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Go East, Young Man

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RECENT BOOKS

BOOK REVIEWS

GO EAST, YOUNG MAN. By *William O. Douglas*. New York: Random House. 1974. Pp. xv, 493, illus. \$10.

Autobiography—more complete than mere memoir and less confidential than trusting confession—is a proclamation of self in which the author tells readers what *he* wants them to know about him, although not necessarily what *they* want to know about him. It is naturally egocentric, although the reasons that urge men to make public statements about themselves vary. Profound spiritual experiences doubtless moved St. Augustine and Abelard to write personal accounts of their religious striving. Hypersensitivity and manic suspicions of persecution helped to produce Rousseau's many confessions. Swagger in high Renaissance style runs through Benvenuto Cellini's account of himself as an artist and murderer. In twelve volumes of cynical cleverness, Casanova thumbed his nose at Europe's high society, through which he rapidly circulated in the eighteenth century. Thomas De Quincey began to earn his living with the *Confessions of an Opium Eater* by tripping his readers into the surrealistic world of drugs. Remorse and repentance, dementia, egotism, contempt for mankind, love of mankind, the need for money—many moods and needs have moved authors to write enduring works about themselves, and so to serve the perpetual curiosity people have about others whose lives produce resonance in their own. For Justice William O. Douglas, perhaps the urge to write an autobiography is suggested by the title of a 1970 article about him: "Bill Douglas Has Never Stopped Fighting the Bullies of Yakima."¹

Sir Arthur Conan Doyle once said that autobiography was ill-adapted to the genius of the British, because national custom discouraged access to private feelings by strangers.² But in the American civic and social culture we are fascinated by personalities in public office; indeed, political success often depends as much on personality as party, and has since the time of Dickens's Jefferson Brick. Moreover, the American ethic is basically equalitarian, despite the grotesque violations against it that racial prejudice and material greed have perpetrated; and we have always been interested to know how much more or less unequal any of us can become. The autobiographies of Jacob Riis, Edward Bok, and Norman Podhoretz come to mind. Perhaps, also, something of the frontier spirit—which used to explain everything—still accounts for such things as

1. Viorst, N.Y. Times, June 14, 1970 § 6 (Magazine), at 8.

2. A. DOYLE, THROUGH THE MAGIC DOOR 86-87 (1925).

openness about one's self. In any case, self-disclosure is as American as the *Autobiography of Benjamin Franklin*.

Justice Douglas tells us a great deal about himself—but certainly not all—in *Go East, Young Man*, an account of his career until the time of his appointment to the Supreme Court in April 1939. The autobiography deals primarily with his professional life; the author who was able to find a right of privacy antedating the Constitution in *Griswold*³ circumspectly exercises it here. Thus, there is little about his psychoanalysis or the women he married. There is something on his first wife, nothing on the other three, and very little about his two children. If not a full disclosure, the autobiography is nonetheless a highly readable account of some aspects of the career of an important man.

In a salute to Justice Douglas on April 17, 1974, the thirty-fifth anniversary of his appointment to the Court by President Roosevelt, Chief Justice Warren Burger said:

His curiosity and concern about the world we live in and all that is in it and his search to satisfy that curiosity seems to increase with each passing year.

This week he publishes his seventeenth book, an account of his early years in Minnesota, in the State of Washington, then back east to New York, and later at New Haven, and then in Washington, where he came to spend four or five months and has remained forty years.⁴

The Chief Justice certainly had reason to remark upon the activity of the Court's oldest and most active justice. In a review of all majority, concurring, and dissenting opinions in the 1973-1974 term of the Court (through June 1974), the *New York Times* reported that Justice Douglas had produced sixty opinions, twenty-three per cent of the Court's total opinions.⁵ Chief Justice Burger had written sixteen opinions, six per cent of the total. It says something about the subjectivity of human judgments that the Chief Justice has often remarked that the Court is overworked, while Justice Douglas has often said that there is not enough work to keep the Court busy. But the story of Douglas's years on the Court, doubtless the subject of the next volume of his autobiography, has yet to appear. In this first volume, he tells us about the boy who became the lawyer who became the Chairman of the Securities and Exchange Commission during the New Deal.

