

Michigan Law Review

Volume 80 | Issue 4

1982

A Psychohistorical View of Mr. Justice Frankfurter

Andrew S. Watson

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Judges Commons](#), [Legal Biography Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

Andrew S. Watson, *A Psychohistorical View of Mr. Justice Frankfurter*, 80 MICH. L. REV. 742 (1982).

Available at: <https://repository.law.umich.edu/mlr/vol80/iss4/26>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

A PSYCHOHISTORICAL VIEW OF MR. JUSTICE FRANKFURTER

*Andrew S. Watson**

THE ENIGMA OF FELIX FRANKFURTER. By *H.N. Hirsch*. New York: Basic Books. 1981. Pp. x, 253. \$14.95.

When the reader closes this modest book, the personality of the late Justice Felix Frankfurter no longer seems enigmatic. Using extensively published correspondence, articles, lectures, and judicial opinions, H. N. Hirsch takes us through Frankfurter's life in sufficient detail to support solidly several major theses about the Justice's motivations and behavior. Although the details and references are parsimonious, they are sufficient to make out a good case. Hirsch's thesis is that Frankfurter was driven by deep psychological conflicts related to his concern about being accepted by the "Brahmin" social elite of Washington and Boston-Cambridge, even as he tried to please his Jewish family, especially his mother. As he struggled to develop an identity consonant with these conflicting social images, he made neurotic adaptations which themselves hampered his ability to achieve his much sought-after goals.

Although Hirsch calls this book "an interpretative biography," it belongs to the new genre of "psychohistory," for in addition to using historical materials, Hirsch uses psychological theory to interpret them. It is this aspect that will probably stimulate the major challenges to the book.

In the past, professional historians and biographers have zealously attempted to rely primarily on "objective materials," which they would set down and allow to speak for themselves. They believed that this was the best way to avoid the distortions of their own subjective views. With the passage of time, more and more scholars, even in the "hard sciences," have come to acknowledge that it is impossible to eliminate the subjectivity of the observer. The only way to minimize or eliminate this kind of distortion is to develop a cognitive awareness of one's own systematic biases.

Similarly, it is assumed that the actors on the historical stage have their own well-organized psychological distortions. Hirsch argues that an analysis of these distortions can lead to a deeper understanding of their activities:

* Professor of Law, Professor of Psychiatry (Ret.), University of Michigan. B.S. 1942, University of Michigan; M.D. 1950, M.S. in Med. 1954, Temple University. — Ed.

The central hypothesis of this study 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. Because of delays and difficulties in psychological maturation — because for several crucial years he could not decide who and what he was and thus suffered from severe self-doubt — Frankfurter, I will argue, was led to develop a compensating, “idealized” self-image in which he exaggerated his political skills and talents. His political style, which he applied throughout his life, resulted from that self-image; it emphasized what he perceived as his ability to handle other people. [P. 5.]

Hirsch explores the “factual information” about Frankfurter from the standpoint of two explicit psychological propositions: (1) the diagnostic category of the “neurotic personality,” and (2) the “self-image,” or what the author comes to call “identity.” Hirsch also makes the implicit presumption, drawn from the theories of psychohistory, that all of an individual’s behavior will reflect his psychological adaptive patterns in interplay with the several or many contexts in which he lives. In this Review, I would like to examine these propositions to see how Hirsch uses them in reaching his understanding of Frankfurter.

The principal progenitor of psychohistory as such is Erik Erikson. Erikson, one of the most elegant contemporary psychoanalytical theorists, set forth his main ideas about psychological development in *Childhood and Society*.¹ The book presents a short psychohistory of Adolph Hitler and uses it to show how a personality is developed.² Later, in “The Problem of Ego Identity,” he further developed the concept of identity, using a psychohistorical sketch of George Bernard Shaw.³ Soon thereafter he completed his first major psychohistorical work — a psychobiography on the life of Martin Luther.⁴ This meticulously researched psychohistory became a model of sorts and was followed by the psychohistorical analysis of the early life of Mahatma Gandhi.⁵ These books demonstrate that for psychohistory to be effective, the traditional historical research must be done meticulously and all of the established and verifiable information about the subject must be used accurately before the analysis of personality is begun.

