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Maurice Finkelstein (1899-1957): A Memorial Tribute

Authors

John A. Flynn, Joseph T. Tinnelly, Louis Prashker, Louis Finkelstein, Felix Frankfurter, Benjamin J. Rabin, Ferdinand Pecora, and Louis S. Posner

MAURICE FINKELSTEIN (1899-1957):
A MEMORIAL TRIBUTE

BY THE UNIVERSITY

Though still young in years, Maurice Finkelstein, upon his demise, had completed thirty years of a rich and respected association with the Faculty of Law of St. John's University.

He was a man of deep religious conviction, conscious always of the theological and philosophical implications of his faith, rigorously practicing its disciplines.

Steeped in classical learning, he had a sense of objectivity in the resolution of the day-by-day problems that crossed his path. He was stimulating and thought-provoking. His profound familiarity with the history of past ages and its moulders of thought gave him a sense of adaptability to the demands of the present.

St. John's was blessed with his association.

VERY REV. JOHN A. FLYNN, C.M.*

The sudden death of Maurice Finkelstein, Professor of Law at St. John's University School of Law, on February 8, 1957, brought to an untimely end the career of a great scholar, teacher, and lawyer.

Professor Finkelstein, an alumnus of Columbia College, was graduated from the School of Law of Columbia University in 1921. Two years later he received the degree of Doctor of Juridical Science from the Harvard Law School. This was a period of great change and progress in legal education, and Professor Finkelstein was fortunate to establish close associations with the faculties of two of the foremost law schools in the United States.

The founding of St. John's School of Law in 1925 and his appointment to the first faculty gave Professor Finkel-

* President of St. John's University.



Maurice Finkelstein

1899 - 1957

PROFESSOR OF LAW

The St. John's Law Review mourns the loss of one of its founders—Maurice Finkelstein—for over thirty years, Professor of Law at St. John's University School of Law.

The tributes that follow manifest the extent of the loss suffered by colleagues, relatives, and members of the Bench and Bar.

stein an opportunity to participate in the tremendous growth and development of legal education. As co-founder and first faculty adviser of the St. John's Law Review he set the editorial standards with such broad vision and meticulous care for detail that they have guided the student editors for over thirty years. Not content with supervising the work of others, Professor Finkelstein proved himself a productive scholar, and his collected writings in various legal publications would fill several volumes.

During a long period of his professional life Professor Finkelstein taught a very limited program at St. John's while he was engaged in the practice of law which brought him before the highest courts in the country. His skill as an advocate was matched by his genius as a counselor, and his character and legal experience earned for him the respect of public officials as well as individual and corporate clients. From 1935 to 1939 he was counsel to the Mortgage Commission of the State of New York, and during the very critical housing shortage from 1946 to 1948 he was Chairman of the Rent Commission of the City of New York. It was during this period of his life that he became convinced of the necessity for reform in the law which he dramatized in a series of articles beginning with *The Case of the Beverly Hotel—A Study of the Judicial Process* in the May, 1953, issue of the St. John's Law Review. Yet all these years Professor Finkelstein thought of himself as primarily a teacher and only secondarily a practitioner.

After three decades of experience as a lawyer-teacher, Professor Finkelstein finally decided to dedicate the remainder of his professional career exclusively to law teaching and writing. In September 1956 he began to terminate his practice; and on February 1, 1957, a week before his death, he took up his duties as a member of the full-time law faculty at St. John's. He taught class on February 7, and his sudden death early in the morning of the next day was a shock not only to his family but to his students and his colleagues on the faculty and at the bar.

Professor Finkelstein was not a Catholic, but his philosophy was a succinct digest of the principles upon which our Judaeo-Christian civilization is based. In the tradition of

his father, Simon J. Finkelstein, an orthodox rabbi, and his brother, Louis Finkelstein, Chancellor of the Jewish Theological Seminary of America, Professor Finkelstein was a deeply religious man. He spoke of God in the words of one familiar with the scriptures. He spoke of the law as a participation of men in the explanation and extension of the law of God.

Professor Finkelstein could make complex legal problems meaningful to a layman, but his learning was not circumscribed by the law. He was equally at home in discussions of philosophy, literature, painting, music, and the drama. His colleagues on the faculty of St. John's Law School took keen delight in his informed and penetrating discussion on modern problems ranging from law and government through sociology to profound difficulties in the application of morality to law. He was respected by the judges of our highest courts. His counsel was valued by fellow attorneys. His students appreciated his skill as a teacher and his ability to inspire scholarship as well as craftsmanship in the law.