Justice Douglas opens his narrative with the Nova Scotian background of his forebears, beginning in 1773. His father was a Presbyterian minister who moved from Nova Scotia via Maine,

3. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

4. Burger, *Salute to Mr. Justice Douglas*, 94 S. Ct. (No. 15) cxxxix (June 1, 1974).

5. *N.Y. Times*, July 1, 1974, at 10, col. 5 (late city ed.).

Minnesota, and California, ultimately settling in Cleveland, Washington. Justice Douglas was born in Minnesota in 1898 and named Orville, a name he detested. (He preferred the name "Bill," which he eventually assumed.) His father died when Douglas was six, and his widowed mother and her three children (there was a brother, Arthur, and a sister, Martha) then moved to Yakima. After their lawyer was improvident with the insurance money, the Douglas family was destitute. The children helped with odd jobs around town and with work in the fields during harvest time, and the tinder of these years kindled Douglas's striking lifelong passion for social justice. Indignation against the "Establishment," a term he uses throughout the book, smoulders in his comments about local clergymen who talked "about 'love' in the way the American Legion talked about 'Americanism,'" and who for the most part were mediocre and remote from life (p. 14). As Douglas "started to move around the world" he came to see, he said, that the Church, whatever its creed or faith, "was usually aligned with the Establishment"—priests in Ecuador were responsible for the deaths of two UNESCO workers who had identified with the serfs; mullahs in the Middle East were "brigaded with the landlords to keep the serfs subdued"; and sermons on Park Avenue were "as unctuous as any pronouncement of John Foster Dulles" and seemed never to be concerned with the social problems of the ghettos of Harlem (pp. 14-15). But then, how could they be? The ghettos, Douglas says, are tied into "New York finance and the New York real estate Establishment" (p. 15). The Depression years demonstrated the "manner in which everyone had become a victim of some Establishment," but prosperity begat smugness and by 1972, he concludes, a majority "apparently preferred a Billy Graham to a religion with a social conscience" (p. 16).

Douglas knew disease as well as poverty. He had poliomyelitis at the age of three and almost died. Although some of the physical damage to his legs was to repair itself while he was still young, there was also damage to the lining of his heart, which required surgery and the implantation of a pacemaker in his chest over six decades later. The emotional and psychological effects of the disease seem also to have been lasting. His mother was over-solicitous; she regarded him as a weakling and puny child, told him so, and generated within him such a rebellion that much of his life thereafter seems to have been devoted to proving himself. There were endless hours of massage and exercise with barbells, and he took long hikes in the mountains from which he drew strength and developed a Franciscan affinity to nature. His schoolmates and other children made fun of his underdeveloped legs (like "pipestems") and he became, as he says more than a dozen times in the book, a "loner." The "shame" of being called a weakling impelled him into what more sedentary

readers would regard as frightening physical risks, and there were many narrow escapes, some of which he recounts with a certain air of drama. One October he was hiking a canyon when a rattlesnake at shoulder height on a ledge struck at him. "I felt its hot face next to mine," he says, "but it missed me. My jump was so excellent I hit the down slope and rolled perhaps fifty feet" (pp. 192-93). Another time, he tells us, he was on horseback in the Wallowas when "a huge boulder came hurtling down It careened one way and then another, its course unpredictable. To run was foolish. So I dismounted and stood still. My horse was frantic, but I managed to hold him. In a few seconds the huge rock roared under his belly at a faster speed than he could ever run" (p. 193). In 1949, Douglas and a companion were on horseback on Crystal Mountain trails in the Cascades when, on a treacherous path, Douglas's horse "Kendall" reared and whirled. He slid off the horse, lost his footing on shale rock, slipped and rolled thirty yards, and found that the horse was rolling down right behind him. Dramatically, he describes: "The great horse hit me. Sixteen hundred pounds of solid horseflesh rolled me flat. I could hear my own bones break in a sickening crescendo." Kendall rolled heavily down the mountain and survived without a scratch. Douglas, however, suffered thirty-eight fractures in twenty-three broken ribs, which "threw out spurs of calcium to such an extent that the spurs tied together all my ribs." The broken ribs had punctured the right lung. While he was convalescing, Douglas put his mind to important dates in the history of American freedom and conceived *An Almanac of Liberty*, which he wrote in 1954. When the doctors concluded that his mountain-climbing days were over, he walked across the roof of the world in the Himalayas to prove to them and to himself that they were wrong. This feat produced another book, *Beyond the High Himalayas*, written in 1952 (pp. 198-201).

