Birthday Reading (1938)

John Q. Barrett[*]

Robert H. Jackson was born on February 13, 1892, in his family's farmhouse in Spring Creek Township, Warren County, Pennsylvania.

It seems that on many a February 13, Robert Jackson did nothing special, and nothing special happened to him.

Jackson did have an unusual experience on his birthday in 1938. He then was Assistant Attorney General of the United States, heading the Antitrust Division. He also had been nominated by President Franklin D. Roosevelt to become the Solicitor General of the United States, succeeding Stanley Reed, who had been appointed to the U.S. Supreme Court. Jackson's Senate confirmation hearing had begun in late January, and on February 13 he was in the midst of testifying, ultimately over three days, in a hearing that was thorough, very substantive, and sometimes contentious. (To boil it down, some Senators were concerned that Jackson was a radical threat to American constitutional law and capitalist freedom and, relatedly, that he was rising to become a leading force in the Democratic Party and, perhaps, presidential material in 1940, when it was expected that F.D.R. would not seek a third term.) Jackson also had, in the previous week, been part of arguing before the Supreme Court in defense of the constitutionality of the Public Utility Holding Company Act, a major New Deal law.

On Sunday, February 13, 1938, his 46th birthday, Robert Jackson was the subject of a *New York Times* Sunday Magazine profile article, "Jackson Sets Forth His Political Philosophy."[1]

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For an archive of selected Jackson List posts, many of which include document images or photographs, visit http://thejacksonlist.com. This essay is posted there as a PDF file with "live" hyperlinks.

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[1] *See* Felix Belair, Jr., *Jackson Sets Forth His Political Philosophy*, N.Y. TIMES MAG., Feb. 13, 1938, at 4, 27. The article is available online at http://query.nytimes.com/gst/abstract.html?res=9F07EEDF1631E03ABC4B52DFB4668383629EDE&legacy=true, readable in full text by *Times* subscribers (but, alas, behind a paywall for non-subscribers—so subscribe!).

The writer, Felix J. Belair, Jr., was *The Times*'s chief White House correspondent. Belair had interviewed Jackson for the article—it contains extensive quotations from him, plus two photographs.

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The New York Times Magazine, February 13, 1938.

By FELIX BELAIR Jr.

WASHINGTON.

THE man President Roosevelt has chosen to be Uncle Sam's chief advocate is a lawyer without a degree. But at 46 Robert Houghwout Jackson ranks high in his profession. Circumstances forced him to get most of his education in the school of hard knocks, but what he failed to get in formal schooling has been more than made up by self-education. This has been amply demonstrated during his three and a half years in Washington as a tax collector, a trust buster and a legislative draftsman. His nomination as Solicitor General to replace Stanley Reed was "a natural."

Robert Jackson is one of those affable men whom his friends will continue to call Bob no matter what office he holds. Yet he does not invite confidences. He has many friends but few intimates. He combines dignity with informality; he is jovial without being trivial. And he has the rare faculty of reducing the most complex legal problem to such simple terms that the uninformed layman can understand it. Those who have watched him in court point to his resourcefulness.

One of the first cases he handled for the Treasury Department before the Supreme Court demonstrated this quality. The government was trying to collect a tax deficiency on the ground that a gift of money by an aged citizen was taxable as a gift in anticipation of death.

Justice McReynolds, whose caustic comments from the bench have made many a young lawyer quake in his boots, asked Mr. Jackson if it were not a fact that the taxpayer involved was a vigorous old Scotsman whose hardy constitution promised him yet more years of life. And Mr. Jackson replied, "Exactly so, Your Honor. And on that point the government bases its case. Being a Scotsman, the respondent would not have given away his money except in anticipation of death."

Justice McReynolds actually chuckled. The government won its case.

BUT Mr. Jackson did not win his reputation by such feats as this. His ability to think things through and his arguments in getting his ideas across were what made him the Administration's chief dependence when it faced difficulties either in the courts or before a Congressional committee. Experience in business and finance has inclined him to the practical side. Almost always he bases his arguments on facts and principles. And he has a positive philosophy of government.

"My philosophy," he says, "is simple and unromantic. My generation has inherited a system of private enterprise which relies upon the profit motive to keep it moving. Our problem, therefore, is to make this system work. I believe that in the main the measures of the Roosevelt Administration have been designed to make that system work by eliminating some of the abuses which have obstructed and endangered it. I have a feeling that our people are not in a mood to accept a philosophy that these periodic waves of unemployment are necessary or must be endured. Any system, to survive, must feed its people. As long as we make our existing system work our people will not find much to attract them toward any other system. If we cannot make it work, they will seek for a better system."

Mr. Jackson was one of the leaders in paving the way for the 1935 tax law. He made a thorough study of the concentration of wealth in this country which is still cited as an authority. The intercorporate dividend tax was put in the law largely upon his recommendation. It represented a phase of his social philosophy which was explained more in detail when the writer asked him what dangers he sees in our present system.

"Well, of course," he said, "we have an astonishing degree of concentration of

The President Chooses an Advocate With a Plan "To Make the Nation's Economic System Work"

wealth and centralized control of the means of production and of industry, finance and transportation. Excessive concentration, throughout industry, has been the most provocative cause of social unrest. We also have other difficulties, but this is certainly fundamental."

WAS he, then, opposed to bigness as such?

"Not at all. No one objects to that bigness which justifies itself in obtaining the benefits of mass production. The era of handcraft is gone," he said. "We are in an industrial age. But there has been an immense amount of concentration through purchase of local enterprise, by big holding companies, through mergers, consolidations and the purchase of assets. Many of these moves have had no relation to efficiency but were chiefly brought about by the speculative possibilities in the exploitation of the securities of the enlarged concern. They established an absentee control over local industries and centered policy in those who had no immediate interest in or knowledge of the local communities."