His friends, and they were legion, loved him for his sympathetic understanding, his compassionate support in difficulty and trouble, his profound understanding of human nature. While one of them lives, Maurice Finkelstein will not be forgotten.

REV. JOSEPH T. TINNELLY, C.M.*

Maurice Finkelstein passed to the great beyond at the age of fifty-seven while asleep shortly after midnight on Friday, February 8, 1957.

The St. John's Law Review takes this occasion to pay tribute to the memory of its co-founder and first faculty adviser. Professor Finkelstein never ceased his interest in

* Dean of St. John's University School of Law.

the Review. Many contributors thereto were the recipients of his letters expressing his appreciation for their part in the publication. It served too as the medium for expressing his own views in many leading articles and book reviews which appeared in the Review over a span of thirty years.

In this issue of the Review is a leading article which Professor Finkelstein volunteered to write for the current number. The article is the fifth of a series of case histories which Maurice had written over the past several years, and appears posthumously in this issue. He put the finishing touches to the article at the law library of St. John's just a few hours before his demise. Until the very end, he was in his intellectual prime, doing what he most loved to do, and passed on without pain and suffering, leaving to St. John's as his last legacy *The Case of the Red Sea Charters: A Study in Administrative Procedure*.

In this issue of the Review dedicated to his memory, tributes are paid to him by Very Reverend John A. Flynn, C.M., President of St. John's University, and Reverend Joseph T. Tinnelly, C.M., Dean of its School of Law.

Maurice's brother, Dr. Louis Finkelstein, Chancellor of the Jewish Theological Seminary of America, contributes a most moving tribute. Several members of the judiciary join in this memorial tribute. Maurice's former professor at Harvard Law School, Justice Felix Frankfurter, has taken time off his arduous tasks at the United States Supreme Court, and written of his recollections of his one-time graduate student. Justice Benjamin J. Rabin, formerly Chairman of the Mortgage Commission of the State of New York, pays tribute to Maurice's work as attorney for the Mortgage Commission. Former Justice Ferdinand Pecora was a warm friend of Maurice and an occasional speaker at St. John's Law Review dinners. He knew him as friend, lawyer and scholar, and joins in the tribute.

Mr. Louis S. Posner, a noted lawyer and, for some years, member of the then Board of Trustees of the St. John's Law Review and an occasional speaker at St. John's Law Review dinners, had many contacts with Maurice. He recommended that Maurice be appointed to head the Law and Appeals Division of the Mortgage Commission of which Mr. Posner

was then a member. Subsequently, he was associated with him in appellate court work. His tribute appears here.

To these tributes paid by others, I like to add the personal word of appreciation which I expressed at the St. John's Law Review luncheon on April 30, 1956, in the presence of Maurice, for his extraordinary and tireless efforts in the founding of the St. John's Law Review in 1926, and his guidance of it for several years thereafter.

LOUIS PRASHKER.*



BY A BROTHER

Maurice's life span seems brief to us, so abruptly deprived of his physical companionship. But in terms of achievement his was a long life indeed.

Much of his labor remained generally unknown, because he insisted on following the Prophetic tradition demanding anonymous service, in an age when it is rare. Those who mourn him and feel bereaved in his death include not only his immediate family and the larger family of colleagues and co-workers, but a wide circle of friends, some helped materially, and all guided spiritually by Maurice.

He was a far more effective influence for good than he himself knew, offering members of his family and other friends, old and young, an example of dedication which spurred us toward goals we could scarcely have envisaged without him.

A lover of peace, Maurice yet would not compromise with practicality in setting limits to the help, friendship, learning, and wisdom he lavished on those in need. Nothing could dissuade him, even during illness, from giving of himself utterly and tirelessly.

* Professor of Law, St. John's University; Faculty Adviser, St. John's Law Review.

His wide range of learning continually astonished men who knew him well, and even the brother close to him in age. How he managed to combine in one life creative research, public service, philanthropy, and his professions, is beyond my understanding, except on the premise that rare dedication elicits energies beyond our ken.

Although his friends were many, Maurice did not, as often happens, permit his affection for them to detract from the primary duty to honor his parents. That his father reached the age of eighty-seven is in part attributable to loving care from Maurice. Never did a son better fulfil the Commandment, "Honor thy father and thy mother," and it was fitting that our father should have died in Maurice's embrace.

Maurice's relation to his wife, children, grandchild, brothers and sisters, and their children and grandchildren, had a spiritual, selfless quality which made him a mentor for the whole family.

Typically, he could not bear a grudge. Some weeks before his death, I suggested reconciliation with a man who once did Maurice a grave injustice. "But," he replied, "I forgave him long ago."