Careless research can ruin otherwise competent work. In 1966, William Bullitt published a psychohistorical study of Woodrow Wil-

1. E. ERIKSON, *CHILDHOOD AND SOCIETY* (2d ed. 1963).

2. *Id.* at 326-58.

3. Erikson, *The Problem of Ego Identity*, 1 J. AM. PSYCHOANALYTIC ASSN. 5 (1956).

4. E. ERIKSON, *YOUNG MAN LUTHER* (1958).

5. E. ERIKSON, *GANDHI'S TRUTH* (1969).

son that he had written in collaboration with Sigmund Freud.⁶ The historical research in this book has been heavily criticized and has provided an excellent basis for the argument that psychohistory is a frivolous and sloppy variety of scholarship. This viewpoint has been enhanced by the publication of Fawn Brodie's psychohistory of Thomas Jefferson.⁷ Most experts on Jefferson seem to agree that she ignored much historical material and greatly distorted other data in her effort to prove psychologically that Jefferson had sired a number of children by his slave, Sally Hemings.⁸

The psychohistorian must overcome still more difficulties. In a recent article, Henry Ebel argues that a historian's choice of a subject for study depends in part on his own psychological adaption, which can influence not only his personal life, but also the "objectivity" of his work.⁹ The work of Ebel's group stirs controversy among professional historians because it suggests the need for self-analysis and self-evaluation, activities that elicit anxiety in most people. (In assaying the psychological objectivity of Hirsch, I must stand mute, for I know nothing of his psychological experience or training.)

Finally, the data for a psychohistory are often difficult to collect. Although it has long been my aspiration to do some psychological analysis of judicial decision-making, the data needed to do it adequately are not readily available. I therefore found Hirsch's study especially interesting because it contains a lot of the kind of information required to understand the psychological processes of someone who cannot be interviewed contemporaneously. While personal letters and the video-taped interviews from the Columbia Oral History Collection are a valuable source of information (and the author made good use of these and similar materials), they have all of the limitations that are imposed on an archaeologist who must reconstruct a forgotten culture from the fragments of ancient artifacts. The important material not ordinarily available in most written records involves the emotional qualities and attributes of the person. Evidence about emotions does not totally escape the printed page, but more often than not it is heavily camouflaged. Inference-drawing about the subject's emotions is fraught with difficulties and risks. Indeed, such an interpretive process inevitably arouses skepticism in most readers. A psychobiographer or a psychohistorian nevertheless has no alternative but to do it if he wishes to explore this vital aspect of his subject's behavior.

6. S. FREUD & W. BULLITT, THOMAS WOODROW WILSON (1967).

7. F. BRODIE, THOMAS JEFFERSON (1974).

8. The historical material in this book was attacked devastatingly by Virginius Dabney in *THE JEFFERSON SCANDALS* (1981), and his analysis was supported by the preeminent Jefferson scholar, Dumas Malone, in 6 *JEFFERSON AND HIS TIME* 514 (1981).

9. Ebel, *The Psychohistory of History: A Symposium*, 3 *J. PSYCHOHIST.* 259 (1981).

Hirsch does undertake this exploration, and in doing so makes important use of the theories of Karen Horney¹⁰ and Erik Erikson.¹¹ But Hirsch makes one mistake that frequently occurs when there is expert psychiatric testimony in the trial of a legal case. He invokes Horney's diagnosis of "neurotic personality" for Frankfurter and then proceeds to deduce that because Frankfurter "had" this diagnosis, he will or will not be able to perform certain types of behavior. It is like saying that persons who are "schizophrenic" will manifest "psychotic thinking." Ipso facto, any thinking that such a person does will be psychotic and irrational. This is simply not the case. While certain of a schizophrenic's thought processes may be psychotic, not all will be so. Instead of deducing certain things from the label, it is more appropriate if the particular thought process or activity is examined specifically in relation to the individual's capacity to carry it out. The information that would be used to arrive at a "diagnosis" should be used directly to make a descriptive judgment only about the behavior in question. It would have been more appropriate, in short, if Hirsch had avoided concern about whether Justice Frankfurter had a neurotic personality. Hirsch should have confined his examination to Frankfurter's manifest behavior as it related to his psychological capacities and disabilities.

