune from the slings and arrows of political opponents, expecting too much from other Jews who need to keep bosses or customers happy to earn a living? Perhaps Dershowitz is "projecting" his own neurosis and insecurity onto the Jewish community.

Perhaps. But by the end of the book, after cataloguing anecdote after anecdote, *Chutzpah* persuades us that Jewish insecurity is responsible for Jewish silence; however, its explanation as to why so many Jews feel like guests in their own country is not fully developed. It is

10. "HALF BROTHER, HALF SON:" THE LETTERS OF LOUIS D. BRANDEIS TO FELIX FRANKFURTER 543 n.1 (Melvin I. Urofsky & David W. Levy eds., 1991).

11. *Id.* at 383-87, 581-85, 588.

12. *Id.* at 520-24.

13. *Id.* at 454 n.1.

14. TAD SZULC, THE SECRET ALLIANCE: THE EXTRAORDINARY STORY OF THE RESCUE OF THE JEWS SINCE WORLD WAR II 7-12 (1991).

truly a bizarre phenomenon that so successful a subgroup would feel alienated in a country that has been such a good home to them. But many Jews do feel like guests in the United States. First- and second-generation Jewish Americans, in particular, often express the view quite openly. The fact that third- and fourth-generation American Jews, albeit in considerably lesser numbers, express this view of guest status — at least to this reviewer — is remarkable.

Jewish insecurity cannot be understood without an awareness of the historical context in which it has developed: a pattern of “hosts” tolerating Jews, only later to force them into ghettos, expel, and murder them.¹⁵ Germany provides only a recent, particularly incredible example of a country that had long treated Jews with some tolerance, only to turn on them with a vengeance.¹⁶

The response to a reminder of the history of anti-Semitism abroad is inevitably: “But surely the United States is a different kind of country than Germany.” While the experience of Native Americans and African Americans belies this assertion, it is true that American Jews have never been murdered as a group in the same way they have been in other countries. Moreover, the expansive reading given to the Bill of Rights and the Fourteenth Amendment in the past forty years establishes protections for Jews in America that are probably unrivaled historically in any country. Indeed, Dershowitz ultimately justifies his prescription for Jewish activism in the belief that the safeguards of the Constitution will protect Jews (pp. 324-25).

15. See PAUL JOHNSON, *A HISTORY OF THE JEWS* 204-44 (1987). Some examples are illustrative. In tenth-century Islamic Spain, Jews flourished under the reign of the Ummayyid caliphs. When the Berbers took Cordoba in 1013, however, leading Jews were assassinated, and at Granada, Jews were massacred. *Id.* at 177-78. In 1090, Emperor Henry IV gave the Jews a charter to settle in Worms. However, in 1096, the First Crusade spread to the Rhineland, resulting in the forced conversion and massacre of Jews throughout the area. *Id.* at 205, 207-08. Between 1275 and 1290, King Edward I of England hanged up to three hundred Jews, confiscated the assets of all other English Jews and expelled them from England, although Jews played active roles in financing church activities. *Id.* at 212-13.

Martin Luther, who receives well-deserved treatment from Dershowitz, *see* pp. 106-07, first turned to Jews for support in the Reformation, but then wrote in *Von den Juden und ihren Lügen* [On the Jews and Their Lies] (1543) that “their synagogues should be set on fire, and whatever is left should be buried in dirt so that no one may ever be able to see a stone or cinder of it.” Quoted in JOHNSON, *supra*, at 241-42.

In sixteenth-century Rome, Pope Paul III and his successor, Julius III, encouraged the settlement of Jews. However, in the 1550s and 1560s, Paul IV created a ghetto in Rome, burned 25 Jewish converts to Christianity who secretly practiced as Jews (*marranos*), and held bonfires of Hebrew books. *Id.* at 243-44.

By 1812, decrees of the Russian Empire prohibited Jews from traveling or living outside of the Pale of Settlement, located in rural Russia. A series of statutes beginning in 1804 forbade Jews from living or working in villages *within* the Pale. *Id.* at 358. *Gimpelson's Statutes Concerning the Jews* (1914-15), the last annotated collection of Russian statutes and regulations concerning Jews, approaches 1000 pages. *Id.* at 369.

16. I use the word “incredible” deliberately. It is difficult to imagine a lesser catastrophe, one seemingly more “human” in scale, inspiring the fervent attempts at revisionist history that apparently dominates contemporary anti-Semitic thought. Dershowitz gives the subject of revisionist Holocaust scholarship solid treatment. *See* pp. 171-78.

