Robert H. Jackson’s “The Faith of My Fathers” (circa 1953)

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When United States Supreme Court Justice Robert H. Jackson died in 1954, he left behind thirteen handwritten pages that were a draft essay. He titled it “The Faith of My Fathers.”

I am pleased to report that this Justice Jackson essay, unknown to the public for more than sixty-five years, was published last week in the University of Pennsylvania Law Review (the leading law journal in Jackson’s 1892 state of birth)—click here to read it.¹ (And click here for

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Supreme Court reporter Tony Mauro’s *National Law Journal* story (paywall-protected) about this Jackson publication.\(^2\)

The essay is Justice Jackson on religion. He describes his own religious beliefs and practices and those of his ancestors, who were 19\(^{th}\) and early 20\(^{th}\) century American farmers in western Pennsylvania and residents of small villages in the adjacent area of western New York State. He also recounts some of the history of Spiritualist movements in their region.

Jackson explains that he and his people were shaped by the religious currents and diversities that surrounded them. They believed that the proper 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 own spaces, so long as they do not intrude unduly on others’ spaces.

This “new” Jackson essay fits with other autobiographical writings that he worked on in the early 1950s. By then, he had lived what he regarded as a full span of sixty years. Perhaps he also was feeling his failing health. He continued to do his Supreme Court judging and opinion-writing, actively and powerfully. He also kept very busy with extrajudicial writings and speeches on legal topics, principally his work following World War II as chief prosecutor at Nuremberg of the leading Nazi war criminals and the issues, accomplishments, and legacies of that undertaking. And in some special, more personal projects, he remembered vividly and wrote beautifully about defining, treasured people, places, and experiences in his past.

In the realm of religion, Jackson as a U.S. Supreme Court justice wrote many notable opinions addressing how the U.S. Constitution limits and empowers government. In *West Virginia State Board of Education v. Barnette* (1943),\(^3\) for example, he wrote the Court’s opinion holding that the Constitution prohibits public officials from compelling Jehovah’s Witness schoolchildren to salute and pledge allegiance to the American flag.

For Justice Jackson, the U.S. Constitution as a limit on government power to compel professions of faith was of a piece with the Constitution

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\(^3\) 319 U.S. 614 (1943), available online at www.law.cornell.edu/supremecourt/text/319/624#writing-USSC_CR_0319_0624_ZO.
also empowering government to prohibit religious proselytizers from harassing others, especially in their homes—under the Constitution as Jackson understood it, government may regulate religious actors when, but only when, their conduct imposes unduly upon the freedom and peace of others. Jackson also believed that the Constitution bars government from ranking religion itself, from ranking any particular religion as more or less correct, or from evaluating the sincerity of professed adherents of this or that belief system. In Jackson’s view, to believe and practice any religion or to believe in none at all is, short of the point where one imposes his or her belief on another, for the individual to determine, separate from government involvement.

Jackson’s “Faith of My Fathers” reveals that his personal views on religion and his own religious practices very much fit with his judicial interpretations of the U.S. Constitution. He 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 systems were not his. In both his living and his constitutional judging, Jackson gave religion its private space. He objected, however, and he read the Constitution as the legal basis on which to object, when government sought to bring religion into public spaces, because they belong equally to people whose beliefs range from religious belief to non-belief.

Justice Jackson’s “The Faith of My Fathers” essay is significant because it comes from him, from his renowned pen and his interesting, enduringly significant mind—it is a late-life, deeply personal piece of Jackson.

Jackson’s “The Faith of My Fathers” also has relevance to us, and indeed it might assist us, as we think about, practice, interact with, steer clear of, etc., religion, which is a continuing matter of great import to people, in constitutional law, in public debates, and in legal cases.
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I can not remember any effort of 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 personally illustrated. There were also a few
books on religious subjects, but after high school
the only books I remember being
read were of the Sunday School type. I knew Introductory
and Confirmation
The early days in the
ministries may have been directed by the family teachings
of prayer and devotions. We were not members of the Church of England
school. Only a few
of the "true" Presbyterians or Episcopalians
were strong in the liturgical reformed to any denomination or dogma.

The organized religion of the region were in the three
chiefly Methodist, Baptist, and Roman Catholic orders of the
Baptist Church. Their sessions and services were often
highly emotional and among my people there was plenty of
sentimental and little systematic. Of all the faiths, they
did know and use. Their often led to the embracing of a faith.

However, the discipline of the prevailing Protestant
denomination would have been intolerable to many of them.

They were an eminently pleasurable loving. They desired
The square dances of their day and loved the music of
the fiddle and the mandolin of the string instruments and the
tunes of the organ and the hymns of the
hymnists. They played cards some. They were lovers.
They went to the fair shows that were within their reach.
All of these were seen in the eyes of the situation.