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Points of Rebellion by William O. Douglas

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Book Reviews

POINTS OF REBELLION. By William O. Douglas. New York: Random House, 1969. Pp. 97. \$4.95.

It seems time for Supreme Court Justice William O. Douglas to retire. This conclusion, reached by many after the recent publicity attendant to some of his activities—the Parvin Foundation affair and publication of a lead article in a magazine very close to being pornographic, if not actually so—is not discouraged by a reading of his latest literary effort, *Points of Rebellion*. Just as the cited activities reveal loss of a sense of propriety, the book reveals a loss of a sense of perspective. A Supreme Court Justice who has neither a sense of propriety nor perspective should cease attending court.

It is remarkable that this work was written by a lawyer and Supreme Court Justice, considering its defects in structure, form and content. It is very difficult to believe that it was written with any intent that it be influential or taken seriously, considering its excesses of prejudice. The fact that portions of it appeared in *Playboy* magazine perhaps explains its frailties as a significant political document.

The work is basically a loose conglomeration of facts, thoughts, biases and reflections, permeated with a pessimism which disqualifies it for bedtime reading, unless the reader wanted purposely to stimulate nightmares or insomnia. The sullenness displayed throughout the book suggests that the Justice awoke one morning with indigestion, ate sour grapefruit for breakfast, and then proceeded to record his thoughts as that acid food took effect. Such a context is also suggested by the style, which is sort of an ill-humored, legal and political stream of consciousness, which does not, however, place Douglas on a literary level with James Joyce.

Points of Rebellion is divided into three parts, the first entitled "How Americans View Dissent". This section best illustrates the pot-pourri character of the book. Consider the following subjects which are discussed in the brief space of thirty pages (large type): protest marches, McCarthyism, effects of technology, freedom of speech, prayer reading in the public schools, control of colleges and universities by the Pentagon and the CIA, defects in modern university education, security problems in government bureaucracies, personality tests for potential government and industry employees, and invasion

of privacy. The number of subjects suggests the depth of treatment given each of them by the author.

The next section supposedly focuses on "Legions of Dissent", a part which would presumably include a description and analysis of those groups who currently engage in dissent, with perhaps some discussion of the subjects which are the focus of the dissenters. But again, the reader is treated only to another mind-boggling catalogue of national ills, a hodge-podge of commentaries about the many grievances which are the Justice's particular hangups. The presentation is less inspiring for the lack of connection or interrelation between many of the topics, which include Asian foreign policy, the war in Vietnam, the Selective Service System, defense spending, the power of the Pentagon, unemployment problems of Negroes, racial discrimination, problems of the poor, consumer problems, landlord tenant relations, environmental pollution, black lung disease, and the evils of government bureaucracy. As if this were not enough of an affront to the reader, the chapter is concluded with a blatant insult in the form of a quotation from Adolf Hitler made in 1932, which concluded with the demand "we need law and order." The demagogy is patent, as is the hypocrisy, when one considers the bitter condemnation by Justice Douglas and other liberals of Senator Joseph McCarthy's frequent use of the tactic of "guilt by association" in the early 1950s.

Only in the last section of the book does Justice Douglas abandon his obsession for enumerating adversities to present some material related to the subtitle. "A Start Toward Reconstructing Our Society" does at least contain two specific proposals toward that end, but even these are sandwiched between more dreary recitations of the nation's inadequacies, which include this time problems about legal services to the poor, the defense budget, preserving wilderness areas, building modern highways, the school lunch program, and agricultural production. But the appalling part of this final chapter is reserved for the statement of the Justice's program for reform. Having brought the reader to the brink of despair by his interminable grouching about American society, the Justice could legitimately be expected to propose solutions which might renew the reader's spirit. But hope gives way to incredulity as the Justice unveils his plan: first, a generality, "re-allocating our resources," a proposal so broad as to be almost totally useless to anyone seriously set on confronting the problems so generously described in the book; and second, the creation of another government agency, one to watch other government agencies. Coming from an author who has just spent the considerable part of two chapters

of his book condemning government bureaucracies, this suggestion is almost unbelievable. It would be laughable, if it were not such a pathetic climax.

