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THE COURT YEARS, 1939-1975: THE AUTOBIOGRAPHY OF WILLIAM O. DOUGLAS. By *William O. Douglas*. New York: Random House. 1980. Pp. ix, 434. \$16.95.

Continuing the memoirs that William O. Douglas began in *Go East, Young Man*,¹ *The Court Years* covers its subject's tenure on the Supreme Court between 1939 and 1975. Douglas arranges his autobiography topically and presents a combination of insightful evaluations and amusing anecdotes about legal and political events and about the public figures whom he encountered as an Associate Justice. Although the book's organization occasionally leaves the reader searching in vain for connections between pages and even between paragraphs, it is nevertheless a valuable compendium of Douglas's impressions of some of the major forces in American society and, if one searches carefully, of his perception of his role as an Associate Justice.

Douglas's autobiography reveals a man propelled by ambition and equipped with a mind of remarkable range and versatility. Raised in Yakima, Washington by his widowed mother, he traveled by boxcar to Columbia Law School, taught there after graduating, and then joined the law faculty at Yale. He was subsequently appointed to the Securities and Exchange Commission and became its chairman. Shortly thereafter, he was sworn in as one of the youngest Justices ever to sit on the Supreme Court. As the confidant of many

1. W. DOUGLAS, *GO EAST, YOUNG MAN* (1974).

public figures and the author of numerous books,² Douglas was for decades a prominent and outspoken figure in Washington.

In the book's most entertaining sections, Douglas recalls his impressions of the major public figures of his time. He devotes entire chapters to anecdotes about, and his opinions of, Presidents from Franklin Roosevelt to Richard Nixon, Chief Justices, fellow Associate Justices, attorneys, and law clerks. But *The Court Years* is not another *Brethren*.³ Although Douglas corroborates some of that work's account of the personal interactions and power struggles among members of the Court, he exposes no new secrets. He is generally rather forgiving toward his fellow Justices, even to Justice Frankfurter, his ideological adversary, and concludes that "out of the great differences on legal and policy issues coming before the Court there evolved a stronger Court" (p. 43).

Controversy nevertheless surrounded Douglas's tenure. His opponents attempted to impeach him four times, and he was often labeled a results-oriented activist and attacked for undermining the Court's image as a neutral institution.⁴ Robert Bork, for example, argues that frequent and open "legislation" by Douglas and the Warren Court demolished a restraining tradition that may never be restored.⁵ Bork finds *The Court Years* particularly frustrating because, in his opinion, it fails to address this transformation of American legal culture. He complains that "[s]ome word of explanation, some outline of judicial philosophy, is necessary from a man who labored so long and so single-mindedly to accomplish a revolution in the relations of our institution of government."⁶

The Court Years, however, does provide the explanation that Douglas's critics seek. He believed that anyone whose life, liberty, or property was threatened or impaired by any branch of government had a justiciable controversy and could properly seek protection in the courts (p. 55). A question was "political" only if the Constitution had expressly assigned it to one of the other two branches of government. If courts bowed to expediency and labeled questions "political" rather than "justiciable" merely because they

2. Douglas's other books include *OF MEN AND MOUNTAINS* (1950); *STRANGE LANDS AND FRIENDLY PEOPLE* (1951); *BEYOND THE HIGH HIMALAYAS* (1952); *AN ALMANAC OF LIBERTY* (1954); *RUSSIAN JOURNEY* (1956); *THE RIGHT OF THE PEOPLE* (1958); *AMERICA CHALLENGED* (1960); *DEMOCRACY'S MANIFESTO* (1962); *THE ANATOMY OF LIBERTY* (1963); *A WILDERNESS BILL OF RIGHTS* (1965); *POINTS OF REBELLION* (1970); *THE THREE HUNDRED YEAR WAR* (1972).

3. B. WOODWARD & S. ARMSTRONG, *THE BRETHERN* (1979).

4. Emerson, *Occupying the High Ground*, *THE NATION*, Nov. 22, 1980, at 552, 553 (reviewing *The Court Years* and *Independent Journey*).

5. Bork, *Justice Douglas: His Politics Were His Law*, *Wall St. J.*, Nov. 21, 1981, at 22, col. 4 (reviewing *The Court Years*).

6. *Id.*

were troublesome or embarrassing, the judiciary would itself become a political institution (p. 55).

Douglas's critics have also attacked his stances on substantive issues. Bork argues that Douglas's positions on issues like school desegregation, legislative reapportionment, the death penalty, obscenity, birth control, and abortion suggest that his politics were also his law.⁷ Douglas does not deny this charge; the courts, he believed, were designed not to be somehow neutral, but to enforce constitutional rights. Time, Douglas concluded, attests to the value of Chief Justice Hughes's advice that "[a]t the constitutional level where we work, ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections" (p. 8).

To understand Douglas's "predilections," one must recognize his contempt for the political bankruptcy of his generation — an underlying theme of the book. Douglas thought that the political branches of government had betrayed democratic principles. He responded with skepticism toward government, hostility toward the Establishment, a vigorous commitment to the rights of the ordinary citizen, and enthusiasm for diversity and new ideas.⁸ In *The Court Years*, for example, Douglas deplors the tactics of the House Un-American Activities Committee because it specialized in "probing people's beliefs, conscience and thoughts — matters put beyond the reach of the government by reason of the First Amendment" (p. 57). Similarly, he criticizes corporate domination of American life (pp. 153-68) and the conformity on college campuses (pp. 109-10). His attack on former President Nixon and Vice-President Agnew, whom he calls "masters in the art of the politics of destruction" (p. 363), is particularly vehement.

Douglas's attitudes explain his most important substantive positions: emphasis on the primary role of the first amendment, strict adherence to the concept of equal protection, extension of due process protection to the poor and uneducated, and the creation of a constitutional right of privacy.⁹ These concerns, in turn, shaped his perception of the Supreme Court's role as an activist institution and as the ultimate vindicator of constitutional rights.

The Court Years thus serves two valuable functions. It analyzes the major political and legal controversies of the past forty years from the perspective of a man often at their center. And it is a personal story of dogged adherence to deeply held convictions and principles. Douglas refused to bend to the pressures of McCarthyism,

7. *Id.*

8. *Id.*

9. *Id.*

big business, religious fanaticism, and four impeachment attempts.¹⁰ When he writes that the judiciary is “the ‘great rock’ over which all storms break leaving that ‘great rock’ undisturbed” (p. 42), we realize that the description fits the author as well.¹¹

10. See Dershowitz, *Inside the Sanctum Sanctorum*, N.Y. Times, Nov. 2, 1980, § 7 (Book Review Section), at 9.

11. Douglas's book is also reviewed by Bork, *supra* note 5; Dershowitz, *supra* note 10; Emerson, *supra* note 4; Mason, *A Justice for All*, MANCHESTER GUARDIAN WEEKLY, Nov. 23, 1980, at 18, col. 1; Moskowitz, *An Outspoken Jurist's Embittered Farewell*, BUS. WEEK, Oct. 13, 1980, at 16; Press, *Douglas on the Court*, NEWSWEEK, Sept. 22, 1980, at 60.