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Robert H. Jackson

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ESSAY

THE FAITH OF MY FATHERS

ROBERT H. JACKSON†

* * *

† Associate Justice, Supreme Court of the United States (1941–1954).

INTRODUCTION

John Q. Barrett^{††}

In his final years, United States Supreme Court Justice Robert H. Jackson worked on a number of autobiographical writing projects. The previously unknown Jackson text that follows this Introduction is one such writing. Justice Jackson wrote this essay in longhand on thirteen yellow legal pad pages in the early 1950s. It is Jackson's writing about religion in his life.

After Justice Jackson's death in 1954, his secretary Elsie L. Douglas found the thirteen pages among his papers.¹ She concluded that the pages were "undoubtedly prepared as part of his autobiography,"² typed them up, and gave a file folder containing the original pages plus her typescript to Jackson's son William Eldred Jackson, then a young partner in the Milbank, Tweed, Hope, and Hadley law firm in New York City.³ Bill Jackson preserved this material carefully for decades but never shared it. Much later, the folder and its contents were entrusted to me. I will be donating it soon to the Library of Congress, for addition to Jackson's papers there.

Justice Jackson's essay on religion, the material that follows, covers two topics: (1) his religious beliefs and practices plus those of his ancestors, who were farmers in Warren County, Pennsylvania, where young Robert Jackson lived for his first five or so years before moving to and then growing up in adjacent Chautauqua County, New York; and (2) some history on Spiritualist movements in that western Pennsylvania and western New York State region. Unfortunately, Jackson did not explain in his draft how his views on religion were shaped by growing up in a landscape of such varied religious beliefs and practices, including Spiritualism. But the gist of his thinking seems clear enough: there are all kinds of people, religions, and beliefs, and the proper

^{††} Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York. Professor Barrett discovered and edited Justice Jackson's memoir *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT* (2003), writes *THE JACKSON LIST*, <http://thejacksonlist.com>, and is writing Justice Jackson's biography. Jackson's late daughter-in-law Nancy-Dabney Roosevelt Jackson gave this manuscript, which had been preserved by her husband William Eldred Jackson, to Professor Barrett. He remembers them with affection and deep gratitude and thanks all Jackson family members for their friendship and support, Max D. Bartell and Danielle M. Stefanucci for excellent research assistance, Professor Kermit Roosevelt III for connecting this piece with the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, and its editors for their great work on this publication.

¹ Mrs. Douglas put the pages in a file folder and, on its label, typed "THE FAITH OF MY FATHERS Ms [Manuscript] discovered after Justice Jackson's death."

² Typed Note of Elsie L. Douglas, undated (estimated date November or December 1954).

³ For background on this law firm, today's Milbank, see John Q. Barrett, *Milbank Loses Hope . . . and Hadley and Tweed and McCloy*, N.Y.L.J. (Mar. 4, 2019), <https://www.law.com/newyorklawjournal/2019/03/04/milbank-loses-hope-and-hadley-and-tweed-and-mccloy> [<https://perma.cc/QTL7-TAJV>].

way to live is to give people space and to tolerate what they are and what they choose to believe and to practice in their spaces, so long as they do not intrude unduly on one's own.

Jackson's essay is significant in many respects. One is that it gives us—readers, scholars, historians—more of Robert H. Jackson. He is remembered, indeed revered, as one of the most interesting, thoughtful, and significant justices in U.S. Supreme Court history, in part because he is regarded as one of the Court's best writers ever.⁴ In addition to his Supreme Court work, Jackson had a distinguished career as a lawyer: in private practice (1913–34); in President Franklin D. Roosevelt's administration, including as Solicitor General of the U.S. (1938–40) and Attorney General of the U.S. (1940–41); and, appointed by President Truman and absent from the Supreme Court, as the United States chief prosecutor of Nazi German war criminals in Nuremberg (1945–46). In each phase of his career, Jackson did his own work, perhaps most importantly his own writing. This essay thus is something special because it is more, and new, from a special voice that we were not expecting to hear—it is a first-person, late-life, deeply personal piece of Jackson.

This essay also is significant because it is Justice Jackson on religion, a topic of great significance across human history, in U.S. constitutional law, in every person's life, in numerous public issues and debates, and in major legal cases, including in the U.S. Supreme Court today.

