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FELIX FRANKFURTER

Philip B. Kurland*

"A little trust that when we die
We reap our sowing! and so—goodbye!"

If, as Felix Frankfurter once suggested, the reason for writing a Nachruf is that "the dead should not cease to be in the minds of men," none need be written to him. For certainly he will remain in the minds of men so long as the future of law and government in this country derives in any way from their past. It is neither appropriate nor necessary nor possible to describe or document here the contributions that Felix Frankfurter made to government under law as a scholar, a counselor, a judge. He cannot escape the judgment of history. And his friends, with good reason, are sanguine about the outcome of that judgment. Posterity is assured of knowing Felix Frankfurter as one of the giants of the law.

Felix Frankfurter will live in the minds of men. The pity is that he cannot live equally long in the hearts of men, where those who knew him really cherish him. It is the private rather than the public figure that will not be conveyed to future generations. For his epigones, like their master, are necessarily mortal, and the unique experience of having known FF is not transferable. The keenest minds with the most facile pens have proved incapable of capturing his genius. His friends read the words of perhaps his closest companion, Dean Acheson, and smile and nod in recognition. They admire and envy the close likeness that the poet's command of language made possible for Archibald MacLeish. But whatever they share in common with Acheson and MacLeish on this score, there is much more that each of FF's friends has for himself alone. Gardner Cox's portrait that hangs in the Harvard Law School and Karsh's magnificent photographs are revealing. But neither art nor science has yet perfected the instrument capable of recording the man who was Felix Frankfurter. Indeed, as might have been expected, it was he—in Felix Frankfurter Reminiscences—that came closest. Perhaps, when his letters are published—there must be a million of them—he will come even closer.

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Certainly it is possible to isolate the factor that made FF unique. Alex Bickel did it: "And above all there never was such a friend. Young or old, whoever was touched by the friendship of Felix Frankfurter was affected forever.... Friendship with Felix Frankfurter was a romance. It made everything worthier and handsomer, including the friend." Nor is there any secret about the reason why friendship with FF was the extraordinary thing that it was. Paul Freund pointed to it in his eulogy: "His love of friends was equally unabashed, as all of us can testify. Who of us will not continue to feel the iron grip on the arm, to hear the full-throated greeting, to be rocked with the explosive laughter, and to be moved by those solicitous inquiries about ourselves and our dear ones that seemed to emanate from some miraculous telepathic power on his part but were only evidence of what the deepest caring could uncover."

If one had to put in the shortest possible compass what it was that made FF different, it would be summed up in the words: "He cared." He cared about everything: about ideas, about institutions, about individuals. But he cared most about individuals, and above all about those individuals whom he befriended.

It is not surprising, therefore, that the tributes to FF have so frequently been written in the first person singular. This is not merely a reflection of the common desire to associate with greatness. It is rather that FF cannot be considered, by those who knew him, separate and apart from the deep personal meaning that he had for them. And so, as he frequently noted, because a tired cliché can gain fresh vitality from a rare occasion, it is true that when FF died, a little bit more than a little bit of a lot of people died with him. We did not ask for whom the bell tolled; we knew it tolled for us.

When I undertook to prepare this note, I too, expected to speak of the significance that FF had for me. But I find the wound still too raw to probe by recording some memories of FF. For a while, at least, I prefer to husband them. With apologies, I therefore end at the beginning of what was to be my tale. To those who did not know him, I offer my sympathy, for they have missed an experience that can never be duplicated. To those who numbered among his friends—and they are legion—I repeat his own words, taken from a letter typical of the kindness that was his: "Sorrow is unique and I won't say that I know your grief for him but I can say that I feel mine."