Typically his gentle nature offered reproof, in kind and loving, but also uncompromising terms, when necessary. He would not without a soft but earnest protest let anyone near him fall away from standards he thought attainable.

There was a sterling quality to his unselfish love for people, which was rooted in profound faith in God. To hear him pray was a spiritual experience of a high order. Never did he waver in his conviction that human affairs are in the care of a loving Providence, to Whose merciful hands Maurice entrusted his spirit.

Actually it was this trust that gave him life, and although gravely ill, a remarkable zest. Alas this deceived even those close to him. He seemed so vital, that we could not believe him near death.

We are promised in the Decalogue that those who honor their father and their mother will be granted long life. The fate which befell Maurice, like that of others truly pious and dedicated, demonstrates that this long life is not to be meas-

ured in years on earth, but in a quality of achievement and an immortality which defies the grave itself.

LOUIS FINKELSTEIN.*



BY THE BENCH

During the academic year 1922-23, Maurice Finkelstein was one of a group of unusually able and attractive men who were in a seminar of mine at the Harvard Law School. Perhaps the most compact way of conveying the impression he then left with me is to say that the sense of him after thirty-five years is as vivid and charming a personality as I then felt him to be, although we had not seen one another for years. The promise he gave in that seminar of a strong and urbane mind he vindicated in the years to follow. Very early, he made a real contribution to as important inquiries as any that test legal scholarship, namely, those that concern the nature of the judicial process and more particularly the demands of so-called issues of public law upon that process.¹

Through occasional reprints from him and as I scanned the law reviews over the years, I could not but become aware of Finkelstein's scholarly fecundity. But not until I made a systematic examination of his writings did I fully appreciate the range and depth of his output as a legal scholar. He brought clarity to recondite problems arising under the New York Law of Perpetuities and kept within the actualities when moving in what Dean Ezra Thayer facetiously called the higher realms of constitutional law. He was as well aware as anyone that legal problems reflect, consciously or unwittingly, philosophic and psychologic judgments, but he did not solve difficulties in the law by assuming answers to even more difficult intellectual problems outside the technical aspects

* Chancellor of the Jewish Theological Seminary of America.

¹ See Finkelstein, *Judicial Self-Limitation*, 37 HARV. L. REV. 338 (1924); *Further Notes on Judicial Self-Limitation*, 39 HARV. L. REV. 221 (1925).

of law. Even apart from his series of four case histories,² his writings added not a little to understanding of the actual process of litigation through the courts.

Book-reviewing constitutes one of the most important aspects of legal literature, and Finkelstein's book reviews were notable. They were not extracted from the books reviewed but out of his well-stocked mind. His judgments were generous but critical, not namby-pamby, and always in the best of manner.

He left us much too early. But he leaves behind the cherished memory of a charming personality, a devoted friend, a fruitful scholar, a man of gifts and character who used them bountifully.

FELIX FRANKFURTER.*

The Wall Street crash of 1929 brought in its wake the mortgage debacle of the early 1930's following the collapse of the real estate market. To meet this emergency, the Legislature of New York in 1935 created the Mortgage Commission of the State of New York. Within ninety days of its appointment, the Commission took jurisdiction of the certificated mortgages of 21 guaranty companies encompassing 15,275 mortgages, in which 200,000 certificate holders had invested \$658,000,000. The task was a gigantic one, and the organization of a suitable staff was of primary importance. This was particularly true of the legal department whose key division was the Law and Appeals Division. Upon recommendation of Commissioner Louis S. Posner, Professor Maurice Finkelstein was appointed to head the Division, and to it he brought a wealth of experience, imagination, and ingenuity. He held this post until he was appointed General Attorney of the Commission.

² The fifth of the series of case histories appears posthumously in this issue. [Ed.]

* Associate Justice, Supreme Court of the United States.

One of the chief difficulties in dealing effectively with the mortgage certificated issues was the inadequate power of the courts or the theretofore existing state agencies to handle the rehabilitation and reorganization of the mortgage issues. The authority granted to the Commission by the Legislature was challenged in the courts. The burden of sustaining the Commission's authority from a constitutional and statutory standpoint devolved upon the Law and Appeals Division headed by Professor Finkelstein.

All legal opinions which were rendered to the several departments of the Commission were prepared under his direction and supervision. He appeared and participated in all appeals from cases arising out of the routine functions of the Commission. He took an active role in the large volume of general litigation made essential by the work of the Commission.