As a Supreme Court justice, Jackson wrote many notable opinions addressing how the U.S. Constitution limits and empowers government in the realm of religion. In the landmark case of *West Virginia State Board of Education v. Barnette* (1943), Justice Jackson wrote the Court's opinion holding that the Constitution prohibits public school officials from compelling Jehovah's

⁴ See, e.g., Interview by Charlie Rose with Justice Antonin Scalia, *Charlie Rose* (PBS television broadcast Nov. 27, 2012), <https://charlierose.com/videos/17653> [perma.cc/P6T5-EKZ7] (“Robert Jackson . . . was a magnificent stylist, he was the best writer on this Court in the 20th century if not—if not forever. He wrote beautifully.”). As current Chief Justice John Roberts testified before the Senate during his confirmation hearing:

One of the reasons I've given previously for admiring Justice Jackson is he was one of the best writers the Court has ever had, and I think you didn't have to be a lawyer to pick up one of his opinions and understand exactly what his reasoning is and why he is saying that, and if he is citing and relying on precedents, he cites them and explains them. They are not written in jargon or legalese, but an educated person whose life, after all, is being affected by these decisions can pick them up and read them, and you don't have to hire a lawyer to tell you what it means. I hope we haven't gotten to a point where that is an unattainable ideal.

Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States: Hearing Before the S. Comm. on the Judiciary, 109th Cong. 385 (2005) (statement of John G. Roberts, Jr.).

Witness schoolchildren to salute and pledge allegiance to the American flag.⁵ For Jackson, that limit on government power to compel professions of faith was of a piece with his view that government constitutionally may prohibit religious proselytizers from harassing others, especially in their homes.⁶ In Jackson's view, the Constitution bars government from ranking religions as more or less correct, or from evaluating the sincerity of professed adherents.⁷ To practice any religion or none at all is for the individual to determine, separate from government imposition or even involvement.⁸ Government has constitutional power to regulate religious actors only where their conduct imposes upon the freedom and peace of others.

The Robert Jackson essay that follows reveals that his personal views on religion and his own religious practices very much fit with his judicial interpretations of the Constitution. Jackson did not really believe in God or practice religion, but he was tolerant of others who did and how they chose to do so. He respected and deferred to the sincerity of people whose belief

⁵ 319 U.S. 624 (1943).

⁶ See *Douglas v. City of Jeannette*, 319 U.S. 141, 166-82 (1943) (Jackson, J., concurring in the result, and dissenting in Nos. 480-487, *Murdock v. Pennsylvania*, and No. 238, *Martin v. Struthers*); *id.* at 181 ("Nor am I convinced that we can have freedom of religion only by denying the American's deep-seated conviction that his home is a refuge For a stranger to corner a man in his home . . . and put him in the position either of arguing his religion or of ordering one of unknown disposition to leave is a questionable use of religious freedom."). See generally John Q. Barrett, *Justice Jackson and the Jehovah's Witnesses' Cases*, 13 FIU L. REV. 827 (2019).

In later cases, Justice Jackson wrote additional opinions explicating his views that government has constitutional power to restrict peace-breaching speakers, including those who claim to be exercising religious beliefs. See *Terminiello v. Chicago*, 337 U.S. 1, 13-37 (1949) (Jackson, J., dissenting); *id.* at 14 ("So [the Court] fixes its eyes on a conception of freedom of speech so rigid as to tolerate no concession to society's need for public order."); *Kovacs v. Cooper*, 336 U.S. 77, 97-98 (1949) (Jackson, J., concurring); *id.* at 97 ("Freedom of speech for Kovacs does not, in my view, include freedom to use sound amplifiers to drown out the natural speech of others."); *Saia v. New York*, 334 U.S. 558, 566-72 (1948) (Jackson, J., dissenting); *id.* at 569 ("I think Lockport had the right . . . to keep out of [its public property] installations of devices which would flood the area with religious appeals obnoxious to many and thereby deprive the public of the enjoyment of the property for the purposes for which it was properly set aside.").

⁷ See *United States v. Ballard*, 322 U.S. 78, 92-95 (1944) (Jackson, J., dissenting); *id.* at 95 ("I would dismiss the indictment and have done with this business of judicially examining other people's faiths.").

⁸ Jackson expressed strong separation-of-church-and-state views in his opinions in Establishment Clause cases. See, e.g., *Zorach v. Clauson*, 343 U.S. 306, 323-25 (1952) (Jackson, J., dissenting); *id.* at 325 ("The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power."); *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 232-38 (1948) (Jackson, J., concurring); *id.* at 235 ("Authorities list 256 separate and substantial religious bodies to exist in the continental United States. . . . If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines, we will leave public education in shreds."); *Everson v. Board of Education*, 330 U.S. 1, 18-28 (1947) (Jackson, J., joined by Frankfurter, J., dissenting); *id.* at 26-27 ("[The First Amendment] was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state . . .").

systems were not his, and which indeed seemed to him, on the outside of those beliefs, as at least irrational and even odd. In Jackson's living and in his constitutional judging, he gave religion its private space. He objected, however, and he read the Constitution as stating grounds on which to object, when government sought to bring religion into public spaces, which belong equally to people whose beliefs range from religious belief to non-belief (such as Jackson's own).