The second concept that Hirsch uses extensively relates to the development of a sense of identity. Erikson states:

The final identity, then, as fixed at the end of adolescence is superordinated to any single identification with individuals of the past: it includes all significant identifications, but it also alters them in order to make a unique and a reasonably coherent whole of them.¹²

We may see from this definition that the instrumental effect of identity upon personality is to provide an individual with a kind of organizing principle from which to make a multitude of personal decisions. Identity does not spring suddenly into being (nor does Hirsch say that it does). Rather, it is a process that takes ongoing experiences and slowly works them into the image of "who I am." Neither is the image necessarily totally integrated and consistent. Erikson visualizes these stages of personality development as processes that are hardly ever perfectly completed. Certain pieces of personality and behavior may be kept apart from each other, remain unintegrated, and even be inconsistent with each other throughout the identity-forming process. He calls this condition "role confusion."¹³ Thus, an individual leaving his adolescence may be closer to one end or the other of the spectrum between identity and role

10. See K. HORNEY, *NEUROSIS AND HUMAN GROWTH* (1950).

11. See E. ERIKSON, *supra* note 1; Erikson, *supra* note 3.

12. E. ERIKSON, *supra* note 4, at 68.

13. E. ERIKSON, *supra* note 1, at 261.

confusion. I will note below some of the ways in which Frankfurter failed to bring various parts of his self-image together into a consistent identity, and that failure will help us to understand some of his adult behavior.

A psychological process that Hirsch frequently confuses with the concept of identity is that of "identification." Identification occurs when an individual unconsciously sees himself to be like another, and in so doing emulates and incorporates the behavior of the other into his own personality.¹⁴ It is from these identifications that part of an identity is built up.

Frankfurter made three powerful identifications during his young adulthood. They were with Henry Stimson, Justice Oliver Wendell Holmes, Jr., and Justice Louis Brandeis. Many strands of his character and identity can be directly traced to them: he revered and then emulated them. Unfortunately, he did not always use their skills in the same contexts in which he had observed them, so they did not always work for him. Additionally, when he later rose to positions of power and importance, he expected those who became his "followers" to act as unchallengingly as he had done with his own models. When he came to the Supreme Court, he expected his brothers to follow and take his professorial direction and advice, much as his students had done. He often prefaced his advice with comments like, "Long years of observation of the work of this Court before I came down here . . ." (p. 159). They demurred, and resented him.

As Hirsch elaborates upon his description of Frankfurter's personality, he relies on a developmental mode of psychology. Each phase in Frankfurter's life then becomes important in shaping his personality. Hirsch assumes that if we can once understand and define certain behavior patterns, subsequent actions or inactions will be comprehensible even when they appear contradictory. This approach follows the "psychodynamic" model of personality development, and most of his theoretical references are from that source. Hirsch sees two principal factors as critical to Frankfurter's psychological development. First, he notes the importance of his background in the German Jewish immigrant community of Brooklyn with its emphasis on upward social mobility and on the importance of intellectual and cultural interests. The second important factor on which much of Frankfurter's adaptive activity was centered was his small physical stature. He was early and continuously preoccupied with his condition as a "little guy," and Hirsch vividly describes how he related to anyone he regarded as important or powerful. In the early stages of a relationship with someone important, he would un-

14. See F. REDLICH & D. FREEDMAN, *THE THEORY AND PRACTICE OF PSYCHIATRY* 135-37 (1966).

abashedly shower the person with flattery. If the person then failed to respond with acceptance or approval, he soon became the object of intense anger and bitterness.

