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### William O. Douglas, Points of Rebellion

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POINTS OF REBELLION. By William O. Douglas. New York: Vintage Books. 1970. Pp. 97. \$1.95.

Speaking in Gary, Indiana, in 1959, Mr. Justice William O. Douglas said that one reason why the Communists had such an advantage over us in the battle for men's minds was that we had not produced, as they had, a manual for revolution which could be used by men who sought freedom from oppression: a strange fact about a nation born of revolution against oppression. *Points of Rebellion* is not that manual.

In this new island in the archipelago of his work,<sup>1</sup> Justice Douglas begins a trilogy dealing with dissent and rebellion. The second book *International Dissent*, will deal with world problems and the third, *A Hemispheric Co-op*, will focus on the special problems of Latin America.

Justice Douglas has become a pamphleteer in the tradition of Thomas Paine, calling to his countrymen to preserve democracy against its contemporary threats:

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, is also revolution.<sup>2</sup>

But I am ahead of myself.

Justice Douglas' book is an attack on the Establishment and the American reality but not on democracy and the American dream. Democracy has never before been tried in a nation of 200 million people, and some who believe in it have said that it cannot work on such a scale.<sup>3</sup> One cause of pessimism, perhaps, is that democracy lives by dissent. Since we have such large numbers of people becoming more politically sensitive and active and since so many of our political decisions are of the fifty-one percent to forty-nine percent variety, dissent becomes more meaningful and hence is less tolerable to those in authority. It is no surprise that we see around us signs of the development of a totalitarian

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1. He has written thirty books, including: ALMANAC OF LIBERTY (1954); AMERICA CHALLENGED (1960); BEYOND THE HIGH HIMALAYAS (1952); DEMOCRACY AND FINANCE (1940); A LIVING BILL OF RIGHTS (1961); THE RIGHT OF THE PEOPLE (1958); RUSSIAN JOURNEY (1956) and TOWARDS A GLOBAL FEDERALISM (1968).

2. W. DOUGLAS, POINTS OF REBELLION 95 (1970).

3. See, e.g., Rousseau, J., *The Social Contract*, in THE SOCIAL CONTRACT AND OTHER ESSAYS 35, 54 (N.D.).

state.<sup>4</sup>

One of the great national myths—I do not use the term in its pejorative sense—is that America is a melting pot. It truly is. The difficulty with a melting pot, however, is that its contents lose their respective individual identities and the end product is a solid, inert mass (a silent majority?). What we have to fear is the kind of enforced conformity that Zamiatin warned of in his novel, *We*,<sup>5</sup> in Russia in the 1920's.

*Points of Rebellion* speaks out against a growing mediocrity and a "goose-stepping conformity." It warns against "the growing rightist tendencies in the nation that require conformity-or else."<sup>6</sup> Foremost in today's bumper-sticker dialogue is the blind and blunt command, "America: Love her or leave her." One wonders how a slinger of such slogans would react if upon reporting his wife's illness to a physician, he were given but two alternatives: "Love her or leave her." Justice Douglas seems to suggest: "Love her and cure her."

Justice Douglas attacks the depredations upon our rights of privacy, the spoilation of our environment and the reversed priorities reflected in a national budget heavy in favor of the Pentagon and inadequate for the needs of the ill, the aged, the poor and the Black.

One of Justice Douglas' principal targets, along with the Establishment, is the corporation state. Though *he* has bridged the generation gap, the older generation generally has not; it has, he says, "become mindless when it comes to criticism of the system. For it, perpetuation of the corporation state and its glorification represent the true Americanism. 'If only the world were like us, everything would be perfect.'"<sup>7</sup> Such an attitude reflects our society's institutionalization of private greed in a relatively unrestrained free enterprise system. This reviewer, who wonders how the great society and the public good can arise out of the multiplication and maximization of private greed, gains comfort from the company

4. At page fifty-eight Justice Douglas quotes a 1932 speech of Adolf Hitler which has a familiar contemporary ring:

The streets of our country are in turmoil. The universities are filled with students rebelling and rioting.

Communists are seeking to destroy our country. Russia is threatening us with her might and the republic is in danger. Yes, danger from within and without.

We need law and order.

5. E. ZAMIATIN, *WE* (1924). Orwell's *1984* and Huxley's *Brave New World* could have been cited, for *We* was the source from which these authors "borrowed" their themes. The fear is not chimerical. It has been recently announced that the President and his advisers have been considering a proposal for the mass administration of psychological tests (to boys and girls between the ages of six and eight) to detect children apt to become "antisocial" and to establish special daycare centers and camps for retraining them. *NEWSWEEK*, April 20, 1970, at 76.

6. DOUGLAS, *supra* note 2 at 31.

7. *Id.* at 10.

of so knowledgeable a critic of the corporate state.<sup>8</sup>

What solutions does he offer? He urges a revolution within the available democratic process. Counseling against violence, which "has no constitutional sanction," he urges peaceful dissent and a tolerance for it so that the dissenters may function as the loyal opposition functions in England. Perhaps the first step would be to borrow a page from Maslovian psychology. Professor Maslow tells us that man's inner nature, as much as we know of it so far, seems not to be intrinsically evil, but rather either neutral or positively "good." What we call evil behavior appears most often to be a secondary reaction to frustration of this intrinsic nature.<sup>9</sup> If we see the dissenters as loyal and sincere, perhaps we may more clearly see the reasons for their dissent and see our way clear to rational solutions. Such a course offers far more hope than the blind assumption that the system will work itself pure without assistance and effort.

