

Felix Frankfurter Reminisces

Earl Ross

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BOOK REVIEWS

Felix Frankfurter Reminiscences. New York: Reynal & Co. Inc., 1960. Pp. 301 + Index. \$5.00.

This book is a transcript of tape recorded conversations with Harlan B. Phillips. The book, therefore, is the more unusual because the unedited remarks of Justice Frankfurter illustrate the excellent command of language which has been familiar to those who have read his articles while a professor, and his opinions as a Judge. His zest for living and keenness of mind show through in these off-the-cuff remarks.

Particularly, two chapters of this book are thoroughly enjoyable. One is the chapter on the *Sacco-Vanzetti* case. In this chapter Justice Frankfurter expresses his credo of the law. He also states a too little used philosophy that no opinion of any case should be reached until the record has been examined thoroughly. The chapters on his Oxford teaching experiences and his comparison of the mores of the English students and the American students are very interesting and delightful.

This book deals mainly with Frankfurter's experiences prior to his coming to the Supreme Court. There is, however, one chapter on the functions of a judge in which he expresses his philosophy that every effort should be strained to declare a law constitutional, to which thesis the reviewer cannot agree. This has resulted in his famous dissent in the case of *West Virginia v. Barnette*, in which the said dissent would require members of the Jehovah's Witnesses to pledge allegiance to the flag despite the fact that this would be abhorrent to members of this religious sect. If this case were to come up for review again, perhaps Justice Frankfurter would see the difference between the question of the constitutionality of laws involving property rights and religious liberties.

In an article in *Wisdom Magazine* of January 1959, Justice Frankfurter stated: "It is right and proper that in the reading room of the Harvard Law School the portrait of Holmes should face in equal honor the portrait of Marshall." There fell to Marshall, as Holmes took occasion to say, 'perhaps the greatest place that ever was filled by a judge.' That Marshall seized it, the role of the Supreme Court in American history bears witness." It would appear that the power seized by Justice Marshall would be abdicated by Justice Frankfurter.

Another interesting aside in this book concerns his feeling towards Harvard Law School. He mentions several times that his entire life was changed because instead of Columbia Law School, he attended Harvard. Among the list of graduates from Columbia for the years 1906 to 1909, the period during and immediately after which Frankfurter graduated from Harvard, there appears the name of the man who appointed him to the Supreme Court, Franklin D. Roosevelt, Class of 1907; and also that of Stanley F. Reed, Class of 1909, who is presently sitting on the same Court with Justice Frankfurter. It would appear that with Frankfurter's great ability, had he gone to Columbia, as able a lawyer and teacher would have come forth; yet his belief in the pre-eminence of Harvard is underscored when the Justice states on page 248: "[I]f you wanted to get a lot of first class lawyers, you went to the Harvard Law School."

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