The sense of nature that early experience created or intensified in Douglas is deep, spiritual, and even mystical. He pens a very lyric statement about a night in the mountains when he found himself feeling that the world is a friendly place, the universe is kindly toward man, and there is "promise of the fullness of life to him who, instead of shaking his fist at the sky, looks to it for health, strength and courage" (pp. 38-39). In fact, he came to prefer "the earth and its wonders" to Christianity, which, like other creeds, served to keep the rich powerful and the poor subservient. His communion with nature made him an "environmentalist" long before the term became popular. His protest hike of 180 miles along the Chesapeake and Ohio Canal in 1954 eventually preserved the waterway as a national park, although bureaucratic and other resistance delayed the designation until 1971, when it was finally made possible by "the much-

maligned Walter Hickel, briefly Secretary of the Interior" (pp. 212-13). Douglas's conservation work has led him to conclude that federal agencies are among the chief despoilers of nature, and he names nine agencies as "public enemies," with the Corps of Engineers, the Bureau of Public Roads, and the TVA at the top of the list (pp. 213-15). In *The Three Hundred Year War*, a detailed work on conservation published in 1972, he urged vigorous citizen action in many directions, and approved the dictum of a professor he once met: "When corporate officers are sent to prison for not complying with pollution laws, the air and waters will become clean rather quickly."⁶

Douglas graduated first in his high school class in Yakima. While he found joy in his schoolwork, he also suffered the exclusions of social inequality. He was never invited to a party, and his family was far too poor to have a party. He was never in any home but his family's. He professes to think that it was a blessing that he was never "united with the elite of Yakima," for "to be accepted" might have become a goal in life. "What it means in the law is a Dean Acheson or John Foster Dulles or a reactionary president of the Bar Association" (p. 60). Turning from this prospect, he extended his sympathies instead to the poor, the migrant workers, victims of class exclusion, Indians, Wobblies, hoboes, Chicanos, the down-trodden of all races, and became their champion. Although sometimes perceiving more virtue than actually existed in the groups he embraced, he was undoubtedly correct in finding little in the groups he despised.

Douglas's disgust for the Establishment, Church hypocrisy, and personal social discrimination might have led him to embrace radical philosophy—the Industrial Workers of the World was one of many available models—but it did not happen, then or later. Even *Points of Rebellion*, published when he was seventy-one, is not philosophy but a set of grievances and a call for "a vast restructuring of laws and institutions,"⁷ written in the idiom of the student New Left of the 1960's. Although Gerald Ford was teased into excited dreams of Douglas's impeachment by sentences such as, "We must realize that today's Establishment is the new George III,"⁸ the words were those of a man who may have committed his heart to the dissenters and the underprivileged, but, unlike a Clarence Darrow or a William Kunstler, never his law career. Number two in his class at Columbia Law School, Douglas took employment with Cravath, deGersdorff, Swaine, and Wood and drew as his first officemate John J. McCloy, who probably did not even know the words to "Hallelujah, I'm a Bum!" Among those practicing law on Wall Street whom Douglas

6. W. DOUGLAS, *THE THREE HUNDRED YEAR WAR* 185 (1972).

7. W. DOUGLAS, *POINTS OF REBELLION* 95 (1969).

8. *Id.*

counted as friends were Thomas E. Dewey, with whom he seriously considered forming a partnership, and John Harlan, who was to become one of Douglas's conservative colleagues on the Supreme Court. Douglas's specialty was bankruptcy law, often a form of social service for the rich. This skill moved him to Washington, onto the staff of Joseph P. Kennedy, first chairman of the SEC, and into the higher circles of the New Deal Establishment—the anti-Establishment Establishment. Indeed, Douglas says that his nomination to the Supreme Court was criticized by Gilbert Harrison of the *New Republic*, I. F. Stone, and Max Lowenthal on the ground that he was too conservative (p. 463). The young man from Yakima who graduated at the top of his class at Whitman College, who rode the freights to get to law school in New York (herding a carload of sheep to Chicago), who immediately earned six hundred dollars writing a correspondence course in “law,” and then supported himself by tutoring (he got as high as twenty-five dollars an hour in one instance), was not jumping into the struggles of the poor and the oppressed. He was jumping out of them.

