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Edmund M. Morgan

Felix Frankfurter

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EDMUND M. MORGAN

The Roman admonition *de mortuis nil nisi bonum* bespeaks generosity of spirit because it implies, at least in part, that since of some people the truth could not be told during their lives, they should not be pursued after they are gone. Happily, even his "warts"—Eddie Morgan, with all his tenacious loyalties, would disown a friend who claimed perfection for him—are endearing or, at least, his limitations emphasize his great qualities. It is an easy and gladsome task to report him aright, and so I rejoice that the *Vanderbilt Law Review* has decided to tell him to his face what is thought of him. Thousands of lawyers scattered all over the land, hundreds of law teachers, judges on every bench, trial and appellate, are, if they know their craft, consciously indebted to him and many more are his debtors without awareness of their obligation. And beyond his services to the functionaries of the law, he has been, and fortunately continues to be, a significant contributor to the very process of law. To speak of this not merely adequately but at all I must leave to others. Even were I not barred by lack of special competence within the areas of his preoccupying labors, a due estimate of what difference Morgan's teaching and writing have made to the law would require time not at my disposal. But I would not miss the chance to utter a word of affection for Eddie Morgan as a lifelong friend, and admiration for him both as a scholar and as an exemplar for the legal profession in all its phases.

As friend and student of the law, I have of course followed his writings, though to be sure not systematically. With a view to refreshing my recollection of its corpus, not, as I have indicated, to descant upon it but by way of recalling the man, I asked those admirable co-workers, the staff of the Supreme Court Library, to bring together all of Professor Morgan's publications. I knew that he was rather scribacious, but I hardly expected to be staggered by the sizable Morgan library with which I was confronted. On a rough estimate, there were some two hundred items of every variety of legal writing: text books, case books, an unpretentious but wise little volume on the *Introduction to the Study of Law*, the successive stages of the Code of Evidence of the American Law Institute, essays scattered in dozens of law reviews, as well as those contained between book covers, like his Carpentier Lectures, book reviews, surveys of developments in the law both in the Nation and latterly in Tennessee. He has not been a one-subject scholar. But in one field, Evidence, he has become the contemporary master. History will surely account him with Thayer and Wigmore as a trinity in the law of

evidence, and not the less so because of his respectful but fresh reexamination of and disagreement with some of the tenets of his two glorious predecessors. Nor has he restricted his great powers to doctrinal writings. If law is indeed to serve as the cohesive force of a civilized secular society, Morgan naturally has not shrunk from applying his deep learning in the field of evidence and procedure—that is, the appropriate conduct of trials—to such *causes célèbres* as the *Mooney* and *Sacco-Vanzetti* cases, even though, or precisely because, they were embroiled in public passion.

Needless to say, I did not read this vast body of Morgan literature, but I did scurry through enough of it to renew my sense of his range, depth, subtle powers of analysis, horse-sense, a scholar's twin faculties of intellectual courage and modesty. He has also been heedful of Mr. Justice Holmes's hint to judges that in order to be weighty they need not be heavy. I cannot resist the temptation to quote *in toto* the way in which Morgan disposed of an unworthy book: "If false, a most outrageous libel upon the dead; if true, the biography of an able, attractive, but thoroughly contemptible shyster; in either case an entirely unjustifiable waste of good, white paper."

These summary comments of mine on the characteristics of his writing are in effect a delineation of the man. But it may come as a great surprise to all who love Eddie Morgan to have me say that in my first encounter with him he appeared not unlike an ogre. This occurred when I was a frightened new second-year editor of the *Harvard Law Review* and Morgan was not only a towering third-year man but the Note Editor of that *Review*, exercising powerful blue-pencilling authority over my earliest efforts at legal writing. I soon realized that Morgan was not dealing with me as a person, properly making my sensibilities irrelevant. He was dealing with my product, dealing with it as mercilessly as intellectual product should be dealt with. It did not take me long to discover that Morgan, unlike too many people, was not confounding his duty as a critic with generosity of feeling as a friend. That is a rare enough quality in men. Morgan strikingly illustrates a still rarer quality. As he would not make the confusion between intellectual and personal issues where others were involved, he does not think there should be such a confusion of functions where his interest is involved. Many years later, after we had become fast friends—he was at Yale and I at Harvard—the Harvard Law School Faculty invited Morgan to join it. For reasons that are here irrelevant as is their soundness, I opposed the call on the ground that the needs of the Harvard Law Faculty at the time were for a reinforcement different from the interests and qualities that Morgan would bring.

I wrote him of my views, adding that while I had to vote against calling him no one would more eagerly welcome him to Cambridge than I. How many men would have deemed such conduct on the part of a friend at least quixotic, if not indeed negating friendship. Not so Eddie Morgan. He respected my action on the basis of my thinking. Not only was there no bruise to our friendship; the incident deepened it.

Need I say more to convey my affection and my admiration for Eddie Morgan.

FELIX FRANKFURTER*

* Associate Justice, United States Supreme Court.