Throughout his career and especially during the Court years, Frankfurter was prone to be critical of his colleagues for doing the very things that were so much a part of his own adaptive repertoire as he tried to manipulate situations and people. In terms of ego-psychology, such behaviors represent a kind of subservience and acquiescence to the perceived power and status of the person being flattered. (With the flatterer there is also an incipient fear and an imagined exaggeration of the other person's dangerousness.) Those with this kind of outlook tend to divide the world starkly into two groups — the powerful, omnipotent, and omniscient on one hand, and the helpless potential victims on the other. This dynamic is largely unconscious and therefore goes unapprehended by the person doing it, but "bootlickers" (a term that Frankfurter used frequently) (p. 25) always hate themselves for being subservient. This hatred is frequently redirected toward the object of the flattery. Thus when Frankfurter was in the submissive and flattering mode, he could see himself in full agreement with and as a true disciple of the powerful person with whom he was relating. At the opposite end of the spectrum, when he was in his assertive, professorial, expert posture, he could graciously "nurse" people along and feel good about himself *so long as they accepted his nurture in the form he gave it*. Let the person he sought to feed refuse to suckle or dare to regurgitate unbidden, and Frankfurter would become extremely angry with him, probably without much awareness of why he was shifting his ground. This inclination was so powerful, as Hirsch well describes it, that it sometimes made Frankfurter assume contradictory positions that greatly puzzled those who watched him. His "scientific" liberalness thus could shift easily into truculent, obstinate conservatism.¹⁵

Another aspect of these seeming contradictions relates to *why* Frankfurter changed his positions. Although he valued highly the idea that he did everything for rational and "scientific" (*i.e.*, external) reasons, Hirsch demonstrates clearly that many of his positions were responses to a drummer whose beat was audible only to his own inner and unconscious mind. Despite all of the powerful intel-

15. Frankfurter himself was *intellectually* aware of this problem. He wrote:

For those wielding ultimate power it is easy to be either wilful or wooden: wilful, in the sense of enforcing individual views instead of speaking humbly as the voice of law by which society presumably consents to be ruled, without too much fiction in attributing such consent; wooden, in uncritically resting on formulas, in assuming the familiar to be the necessary, in not realizing that any problem can be solved if only one principle is involved but that unfortunately all controversies of importance involve if not a conflict at least an interplay of principles.

Frankfurter, *The Supreme Court in the Mirror of Justices*, 105 U. PA. L. REV. 781, 794 (1957).

lectual skill that Frankfurter could muster, he, like most of us, did not adequately understand some of the conflicting forces that operated within himself. One person who was well aware of these conflicts was his wife, Marion, who apparently tried often to get him to be more sensitive to her emotional needs and complexities. In his letters he occasionally and defensively comments about how his self-awareness had increased and he states hopefully that Marion will be surprised at his increasing sensitivity. However, I very much doubt that he ever did become substantially more aware of himself, at least in the way that he (and she) hoped for.¹⁶

These last comments recall to mind an interesting point made by Arthur Koestler in *The Trail of the Dinosaur and Other Essays*.¹⁷ He notes that La Fontaine did not properly end his fable of "The Fox and the Grapes." It should have been that after the fox said the grapes were sour, all the other foxes went off to the local henhouse to have a ball. The fox who called the grapes sour nevertheless continued to struggle to climb the tree. Night after night he returned and repeated his attempts. One night, he actually got up into the tree and, grabbing a large bunch of grapes, bit into them and discovered to his dismay that they *were* sour. He wanted to go and tell the rest of the foxes that the grapes were in fact sour, but he knew they would not listen to him because foxes cannot climb trees! Rather than turning to new trees to test other grapes, the poor fox could be seen returning to the same tree night after night to taste the same sour grapes. In fact, in the end he died from a perforated ulcer caused by the sour grapes.