Justice Jackson's manuscript was, as he left it, still a draft and incomplete. He likely would have, with more time, expanded and polished it. Then he might well have published it, as he did other memoir-type articles during his final years, including a famous one in this Law Review.⁹

For this publication, I have made minor corrections of grammar and punctuation, corrected dates, filled in some date-blanks, and added the bracketed text and bracketed footnotes.

That aside, the unbracketed words that follow are all Jackson's.

* * *

⁹ See Robert H. Jackson, *Falstaff's Descendants in Pennsylvania Courts*, 101 U. PA. L. REV. 313 (1952); see also Robert H. Jackson, *A Presidential Legal Opinion*, 66 HARV. L. REV. 1353 (1953).

The Faith of My Fathers.

* Book of Martyn in sketch 7's
& note

They had no time for questions of any kind, they distrusted strangers and hated hypocrites.

I can not remember any effort by either of my parents or any of my grand parents to instill in me any religious doctrine. There were several Bibles in the house including some ~~preciously~~ ^{generously} illustrated. There were ~~two~~ a few books on religious subjects. * A few back the Jacksons had been like many of the Scotch Irish stock had been Presbyterians and ~~its gloomy doctrine may have~~ the early days in the wilderness may have been colored by the gloomy teachings of Knox and Calvin. The ~~Edwards~~ ^{originals} were of the Church of England school. But neither of these were ~~strong~~ Presbyterians or Episcopalians were strong in the ~~little~~ regions where we lived and none of my family in my days at home were affiliated with any formal religion group. ~~Not one~~ Not one of them was intellectually or emotionally committed to any denomination or dogma.

Within among village centers

The organized religion of the region were in those times chiefly Methodist, Baptist, and various splinters of the Evangelical order. Their sermons and services were often highly emotional and among my people there was plenty of sentiment but little sentimentalism. } Of all the fields they least knew self pity which often led to embracing of a friend. Moreover the discipline of the prevailing Protestant denomination would have been intolerable to any of them. They were all moderately pleasure loving. They danced the square dances of their day and loved the music of the fiddle and the ^{violin} measures of the quadrille as well as the tones of the organ and the stirring measures of the hymns. They played cards some. They raced horses. They went to the few shows that were within their reach. All of these were sins in the eyes of the ostentatiously

THE FAITH OF MY FATHERS, BY ROBERT H. JACKSON

I cannot remember any effort by either of my parents or any of my grandparents to instill in me any religious doctrine. There were several Bibles in the house, including some gruesomely illustrated. There were a few books on religious subjects.* Afar back the Jacksons, like many of the Scotch-Irish stock, had been Presbyterians and the early days in the [western Pennsylvania and Western Reserve] wilderness may have been colored by the gloomy teachings of [John] Knox and [John] Calvin. The Eldreds [the family of Jackson's father's mother] originally were of the Church of England school. But neither Presbyterians nor Episcopalians were strong in the regions where we lived and none of my family in my days at home was affiliated with any formal religious group. Not one of them was intellectually or emotionally committed to any denomination or dogma.

The organized religions of the region were in that time chiefly Methodist, Baptist, and various splinters of the evangelical order. Their sermons and services were often highly emotional and among my people there was plenty of sentiment but little sentimentalism. They had no time for fanatics of any breed, they distrusted extremists and hated hypocrites. Of all the pities they least knew self-pity, which often led to embracing of a faith. Moreover, the discipline of the prevailing Protestant denominations would have been intolerable to any of them. They were all moderately pleasure-loving. They danced the square dances of their day and loved the music of the fiddle^[10] and the lively measures of the quadrille as well as the tones of the organ and the stirring measures of the hymns. They played cards some. They raced horses. They went to the few shows that were within their reach. All of these were sins in the eyes of the ostentatiously Protestant part of the community. And of course Catholic discipline or practice was alien to their habit and nature.

While we lived rather apart from the religious elements of the community we had no hostility to it, nor it to us, except I suppose we were pitied as unbelievers. Now and then some [family members] attended services, when it was convenient, but more in the nature of a social diversion than an exercise of religion. I cannot recall that I was ever "sent" or urged to go to Sunday School, but along with those of my age I attended the Baptist Sunday

* [Jackson's footnote/note-to-self]: Book of Martyrs in Elijah J's estate. [It seems that Jackson, writing this fragmentary placeholder for a footnote, was remembering, and perhaps he was intending to look for and then to write a full footnote about, this book. His note indicates that the book had been property of his great-grandfather Elijah Jackson (1772–1845). Robert Jackson was recalling the book as one that he had read in his 1890s-era boyhood home. I have been unable to determine if this book survives or, if it does, where it is located.]

