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Points of Rebellion by William O. Douglas

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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*

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

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).

academician who is conditioned to be "objective" and "intellectually indifferent" even as to matters such as revolution and repression, and whose literary style and terminology is supposed to reflect such "objectivity." But it is possible to be *truthful* even if one is not objective, and the real question posed by *Points of Rebellion* is whether Justice Douglas has set forth an accurate portrayal of American society as it exists today and has correctly analyzed the problem of change, dissent and repression. If he has, then there is indeed cause for alarm.

The essential theme of the book revolves around the fact, as Justice Douglas sees it, that there is fundamental dissatisfaction, particularly on the part of the young, with American society as it exists today. He catalogues, in no uncertain terms, what is wrong with our society and what must be done to restructure the society to make it responsive to human needs. At the same time he sees great resistance to change on the part of the "Establishment." This resistance has produced a sense of futility and frustration which makes the use of violence "inviting" and "seems to the discontented to be the only effective protest." He contends that the combination of great pressures for change and opposition to such change means that we will either see a new society responsive to human needs or that the "Establishment" will resist the pressures for change by creating a "police state in which all dissent is suppressed or rigidly controlled." If America becomes a police state—and he emphasizes that it is not a police state now, but that it is moving in that direction—then he sees a real danger of violent revolution.

There are three parts to the book: How America Views Dissent; The Legions of Dissent; and A Start Towards Restructuring Our Society. In the first part he reviews the nature of dissent and protest in America today and the attitudes that exist toward it. In the second part he lists all that is wrong in American society—what the dissent is all really about. In the final part, as the title indicates, he discusses what can be done. But at the same time he illuminates the resistance to change and the resulting possibility of a police state in which dissent will be repressed. There will be a revolution, he contends, and the question for America is whether it will be "in the nature of an explosive political regeneration" or whether the "Establishment with its stockpile of arms, resolves to suppress the dissenters," in which case, as he sees it, "America will face an awful ordeal."

The "popular charge" made against Justice Douglas—by that I mean the charge that has been made by what Justice Douglas would call the "Establishment"—is that in this book he advocates violent

revolution. Revolution is not a very respectable word in "Establishment" circles these days—notwithstanding that we wave the flag about it every July 4th—and it has come to connote in those circles violent and bloody revolution. Revolution of course means fundamental social change,⁴ and it can come about peacefully through the democratic process. But if one is opposed to fundamental social change, it becomes convenient to label any such change "revolutionary," and to assume that it would be preceded by violence. It can then be argued that all advocates of fundamental social change are "violent revolutionaries" and that anyone who is opposed to violence should be opposed to fundamental social change.⁵ And when a "controversial" spokesman for social change such as Justice Douglas discusses violence and predicts that violence may occur if demands for social change go unmet, he will necessarily be accused of advocating violent revolution, and this has been advanced as grounds for his impeachment.

Of course, as former Justice Tom C. Clark has pointed out, Justice Douglas is not advocating violent revolution in any way.⁶ He discusses the risk of violence (p. 92) and warns that when a necessary restructuring of society has not been forthcoming, violent revolution may occur and has occurred in the past. (p. 95). But he emphasizes that a revolution—a restructuring of a society to bring about fundamental social change—need not and hopefully will not be violent. (p. 97). The furthest he goes in regard to violent revolution is to say that it may be *legitimate and moral* if all other avenues for change have become foreclosed and the society itself has become a complete police state. The following excerpts from the book will demonstrate his position very clearly:

"Violence has no constitutional sanction; and every government from the beginning has moved against it.

But where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response.

In some parts of the world the choice is between peaceful revolution and violent revolution to get rid of an unbearable yoke on the backs of people, either religious, military, or economic. . . .

We of the United States are not in that category. But the risk

⁴ In Webster's Third New International Dictionary (unabridged), it is defined as: "A fundamental change in political organization or in a government or constitution: the overthrow or renunciation of one government or ruler and the substitution of another by the governed." At 1944 (1966 ed.)

