

## Points of Rebellion (William O. Douglas)

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## REVIEWS

POINTS OF REBELLION. By Wm. O. Douglas. New York: Random House, Inc., 1970. Pp. 97. \$4.95.

*Points of Rebellion* is one man's view of what is wrong with American society and what can be done to correct it. Because that one man happens to be an associate justice of the United States Supreme Court, and because the book is written with considerable imprecision, certain public figures have severely criticized it and have questioned whether Mr. Justice Douglas has advocated violent revolution. In light of the controversy resulting from such criticism, no discussion of the book can proceed without first dealing with this question.

The most controversial passage is by now well-known:

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>1</sup>

The language is, at best, ambiguous. The term "redress" may imply that revolution is the proper response to continued adherence to George III's "tactics." It is equally possible that the passage is merely a prediction and not a statement of approval of violent revolution.

Resort to context is not particularly helpful. Seven pages before the above-quoted passage, Justice Douglas concedes that violence "has no constitutional sanction."<sup>2</sup> Since the author has sworn to uphold the Constitution, the reader may conclude that Douglas is not advocating violent revolution.

On the other hand, the following statement is found immediately after the phrase "has no constitutional sanction":

But where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response.<sup>3</sup>

If, in the author's view, some kind of effective response is required, is this not a statement that violence is sometimes essential?

Further uncertainty is created by the concluding paragraph of the book. Here the author suggests that the word "revolution" may not

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<sup>1</sup> W. O. DOUGLAS, POINTS OF REBELLION 95 (1970) [hereinafter DOUGLAS].

<sup>2</sup> *Id.* at 88.

<sup>3</sup> *Id.* at 88-89. Compare this with the following passage from an earlier work: "But when there is no mechanism for political change and grievances pile high, force and arms will be used in any country, just as they were used in this country in 1776." W. O. DOUGLAS, TOWARDS A GLOBAL FEDERALISM 12 (1968).

mean violent revolution: "It [the revolution] could be a revolution in the nature of an explosive political regeneration."<sup>4</sup>

Using a technique similar to one developed by the late Professor Hart and Professor Sacks for statutory construction,<sup>5</sup> the controversy may be resolved in the following fashion: Prior writings of Mr. Justice Douglas — both legal opinions<sup>6</sup> and other writings<sup>7</sup> — indicate clearly that Mr. Justice Douglas is deeply attached to the Constitution and especially to the principle of "due process of law" — the principle that worthy goals are to be achieved only through observance of proper procedure. Therefore, there is a presumption that Mr. Justice Douglas would not advocate violent revolution, and this presumption should continue until conclusive evidence of such advocacy is found. Since such evidence is lacking, one is left with the presumption.

What else can be said of the book other than that it apparently does not espouse violent revolution? It points to some of the causes of present dissent, including "the growing subservience of man to the machine,"<sup>8</sup> and it contains suggestions, not all entirely original, for the solution of some current problems—for example, a general proposal that natural resources be reallocated, with much less emphasis upon things military,<sup>9</sup> and a more specific proposal that public hearings be required before administrative agencies are permitted to take actions which may adversely affect the environment.<sup>10</sup>

The difficulty is, however, that the author connotes more than he denotes. After reading the book, one cannot help believing that Mr. Justice Douglas has some rather strong views about many current issues, but what is said is obscured by the emotive clichés, over generalizations, and, on occasion, historical inaccuracies.

Clichés abound. For example, "Establishment" is used at least twenty-four times and is nowhere defined;<sup>11</sup> "military-industrial complex" and "cattle baron" are also employed several times.<sup>12</sup>

Over generalizations, often combined with elements of exaggeration, are well illustrated by the author's characterization of the members of the Armed Services Committees of the Congress<sup>13</sup> as "those who

<sup>4</sup> DOUGLAS 97.

<sup>5</sup> H. Hart & A. Sacks, *The Legal Process* 1272 (unpublished, 1958).

<sup>6</sup> See, e.g., *Rochin v. California*, 342 U.S. 165, 177 (1952) (concurring opinion).

<sup>7</sup> See, e.g., W. O. DOUGLAS, *AN ALMANAC OF LIBERTY* viii (1954).

<sup>8</sup> DOUGLAS 10.

<sup>9</sup> *Id.* at 64-65.

<sup>10</sup> *Id.* at 85.

<sup>11</sup> At one point, the author uses the term "Establishment" four times on a single page. *Id.* at 80.

<sup>12</sup> *Id.* at 15, 55, 65, 78, 83.