[10 In the left hand margin, Jackson here wrote "violin among Elijah[']s assets."]

school,^[11] mainly because its teachers included some I admired—and so did its choir. But it was all without submission to its discipline or commitment to its doctrinal teachings.^[12]

But I was reared in an atmosphere of perfect respect for the religious views of others—or at least the respect for the personal right to have any religion one preferred. While of little faith ourselves, I never knew any of them [i.e., my family members] to try to arouse doubts in the minds of another or to unsettle his faith. On the contrary, as a mere youngster I was soundly spanked for denouncing Catholicism to an Irish “hired girl,” although Mother knew I was only repeating what I had heard a violent anti-Catholic say.^[13] And in early high school days, when my father^[14] heard that I, with several others, had visited a revival meeting and behaved irreverently to the annoyance of the congregation, I received a reprimand couched in unforgettably irreligious language.

While I think they^[15] regarded a good deal of the turbulent evangelism of the time and region as little better than respectable superstition, they were individualists in faith as in works. They let others alone in their beliefs and practices and were reasonably tolerant of their missionary efforts if not much moved by them. The clamorous sophistries of the revival and camp meeting which often stirred the neighborhood rolled over us without an emotional stir, though sometimes the “conversions” and “backslidings” of some of the characters afforded a little amused conversation. Occasionally preachers or neighbors with zeal to save our imperiled but complacent souls called.^[16] They were kindly received, as one would tolerate the slightly unbalanced, and were neither encouraged nor rebuffed. Typical of this attitude is an incident I recall [around 1905,] when a fiery United Brethren minister called. Only my grandfather [Robert Rutherford] Jackson and my baby sister [Helen] and I, in early high school, were home.^[17] After a few neighborly remarks, the preacher asked if he could pray for grandfather’s soul. “Why, I don’t mind, if you want to,” said the old man, “but do it quietly so you will not waken that baby.”

[11] In Frewsburg, New York, Jackson’s boyhood home, 12 Main Street, was and is across the street from the First Baptist Church.]

[12] Above the word “doctrinal,” Jackson wrote “sectarian”—he was considering which word he wanted to use.]

[13] Jackson’s mother, Angelina (Lina) Houghwout Jackson (1867–1942), administered this spanking.]

[14] Jackson’s father was William Eldred (Will) Jackson (1862–1915).]

[15] “They” could refer to Jackson’s parents alone, or more broadly to them and his other relatives.]

[16] In these days before the telephone, “calls” were in-person visits.]

[17] Jackson began ninth grade at Frewsburg (New York) High School in fall 1905, when his younger sister Helen, born in 1904, was still a baby. So this incident occurred around that time.]

But their negative attitude toward organized religions did not mean that they had no reflective hours on the problems of life and death.^[18] Indeed, in the stillness of the country evening they often meditated on whence we came and whether we go and why we are here. They never got very far with answers, a matter in which there is little to distinguish between the efforts of the simplest and the greatest of minds. But at least they knew a mystery when they saw one and did not pretend to get answers out of the clouds, and they acknowledged no better authority on the subject for themselves than their own reason. But at least no dogma was invoked to prevent discussion nor to provide answers where reason failed to give any. There was no trace of atheism in them. A vague belief in some hazy kind of Supreme Being hovered over their serious moments. The male Jacksons were traditionally active Free Masons in a small country lodge where Masonry is at its best. That is based on a belief in a Supreme Being and goes little beyond. That perhaps was the nearest to a formulated religious belief that any of them possessed. There were no family prayers, they returned no thanks at meal time, for they were under no illusions as to how they got their daily bread. It was their own hard work and often I heard “God helps only those who help themselves.” As to the Christian revelation they were respectfully agnostic, as to the superstructure of dogma reared on it they were sceptic and unbelieving, and as to church discipline they were non-conforming.

And they died as they lived. The “fear of God” was no more in my people than fear of anything else. They faced the vicissitudes of life without leaning on religion, its hardship without mitigation by what the Communists call “the opiate” of religion. When grave sickness came, there was no appeal to the clergy. If one called it was received and appreciated as a neighborly act, not as a professional ministrations. Had one taken advantage of the occasion to exert missionary pressures it would certainly have been resented. When death approached there was no call for help, no conversion, no repentance, no last rites. They had lived their lives, poor things perhaps but their own, and what they had done would have to stand.