⁵ Young people also like to throw the word "revolution" around for its shock effect on the older generation. It may be the political equivalent of "fuck." Multiple shock effect can be achieved by referring to "the fucking revolution."

⁶ Book Review, 83 HARV. L. REV. 1931, 1932 (1970).

of violence is a continuing one in our own society, because the oncoming generation has two deep-seated convictions:

First The welfare program works in reverse by syphoning off billions of dollars to the rich and leaving millions of people hungry and other millions feeling the sting of discrimination.

Second The special interests that control government use its powers to favor themselves and to perpetuate regimes of oppression, exploitation, and discrimination against the many.

There are only two choices: A police state in which all dissent is suppressed or rigidly controlled; or a society where law is responsive to human needs.

• • • •

We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, also is revolution.

• • • •

The youngsters who rise up in protest have not formulated a program for action. Few want to destroy the system. The aim of most of them is to regain the freedom of choice that their ancestors lost, to be free, to be masters of their destiny.

• • • •

The search of the youth today is for ways and means to make the machine—and the vast bureaucracy of the corporation state and of government that runs that machine—the servant of man.

That is the revolution that is coming.

That revolution—now that the people hold the residual powers of government—need not be a repetition of 1776. It could be a revolution in the nature of an explosive political regeneration. It depends on how wise the Establishment is. If, with its stockpile of arms, it resolves to suppress the dissenters, America will face, I fear, an awful ordeal."⁷

Justice Douglas clearly eschews violent revolution as anything but the last alternative. But if it is the only alternative to a repressive and unjust society, to a society that is unresponsive to sweeping pressures for social change, then it is his submission that violent revolution is *legitimate*.

In so contending he is on sound historical ground. He points out that the use of violence is "deep in our history," and gives some examples.⁸ More significantly, violent revolution is legitimized for Americans by that revolutionary document known as the Declaration of Independence, where it is proclaimed that:

" . . . To secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of

⁷ *Points of Rebellion*, 88-89, 91-92, 95, 96-97.

⁸ *Points of Rebellion*, 57.

these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness."⁹

The same principle is found in state Constitutions such as that of Kentucky, where it is provided that:

"All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they seem proper."¹⁰

To legitimize violent revolution when all else has failed—hoping all the while that this will not be the case—and to recognize that violence may seem to the discontented the only effective protest, is a far cry from advocating violent revolution or countenancing the use of violence. The dislike of the message that Justice Douglas is presenting may tempt critics to try to discredit that message by invoking the cry "he advocates violence," but anyone who reads the book with the slightest perception will see that this is not so.

I must confess that I find our recent preoccupation with violence somewhat hypocritical. Drawing an analogy to the cry of "communism" directed against any effort to achieve social change, it is a "red herring." The reason that the "Establishment" is opposed to social change is not because some segments of the movement for social change have resorted to violence. It was just as strongly opposed to social change before any violence appeared. But just as the riots in the urban ghettos have been advanced as justification for the argument that "blacks are moving too fast" (because they want to enjoy the same rights and privileges that whites take for granted), violence on the part of extreme elements of the movement for social change has been advanced as justification for continued resistance to social change.

Our society, however, is by no means opposed to violence. *It all depends on who is being violent against whom.* When violence takes the form of destroying Vietnamese cities, burning huts, dropping

⁹ To read aloud the Declaration of Independence in Kentucky would appear to have been prohibited by the utterly unbelievable "teaching sedition" law, KRS 432.040, which was declared unconstitutional in *McSurely v. Railiff*, 282 F. Supp. 848 (E.D. Ky. 1967).