<sup>13</sup> Douglas referred to "members of the Armed Services Committee of Congress." *Id.*

think only in terms of death."<sup>14</sup> A further example is found in the following passage in which the author comments on aspects of racial problems in the United States:

Police practices are anti-Negro.  
 Employment practices are anti-Negro.  
 Housing allocation is anti-Negro.  
 Education is anti-Negro.<sup>15</sup>

The following statement, related to American presence in the Far East, is an example of the author's historical inaccuracies:

The American fear of Peking is the major reason for our conversion of Japan into a military base. Yet neither the youth of Japan nor the older generation fears China. "We are blood brothers and have lived side by side for centuries."<sup>16</sup>

The implication is that China and Japan have always been peaceful neighbors. This, of course, ignores the Sino-Japanese War of 1894-1895, the Japanese occupation of Manchuria in 1931, and the Sino-Japanese War of 1937-1945.<sup>17</sup>

Another apparent misstatement is contained in a comparison of the political situation of early America with that of the present. Says Douglas:

An American GI in Vietnam wrote me in early 1969, stating that bald truth: "Somewhere in our history — though not intentionally — we slowly moved from a government of the people to a government of a chosen few . . . who, either by birth, family tradition or social standing — a minority possessing all the wealth and power — now . . . control the destiny of mankind."<sup>18</sup>

Douglas obviously agrees with the GI; otherwise he would not say that the GI stated "that bald truth." But where is historical support for the view that "we slowly moved from a government of the people to a government of a chosen few"? How can such a statement be reconciled with the fact that in the early days of our Republic, slaves, women, and the poor were denied the right to vote?<sup>19</sup>

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at 43 (emphasis added). Presumably he intended to say "Committees" since, of course, each house of the Congress has its own Armed Services Committee. Legislative Reorganization Act of 1946, 60 Stat. 812, 815, 822.

<sup>14</sup> DOUGLAS 43.

<sup>15</sup> *Id.* at 45.

<sup>16</sup> *Id.* at 37-38.

<sup>17</sup> See W. EBERHARD, A HISTORY OF CHINA 295-96, 316-19 (1969).

<sup>18</sup> DOUGLAS 53.

<sup>19</sup> Constitutionally, slavery was not abolished until 1865, U.S. CONST. amend. XIII, and Blacks were enfranchised in 1870, U.S. CONST. amend. XV; women did not become entitled to vote until 1920, U.S. CONST. amend. XIX; and the poll tax survived in some states

If it is true, then, that *Points of Rebellion* is aimed more at the stomach than at the brain, one question remains: whose stomach? One clue may be found in the almost total lack of citation of authority. In an earlier work, Douglas said: "Since I have written for laymen, no footnotes or citations have been included."<sup>20</sup> If laymen are also the target of *Points of Rebellion*, what is the likelihood that the book will hit the mark? Certainly those who are already unhappy with various aspects of present life in America will take comfort in the knowledge that an associate justice of the United States Supreme Court apparently shares many of their views. The reader may conclude, however, that the author has a broader goal; after all, the dire prediction of possibly violent revolution indicates a desire to change the minds of many persons so that violence will become unnecessary. And yet it is difficult to believe that this book will change many minds. When Justice Douglas says that "the powers-that-be faintly echo Adolf Hitler, who said in 1932: . . . 'We need law and order,'"<sup>21</sup> he forces the uncommitted or indifferent to choose between the "powers-that-be" ("Establishment"?) and himself. If it is unfair to liken the "powers-that-be," whoever they are, to Adolf Hitler, or if it appears to the uncommitted to be unfair, are not the uncommitted likely to side with the "powers-that-be"?

Anyone can emote. Most people expect more of an associate justice of the United States Supreme Court.

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UN PROTECTION OF CIVIL AND POLITICAL RIGHTS. By John Carey. Syracuse, N.Y.: Syracuse University Press. 1970. Pp. xii, 205. 2 App. \$7.50.

In April-May 1968 the United Nations sponsored an International Conference on Human Rights in Teheran. U Thant, the United Nations Secretary-General, directed the attention of the Conference to the need for "an examination of the degree of effectiveness of the methods used by the United Nations" and its various subsidiary organizations for the protection of human rights. In his book *UN Protection of Civil and Political Rights*, John Carey points out that the Conference failed to make a systematic evaluation of many of the methods and techniques

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until it was declared invalid by the United States Supreme Court in *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966), in which Mr. Justice Douglas, himself, wrote the majority opinion.

<sup>20</sup> W. O. DOUGLAS, *supra* note 7, at vii.

<sup>21</sup> DOUGLAS 58.

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