Death they simply took as in the natural order of things. I cannot recall a single manifestation of fear of it in any of them. Who ordained it, what it meant in terms of the personality, and what if anything lies beyond it they knew not. But to it they would go alone, yet with all mankind for company, and they expected to get through it as well as most. I was never impressed that they expected Heavenly reward and I am sure they had no shudders about Hell fire though both ideas were rife in the community.

My grandfather Jackson lived for years with knowledge of a bad heart but never made a concession to it, much to the vexation of the family. In his

[18 Above the word “problems,” Jackson wrote “mysteries”—again, he was considering which word he wanted to use.]

eighties he dropped dead making garden.^[19] My mother refused flatly to diet and said when she could not enjoy her meals she no longer wanted to live—in the spirit of “Old English” that George Arliss made familiar to Americans.^[20]

But it was my grandmother [Parthena Gregory] Houghwot whose strange end revealed best the spirit of them all. In her eighties she refused to leave the farm [in Farmington Township, Pennsylvania,] which had pretty much defined the horizons of her life. There was no plumbing, and the heating was by wood stove which burned out at night. She would rise before daybreak and start the fire, feed her chickens, get breakfast, and do a variety of chores, indoors and out, which she refused to relinquish. But in the spring of 1925 she complained that she could not get warm and said she did not want to live through another winter. There was nothing morbid about this and we joked her a good deal about it.

On the 8th day of October the glorious and gaudy Indian summer she loved so among her native hills turned to winter. The next morning snow was falling and she did not get up. Before noon she died.^[21] Death had met no resistance but welcome. Body and soul parted without as friends who take separate ways. We who had laughed were shocked at what seemed a self-willed natural death. It was very strange. But I think it takes more faith to serenely and alone meet death halfway than to retreat and call for help until cornered in the inevitabilities. I wish only that I might have half her courage.

I should sum up the attitudes that I absorbed from the example more than from the precept of my forebears. I should say it is that religion is an intensely personal affair in which one is entitled to be free from aggression.^[22] From the beginning, I was taught that the other man's relations with the infinite were none of my business. My people detested all meddlesomeness in affairs of the spirit—and so do I.

How well I have walked in this faith, or non-faith as you may choose to call it, is for others to judge. [Intellectually I am and have always been an agnostic.

[19] Jackson's grandfather Robert Rutherford Jackson, age eighty-four, fell dead on April 1, 1913, while spading an onion bed in his daughter Nora Jackson Gregory's garden in Russell, Pennsylvania.]

[20] Arliss was a British actor, the first to win an Academy Award. He starred in many American and British films during the 1920s–1940s. In *Old English*, he played an aging shipbuilder who, to escape the wrath of enemies and creditors, committed suicide by eating a massive meal.]

[21] See *Obituary, Mrs. Parthena Houghwot*, JAMESTOWN EVENING J., Oct. 9, 1925, at 6.]

[22] This Jackson choice to use the word “aggression,” surely deliberate, is striking. In 1945–46, about eight years before he wrote this piece of autobiography, Justice Jackson served in Nuremberg, before the world's first international criminal court, as U.S. chief prosecutor of Nazi war criminals. He and colleagues charged and proved a case focused on military aggression—as Jackson put it in his opening statement to the International Military Tribunal (IMT) on November 21, 1945, “It is the plot and the act of aggression which we charge to be crimes.” On September 30, 1946, the IMT decided that initiating a war of aggression “is the supreme international crime” and convicted some defendants of having committed it. Jackson regarded Nuremberg, and his winning of this court judgment, as the most important work of his life.]

I don't know the answers to the mysteries of our existence and I don't think other humans have any faculties for the search that we do not all have.][²³] I never joined any formal religious organization until I was well along in years. My wife [Irene Gerhardt Jackson] was an Episcopalian and our children were sent to its Sunday School [at St. Luke's Episcopal Church in Jamestown, New York].][²⁴] When my son [William Eldred Jackson] was about to be confirmed, he raised the question why he should be if I had not. It was easier to be confirmed than to answer the question.][²⁵] But it was a little more than that. The confirming Bishop was Right Reverend Walter Henry Overs, a lifelong friend of mine and of my family. He had officiated at my father's funeral [in 1915] and as a former Methodist belonged to the more liberal school of that [Episcopal] church. And so if its teachings were not intellectually satisfying, its general attitudes to life came nearer my own than any other, though I cannot profess to have been other than negligent even of its comfortable ordinances. I have also been through all the degrees of Free Masonry including both the 33rd of the Scottish Rite, Northern Jurisdiction and the Knights Templar. But that too requires a minimal affirmation of belief. But if these rather orthodox bodies do not offer much solution to the questions that come out of the mouths of babes, neither of the ancient Roman or Grecian Churches seem to me on stronger ground, and least help of all is to be found in the multitude of sects of the passionate deniers of orthodoxy.

