

FELIX FRANKFURTER †

SINCE the beginning, nearly 100 men have been Justices of the Supreme Court of the United States. Of these, a dozen — no more — have made their mark, so that their distinctive work is part of the American Constitution. Among the moderns, excluding any still sitting, one counts Brandeis, Holmes, perhaps Hughes, perhaps Stone, possibly Cardozo, and certainly Felix Frankfurter. His voice will be heard, and he will influence political thought so long as there is a Supreme Court and so long as men are concerned to make their actions fit the American constitutional tradition.

The judging, no doubt, was his most enduring work, his sure claim to permanence. But the twenty-three years on the Supreme Court (January 1939–August 1962) followed upon thirty-odd years of government service, teaching, scholarship, journalism and politics. When he was called to a Professorship at the Harvard Law School in 1914, Mr. Frankfurter was already a public figure of considerable note, owing to his service under Mr. Stimson in both New York and Washington. He then rose to important positions in the First World War under President Wilson. He was at Versailles. He it was, as much as any single man, who threw the country into a turmoil over Sacco and Vanzetti. He fought his heart out for Al Smith in 1928. And there can be, of course, no histories of the New Deal that fail to take account of him. All the while he taught, furiously and effectively, and produced scholarly books and articles and a torrent of journalism, not to speak of letters to the editor, of which there must be at least two volumes.

This is the Frankfurter of record, and we do not have the full story yet, at that. He leaves voluminous papers, out of which, in time, the record will be completed. But an oral tradition will carry forward from the hundreds who knew and the thousands who encountered him the extraordinary experience of his presence. There is a bird, it is said, that flies at a normal body temperature of upwards of 200 degrees Fahrenheit. Something of the intensity that this temperature suggests there was about the way Felix Frankfurter lived and functioned. At any given moment,

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he thought more thoughts, loved more loves, felt more outrages than anyone else. There never was a man so quick to understand, so ready to contradict, so warm in sympathy and so warm in anger, so indulgent of the frailties of others and so intolerant of them, so patient and so restless, so gentle and so brusque. There never was such a listener and such a talker, such a verbal fencer and such a lover of music. There never was such laughter and such intellectual rigor, such involvement in politics and such moral rectitude. And above all there never was such a friend.

Young or old, whoever was touched by the friendship of Felix Frankfurter was affected forever. He was a hero worshipper who transformed all those he worshipped into real heroes. Friendship with Felix Frankfurter was a romance. It made everything worthier and handsomer, including the friend. But there were these differences. The private, hard judgment of Frankfurter himself was never finally beguiled. And the friend, drawn out, encouraged, beseeched, charmed, wheedled, needled and finally driven by the canniest of teachers operating on the simple, unadorned premise that there is, after all, something in everybody — the friend actually became a little worthier and a little handsomer than he could ever otherwise have been.

What a career it was! The academy and the world of affairs, the drawing room and the courtroom, the law journals and the journals of opinion. It was a triumph of intellect, of engagement, of vitality, of charm. It was built on all these, but above all on purity of motive, on integrity and courage. An audience of high-school students could frighten him, but nothing else did. Not Theodore Roosevelt on the patriotic warpath in his last unedifying days, not A. Lawrence Lowell of Harvard, or Pat McCarran of the Senate; not the Great Depression, and not the might of America's foreign enemies or, in the Thirties and Fifties, the menace of her domestic ones. He was afraid neither for himself nor for the country and the institutions that he deeply loved. He harbored no simple faith in progress. Rather he had the sanguine temperament of a brave man, and the moral faculty of courage. And so, as Yeats's line says of Swift, he served human liberty. He would attempt to build few protective shields around it, but strove to secure justice, to educate men, and to cause them to seek and enrich their freedom.

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