¹⁰ Kentucky Constitution, Section IV. This provision has been interpreted as giving the people the power to adopt a new constitution without going through the amendment procedures provided in sections 256-263. *Gatewood v. Matthews*, Ky., 403 S.W.2d 716 (1966).

napalm, and so forth against the "enemy," it is good and if done properly, will earn a medal for the doer. But if it takes the form of a student sit-in or stoning a vehicle in which a C.I.A. recruiter is riding, it is bad. I must agree with veteran civil rights lawyer, William M. Kunstler, who observed that, "In terms of real violence to human beings, one B-52 raid over South Vietnam makes it offensive to apply the word violence to what some of the more militant factions of the movement have done."¹¹ There was great consternation over rioting in the black ghettos of urban America in the summer of 1967, particularly because of the great damage to property. But most black people live their entire lives in a climate of violence and always have done so. We glorify in literature and on the screen the role of the Ku Klux Klan in reconstruction days when it used violence to "keep the niggers in their place." Throughout the American south in earlier days "uppity niggers" would be whipped if they offended the white power structure. Hundreds of blacks were lynched each year for allegedly committing crimes against whites. In many parts of the south it is still possible to kill blacks with impunity. Anti-war protestors are scored when their protest erupts into rock throwing, but when "hardhat" construction workers attack and beat up peaceful protestors—in full view of the police—their action is applauded and results in an invitation to the White House. Our government has proudly boasted that it helped to engineer the violent overthrow of "unfriendly governments" such as the Arbenz regime in Guatemala. Violence, as H. Rap Brown once said, is indeed "as American as apple pie." For a nation that came into being through a violent revolution and in which violence is so glorified, it is somewhat astonishing that we appear to be so frightened at the mention of violence. What really frightens those who are frightened is not violence, but the concept of revolution—of fundamental social change—and hand-wringing about violence merely obscures the real issue. The legitimization of violent revolution as a last resort measure in the face of a repressive police state does not alter the validity and main thrust of Justice Douglas' message.

A more justifiable kind of criticism is that put forth by Dr. Hayakawa, who takes Justice Douglas to task for blaming everything on the "Establishment." Dr. Hayakawa, an outstanding and respected semanticist before embarking on his present career as the symbol of the "hard-line University response to student protest," observes that: "The semantic solution to Mr. Douglas' problem is simple. He could simply stop using blanket abstractions like 'Establishment,' which by

¹¹ Interview, *Playboy Magazine*, 232, (August, 1970).

explaining everything explain nothing."¹² And it is true that Justice Douglas does speak of the "Establishment" without precisely defining what he means. However, I think the meaning of "Establishment" is clear to his youthful readers and to those, who, unlike Dr. Hayakawa, have felt the "Establishment's" wrath. I would concede that "Establishment" is a terribly overworked word and in the semanticist's view would be trite. Nonetheless, sometimes such a word is the only word which will accurately convey the message. And in terms of the point that Justice Douglas is trying to make—that of resistance to social change and repression of dissent—the concept of "Establishment" is not abstract, but is very real indeed. I think that Justice Douglas is using "Establishment" to refer to those people who are "running things," those who are administering the institutions of society. In this sense there are many "Establishments," but the concept of "Establishment" does represent a unifying theme, namely an essential satisfaction with the status quo and resistance to fundamental social change. By viewing "Establishment" in terms of power and attitude,¹³ particularly as it relates to benefits derived from that power and resistance to fundamental change that would eliminate or reduce it, it is possible to identify an "Establishment" and to speak of it in the manner that Justice Douglas does. I know what he means by "Establishment," and I really suspect that Dr. Hayakawa does too. In that sense it is possible to blame everything on the "Establishment."

I come back then to the questions raised at the beginning of the review. Is what Justice Douglas is saying an accurate portrayal of American society as it exists today? Has he correctly analyzed the problem of change, dissent and repression? Is the warning he sounds a valid one, to which we should pay heed? I think that I would answer all of these questions in the affirmative, subject to certain qualifications. I myself do not think that we face the real danger of an *organized* violent revolution on the part of the left. I agree that to many of the discontented violence seems to be the only effective protest, and this makes itself felt in *disorganized* and *irrational* acts of violence on the part of individuals and groups. We see some of this in the behavior of the Weathermen and in the bombings and acts of destruction that have taken place on college campuses. But very few persons are involved in these acts, and such involvement may reflect nothing more than an individual death wish—which has become a

¹² Hayakawa, *supra*, note 3 at 495.