Although he never developed a radical philosophy of his own or embraced that of others, his social conscience has produced an unphilosophic but persistent and restless leftist sentiment, rather solemn, intense, and quirky. He rejects socialism—perhaps we could have socialism and freedom at the same time, he says, but he doubts it (p. 308). He is for free enterprise and a Brandeisian kind of enforced competition, but he also believes that the economy should have a public sector. He notes that China has one and believes that the “people” support antimonopoly programs, although the only evidence adduced is that the Sherman Act passed in the Senate by a vote of fifty-two-to-one (pp. 307-08). A collection of speeches made when he was with the SEC, published in 1940 under the title *Democracy and Finance*, is in general a New Deal excursus on remedies aimed at civilizing greed in the world of finance. At that time he was enthusiastic about the virtues of the administrative agency, terming it “the mechanism of democratic government whereby capitalism can discipline and preserve itself.”⁹ He did feel that many of the programs of the New Deal were intended to prop up the status quo—the NRA in effect delegated law-making functions to trade associations—but he had no taste for the more far-reaching changes in politics and policy urged by Rexford G. Tugwell. Although he said, in implied criticism, that FDR “never aimed at permanent control of basic industries” (p. 347), the autobiography gives no hint that its author did either.

As his social philosophy was not radical but reformist and meliorist, so his political philosophy seems quite conventional (with

9. W. DOUGLAS, *DEMOCRACY AND FINANCE* 264 (1940).

an exception to be noted): a declaration of political beatitudes and articles of belief, without complication. The elder Holmes, the autocrat of the breakfast table, thought that some men had arithmetical minds and some had algebraic minds, the first being simple structures of linear values accepted without worry, free of ambiguity, randomness, and complexity, and the latter full of speculation about unknown quantities, tentative, provisional, hypothetical, contingent, and unresolved.¹⁰ Justice Douglas's political principles are as uncomplicated as a catechism. He believes that the state exists for the individual. Human rights come first. Human rights include the right to own property. Government is an agency of the people. All this is quite unstimulating.

These simple articles of faith, however, conceal an unresolved dilemma. Government exists to serve the people but not necessarily by letting them have their way. Government is "a priesthood of a very special kind," which requires a commitment to "law over and above all else" (p. 308). The task of a man in government (it is sometimes not clear whether he refers to all officers of government or just the Court) "is to tell the people what the national conscience—the Constitution—requires. The people can change it if they desire. But the main job of the Keepers of the Conscience is to make clear in a fearless way what the demands of civilization are" (p. 308). He does not resolve the dilemma implied in the co-existence of an omnipotent people and a supreme magistracy, although he does say that a "government need not take its policies from the mob, for the mob is a formless, illiterate organ"; the man of government takes his policies from "the law as legislatures write it and as the Constitution conceives it" (p. 308). The philosophical problem inherent in the concepts of majority rule and minority rights is thus obscured in the Delphic pronouncement, "as the Constitution conceives it." Since it is the judges who decide what the Constitution conceives, the paradox is not resolved, only postponed.

What is truly exceptional and enormously stirring about the political philosophy of Justice Douglas is his passionate devotion to the basic freedoms of the Bill of Rights, especially those of the first amendment. Government has a thousand justifications for serving its ends at the expense of the individual, and it may use crushing power to achieve them. Its arguments are always plausible—the public interest, national security, executive privilege, inherent power, domestic welfare, military necessity, law and order. Against the monstrous regiment of the state's authority the individual stands alone and, most often, helpless. The sympathies of Justice Douglas are with the individual, and his jurisprudence has been an untiring struggle to keep government off the backs of the people. His record

10. O. HOLMES, *THE AUTOCRAT OF THE BREAKFAST TABLE* 1 (1858).

in the Supreme Court as the champion of first amendment freedoms ensures his place as one of the Court's outstanding libertarians.