Professor Finkelstein participated in proceedings against defaulting agents, judgment debtors, the prosecution of damage claims, recoupment proceedings against title companies, the defense of suits brought against the Commission or its subsidiaries, and various related matters. Condemnation proceedings, tax lien foreclosures, and proceedings to foreclose mortgages and other legal and financial matters commanded his attention and efforts. With his invaluable assistance, decisions affecting policy and procedure were made; and with his help the many departments comprising the Commission functioned smoothly and efficiently. He was always ready to help those who sought his advice and cooperation in their assigned duties.

An important task facing the Commission was to assist in an effort to stabilize the real estate and mortgage industry, which had been so badly shattered and with which the fortunes of the certificate holders were inseparably linked. As part of the research projects, Professor Finkelstein initiated an exhaustive study of the mortgage situation.

Recommendations were made for the improvement of real estate law generally, the abolition of deficiency judgments and the simplification of mortgage foreclosures, and the tapering off of the mortgage moratorium. These are but

some of the salient aspects of the work of the Commission and the contribution thereto made by Professor Finkelstein.

His efforts in behalf of certificate holders were untiring. To his fellow workers in the Commission, he was a constant source of inspiration, and by his consideration and patience he earned the esteem and affection of all who had occasion to come in contact with him.

In 1939, on certification of the Commission that it had completed its task, the Legislature terminated the Commission as of September 30, 1939. Much of the work of the Commission and its achievements would not have been possible except for the superb contributions made by Professor Finkelstein.

BENJAMIN J. RABIN.*

To lose a friend is the greatest of all evils, but endeavor rather to rejoice that you possessed him than to mourn his loss.

Seneca—*Epistulae ad Lucilium*.

It is inevitable that those privileged to claim the close friendship of Maurice Finkelstein (as was this writer for more than a score of years) will grievously miss him and will feel the poorer by his sudden death. Equally certain it is that the enrichment which his attractive personality added to their lives will temper their sorrow, and enable them gratefully to rejoice that they had possessed him as a friend.

Embodied in Maurice Finkelstein was a rare combination of qualities. He had a brilliant mind with an amazing versatility. By temperament he was gentle. But injustice and inequity roused in him a fighting indignation. Deep was his learning, especially in his chosen profession of the law. But

* Associate Justice of the Supreme Court of the State of New York, Appellate Division, First Department; formerly General Attorney and Chairman of the Mortgage Commission of the State of New York.

in the application of it he was never pedantic. Indeed, any ostentatious display on his part was forbidden by his innate humility. To hear him in the courtroom was an intellectual delight. His arguments were incisive, well marshaled, and quietly but effectively delivered. He was invariably courteous to the Court, and fair to his adversary. On the rare occasions when the determination was unfavorable, he accepted it gracefully. In victory he was modest.

He wrote extensively for such discriminating periodicals as the *St. John's*, *Harvard*, and *Columbia* law reviews. His subjects ranged from tangled procedural problems to profound constitutional issues. But he wielded his facile pen with such lucid expository power that they were stripped of their seeming complications. He carefully studied the apparently shifting positions taken at times in the past quarter century by the United States Supreme Court, in the field of constitutional rights. By his keen and logical analyses, he brought those decisions into harmony with the changing political and sociological backgrounds against which they were rendered.

Notwithstanding the intensity of his labors as a practitioner and as a teacher, he somehow found the time to serve in exacting and vexatious civic spheres with genuine distinction. The contributions which he made to the public interest as City Rent Commissioner, and as Counsel to the State Mortgage Commission, were constructive and enduring. Nor did the heavy pressure of these manifold responsibilities deter him from voluntarily assuming other obligations to society. In addition to being a Director of the Menninger Foundation, he was an active leader in many Jewish communal and cultural movements. With an overflowing knowledge of the treasures of Jewish lore, he could cite from Talmudic literature many illuminating parallels to current trends. He understood and exemplified in his daily life the loyalty and generosity of friendship. Kindly and compassionate by nature, he was warm and genial in a social atmosphere. Endowed with a rollicking sense of humor, he responded with flashing wit to the drolleries of the raconteur.

Rightly may it be said of him, "This was a man!" He was indeed a noble man—one whose moral stature towered as impressively as did his lofty achievements.

"To live in hearts we leave behind,
Is not to die."

Thus truly sang the Scottish poet, Thomas Campbell, more than a century ago.

Enshrined in the hearts of the multitude to whom he had become endeared, Maurice Finkelstein continues to live.

FERDINAND PECORA.*



BY THE BAR

The various facets of a man's life converge upon the affectionate memory when he has gone, until it is impossible to separate the brightness of each surface from the light of the whole. Few paths have been more precious to the eye or dearer to the heart than the paths of Maurice Finkelstein, who journeyed among us as lawyer, teacher, scholar, writer, and friend.