This is a very keen insight about human behavior. Although human beings learn many things in the context of *rationalizations*,¹⁸ the process is in many respects imperfect. A new skill is often not useful in new and different situations simply because the person who has acquired it cannot control it. The person is continually dragged unwittingly back to an inappropriate and ineffective use of the skill because a part of his memory is unconsciously attached to the context where the skill was developed (which included an erroneous assumption). It is as if the mind cannot recognize that the original rationalization has been tested and found to be wrong, or that a new skill has been developed that could be used in other and different ways.

Many people are trapped exactly as the fox was, and Hirsch gives

16. P. 49. Mrs. Frankfurter notes that he is "as remote as the alps." There are similar comments at pp. 50, 58. At p. 60, Hirsch quotes a letter to Marion in which Frankfurter says, "[I]f you knew what such glimpses of your own griefs, your sense of my inadequacy, do to me — well you might believe that I'm learning some things." Such tensions were to exist throughout their marriage.

17. A. KOESTLER, *THE TRAIL OF THE DINOSAUR AND OTHER ESSAYS* 92-93 (1955).

18. See O. ENGLISH & S. FINCH, *INTRODUCTION TO PSYCHIATRY* 66 (1957).

many examples of Frankfurter's being caught in such a trap. Frankfurter did develop great leadership capacity but did not always have the power to dominate. In his several identifications with great and powerful people, he observed that they could assert great personal influence upon others, but he apparently did not "see" that theirs was a persuasive and not a dominating power. Stimson, Brandeis, and Holmes all could relate politically and personally to their colleagues even when they disagreed. This enabled their influence to grow rather than diminish over time. Because Frankfurter did not fully comprehend all of the psychological qualities of his models — and also because of his own powerful wish to dominate and be the "big one" among men — he, like the fox, failed to take into account several important limitations of his growing skills.

As Hirsch discusses the concept of identity formation he tends to imply that identity is made up largely of positive qualities from the point of view of social values. This is not the case. It may also include negative structures that, in fact, are psychologically flawed and therefore carry with them the omnipresent potential for failure. It appears that in many respects Frankfurter never had a truly realistic and accurate evaluation of his own capacities incorporated into his identity structure. Some of his self-concepts were assertions dedicated to reassuring himself that "I am not a little guy; I'm a big, strong, powerful individual." This smacks of the defense called "reaction formation."¹⁹ Whenever he struck an interpersonal obstacle, instead of being able to see it in full perspective, it was as though he was once more confronted with his fearful little boy self. He would literally have to destroy the obstacle to reassure himself that he was big, competent, strong, and in control. This entailed wheeling out his heaviest barrage of sarcasm and vitriolic characterization, which nearly always increased the likelihood of alienation and failure. Instead of the smooth, diplomatic "manager" of things he hoped to be, he was often isolated and ineffective. In the end, his colleagues simply tuned him out. Hirsch notes many examples of this: It takes little imagination to see that this process of alienation must have produced a great sense of helpless impotence and despair in Frankfurter. One gathers that this same dynamic occurred between Frankfurter and his wife, and that, too, would have fed back into his omnipresent fear that he would not be accepted by the world at large but rather would be relegated to the position of the rejected Jew.

Although there is clearly a shortage of material with which to explore the early developmental stages of Frankfurter's personality, there is a great deal of information about his adult life. Yet Hirsch

19. A *reaction formation* is "the setting up of a more or less rigid attitude or character trait which will serve as a means of preventing the emergence of a painful or undesirable attitude or trait, usually of the opposite type." See *id.* at 61.

largely confines his psychological analysis to the stage of identity development that occurs during adolescence. There are other Eriksonian theoretical concepts that he might have used fruitfully. For example, during "young adulthood" (in terms of Erikson's "developmental stages") the ego adaptive qualities that evolve are either "intimacy" or "isolation."²⁰ The biographical details of Frankfurter's life provide many clear examples of difficulty across this spectrum. Instead of developing personal relationships that moved progressively toward closeness and intimacy — relationships that reflected deeply felt concerns about another person, such as a loving interest in Marion's problems instead of the mere appearance of being a good husband — he seems to have engaged almost exclusively in more self-serving activities, such as power-brokering or appearing paternal. According to Erikson's theory, people act this way because of their failure to develop a solid identity, which in turn would lead to a disinclination to take the psychological risks involved in intimacy.

