

## *Frankfurter vs. Psycho-Biography*

T H O M A S   D .   E I S E L E

**The Enigma of Felix Frankfurter**, by  
H. N. Hirsch, *New York: Basic Books,*  
1981. x + 253 pp. \$14.95.

THIS is a clearly written book about a subject that is anything but clear: it concerns a man's psyche. In particular, it deals with what some consider to be the enigmatic actions of the late Justice Felix Frankfurter (1882-1965) during his long tenure on the U.S. Supreme Court (1939-1962), during most of which he was engaged in a bitter feud with the "liberal bloc" on the bench, especially Hugo Black and William O. Douglas. Justice Frankfurter opposed this group because he saw it as composed of shoddy jurists and politically-motivated activists who failed to see the wisdom of "judicial restraint," the position preferred by Frankfurter in cases requiring the Court to review the constitutionality of legislative action. This theory of judicial review contrasts with the one espoused, and enacted, by the majority of justices sitting on the Warren Court (among others). What seems to be enigmatic is that this alternate theory of judicial review stressing deference toward the legislative branch, issued from the same Frankfurter whose pre-Court activities included writing unsigned editorials for the then liberal-progressive *New Republic*, leading a famous but futile effort to overturn the convictions of Sacco and Vanzetti, supporting the splinter candidacy of "Fighting Bob" LaFollette, and placing under his own unofficial stewardship a major portion of Roosevelt's "New Deal." The puzzling relation between the activities of Professor Frankfurter and the position of Justice Frankfurter is, then, the issue addressed in this book.

Professor H.N. Hirsch proposes a cipher that draws upon the work of some contemporary political scientists who, in their efforts to shed light on various political figures, have turned to the discipline of psychology for enlightenment. Their particular emphasis has been on the studies of Erik Erikson concerning "identity crises" and Karen Horney's work on "ego psychology." This focus on the field of psychology Hirsch finds indispensable for the study of political figures. "The central hypothesis of this study," he states, "is that Frankfurter can only be understood politically if we understand him psychologically, and that we can understand him psychologically as representing a textbook case of a neurotic personality: someone whose self-image is overblown and yet, at the same time, essential to his sense of well-being." Hirsch goes on to argue that "the key to Frankfurter's political behavior was his attitude toward opposition, and...the vehemence with which he reacted to opposition [on and off the bench] was a function of the psychological process involved in the formation of his self-image."

The construction of this psychological cipher requires seven chapters of unequal length and importance. Beyond the brief introductory and summary chapters that, respectively, set the stage for and draw the curtain on the intervening analysis, there are five chapters devoted to supporting and amplifying Hirsch's argument. Three of these (Chapters 2-4) deal with Frankfurter's pre-Court years (1900-1939) and they serve, essentially, to collect information concerning Frankfurter's behavior during his formative years and to organize

it into certain specific psychological configurations. Having constructed a psychological profile of the late Justice before he reached the bench, Hirsch proceeds in the next two chapters to use that profile in analyzing Frankfurter's actions as a jurist. The conclusion reached is that Frankfurter's actions are of a piece in that they proceed consistently from the personality sketched in the preceding chapters. The gist of that profile is that, during a period of personal and professional crises (1917-1919) that caused certain "delays and ambiguities...in Frankfurter's psychological maturation, he developed a compensating, idealized self-image and the type of neurotic personality described by Karen Horney." This diagnosis is supported with information culled from private as well as public papers of the late Justice and others, and it is so supported in far more detail than I care to survey here. Perhaps it will suffice to say that the portrait painted of Frankfurter by Hirsch, sometimes using as ingredients the Justice's own admissions against interest, bares rather more warts than one might have expected. Toward those whom he revered (such as Holmes and Brandeis) and those who could be helpful to him in his various struggles, Frankfurter was a sycophant who vacillated between flattery and manipulation; toward those whom he despised (such as Black and Douglas) and those who did not measure up to his various standards, Frankfurter was an ogre who alternated between vituperation and studied neglect. Painful as such a picture must be to anyone who has admired the craftsmanship of Frankfurter the jurist, Hirsch hopes to ease the distress this portrait is apt to cause by insisting that his motives in making this study are straightforward. The book, Hirsch says, "seek[s] to explore the shadows and the shades of the man as well...[as the] public personality...[that] Frankfurter himself wanted history to record." If the portrait proves painful, if it makes Frankfurter "any less magnificent," then, Hirsch argues, "it does so...only by making him more human."

I do not find Hirsch's analysis of Frankfurter to be either subtle or profound; it is, I think, workmanlike and worth considering. Nor do I find Hirsch's prose to be particularly engaging; much of it quickly becomes formulaic (*e.g.*, one soon tires of reading that "Frankfurter's relationship with *x* [a person] was *y* [an appropriate adjective]"). But what can be said in favor of Hirsch's presentation, especially in view of the tone of many other psycho-biographies, is that he refuses to engage in psychological reductionism. That is, he claims for his study only that it can complement—not that it must compete with or even replace—the traditional "jurisprudential" interpretations of Frankfurter. Of course, Hirsch's book is an attempt to explain, to some extent, Frankfurter's behavior, and in this regard it may seem to claim for itself some exclusivity, but his account is admittedly hypothetical and provisional, and its author seems to realize that, as such, it requires further research as a test. The question is just what would such research test, or show? Here I am thinking of the fact that one can ask of such a book at least three questions: (1) What does it mean? (2) Is it true? (3) What is its point? As to the first, I suppose we might say that it could mean that, even for those who have shown themselves capable of the highest achievements, every man has his feet of clay, or his tragic flaw. And, as for the second, I do not see that we can answer this question, given what little most of us know about Frankfurter, although Hirsch's analysis seems plausible enough. So we are left with the third question: what is the point of it?