By one of the accidents of existence I came to a small knowledge of the existence of Spiritualism. In a beautiful valley of the Kiantone Creek, where it leaves Farmington Township, Warren County, Pennsylvania, and flows into New York State, the spiritualists about 1853 established a community. It was within a couple of miles of both my grandfather Jackson's farm and that of the Houghwouts [located near each other in Farmington Township, Pennsylvania]. As a boy I spent much time on those places and with dog and rifle or fish pole wandered up and down the stream through what was called "the Domain." Its beauty and haunting loneliness fascinated me, but the legend even more so. This is the authentic history of a strange people who vanished and left behind only a few ruins to frighten the superstitious.][²⁶]

[²³ These brackets in the text are Jackson's, indicating that he planned, as he continued to write and edit this paper/possible article or book segment, to revisit and at least hone, and maybe delete, this bracketed text.]

[²⁴ The Jacksons lived in Jamestown and he practiced law there from 1918 until 1934. Their children William and Mary were born in Jamestown in 1919 and 1921, respectively.]

[²⁵ On June 9, 1929, Robert H. Jackson, age thirty-seven, received the Apostolic Rite of Laying on of Hands at Confirmation at St. Luke's Episcopal Church in Jamestown. Reverend Walter Henry Overs, assisted by Reverend Lewis E. Ward, officiated.]

[²⁶ See generally DEBORAH K. CRONIN, *KIANTONE: CHAUTAUQUA COUNTY'S MYSTICAL VALLEY* (2006).]

* * *

Some of the remote relatives became interested in Spiritualism. I have read somewhat of its literature, and have known some of the practitioners of its art, and have attended a few séances. I do not pretend to be able to demonstrate that it is all imposture, though charlatans find its credulous followers easy prey. But it is not easy for one to demolish the theories or discredit the experiments of such men as Sir Oliver Lodge.^[27] Whatever of fraud plays around its fringes, I should deplore any legal interference with its practice and teaching. There might be something learned from it.

As for Christian Science, I must admit that Mary Baker Eddy is one of the few religious leaders whose writings I find utterly incomprehensible. They might as well be done in Sanskrit so far as having meaning for me. But I have known really remarkable transformations in several persons who have taken it up^[28] and can only conclude that it contains more than I can grasp from its literature.

But my experience fifty years ago [i.e., around 1900] in the rural section of the upper Allegheny River shed leads me to take sharp issue with those who ridicule the “Bible belt” and its faith. Henry Mencken was the high priest of this cult of contempt and no more enjoyable hours have I spent than those around a table with a few kindred souls when he let fly his arrows at everything he thought was sham and pretense.^[29] From his Baltimorean [i.e., sophisticated, big-city] lookout, the small town and rural Protestant sects, with their passionate sectarianism, emotionalism, and fundamentalism, which he saw culminated in [William Jennings] Bryan’s weird doings at the [1925] *Scopes* trial which he [Mencken] attended^[30] To him, all of us yokels appeared stupid, querulous, intolerant, and ridiculous. In the context of his intellectual environment, none of these charges could easily be disproved.

But I saw it from the underside, and there it presents a different view. In many times and places these little churches were the only influence that fostered the school, offered a clean and non-commercial social meeting place, and were unashamed to uphold ideals that were above materialism, gain, and

[27] Lodge, a British physicist and writer who developed and held patents for radio and radio tuning, also researched psychic phenomena and worked to prove the existence of an afterlife. He wrote a number of books on his interactions with mediums and other aspects of his psychical research.]

[28] It is not clear to whom Jackson was referring. One possibility is former U.S. Secretary of State Bainbridge Colby (1869–1950), with whom Jackson was acquainted in western New York State. Colby died not very long before Jackson started to write this essay and seems to have been to some degree a Christian Science practitioner.]

[29] In 1937, when Jackson was U.S. Assistant Attorney General heading the Antitrust Division and nationally prominent as a leading New Dealer, he was introduced to H.L. Mencken by Yale Law School professor Thurman Arnold, their mutual friend.]

