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## Alexander Mordecai Bickel

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First there was courage; courage is always first. If somebody had to be behind a gun directly fronting on a vast massing of power obscenely sworn to Hitler, then of course that person would be young Alex Bickel. He wouldn't have been able to see any reason why it should be anybody else. And when the mightiest enemy of all, the undefeatable Hitler, arrived and set up his siege, out of season, without warning, bitterly as to time and manner, cutting off all hope, Bickel sat and laughed with his friends, or did what work he could. In between the Hitler of Europe and the Hitler of the universe there was never any faltering from courage. Courage is always first.

To an intellectual, courage commands intellectual honesty. There were many times in Bickel's life when the opinions to which his thought led him did not make him popular among the people with whom he would naturally have wished to be popular. Some of these opinions may even have been wrong; he never came close to claiming infallibility. But he had reached them by the best means known to him; they were his best, at least for the time, and he stuck with them until he saw *reason* to change. Of course.

There came a day when a question was asked him, and when a "yes" might, at the very least, have made possible further movement down the road toward what must have been a much-desired (I dare say the most-desired) goal. The question, mark you, was a close one; an honest and competent man might easily have concluded that the right answer was "yes." Alexander Bickel had come, on balance, to the opposite conclusion. He said "no," and a door closed; "no" was not the right answer, not the wanted answer. His name, by low men for low reasons, was doubtless crossed off a list. But it stayed, and stays, on another list—the list of those to whom courage (and therefore honesty) is first. Bickel must have felt rather wry about this, but I don't think there can have been any conflict in his mind. By

that time the habit of honesty ran through the man's whole grain.

Now what of the quality and worth of the thought guarded by this honesty? With much of that thought, I disagreed; as to one matter, I put this disagreement into (quite vigorous) print, even after it was known Bickel was dying, for I would not offer him, above all at such a time, the supreme insult of failing to answer fully and candidly his own thought.

The key to my own evaluation of all his thought is in the phrase (which I quote without remembering the source) that he and I agreed in everything but our opinions. No one in our times, or perhaps in any times, so deeply, so broadly, so imaginatively explored the institutional place of the courts in shaping the world—and, even more widely than that, the place of constitutional law in political life.

All the above (so far as concerns the particular and personal thing I can say) is underpinning to a relation. Bickel and I were *colleagues*. This word is multivocal. It can mean (and often does mean) that the same Assistant Treasurer signs both salary checks. But it can mean something else. It can mean that you come at the same set of questions from very different directions—in his case from the direction of Felix Frankfurter, and in my case from a direction that in 1956 was yet to be fully defined—the direction, generally, that was to be that of the Warren Court. It can mean, then, that through eighteen years of continual discourse, now cool, now heated, you travel over every question, old and new, within the range of this common interest. Many—perhaps most—of the opinions on old questions remained the same in abstract statement—but how newly rounded, how subtly qualified! In eighteen years, too, many new questions arose; on the more important of these, I think, we formed our opinions—by no means always the same opinions—together, in a process of tireless shared thought—and he always shared his thought, tirelessly. I learned much from Bickel. We were colleagues; I speak measuredly when I say that in twenty-eight years of academic life, I think I have never had so deep and satisfying a *colleague-to-colleague* relation. It remains only to add that in this relation, as in any relation of life, love can develop.

So much more could be said, at this time when there is really nothing to say. May Joanne and the girls find consolation. May he be received into peace.

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