Nonetheless, American anti-Semitism has been a serious problem for Jews, especially in regard to immigration policies.¹⁷ In regard to current anti-Semitism, *Chutzpah* presents a persuasive case that presidential candidate Patrick Buchanan is an anti-Semite. Buchanan has come to the defense of Klaus Barbie, "the butcher of Lyons"; expressed doubts about whether Jews were gassed to death at Treblinka; and warned the "Jews" as "those who so evidently despise our Church" that the "slumbering giant of Catholicism may be about to awaken" (p. 163).

Dershowitz concludes his assault on Buchanan with a sting:

Buchanan's apparent lovefest with Nazi criminals certainly cannot be explained by any sustained commitment to the rights of accused defendants. In every other context he supports the rights of victims and rails against defense attorneys. Nor can it be rationalized by his objection to the use of KGB evidence, since several of the cases — notably Klaus Barbie's — relied on no Soviet evidence or assistance. [p. 164]

Dershowitz also writes powerfully about his own exposure to anti-Semitism among Wall Street law firms (pp. 50-56) and of insensitivity at Harvard, such as when Dean Griswold told Dershowitz, who had not eaten the roast beef at the Dean's house because he kept kosher, that it was time for "your people" to adapt to modern times (p. 64).

As Dershowitz notes, a considerable range of views concerning anti-Semitism among American Jews remains. Contrast Dershowitz' extreme sensitivity toward anti-Semitism with the following quotation taken from Judge Posner's recent study of Justice Cardozo:

It is true that Cardozo may have been passed over for the Supreme Court several times because of his Judaism — more particularly because there was already one Jew (Brandeis) on the Court. But should this be called anti-Semitism? Ethnic balance, including the avoidance of ethnic imbalance, has long been a consideration in appointments to the Supreme Court, as in political appointment generally.¹⁸

Chutzpah recounts the anti-Semitic hate mail that Dershowitz receives. His letters *number in the thousands* (p. 98):

17. During the Second World War, the United States allowed only 21,000 Jews to immigrate, 10% of the number authorized under the quota law. Between 1938 and 1945, polls showed that 35-40% of the American public would have supported anti-Jewish laws. JOHNSON, *supra* note 15, at 503-04. President Franklin D. Roosevelt spoke at the Casablanca Conference during the War of "the understandable complaints which the Germans bore towards the Jews in Germany, namely that while they represented a small part of the population, over 50 per cent of the lawyers, doctors, schoolteachers, college professors in Germany were Jews." (the actual figures were 16.3, 10.9, 2.6 and 0.5 per cent)." *Id.* at 504.

18. RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* 2 n.3 (1990) (reviewed in this issue by Professor David A. Logan. — Ed.). Of course, Judge Posner has a valid point about ethnicity in politics. But it is all too easy to find palatable grounds for a choice to deny an opportunity to a qualified minority. Had Judge Posner been denied a seat on the bench because of his faith, he might find the moderate-sounding position he articulates somewhat less persuasive.

A TV appearance about the Claus von Bülow case generated this thoughtful response from a Boston woman named Mrs. J.M. Ransfor:

My brother — a Harvard Grad — is a famous judge in another State and he says he is appalled at the quality of the lawyers now being turned out at Harvard. I work for a very prestigious law firm & all the men are laughing at you. You are simply a kike jew from the Bronx. . . .¹⁹

Another correspondent wrote following a Dershowitz piece in the *New York Times* op-ed page, “‘Sadly, you people are asking for another pogrom, for you are increasingly behaving as the Jews of Germany did. You are all vile and will deserve whatever pogrom overtakes you’” (p. 96).

A third wrote following a Dershowitz newspaper column pointing out Patrick Buchanan’s anti-Jewish views were not reflective of mainstream America:

Hymie!

Why do you think [Buchanan’s] views are not American Mainstream? I know many many people like myself even tho Catholic, hate all niggers and jews. We are a silent majority. All you have is the press, congress and money. . . . [p. 98]

These letters are so extreme, they are difficult to take seriously. Unfortunately, the feelings underlying their positions are not limited to a minute fraction of the American population. The results of a 1990 survey on views of ethnicity, published following the release of *Chutzpah*, revealed that twenty-one percent of the respondents thought Jews have too much power.²⁰

Anti-Semitism is present in subtle forms among some successful members of the bar today. Alan Dershowitz would probably not be surprised to hear that in a discussion about him in July 1991, a partner in one of Boston’s largest law firms informed the reviewer in a strident tone, “He always takes cases for money. That’s what he wants, money.” When one of her partners suggested the incongruity of her statement given Dershowitz’ choice to pursue an academic career and to take on many pro bono cases, compared with their own careers as big-firm lawyers, she snorted, “well, I don’t pretend to be a professor.”