[30] This is a Jackson sentence fragment.]

money-making. Granted the preacher was ignorant by best standards but he was more literate than those who looked to him for guidance, and a one-eyed man may help the blind. Granted there were hypocrites in the fold, but would they have been better if they had not paid the tribute of insincere support to the church? Granted it taught some absurd theories of creation but it also taught some fine things. It at least encouraged a little reading, only the Bible perhaps, but while that contains a good deal of sin and gore, it also contains as ennobling thoughts as our western civilization has produced, cast in English that has no equal for simple forceful clear expression. No, if I could never join these churches, I could no more join the cynical city scoffers who saw their intellectual defects but did not see the service they rendered to isolated and lonely men and women, whose faith had to be narrow because their lives were narrow. As a social force, the rural church fell short of the ideal but it was still the best influence at the four corner settlement.

So far as the intellectual problems with which religion is concerned, I have had many, many, advantages over my parents and grandparents and those who shared their lives. I have met priests, bishops, archbishops, and [the] Pope. I have heard great preachers in my own country, in England, and in Europe. Rather more than casually, I have dipped into the Holy Writ of other peoples—the best available translation of the glorious Koran of the Muslim world, “that immutable symphony, the very sound of which moves men to tears and ecstasy”—the sayings of Confucius—the Egyptian Book of the Dead—the Bhagavad Gita of the Hindu—the Book of Mormon—and many Christian works. I have journeyed to Jerusalem and on a Christmas Eve to Bethlehem, where walking outside the little village the shepherds were still tending their flocks and the stars seemed almost within reach. And I have lingered for days at Luxor, resting in the shade cast by Temples that the faith of men built 4,000 years ago and trudging through a city of tombs that bespoke their belief that death was a beginning as well as an end.

But I cannot add one thought to those I heard expressed by simple country folk around the fireside when death had struck in their midst and they were pensive and sad.

* * *

The score of years preceding the Civil War seem to have witnessed a great deal of study and experiment with the occult. Mesmerism, hypnotism, clairvoyance, slate writing, table tipping, rapping, astrology, phrenology, and all manner of phenomenon possessed the attentions of men. These were not little or ignorant men either, for leading men like Horace Greeley, William Cullen Bryant, and scores of others gave serious consideration to the claims of these

mystical movements.^[31] I shall not review the history of the strange psychological [sic] wave that engulfed the land for there are adequate histories of it.

But in 1848 near Rochester, New York, two little girls of twelve and fifteen years produced or transmitted certain “rappings” or sounds which the credulous interpreted as communications from the spirit world. Thus the Fox Sisters gave birth to the cult of Modern Spiritualism, which rapidly spread. Its adherents also showed a strong inclination to Socialism, communism, and other extreme reforms.

About 1853, the wife and two daughters of John Chase, a blacksmith in the Kiantone region [of New York State], became “trance-mediums.” They had communication from the spirit world that in the Kiantone Valley long ago there had existed a wonderful civilization, one that needed no laws because men were righteous and governed by their own pure hearts. Marriage had no existence there but unrestrained free love obtained. There had been many fine buildings of unique design. But marriage and selfishness crept in and this magnificent civilization perished—but there were remains. There were, they said, the two magnetic springs whose waters would cure any disease. One was *positive* and the other *negative* in magnetic qualities and one would cure affirmative and the other negative diseases.

Chase enlisted help and began digging under spirit guidance. And he did find springs—springs whose waters were and still are strong with taste and odor of minerals. The fame of his discovery traveled fast and far.

Meanwhile one John Murray Spear of Boston learned of this discovery and he was deep in spiritualism himself. He had been a Universalist minister, was a friend of William Lloyd Garrison, Wendell Phillips, Edward Everett, Henry W. Longfellow, Horace Mann, and others of New England. His life was given largely to the help of prisoners, and he had been mobbed for preaching abolition of slavery. He was a prolific writer and published in Boston the “Educator,” in which his spiritualist views and spirit communication were given to the world.^[32] He became the leading intellectual force in the “Kiantone Movement” which held the center of the Spiritualist stage for a few hectic years.

[31] Horace Greeley (1811–1872) was founder and publisher of the *New York Tribune* and, in 1872, a U.S. presidential candidate; Robert Jackson, during his early boyhood in Spring Creek, Pennsylvania, was acquainted with some Greeley relatives who lived nearby. William Cullen Bryant (1794–1878), co-owner and editor of the *New-York Evening Post*, was another nationally prominent journalist.]

[32] Spear, a Universalist minister and preacher, published his collection of essays, *THE EDUCATOR, BEING SUGGESTIONS, THEORETICAL AND PRACTICAL, DESIGNED TO PROMOTE MAN-CULTURE AND INTEGRAL REFORM, WITH A VIEW OF THE ULTIMATE ESTABLISHMENT OF A DIVINE SOCIAL STATE ON EARTH*, in 1857.]