Justice Douglas' solutions are even more inappropriate when it is considered that, among all of the social afflictions discussed, not one word is devoted to one of the root problems which causes so much of the other misfortunes mentioned—the problem of overpopulation. A discussion of this subject would have been timely and beneficial, and might have redeemed the value of the book. It is a serious omission.

Aside from the defects in the structure, form and content of the book, there are some general observations which can be made about the particular posture or viewpoint which it represents. One of the recurrent phrases to which the Justice is committed is "restructuring society." The idea embodied in it is not new, as David Reisman made the same call in the lead essay of a collection entitled *The Liberal Papers*, published in 1961. Justice Douglas uses the phrase, or a corollary of it, no less than five times. By the fifth time, it has a hollow ring to it, much like the emptiness which usually accompanies those calls for "rededicating ourselves" which one hears so frequently at bar association meetings and civic club functions. The Justice has also picked up the basic catchword in the lexicon of dissenters and revolutionaries—the "Establishment"—and uses it, like his more youthful counterparts, with a glibness that assumes that the group is as familiar and as easily identifiable as the Rotary or Kiwanis Clubs.

The Justice makes his call for ousting the "Establishment" and reorganizing society with a naivety which suggests that he has absorbed nothing from the lessons of history. Implicit in all such suggestions are questions which should give a man of Douglas' age and experience pause for reflection. For instance, it can legitimately be asked, what assurances are there, assuming that a vast reorganization of society does come about, that the new social structure will be any better than the old, not worse? And what is to prevent the rise of a new "Establishment" as alien to some citizens of the new order as the present one is to Justice Douglas. The answer, of course, is that no such assurances can be given. Evils in the new social structure would soon appear, and a new "Establishment" would not only be probable, but inevitable. But these questions and answers are lost on the Justice.

Justice Douglas argues in *Points of Rebellion* that unless the restructuring of society comes about to abate all of the grievances which he has inventoried, revolution will be inevitable. The threat

in his argument is apparent, and by predicting revolution if his recommendations are not acted on, he is guilty of at least condoning if not actually encouraging it. The conceptual and intellectual incapacities which accompany many political fanatics seem very close to afflicting Douglas for his failure to recognize anywhere in his work that the results achieved in a revolution may not be worth the purchase price which must be paid in terms of the inevitable anarchy and bloodshed. Such impending incapacities are also suggested by his argument that the political climate of present day America is identical with that existing at the time of George III, and his branding of the current "Establishment" as the modern day equivalent of that historical figure. Such observations are absurd on their face to anyone familiar with the circumstances of the American Revolution.

The particular attitude expressed in this book which recognizes so many failings of American society should actually be viewed as an admission of the failure of those policies which Justice Douglas has been promoting for the last thirty years. He started his public career in Franklin Roosevelt's New Deal as a member of the Securities and Exchange Commission. He has been an outspoken advocate of liberal causes since that time. During his career as public servant and judge, government has, succumbing to liberal influence, exercised increasing and far reaching control over the affairs of state and local governments, and over the affairs of private enterprises and individuals. If the United States has become as oppressive a society as Justice Douglas would have it, then one can only conclude that the policies of government which he has supported must be in a very large way responsible for that condition. And, as one commentator asked, if that is the situation, by what logic can it be argued that what is needed to correct the situation is more of the same?

It is well known that the Justice is a partisan member of the judiciary, but *Points of Rebellion* adds a new dimension to his attitude, where bias has become transformed into zealotry which is sort of a reverse chauvinism. The acrimony and, at other times, hand-wringing despair which so flavor the entire book are the central characteristics which suggest the author's complete loss of perspective. It is remarkable that not one paragraph or sentence is devoted to the achievements of American civilization. There is no part which suggests satisfaction with the abundance and affluence which has been made available to so many citizens. No effort is made to balance or weigh accomplishments against failures. Maybe Justice Douglas was merely attempting to marshal arguments in favor of his rather meager proposals for reform. Perhaps he saw himself as a latter day Thomas

Paine, destined to record those injustices which would be the seeds of a second American Revolution. But the effort comes across only as the soured outlook of a sour man, the broodings of a legal Scrooge.