Finkelstein's record as a student was noteworthy both at Columbia, where he received his law degree, and at Harvard, which gave him a Doctorate in Jurisprudence, earned by an arresting thesis on the subject of judicial self-limitation. His mental processes were notably swift, as was his ability to penetrate to the very core of a legal problem, however complex. In the course of time these endowments brought numerous briefing and appeal retainers as well as friendships among those whom he served. Many admired increasingly not only his unusual knowledge of the law and its principles but, no less, his equally unusual ability in the difficult process of applying those principles to the facts of the particular case.

* Former Justice of the Supreme Court of the State of New York, First Judicial District.

Maurice Finkelstein loved the law beyond all else, and loved the teaching of it. To him it was a command, an ennobling urge to expound and guide in the procedures by which truth is sought and justice established. The recital of experiences from his own active practice lent added interest and clarity to Finkelstein's teaching. Included in those experiences was his service for a time as Chairman of the Temporary Housing Rent Commission in New York City. Included also was the important task which he accepted as Assistant Counsel and later as Chief Counsel to the New York State Mortgage Commission.

Keen perception and a capacity for analysis and exposition, gifts so important for a teacher, distinguished Professor Finkelstein also in his writings, for he was more than a first rate lawyer and teacher; he was a fluent writer, and his articles dealt with a wide and striking variety of topics, among them political and governmental questions, price fixing, rent regulation, corporate rights, common-law pleading, taxation, and procedure. All were illumined by the prodigious quantity of his reading, which, extending far beyond the immediate field of jurisprudence, ranged into history, psychology, philosophy, and Rabbis. To his wide scholarship was added a retentive memory upon which even casual reading left a lasting impression.

In late years the problems of the law's delays held Finkelstein's attention. Taking up actual cases, he traced their cumbersome course in practice and procedure, and pointed up the gap between the text book exposition of the things that should happen and the things that did happen—a fact-finding study of the law in theory and the law in action. These studies resulted in a series of five articles, noteworthy for their findings. The last of these writings appears in this issue of the St. John's Law Review.

Constitutional law and the functions of the Supreme Court were subjects of early and continued interest to him, and for several years he engaged in the preparation of his major opus on the subject. It is hoped this work will be found sufficiently advanced toward completion to justify its publication. Indeed, so many and diverse have been his writ-

ings, numbering a half hundred or more of law articles and book reviews, and so constructive and original his treatment of themes, that one ventures also the hope they will one day be collected and published; these writings may well prove to be signposts on the crisscrossing footpaths of the law.

Finkelstein was genuinely and actively concerned with the welfare and problems of those about him. He was free of even a trace of intolerance or bigotry. He aided in the establishment of The Menninger Foundation, an institution of foremost standing in the field of psychiatry; and also took active and significant part as a member of the Board of Directors of the scholarly cultural association known as the Conference on Jewish Social Studies. Many were the troubled students who over the years brought their family and personal problems to him; that he similarly helped persons other than his students was known to but few of his intimates, whose occasional cautions to him against imposition were always listened to but rarely heeded. It was his unvarying rule, when a matter of this nature was concluded, to remove from his files every scrap of paper relating to it.

It is not easy to be, nor indeed is one expected to be, altogether objective when memorializing a friend. Maurice Finkelstein would not wish to be pictured as "a verrey parfait gentil knight"; he was a man with many of the virtues and some of the foibles common to man, and possessed of many uncommon gifts. He was blessed with an unusually quick sense of humor and an ability to extract a smile from behind nearly every situation, however lugubrious. This capacity, more frequently than not, betokens in a man a high degree of sensitivity; and Finkelstein was indeed deeply sensitive. His laughter, frequent, was rippling and readily roused; occasionally, in the course of the years, it took on an undertone that marked the effort to hide a hurt or the pain of an untoward event. When a situation seemed for the moment beyond solution or understanding, his usual remark was "Now let's give God a chance to work."

Perhaps the central memory of Maurice Finkelstein longest likely to endure is that of a forthright and stimulating

human being who combined high intelligence, character, and sensitivity with cordial manner, quiet word and ready smile. It was of a man such as this that Shakespeare wrote:

“He was a scholar, and a ripe and good one;
Exceeding wise, fair spoken, and persuading;
Lofty and sour to them that loved him not;
But, to those men that sought him, sweet as summer.”

LOUIS S. POSNER.*

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* Member of the New York Bar; formerly a member of the Board of Education of New York City and Vice-Chairman of the Mortgage Commission of New York State.

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