* * *

AFTERWORD, BY JOHN Q. BARRETT

That is the end of Justice Jackson's "The Faith of My Fathers" manuscript, as he left it.

On October 9, 1954, Jackson, age sixty-two, died of a heart attack.³³ It seems that he had his grandfather Jackson's bad heart, mentioned above in the passage about the grandfather refusing to make concessions to that in how he lived. That passage is striking because heart disease was killing Justice Jackson as he wrote this essay, and because he had inherited his grandfather's uncompromising attitude and was living actively while knowing that his heart could fail.

On October 12, Robert H. Jackson was mourned at an Episcopal funeral service, planned by his son,³⁴ at Washington National Cathedral.³⁵ During the service, the Reverend Alfred St. John Matthews of McLean, Virginia, where Jackson and his wife had resided, at their Hickory Hill home, since 1941,³⁶ read Dr. Samuel Johnson's "Lawyers' Prayer." The Cathedral's Boys Choir chanted the 121st Psalm. The Reverend Albert H. Lucas, who in the 1930s was headmaster of St. Albans School in Washington and met Jackson when his son was a student there,³⁷ and who in 1954 was serving as the Archdeacon of Maryland, read from the Bible (Romans 8). Two hymns, "The Strife Is O'er" and "Faith of Our Fathers"—the latter name which Justice Jackson had adapted to title this essay—were sung. And the Reverend Angus Dun, the Episcopal Bishop of Washington, pronounced the benediction.

³³ See *Justice Jackson Dead at 62 Of Heart Attack in Capital*, N.Y. TIMES, Oct. 10, 1954, at 1.

³⁴ See Letter from Archdeacon Albert H. Lucas, Diocese of Maryland to William E. Jackson (Nov. 17, 1954) (on file with author) ("As for the service—I too thought it was beautiful and I understand you planned it.").

³⁵ See Luther A. Huston, *Service in Capital Held for Jackson*, N.Y. TIMES, Oct. 13, 1954, at 31; Frank R. Kent, Jr., *Tribute Paid Justice Jackson at Rites Held in Cathedral*, WASH. POST & TIMES HERALD, Oct. 13, 1954, at 18. Unless otherwise indicated, the details recounted in this Afterword are based on these newspaper reports.

³⁶ See *Historic Hickory Hill in Fairfax Is Sold to Justice Jackson*, WASH. POST, July 13, 1941, at R5.

³⁷ See Letter from Reverend Albert H. Lucas, Headmaster, St. Albans School, to Robert H. Jackson, (Sept. 21, 1933) (reporting Bill Jackson's results on St. Albans qualifying examinations), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. (Box 2, Folder 5); see also Letter from Archdeacon Albert H. Lucas, Diocese of Maryland to William E. Jackson, ("Sunday afternoon" [Oct. 10, 1954]) (on file with author) ("Bill, I remember so well your father's first visit to St. Albans at the beginning of his Washington career—a visit which led to our association . . .").

Following the funeral, Jackson's family, friends, and Supreme Court brethren accompanied his body on an overnight train from Washington to Corry, Pennsylvania, and then to Jamestown, New York.³⁸

On October 13, Jackson was mourned at a funeral at St. Luke's Episcopal Church in Jamestown. His remains then were buried in Frewsburg, New York, less than a mile from his boyhood home.³⁹

Robert H. Jackson's gravestone in Frewsburg's Maple Grove Cemetery states his service on the Supreme Court, as U.S. Attorney General, as U.S. Solicitor General, and as American Chief Counsel at Nuremberg. The marker is not adorned with any religious symbol or quotation, unless these final lines, written by his family,⁴⁰ qualify:

HE KEPT THE ANCIENT LANDMARKS
AND BUILT THE NEW

³⁸ See *Final Jackson Rites Held in New York*, WASH. POST & TIMES HERALD, Oct. 14, 1954, at 26; Diary Entry of U.S. Supreme Court Justice Harold H. Burton (Oct. 13, 1954), in Harold H. Burton Papers, Library of Congress, Manuscript Division, Washington, D.C. (Box 3); Memorandum from the Marshal by Direction of the Chief Justice (Oct. 11, 1954), in Harold H. Burton Papers, Library of Congress, Manuscript Division, Washington, D.C. (Box 314, Folder 9).

³⁹ See *Final Jackson Rites Held in New York*, *supra* note 38.

⁴⁰ See Letter from William E. Jackson to Iner Jensen, Jensen-Haglund Memorials (June 30, 1955) (on file with author).