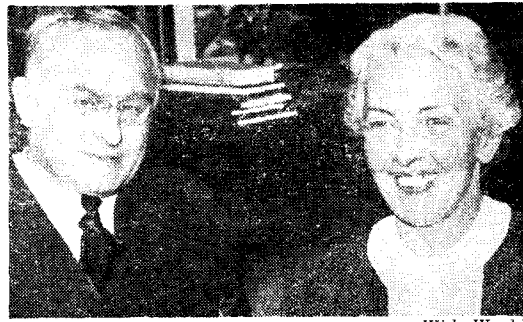


FRANKFURTER

The Past Is Prologue



—Wide World

The Frankfurters — "adhesive reputation as a radical."

By JOHN MASON BROWN

THE shaming reasons for much of the opposition to Frankfurter did not show themselves until Roosevelt, who had already elevated Black and Reed to the Court as his first appointments, suddenly sent Frankfurter's name to the Senate early in January 1939. "Honestly, I think Felix's nomination," wrote the President, "has pleased me more than anybody else in the whole country." Although many shared his pleasure and many did not, no American, proud of his country and believing in its promises, could be pleased by the prejudices, hatreds, and slanders that floated to the surface in the Senate hearings.

The hearings lasted only three days, compared to the month-and-a-half ordeal which Brandeis endured twenty-three years before. This much was good about them. Among their other cheering aspects were these: that most of the Senators acquitted themselves admirably; that Frankfurter did, too, as the second nominee to the Supreme Court to appear before the Judiciary Committee in its entire history; and that those who testified against him, instead of being prominent and responsible citizens like Brandeis's opposition, were mainly crackpots and fanatics. One's horrible suspicion is, however, that the views expressed in public were privately shared (and still are) by too many who should know better.

The hearings make frightening reading today because, though presumably a blemish on the past, they have a sickeningly contemporary ring. They have their interludes which would be hilarious if laughing at them were not like having fun at Bedlam. The eleven witnesses were on the whole a sorry lot. They included a man who identified himself as national director of the Constitutional Crusaders of America, an organization which, in spite of claiming to represent almost everybody in the United States except the CIO, the AFL, Dr. Townsend, and Professor Frankfurter, turned out never to have had a meeting, much less a conven-

tion, and to have a membership of one. The climax in this crusader's testimony came when he read into the record a telegram which asked, "Why not an American from Revolution times instead of a Jew from Austria just naturalized?" and Senator Neely answered, "An American from Revolution times would be too old."

Another witness was Elizabeth Dilling, author of *The Red Network*, who insisted Frankfurter's being a member of the national committee of the American Civil Liberties Union was a proof of his Communism, apparently forgetting that this same ACLU had once defended her right to broadcast her opinions. There was even "a Seneca Indian from the State of Indiana" who, speaking for the American Indian Federation, said she opposed Frankfurter because the Civil Liberties Union (she could only guess it was with Frankfurter's knowledge) had supported a bill which "communized" Indian living.

Freakish and contemptible as most of the statements were, the hearings had their high points. One came when Senator Borah thundered at a witness, "So far as I am concerned, I do not propose to listen to an argument against a man because of his religion." Another was supplied by Frankfurter. When asked by Senator McCarran if he would agree with Harold Laski, had Laski in one of his books advocated Marxism, Frankfurter replied, "Senator, I do not believe you have ever taken an oath to support the Constitution of the United States with fewer reservations than I have or would now, nor do I believe you are more attached to the theories (he later added that by 'theories' he meant 'principles') and practices of Americanism than I am. I rest my answer on that statement."

Inevitably, the often-quoted letter Theodore Roosevelt wrote Frankfurter in 1917 was again quoted; the letter in which T. R. condemned the attitude taken by Frankfurter in his report to Wilson on the Bisbee deportations as being "fundamentally that of Trotsky and other Bolshevik leaders in Russia." Fortunately, Frankfurter's little-known answer, in which he denied the

views attributed to him and wondered if the ex-President might not have had the letter of another correspondent in mind, was also included. Moreover, Frankfurter was granted permission to introduce his widely misinterpreted reports on the Bisbee and Mooney cases.

What Frankfurter deplored in the deportation of the striking war workers from Bisbee, Arizona, to New Mexico was that the action "was wholly illegal and without authority in law, either State or Federal." In the San Francisco dynamitings he held no brief for Mooney, whom he described as "a well-known labor radical," "associated with anarchists," and "a believer in 'direct action' in labor controversies." He was disturbed by the prejudicial atmosphere in which the trial was held, and appalled to find that Mooney's first conviction was based on the flimsy evidence of dubious witnesses. Accordingly, he recommended a new trial at which Mooney's guilt or innocence could be "put to the test of unquestionable justice."

In both cases, as cannot be emphasized too strongly, Frankfurter wrote not as the friend of labor, capital, or any special interest, but as the champion of law and justice. Though overlooked by those who testified against him at the hearings, it was precisely in this spirit that Frankfurter undertook his famous article for the March 1927 *Atlantic* about the Sacco and Vanzetti case. This article, written after the case had dragged on for six years, was referred to constantly at the hearings to prove that Frankfurter was not only the friend of anarchists but a dangerous agitator himself.