A psycho-biography gives us, as any biography does, an account of a man's life. And such an account, again as with any biography, tries to deal both with the so-called "external" facts of a man's existence (his relations with people, places, and things) and with the so-called "internal" side of the person (his relation with himself). But a psycho-biography puts a peculiar twist on its treatment of these standard themes, for it imagines itself able

to account for the psychological sources of the subject's actions. These sources may be thought of in different ways (as, e.g., motives, causes, a matter of some physiological mechanism, etc.), but all of them are meant, regardless of the particular model of the mind into which they fit, to explain a person's actions by allowing us to appeal to them in characterizing the development of his psyche or the workings of his mind. So it is, ultimately, the person's psyche that is the subject of a psycho-biography.

How it becomes the subject is the cause for my concern here. In traditional psychoanalysis, the procedure of delving into a person's psyche is set within the following context: there is a patient (analysand) and a therapist (analyst), and the two converse about the former's fears, hopes, feelings (etc.), with the patient usually initiating the discussion. The process of psychoanalysis is, then, essentially the dynamic that grows between these two people; it is the pattern, if you will, that their conversation forms as they find their way through the labyrinth of a mind. In all of the psycho-biographies of which I am aware, however, there is absent one of these two crucial participants: the analysand. What, then, are we to make of this attempt to analyze an absent patient? A patient goes into therapy, presumably, for a cure, so that he may get on with his life. But why does the scholar, as it were, involuntarily analyze a missing patient? Not, certainly, for a cure. Then, out of curiosity, so as to understand the person better? Perhaps. But here I find a real danger in such exercises of understanding. A patient in therapy is a part of the audience of his own expressions; he hears himself saying things and then is compelled (internally—or externally, by the therapist) to examine his having said just *this* just here and now. The process of psychoanalysis, as I understand it, is based on nothing more, but nothing less, than the patient's confrontations with, and interpretations of, his own sayings and feelings. Or, rather, it is his continually re-interpreting (replacing) what he has said, and what he

feels like saying, and what he tries not to say (etc.), that becomes the process of therapy itself. This process is the patient working himself out, curing himself.

This "auto-therapy" component of psychoanalysis is, so far as I can see, completely and necessarily missing from psycho-biographies. Accordingly, I want to know the point of this analysis of a missing patient. And I am not at all sure that "scholarly curiosity" will do for an answer. I should mention here that Hirsch does not claim to be psychoanalyzing Frankfurter, but rather to be employing the categories and constructs of Erikson's work on "identity crises" and Horney's on "ego psychology." Still, the inspiration is, surely, derived from Freud (as Erikson himself acknowledges), and the question remains as to what the utility of any psychological approach can be for understanding absent analysands. In addition, another point can be made about Hirsch's choice of a particular psychological approach. The school of "ego psychology" claims, as I understand it, only to have made available certain characteristic or representative categories of personality; Hirsch himself speaks in terms of Frankfurter's "representing" a specific neurotic "type." Given that, for our understanding of a person, it may be helpful to classify him psychologically, we still want to know, I should think, the specific *differentia* that make him him and not someone else. On its own terms, then, the kind of psychological approach used by Hirsch leads us, at best, only part of the way down the path of understanding; it types the person but does not differentiate him from his classmates.

It could be said, in response to my qualms about the way in which we are to understand the words of someone who is not present to explain them as best he can, that we do in this case what we always do in such a situation: we imaginatively reconstruct the context in which, and the audience to which, these remarks were made, and we further imagine what someone might have meant by saying just these words in this context to this audience.

I will not deny that this is the process through which we go, but, to the extent that it is, just to the same extent it would be wrong for anyone engaging in this method of interpretation to claim that he was practicing a science, be it a matter of psychological, political, or literary science. The imaginative reconstruction described is as old as is the experience of reading the words of another, and it is not a science. It also might be said, against my qualms, that they are misguided, because the continuing discoveries and techniques that psychology affords us prove over and over again their utility in helping us understand people. What I find true about such a response is the idea that psychology has helped us to see that the mind is accessible to itself, and that its routes of self-access are as normative as are any of the ways we have of acting as human beings. This means, in part, that the ways the mind has of becoming neurotic are as common to all of us, as normal for any of us, as are its ways of becoming sane. What the psycho-

biographers seem to forget is that, while there are these norms among us, structuring our lives and our minds, in order to understand a particular person we must know not only what these norms (or categories) are but also how *he* came to terms with them.

Frankfurter could have helped his psycho-biographers to understand this better, for it is an essential aspect of our system of law. A person before the law faces as many (or more) norms and categories as does a person being psychoanalyzed; in each process there is the underlying insight that applying these various classifications to a person is necessary but not sufficient. The process (of the law, of psychoanalysis) does not end until we reach that unpredictable point at which a recognition scene can and does take place: there, for all to see and witness, an individual stands before his community, in mutual and self-reflexive judgment, seeing and being seen.