
Book Review

The Greatest of Roosevelt's 'Forgotten Men'

by Jerry Berg

That Man, An Insider's Portrait Of Franklin D. Roosevelt

by Robert H. Jackson, edited by John Q. Barrett
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290 pages, hardcover, \$30

In February 1940 *U.S. News & World Report* matter-of-factly informed its readers: "If Roosevelt could pick his own successor for the presidency, he would name a man who entered his first political office last month. This man is Robert H. Jackson, the president's new Attorney General and chief of all federal law enforcement." Their reportage was, almost certainly, accurate.

A few days later, leading columnist Drew Pearson wrote a feature in the prestigious *Look* magazine, Unambiguously headlined: "Roosevelt's Choice for President Is Bob Jackson." Until FDR declared later that year for an unprecedented third term, such articles were commonplace. After Roosevelt's intentions became clear, Jackson was promptly identified as a finalist for Vice President. He ultimately backed his cabinet colleague, Henry Wallace, for that post.

Previously, FDR had made extensive personal efforts to install Jackson as 1938 Democratic nominee for New York governor, with the Presidential succession in mind, but had been thwarted by Wall Street's local politicians, in a foreshadowing of the right-wing synarchists' "Truman Coup" against Vice President Wallace at the 1944 Democratic Convention. (This latter event, we now realize, was decisive in misshaping the post-war world.)

In the Roosevelt-era vernacular, author Robert Houghton Jackson has become something of a "forgotten man" to today's historians—though he was a key participant in most of the major decisions of the 20th Century's greatest Presidential administration. He likely ranks among the most important Americans of the last century whom most readers have never heard of. Partisans of today's pernicious doctrine of "shareholder value," who despise the New Deal principle that the "common good comes first," have largely written Jackson out of the history books, while simultaneously besmirching

President Roosevelt's legacy with an endless procession of gossipy fairy tales, and mindless diatribes about the supposed evils of "big government."

Jackson's long-delayed insider's account of the Roosevelt Presidency, thus, is all the more significant for who wrote it, than it is for its many delightful insights and historical anecdotes about FDR. The book is a valuable contribution to today's political discourse, if only to get Americans reacquainted with an historic figure of the last century, who, with only a handful of other statesmen in the nation's history, might plausibly stake a claim to being the best President we never had. What Roosevelt came to appreciate about Jackson was that he was superbly qualified to be President, by virtue of his fierce devotion to, and legal genius in support of, the Constitutional principle of the "general welfare," whatever his "retail" electoral political skills.

That Man is assembled from hitherto unpublished notes and papers of this Roosevelt confidant, who passed away in 1954, and who, like FDR, never reached his 65th birthday. At the time of his death, Jackson was a Supreme Court Associate Justice, and was preparing these notes for publication. The memoir's wry title, chosen by the famously witty Justice, refers to the amusing tendency of well-heeled opponents of the New Deal to become so enraged at "traitor to his class" Roosevelt, that they could not even utter his name, but only rant and sputter in exasperation at "that man" in the White House, who dared put the general welfare ahead of their private gain.

To the extent he is known at all to present-day Americans, Robert Jackson is vaguely recalled as the dashing and eloquent lawyer—he gets a cameo appearance in the occasional Holocaust movie or documentary—who prosecuted prominent Nazis for their war crimes and crimes against humanity, at the post-World War II Nuremberg Tribunal. His adoption of that post-war role, on loan from the U.S. Supreme Court, was one of FDR's last known wishes. It was surely Justice Jackson's finest hour, and one of 20th-Century America's finest hours. He performed an immense and immortal service to mankind at Nuremberg, in establishing a moral compass for future citizens and statesmen.

Lamentably, policy-shapers and citizens of the recent generation, have, more often than not—especially recently—ignored his wisdom.

New Deal Rising Star

Jackson, like FDR, a native of upstate New York, was, unquestionably, the greatest legal mind of Roosevelt's New Deal.