A good example of this disposition to see only the bad in things is the commentary on the highway construction program. In the third chapter the Justice writes:

The design of a highway, as well as its location, may be ruinous to economic, aesthetic, scenic, recreational, or health interests. . . .

The Highway Lobby makes the Bureau of Public Roads almost king. In 1968 when Alan Boyd proposed hearing procedures before federally supported highways were either *located* or *designed* public hearings on the proposed regulations were held. Every one of our fifty governors appeared or sent word *opposing* the regulations. Why? Because the national highway lobby and the state highway departments have such a close working relationship that nothing should be done to disrupt it. That means that they think that individuals should have no voice in planning

Aside from the fact that most state highway departments have for many years followed the practice of holding public hearings before a major project, even a non-federally financed one, is initiated, there are considerations which the Justice omitted from his dissertation. He didn't say that the proposed regulations, because of appeal procedures and other factors in them, would result in construction delays of months or even years. He didn't comment on the fact that such delays might critically affect rural communities in being able to transport farm products to market, or to attract job creating industries to break a poverty cycle, or to enable school children to ride buses to school. He didn't even question the capacity of the downtrodden citizens for which he expresses such concern to comment on the technicalities of the design of a modern freeway or interstate highway. Finally, he failed to consider the effect of delays in construction of modern freeways in saving lives in traffic accidents, or even to note the very positive contribution which interstate highways have made in reducing the highway fatality and accident rates. Such inability to discern the good in many facets of American life is probably the single most disturbing trait exhibited by the Justice in this book; a trait which seems singularly characteristic of the liberal mind. In Douglas' case it is particularly unfortunate because he is in such a unique position to assist his country through a time of turmoil and unrest.

A final word seems necessary on the style of the book. The writings of a lawyer or a judge are usually equated with precision and accuracy. Such characteristics are the basic tools of a lawyer. It is

obvious from the above discussions that this book is neither precise nor accurate. It is carelessly written, and given to gross overstatement. The logic employed is also of doubtful validity, since the Justice argues from the specific to the general, without sufficient supporting data or illustrations to support his generalizations. They are simply not convincing. If a Supreme Court opinion were written as loosely and imprecisely as this book, containing the imperfections in perspective which it does, to a lawyer such an opinion literally wouldn't be worth the paper it was written on. And perhaps this is the best way of summing up the worth, to the reading public, of *Points of Rebellion*.

James G. Apple*

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To say the least, *Points of Rebellion* by Justice William O. Douglas is a book which produces a *reaction* on the part of readers and reviewers, a reaction that may be fairly predictable depending upon one's basic outlook as to the necessity of fundamental change in this country and the nature of the protest directed toward achieving such change. To a spokesman for the New Left such as Professor Howard Zinn¹ the book is a "concise, lucid, persuasive demolition of the schoolboy fable that our system, despite flaws, is basically decent, and that it provides the means to correct its own deficiencies."² To a defender of the present system who has had first hand experience with the "revolution of the New Left" such as Dr. S. I. Hayakawa, the President of San Francisco State College:

"Mr. Douglas had adopted the fashionable dissenting-youth culture as his own. He is trying to be different like everyone else, and his dissent is, therefore, the echo of everyone else's. He repeats all the clichés of the New Left, solemnly and portentously as if he were thinking them up for the first time. None of them is subjected to the slightest analysis or criticism."³

Admittedly Justice Douglas feels strongly about the subject of change and dissent and does not mince words. This will be disturbing to the

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¹ See e.g., H. Zinn, *The Responsibilities of Civil Disobedience: Nine Fallacies on Law and Order* (1968).

² Book Review, 50 B.U.L. REV. 490 (1970).

³ Book Review, 50 B.U.L. REV. 493 (1970).