Some readers might not find these comments to be especially anti-Semitic. They might say that Dershowitz even deserves them. Dershowitz, after all, is something of a showman compared with most attorneys or professors. He writes for public consumption;²¹ represents well-known, wealthy clients, such as Claus von Bülow, Leona Helmsley, and Mike Tyson; appears on television and radio shows;

19. P. 96. Dershowitz is from Brooklyn.

20. Tamar Lewin, *Study Points to Increase in Tolerance of Ethnicity*, N.Y. TIMES, Jan. 8, 1992, at A12. The headline reflects the thrust of the article that anti-Semitism has diminished since 1964. Nonetheless, the statistic is chilling.

21. See, e.g., ALAN M. DERSHOWITZ, *TAKING LIBERTIES: A DECADE OF HARD CASES, BAD LAWS, AND BUM RAPS* (1988).

speaks at rallies; and generally conveys the impression that he enjoys public attention. There are many who find such behavior inappropriate for academics or attorneys. The Boston attorney did not criticize Dershowitz for these reasons, however. She commented on Dershowitz' supposed greed — a traditional, anti-Semitic focus.

In his most memorable comment regarding anti-Semitism, Dershowitz writes the following:

The anti-Semites will condemn liberal Jews because they are liberal, conservative Jews because they are conservative, and moderate Jews because they are moderate. Indeed, I myself have been condemned on *all three* grounds by those looking for reasons to condemn . . . [I]t is not the liberal or conservative *content* of remarks made by a Jew that provokes epithets directed at his or her Jewishness. It is the fact of Jewishness coupled with any degree of controversiality surrounding the remarks. [pp. 124-25]

In response to anti-Semitism of the kind described, Dershowitz reminds Jews of the protections that the First Amendment affords them and argues that

there is a real difference between what this country may be socially and demographically and what it is *legally* and *constitutionally*. . . . It is crucial . . . that we . . . battle for first-class status on all fronts. We must insist on equal social treatment and refuse to accept the "reality" that a Jew — even a Jewish Jew — can never become president. [pp. 324-25]

Jews, he writes, must not take responsibility for the acts of anti-Semites. Jews do not bring hatred upon themselves. To believe otherwise is to accept a tenet of anti-Semitism, that Jews deserve to be treated badly, and this belief is intolerable. Therefore, Jews should speak out forcefully on behalf of Jewish causes:

America's Jews have contributed as much to the success and vibrancy of this country as any other group, including the *Mayflower* descendants. This is every bit as much *our* country as it is "theirs." . . . That, thankfully, is what distinguishes America from other nations in which Jews have lived as a minority.

. . . .

. . . No Jew should have to worry about becoming active in politics — even unpopular politics. [pp. 123-24]

Dershowitz invokes the difference between social reality and legal protection, but *Chutzpah* does not address the sociological impact of what he advocates. Dershowitz' reasonable outrage at the notion that Jews are responsible for anti-Semitism, and his accurate account of the history of anti-Semitism in the face of efforts by Jews not to offend or provoke their neighbors, blinds him to the fact that Jewish behavior can affect the expression of anti-Semitism. His own example is illustrative. He is a provocative Jew who also receives thousands of anti-Semitic letters. Those Jews who are not provocative presumably receive far less hate mail.

This is not to say that controversial Jews should keep quiet or that Jews will be safe in the United States so long as they remain quiet. One who advocates a widespread expression of chutzpah on the part of Jews, however, should at least discuss the negative consequences of this proposal. The politics of chutzpah may be the most effective route to preserve the safety of Jews, but it is possible that in some cases it will backfire. Dershowitz never considers whether the political impact of a chorus of louder Jewish voices might actually reduce support in the Congress for aid to Israel, for instance.

Dershowitz seems to expect the American public to behave with considerable patience and understanding toward an ethnic group that it has kept at a distance until recently. The fact that he has spent most of his life in Brooklyn and academic Cambridge may cloud his vision about the comfort level of most Americans with Jews. By failing to explore the effects of his proposed recommendations, Dershowitz fails to satisfy the skeptical Jewish reader that he or she should behave with more chutzpah. However, many Jews will not read this book skeptically, but joyfully. For *Chutzpah* expresses a message which the members of any group would enjoy hearing: You have nothing to fear from being yourself! Given the success Jews have achieved by assimilating, many will find in *Chutzpah* the hopeful message: Jews no longer need to assimilate to succeed.

— *David A. Nacht*