In the New Deal's infancy, Bob Jackson served as the U.S. Treasury's chief prosecutor when tax evasion charges were levelled against Wall Street's pre-eminent "economic royalists" J.P. Morgan and Andrew Mellon. Through his astute handling of this impossibly difficult, but politically imperative task, the young "country lawyer" attracted the atten-



Few were closer collaborators of Franklin Roosevelt than Justice Robert Jackson, his Attorney General, Supreme Court appointee, and one whom FDR wanted to make his vice-presidential running mate. Jackson's writings on FDR have been edited into a valuable biography. Here he is in his best-known role, as chief Nuremberg war crimes prosecutor.

tion of the President, and soon had earned Roosevelt's complete confidence. (Mellon, as a matter of damage control from the case, donated his extensive art collection to establish what became the National Gallery of Art in Washington. FDR delighted years later, in asking Jackson about "his gallery.") Jackson quickly rose to head the Anti-Trust division of the Justice Department, before becoming Solicitor General—the number-three position in the Justice Department and its highest-ranking courtroom post, as the administration spokesman before the Supreme Court.

From this pulpit, Jackson argued forcefully, and usually successfully, for the Constitutionality of FDR's historic efforts to regulate financial predators and uplift the common man—and this before a Supreme Court that often seemed, in Roosevelt famous phrase, "stuck in the horse-and-buggy era." (At one point, at the height of the Depression, a nominally states'-rights Court majority bizarrely ruled, that individual states had no Constitutional right to establish unemployment insurance!) One admiring Justice, though, remarked that Jackson's legal mind was so brilliant that he ought to be "Solicitor General for Life."

Bob Jackson spent many a working vacation with FDR aboard the Presidential yacht, an honor bestowed but rarely by the President. On one of these voyages, at Roosevelt's urging, Jackson began to engineer the politically delicate legal framework for the Lend-Lease of naval armaments to Britain, which was instrumental in defeating the synarchist scheme for world domination that had launched Hitler. For all practical purposes, Jackson was the prime U.S. negotiator of the Lend-Lease agreement, who ensured it passed Constitutional muster, and could in no way be construed as a

giveaway to the widely distrusted British Empire. *That Man's* chapter on this matter, breaks fascinating new ground even for the Roosevelt scholar. To no one's surprise, by this time in early 1940, Jackson held official cabinet rank as FDR's Attorney General.

In 1941, before Pearl Harbor, President Roosevelt appointed Jackson to the Supreme Court, with the intimation that at the earliest opportunity he would be elevated to Chief Justice. From there, it was understood, he could, conceivably, shape American culture and law, as few Presidents ever did, for a generation to come. Though his chance to become Chief Justice effectively died with FDR on April 12, 1945, Jackson, renowned for his incisive wit and clarity, is widely acknowledged as likely the most eloquent writer to ever sit on the U.S. Supreme Court. (Ironically, the unworthy current Chief Justice, William Rehnquist, soul-mate of fascist ideologue Antonin Scalia, briefly served as Justice Jackson's law clerk.)

Law on the Side of Peace

While the British and Russian delegations, negotiating the fate of the captured Nazi war criminals in the Spring of 1945, would have preferred a quick firing squad and imperial business-as-usual, the American delegate, Jackson, held out for a more profound and revolutionary approach. Since the age-old approach to international law held that war-making was not illegal and thus not subject to prosecution, there existed no legal precedent for the Nuremberg Trials, which made much of the globe's political establishment and legal profession uneasy. Jackson, unfazed, invoked the natural law tradition to distinguish "just wars" from unjust ones. He concluded a Summer 1945 report to President Truman. "We therefore propose to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus, may the forces of law be mobilized on the side of peace," Justice Jackson contended. The threshold between just and unjust war was established as "unprovoked invasion," and the absence of a plausible case for self-defense.

Elsewhere in his report to Truman, Jackson derided the "obsolete doctrine that a head of state is immune from legal liability . . . a relic of the doctrine of the divine right of kings," and added. "We do not accept the paradox that legal responsibility should be least where power is the greatest." Anticipating the defense of Hitler's henchmen, Jackson noted that "with that doctrine of immunity of a head of state, is usually coupled another—that orders from an official superior protect one who obeys them. It will be noticed that the combination . . . means no one is responsible."

When Nazi officials, at Nuremberg, tried to defend them-

selves by insisting they did not, personally, kill anyone and “were just doing their jobs” and “didn’t know the extent” of Der Führer’s genocide—and after all, they “were only following orders”—Jackson’s rebuttal was memorable: The Nazi officials, insisted Justice Jackson, “knew or should have known” the consequences of their actions, both their acts of commission and omission. Justice Jackson’s articulation of the standards for holding individuals—and not merely faceless states or governments—responsible for conspiracy, crimes against peace, war crimes, and crimes against humanity, stands as a cornerstone of international law and civilization. The culpability of leaders for the consequences of their policy decisions, and not merely for their professed “intentions” was enshrined in the law—a mighty weapon to be wielded by future generations against future tyranny and injustice.