With the disabilities stemming from failure in the "adolescent" and "young adult" stages, further developmental skewing during the "adulthood" stage would push the ego away from "generativity" in the direction of "stagnation."²¹ While Frankfurter certainly produced a great deal of work, there is at least some impression that his ideas did not continue to develop as all had anticipated. Instead of coming to their full growth and flower, they seem to have become fixed and ultimately stunted, as though they had failed to receive some vital nutrient from their surroundings. Hirsch might have more effectively explored these aspects of Frankfurter's later development by using more of Erikson's theories. Frankfurter's failure to develop a well articulated identity clearly did impose limitations on his personality, but by using the materials from Frankfurter's later years that he had at hand, Hirsch might have carried out a better and more rounded analysis that would have deepened our understanding about his subject.

Reading Hirsch's description of Frankfurter recalled a vivid and very unpleasant encounter that I had with Justice Frankfurter. It occurred when Frankfurter presented his Owen J. Roberts lecture at the University of Pennsylvania Law School.²² In the course of a faculty reception I was introduced to him. That encounter lives vividly in my memory as one of the most unpleasant social encounters of my life. There was no particular reason why Justice Frankfurter should have had any image of me whatsoever since I was a nearly new arrival in the law school world. The only two real stimuli (un-

20. E. ERIKSON, *supra* note 1, at 263-66.

21. *Id.* at 266-68.

22. Frankfurter, *supra* note 15, at 781. This occurred on March 20, 1957.

less we assume that Frankfurter was in possession of some kind of psychic omniscience) that may have spurred a reaction in him were (1) although I did not exactly tower over him, I was at least a head and a half taller than he, and (2) I was introduced as a psychiatrist (probably in those days with the faculty "joke," "This is the faculty psychiatrist!"). His response to me, lightning fast, was that I obviously did not warrant any kind of attention from him, and after a brusque "How do you do," he sharply turned away from me. Hirsch's description of how Frankfurter was strongly inclined to make swift judgments about a person's capacities, and then treat the person as one to be regarded with either respect or disdain (p. 43), made me better understand how Frankfurter had behaved with me. I also recall being struck by the fact that when he arrived, he was accompanied by a group of younger men who obviously looked upon him with adulation and reverence. This was in marked contrast with other Supreme Court Justices who visited our school and whose arrivals were nearly inconspicuous. Frankfurter clearly flourished on such attention and Hirsch helps us understand how much he needed it (p. 107).

On a second occasion I met Justice Frankfurter in Washington when I was participating in a judicial seminar with the benches of the Supreme Court and the Court of Appeals for the District of Columbia. My memory of that experience is not so vivid, but I do not have any recollection of his having had any great interest in exploring the psychological subjects that the group was examining. This was in stark contrast to many of his brothers. His lack of interest may have been related to experiences that he had with his wife's mental illness, for she and her psychiatrist (with whom he consulted several times) (pp. 84-85) surely must have discussed his own behavior. It is possible that a suggestion might have been made that he receive help in dealing with his insensitivity to her. Hirsch's account makes it clear that Frankfurter did not have the kind of personality that would be drawn easily toward psychotherapy. Since these encounters stand out so vividly in my memory and are still, after more than twenty years, enmeshed in unpleasant memories, I found Hirsch's biography interesting and helpful. It is likely that many others will respond similarly to this book.

It is easy to dwell on all of the things that Hirsch did not do, or to comment on what he might have done, but this would risk giving a very wrong impression. Hirsch goes far toward clarifying much of the enigma about Frankfurter's behavior. It takes a large measure of courage to write this kind of book and the author deserves our commendation for having done so. Although one may carp about some of the psychological trails that he followed, for the most part I would agree with his psychological conclusions. I found the book valuable

and stimulating, and I hope that it will encourage others to go forward and use the analytic methods of psychohistory.