Justice Douglas makes a number of specific recommendations<sup>10</sup> to cure specific evils in society, but in general the only alternative—other than revolution—which he sees to a police state in America is the development of laws "responsive to human needs."<sup>11</sup> "A minimum

8. Justice Douglas served from 1936-39 as a member and chairman of the Securities and Exchange Commission. He is not a bitter enemy of the free enterprise system. In delivering the eighth annual Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York on April 2, 1949 he said:

Today there is greater realization that survival lies in the development of a cooperative society where the security of capital rests on the broad base of the prosperity of the multitude. Today the accepted view is that property need not be made tyrant in order to give men freedom and incentive to acquire it, own it, and manage it and to unleash the great productive power of free enterprise.

W. Douglas, *Stare Decisis*, in 4 THE RECORD OF N.Y.C.B.A. 171 (1949). See also W. DOUGLAS, *DEMOCRACY AND FINANCE* (1940).

9. A. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* 3 (2d ed. 1968).

10. Some of his recommendations are:

If the budget of the Pentagon were reduced from 80 billion dollars to 20 billion it would still be over twice as large as that of any other agency of government. Starting with vast reductions in its budget, we must make the Pentagon totally subordinate in our lives.

The poor and disadvantaged must have lawyers to represent them in the normal civil problems that now haunt them.

Laws must be revised so as to eliminate their present bias against the poor. Neighborhood credit unions would be vastly superior to the finance companies with their record of anguished garnishments.

Hearings must be made available so that the important decisions of federal agencies may be exposed to public criticism before they are put into effect.

The food programs must be drastically revised so that its primary purpose is to feed the hungry rather than to make the corporate farmer rich.

DOUGLAS, *supra* note 2 at 93.

11. *Id.* at 92.

necessity," he adds, "is measurable change."<sup>12</sup>

The revolution must begin in men's hearts and minds. He decries the lack of "moral imagination"<sup>13</sup> and declaims that our problems demand "bold and adventure-some attitudes."<sup>14</sup> "We need the irrepressible urge to rejoin the human race."<sup>15</sup> The author seems to think back nostalgically to the imagination and attitudes which he feels he shared with his fellow New Deal architects. Whether that is the case or not, it is obvious that here is a man who *cares*, who loves America and does not choose to abandon her.

Is violence inevitable? His critics will no doubt say that he urges it. What he *does* say is this:

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.<sup>16</sup>

Indeed faith in a second revolution in the spirit of 1776 may be ill-founded. Rousseau warned long ago: "Free peoples, be mindful of this maxim: 'Liberty may be gained, but can never be recovered.'"<sup>17</sup>

Before concluding, a word about style is in order. It has been pointed out elsewhere that Justice Douglas is not a law professor's judge.<sup>18</sup> He is not a scholar's scholar either. The book is patchy; it indulges in overstatement; it draws sharp conclusions from rather vague evidence; it is heavily laced with rhetorical questions which are the earmarks of a harangue and it really says nothing new. But maybe this is making the wrong kind of demands upon political pamphleteering. Justice Douglas can be quiet, careful, logical and precise when he wants to. To fault him for painting boldly and with a broad brush, though he is capable of painting delicately and with precision, would be the same as criticising Picasso for painting *Les Femmes d'Alger* and saying that he should always have painted in the classical style. Some things can only be said boldly, and it is important here who says them. There is more than a touch of irony in the fact that the best way to describe this book is to borrow the words of Christian Gauss in his introduction

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12. *Id.* at 95.

13. *Id.* at 93.

14. *Id.* at 29.

15. *Id.* at 31.

16. *Id.* at 97.

17. Rousseau, *supra* note 3 at 35.

18. Cohen, *Introduction*, 16 U.C.L.A. L. Rev. 701 (1969).

to the Mentor Edition of Machiavelli's *The Prince* :

In addition to its brevity, there are stylistic qualities in *The Prince* which make it easy if not delightful reading. Unlike the later diplomat, Talleyrand, Machiavelli never uses words to conceal his thought. His meaning is never ambiguous. His conclusions may occasionally be unwelcome but they are always as downright as a box on the ear, and it is safe to predict that for the modern reader he will set some of the problems of citizenship, statecraft and political power into new and sharper focus.<sup>19</sup>

Further irony will be found in the fact that Justice Douglas, one of the moral leaders of the Supreme Court, the only one of our three branches of government which has shown consistent moral leadership for at least the last sixteen years, will be attacked for this dithyramb.<sup>20</sup> He, who perhaps more than any other has led the chase in pursuit of individual liberty, with Congress and the Executive only rarely hearing his calling voice, has at this writing become the object of Congressional murmurs for impeachment. Ovid's *Metamorphosis* contains the story of Actaeon, turned into a stag by the fleeing Diana whom he had seen unattired, and hunted to death by his own hounds who no longer recognized the sound of his voice. Let us hope that Mr. Justice Douglas does not suffer this fate by being hounded by the Vice President and the House of Representatives merely because in this important little book he has dared to expose the naked facts about contemporary America.<sup>21</sup>

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19. C. Gauss, *Introduction to N. MACHIAVELLI, THE PRINCE* 8 (Mentor ed. 1952).

20. Thanks to Susan Willock for giving me this lovely word.

21. Some of them have been growling and showing their teeth because pages 83-97—part of Chapter 3 of *Points of Rebellion*—have been reproduced with the consent of Random House (but without the knowledge of the Justice) in a magazine which also contains pictures of naked ladies. It appears as Douglas, *Redress and Revolution*, *EVER-GREEN REVIEW*, April, 1970, at 41.

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