IT IS hard to understand, reading that article today as expanded into book form, why it should have created such a furor, scandalized proper Bostonians, imperiled Frankfurter's position at Harvard, and won him an adhesive reputation as a radical. It is a courtroom chronicle told as simply and engrossingly as any ever recounted by William Routhead or Edmund Pearson. The miscarriage of justice is its one flaming theme. Its strength lies in the skill with which

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Playwright on a Soapbox

"Sunset and Evening Star," by Sean O'Casey (Macmillan. 339 pp. \$4.75), is the latest panel in the autobiography of the Irish playwright who gave the English-speaking stage such classics as "Juno and the Paycock" and "Plough and the Stars." Here it is reviewed by Horace Gregory, well-known American poet and critic.

By Horace Gregory

WHEN The Abbey Theatre was a living force in Dublin—the years extended from 1899 to 1937—when Irish plays caused riots of cheers or hisses as well as the threat of stones and broken chairs, when the plays themselves were more than an evening's entertainment, and were a serious, yet often lively contribution to literature, the name of Sean O'Casey had singular distinction. It moved with five others—W. B. Yeats, Bernard Shaw, J. M. Synge, Lady Gregory, and Paul Vincent Carroll—names that became associated with dramatic genius, each with its highly individual gifts and talents, and together they proved the existence of a national literature that transcended provincial insights, quarrels, theories, as well as local politics.

It is in this nearly Olympian company of two dozen plays written under the names I have listed and produced on the Abbey stage that O'Casey's "Juno and the Paycock" and his "Plough and the Stars" belong. No critic can deprive O'Casey of that honor or those two signs of writing supremely well. His characters were urban peasants, dwellers in slum tenements, in time of civil war—and his "Captain" Jack Boyle of "Juno and the Paycock" has already found his more than life-size place not too far from the figure of Wilkins Micawber.

Of the plays that O'Casey has written or produced since 1926 none contains the singular combination of theatrical skill and shrewd appraisal of all-too-human acts and motives that charged his successful plays with the illusion of life. Since the writing of "The Plough and the Stars" O'Casey has followed too closely the sentimental, serio-comic, melodramatic tradition of Dion Boucicault, who wrote "The Colleen Bawn" and "The Octoroon," an anti-slavery play of the

1850s. His later plays reflect the skills of theatrical facility rather than the moral forces which so often inspire dramatic art.

Since 1939, and after his removal from Dublin to England, O'Casey has been at work writing six volumes of his autobiography, of which "Sunset and Evening Star" is the latest instalment. For certain Irish writers who came of age during Eire's long civil war London became a sanctuary, a place where in the oasis of Hyde Park any man could mount a soap-box to have his say. Most of O'Casey's autobiographical writings are of the soap-box variety, timed for a laugh, a cheer, or a hoot of rage from those who hear or read them. Such prose has been known as Irish eloquence since the days when Samuel Lover wrote his "Handy Andy."

Of the six books "Inishfallen, Fare Thee Well" is the most impressive because it recalls with greater vividness than the others the years of O'Casey's fame, the years of civil war, of writing his two memorable plays, of meeting Lady Gregory and W. B. Yeats—anything after those high moments arrives as an anticlimax. In this book O'Casey's voice was the last echo of the more stormy scenes which took place during the half century of the Irish Renaissance; the book has its place in Irish literary history.

"SUNSET AND EVENING STAR" is sparse in anecdote and weighted by political innuendo. The book has a report of O'Casey's wife's visit to the bedside of the dying Bernard Shaw, flashes of O'Casey himself on New York's Broadway and in his last meetings with Lady Gregory; it is clear enough that O'Casey is a man of the theatre, loving the bright lights, the smells, the sounds of the green room, the sight of drama critics in the lobby before the curtain rises, the excitement that fills Shaftesbury Avenue and the streets off Broadway at theatre hour. The book also contains an amusing fantasy of Kathleen ni Houlihan in a British pub, but behind these sketches the image of the Hyde Park soap-box rises and on the placard across the speaker's chest is lettered "Communist Party."

Very nearly the whole of a chapter in the book with its title "Rebel Orwell" is devoted to slippery, double-talk abuse of George Orwell and



—From "Ireland," by James Reynolds (Farrar, Straus).

"... highly individual gifts and talents."

"Animal Farm." Confused interpretation of facts and character assassination have long been the marks of totalitarian methods, Communist as well as Nazi, in literary criticism; O'Casey follows the formula neatly:

And Orwell had quite a lot of feeling for himself; so much so that, dying, he wanted the living world to die with him. When he saw, when he felt, that the world wouldn't die with him he turned the world's people into beasts; Orwell's book of beasts. Since that didn't satisfy his yearning ego, he prophetically destroyed world and people in 1984.

"Animal Farm" has been a difficult book for Communists to refute; it is too clearly a parable of what happened in the USSR. "Nineteen Eighty-four" is a warning of what would happen if Communists took control throughout the world; both books are destructive only to those who hold with desperation to Communist Party lines. The ugly side of O'Casey's comment is that Orwell is dead and cannot answer him. There is more than a little trace of the inhuman, certainly of the inhumane, in O'Casey's conduct.

The same inhuman strain appears as he tells the story, a well-known one to newspaper correspondents, of a woman whose husband vanished into the political machinery of the USSR; O'Casey does all he can to make the woman seem unattractive: "graying hair fell down to the shoulders in slender hanks, hanging untidily . . . her face . . . very pale . . . glared brazenly." O'Casey replies to her anger and grief calmly, "I have been a comrade to the Soviet Union for twenty-three years . . . I've no evidence that he was taken by the OGPU."

From his correspondence he quotes the following letter which he intro-