"What," he was then asked, "do you think the course of industrial development must be to make the system work?"

"I would answer," he replied, "that its success will depend on the general adoption of a policy of high-volume, low-cost and high-wage economy. I mean," he said pointedly, "a high wage in terms of dollars earned per year, and not merely a high wage scale which may still mean a low total annual income, owing to partial employment. Reduction of prices must be accomplished through the economies of high-volume production rather than through low wages.

"Industry," he declared, "can only insure itself consumers by furnishing our immense wage-earning population with something to use for money. We must maintain a high standard of living because our manufacturers are organized to produce goods which can only be bought by those with a high standard of living.

"Most of all, perhaps," he went on, "I think the government must concern itself with the welfare of our social system, and not settle its policy in terms of economics alone. I am concerned about the effects of an industrial policy on the lives of men and women as much as about its effects on the profit statements of the corporations. It is the homes of humble people, working men and farmers, which are reproducing the race, and the government must guard these homes to preserve the nation. We cannot take hope and courage away from such homes just because their breadwinners have reached the age of 45. We cannot afford to sweat the mothers, or to impose a deadly speed-up or unreasonable hours on the fathers and mothers of the America of 1960. We cannot afford financial manipulations that make gaudy fortunes for the few but which burden the laborer and the consumer to make paper fortunes good."

THIS is no newly arrived-at philosophy. For years Mr. Jackson has been demanding the abolition of useless intermediate holding companies, the breaking up of corporate monopolies and a more tolerant attitude by business men toward government undertakings in the interest of the vast majority of the people.

And he (Continued on Page 27)

JACKSON SETS FORTH HIS POLITICAL PHILOSOPHY

"Our problem," says Robert H. Jackson, "is to make the capitalist system work. As long as we make it work our people will not find much to attract them toward any other system. If we cannot make it work, they will seek a better one."

Times Wide World

I regard the article as strong personal profile journalism. It is distinctly pro-Jackson, published at a moment when he was a well-publicized, controversial nominee in the middle of a Senate confirmation

battle. It also is an article that contains some of what we now call political spin, plus it contains some dubious stories. The article reports:

- Jackson has no law degree;
- He has many friends but few intimates;
- He once made Justice James C. McReynolds, not generally a jovial figure on the Supreme Court bench, laugh during an oral argument;
- Jackson defends FDR as working to make the private enterprise system work;
- Jackson believes that people will not accept waves of unemployment; they must be fed or they will turn to a new political system;
- His 1934-35 work at the Treasury Department, including his study of wealth concentration, was a basis for the 1935 tax reform law;
- He is not opposed to productive bigness in companies, just to holding companies that are put together for the purpose of speculating in corporate securities;
- He believes the U.S. needs a high wage industrial economy;
- He thinks about the future—one quotation looks ahead to "1960" [when Jackson would have turned 68, but which he did not live to see—he died in 1954];
- He testified in defense of FDR's 1937 "Court-packing" proposal;
- His record in major constitutional arguments before the Supreme Court is 4-4;
- He is a father, a horseman, and a businessman;
- He attended Albany Law School but did not receive a degree. [This is true, but Belair did not report that this was only because the school regarded Jackson, age 20 when he completed all requirements, as too young to receive a degree. The article also incorrectly states that Jackson did two years of law school course work in one year—a myth that follows him still. And the article does not mention that in addition to attending Albany Law

School, Jackson trained for the bar by apprenticing for two years in a law office.];

- Jackson's law practice started in [conservative] Jamestown, New York, where he defended radicals charged with crimes growing out of a street railway strike and, surprisingly, won;
- He subsequently became counsel to businesses [including in Buffalo, New York, and elsewhere, which Belair did not mention];
- Jackson loves horses: they were central to his farm boyhood in Spring Creek; he owns a horse farm in Jamestown; he lives with his wife Irene, daughter Mary, and horses on a large property in Maryland;
- He works late and rides early, often with Mary, sometimes trying out on her, or on his [more amenable?] horse, speeches that he is preparing;
- He and Irene also have a son, William [then a Yale College freshman]. [Belair reported that Jackson hoped Bill would become a lawyer, but in fact, at least by the time Bill was finishing college, Jackson was open to Bill pursuing whatever career path he wished—and he did then go to law school and became a very accomplished lawyer.];
- Jackson likes to talk about his ancestors, including his great-grandfather Elijah Jackson, the first white settler of Spring Creek;
- His middle name, Houghwout, is a family name, from ancestors who were early Dutch settlers in New Amsterdam;
- Jackson's family politics: Andrew Jackson Democrats;
- He never sought political office. [That is largely true, unless one counts, unreported here, his election in young adulthood to country political organization office.];
- He was appointed corporation counsel in Jamestown by a Republican mayor [which is

true—Mayor Sam Carlson was a smart, liberal Republican];

- Jackson came to Washington at the personal request of FDR. [This might be an exaggeration of Roosevelt's personal role in Jackson's recruitment to the New Deal.];
- Jackson offers blunt criticism of the bar (the legal profession), including for its conservatism and opposition to government reform;
- He has critics and enemies but also many friends and admirers;
- He has been mentioned in the past for numerous offices, including the Supreme Court, the U.S. Senate, and the Governorship of New York; and
- He has no idea what future will bring—maybe just a return to practicing law in Jamestown.[2]

I assume that Jackson, on that Sunday morning, got a copy of *The Times* and read Belair's profile piece. I bet that Jackson mostly liked it. I bet more that he didn't spend a lot of time on it, and that if the weather was good enough he spent more time that day on horseback.

[2] *See id.*