¹³ On this basis, Justice Douglas is not, as Dr. Hayakawa suggests, a member of the "Establishment" by virtue of being a Supreme Court Justice. It is the combination of power and attitude that denotes a member of the "Establishment" as Justice Douglas speaks of it.

reality for those whose careless use of bombs has destroyed themselves. No rational person would believe that it is possible in the foreseeable future to overthrow the "Establishment with its stockpile of arms." If the instinct for self-preservation is strong, if there are other *personal* alternatives to violent and probably self-destructive attack against a repressive system—such as "dropping out" or becoming "co-opted"—these alternatives will loom large. In other words, in order for violent revolution to be rational—and this is apart from considerations as to the morality of such revolution—it must have some prospect of succeeding. In a technologically advanced society, where the "Establishment" necessarily has the stockpile of arms, a violent revolution cannot succeed, and therefore is not a rational course of action.

I do think, however, that we will see acts of violence on the part of the discontented, possibly increasing in number. I think that segments of disaffected and repressed peoples—such as the blacks, the Mexican-Americans, the white poor—may spontaneously resort to violence because of the overwhelming frustration and powerlessness that they feel day by day. Perhaps this is what Justice Douglas is really talking about. But I do not see the possibility of an organized violent revolution, which in this society at this time cannot be a rational way to achieve fundamental social change.

Rather the danger of violence I see is that coming from the right. It is the danger of violent repression on the part of the "Establishment" to beat back the *peaceful revolution* that may occur when the youth of today—reinforced by succeeding waves of young people who are even more alienated—will become the political majority of tomorrow. I am not at all convinced that the present "Establishment"—those who are running things—will peacefully and with good grace accept fundamental social change. As it becomes more difficult to repress dissent "legally," as the pressures for social change become stronger, as dissident groups become more cohesive, as a new political majority appears to be forming, the temptation on the part of the "Establishment" to resort to violence may be difficult to control.

My own view is that we will see a new political majority in this country, led by the young people, who are becoming ever more disenfranchised with our present system. The peripheral reforms which the "Establishment" may be willing to undertake will not stem the tide. If anything, as the increasing expectations of blacks following the limited gains of the civil rights movement of the 1960's indicates, it will fan the pressures and increase the demand for fundamental social change. When the present dissenters are in a position to obtain political power—and to become the new "Establishment" with different

values and priorities—I think that there is a real danger that those who now hold the reins of power will be unwilling to give them up. It is at that point that the professed commitment of the present “Establishment” to democratic principles and “working within the system” will be put to the test.

In *Points of Rebellion* Justice William O. Douglas has accurately portrayed American society as it exists today and has carefully analyzed the problem of change, dissent and repression. He has sounded a warning for the future. There is the real danger that the confrontation between the dissenters and the “Establishment” will produce violence, and if our belief is in a peaceful, democratic society in which fundamental social change may take place within the framework of the law, it matters not whether that violence reflects the frustration of the dissenters or the repression of the “Establishment.”

It is with this perspective that the thoughtful reader will approach *Points of Rebellion*.

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ANTITRUST AND TRADE REGULATION TODAY: 1969. By John C. Scott. The Bureau of National Affairs, Inc., Washington, D.C. Pp. 204. \$12.50.

The Bureau of National Affairs' (hereinafter BNA) antitrust publications are most familiar to practitioners devoted to that cloistered and somewhat compulsive practice of following developments in the specialized corner of the antitrust law. BNA's weekly *Antitrust & Trade Regulation Report* no doubt provides nighttime reading for the bulk of the antitrust bar. Every issue arrived with ominous precision on my desk when I was a novice in a large Eastern law firm. Somewhat the same as one participating in devotions each night as a member of some holy order, I would carry each copy in my brief case until the stack (and my guilt) became so heavy I would have to set aside two or three hours to correct my backsliding.

This book is a collection of part of those interminable weekly reports. In addition to a quite thorough report of federal and state antitrust cases, arguments before the Supreme Court on leading cases, and relevant legislative proposals, BNA also includes a monthly article analyzing recent developments in the context of past and present economic and legal trends. It adds to the report a valuable