The Nuremberg Metric: ‘Power Pays Tribute to Reason’

“The privilege of opening the first trial in history for crimes against the peace of the world imposes a great responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant and so devastating, that Civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captives to the judgment of law, is one of the most significant tributes that Power ever paid to Reason,” Jackson declared on Nov. 21, 1945, in his rivetting opening statement as lead prosecutor against the surviving luminaries of the Nazi regime, at the Nuremberg Palace of Justice.

Jackson damned the Nazi hierarchy for conspiring to wage and waging “aggressive war,” that is, invasions launched on the flimsiest, most transparent of pretexts, as with the Nazi invasion of Poland or “liberations” of Czechoslovakia and France. In his summation, Jackson ridiculed some Nazi defendants’ contention that they were acting in self-defense, not waging aggressive war, since they claimed to perceive an imminent “Bolshevik menace.” (Substitute the word “Saddam” for “Bolshevik,” and one might mistake the Nazis’ Nuremberg defense argument for a modern-day Washington press briefing! This author happened to be on European soil during the March 2003 launching of the so-called “Operation Iraqi Freedom”: I heard more than one educated European remark on the striking similarities between those Hitlerite “liberations” of yore, and the current Cheneyac variety.)

Economic Crimes

Among those convicted by Jackson’s team were not only the Nazi high command, or the operators of the gas ovens, but also those who ran Hitler’s medical system. Whole categories of the poor, weak, handicapped, or hated, had been systemati-

cally exterminated, through denial of treatment, under a doctrine that “useless eaters” had “lives not worthy to be lived.” This rationing of care—eerily similar to our modern HMO system of triage—was also defined as a crime against humanity.

In his closing arguments, Justice Jackson blasted top Synarchist banker, Nuremberg defendant Hjalmar Schacht, whose policies as Hitler’s Economics Minister, were the foundation of the Nazi war machine. Jackson called Schacht’s policies “the façade of starched respectability” for the barbaric Hitler regime, and with contemptuous irony, quoted Schacht’s rendering of the cynical philosophy behind the atrocities. Schacht had said, “Truth is any story that succeeds. . . . I think you can score many more successes, when you want to lead someone, if you don’t tell them the truth—than if you do tell them the truth.” This, Jackson left no doubt, was a supremely criminal mindset.

Clearly, Jackson would have detested the Straussian neo-conservatives so prominent in Washington, today, who share Schacht’s view of truth, and, not accidentally, his economics.

‘Go Along To Get Along’

The U.S. Constitutional principle of the general welfare, or the common good, comes shining through in all of Jackson’s reasoning at Nuremberg. Mere “administrative rules, procedures and orders,” are to be subservient to the principle of justice or “the Good.” “Going along to get along,” in today’s parlance, was the Nazis’ defense, and was not acceptable among civilized men, Justice Jackson held. Justice under the law, in Jackson’s view, must always supplant the use of force in human relations.

It should not be surprising then, that Justice Jackson, on May 17, 1954, arose from his hospital bed, where he was recuperating from a near-fatal heart attack, to join his Supreme Court colleagues in the public announcement of their unanimous decision in the landmark civil rights case, *Brown v. The Board of Education of Topeka, Kansas*, which outlawed racial segregation in America’s public schools.

The local Democratic Party functionaries who have executed Democratic National Committee Chairman Terry McAuliffe’s fascistic orders to muzzle, defraud, and obstruct Lyndon LaRouche, the 21st-Century embodiment of the desperately needed FDR tradition, would be well-advised to reflect on Jackson’s message, rather than “going along to get along,” and “only following orders.”

In this era of the Cheney Doctrine of preventive nuclear war and “might makes right,” it is long past time that we rediscovered and embraced anew the principles of universal justice so eloquently set forth by Justice Robert H. Jackson. If *That Man* can serve to further such a process, by bringing a forgotten giant of the 20th Century to the attention of 21st-Century Americans, it may prove to be a notable contribution to current history—a much-needed “weapon of mass instruction.”