As part of the New Deal Establishment in the 1930's, elevated to the chairmanship of the SEC by Joseph Kennedy and then to the Supreme Court by Justice Brandeis and political friends in Connecticut and elsewhere, Douglas met most of the great, the near great, and the merely swollen of the first two Roosevelt terms. He thought that Harold Ickes ("a dear friend of mine") was an honest man but an empire-builder who polished his diary to make himself shine (p. 370). He admired Jerome Frank, who had a "vivid experience in psychoanalysis" (p. 267); was a friend of Walter Louchheim, a Wall Streeter who "many times . . . said I should be President" (p. 269); knew "Pa" Watson, FDR's military aide ("I later learned that I had been Watson's choice to succeed FDR") (p. 285); and mentions George Allen ("his greatest achievement was in keeping me from becoming President") (p. 414). There was Jesse Jones, head of the Reconstruction Finance Corporation ("ran it like a feudal lord") (p. 303); Henry Wallace, who "jealously protected his principality in Agriculture" (p. 306); Maury Maverick of Texas, "a radical, not a socialist—and far from being a communist" (p. 365); Adolph A. Berle, Jr., "[w]hom many people despised" (p. 368); and, of course, Franklin Delano Roosevelt, with whom he seemed on the most cordial terms at Shangri-la, at Hyde Park, and at the White House as a companion, poker partner, and cocktail mixer.

He also came to know many of the members of the Supreme Court in the 1930's, some of whom would later be his colleagues. He regularly visited Harlan Stone, one of his former Columbia professors. He mentions an "unusually close relationship" with Justice McReynolds ("Old Mac") after his appointment (p. xiv). He recruited Abe Fortas for the SEC ("my right-hand man in all of the turbulent years at that agency") (p. 465) and had him transferred to the protection of Ickes in the Department of Interior when he left the SEC. He admired Stanley Reed ("the most perfect gentleman I have known") (p. 304). He first met Hugo Black in the Senate cloakroom. Robert H. Jackson ("to whom FDR promised the Chief Justiceship once Hughes retired") carried the battle for the Court-packing plan, which Douglas and "a few of us around FDR" opposed (p. 323). Many of his comments about Felix Frankfurter are edged with accusation: He was "a brilliant traditionalist" (p. 167); he sponsored Henry L. Stimson, Wall Street lawyer, for the Cabinet in 1940 (p. 286); his "machinations" may have cost Reed the chief justiceship that went to Vinson (pp. 303-04); he assured Douglas that he did not support the Court-packing plan, a point on which Douglas was to learn "that what Frankfurter told me was not the truth" (p. 324), and that Frankfurter was therefore a "prevaricator" who "had been

promised a seat on the Court and was swinging along with FDR as the price of getting it" (p. 327); he pressed FDR so hard for the appointment of Learned Hand to the Court that the President told Douglas "... by golly, I won't do it" and gave it to Wiley Rutledge instead (p. 332); Frankfurter was a "salesman" (p. 443) who was also "brilliant and able, friendly yet divisive" and who "brought great distinction to the Bench" (p. 459). Douglas's great friend on the 1930's Court, however, was Justice Brandeis, who sought him out in 1934 and whom he saw every week after the initial meeting. Brandeis was greatly interested in the work of the SEC, in the world of finance of which it was a part, and in what was going on in Washington. For Douglas, "Brandeis was a modern Isaiah" (p. 443), and he felt a special honor when Brandeis suggested that Douglas succeed him.

Curiously, there are some errors in the autobiography, mostly dealing with labor problems. *Lochner v. New York*¹¹ is cited for the Court's holding against the regulation of the prices of theater tickets (p. 322), and the date of *Hammer v. Dagenhart*¹² is said to be 1916 (p. 322). Douglas seems to say that the Court had held that hours regulations for working women violated the due process clause, although no case is cited (p. 322)—perhaps because there never was such a holding.¹³ It is said that before the New Deal "strikes by laborers had been illegal under a rule created by judges" (p. 349), when it would be more nearly accurate to say that "some" or "many" strikes had been so held, and certainly not all. Douglas writes that before the Wagner Act "most unions were instruments of the companies," which would have surprised the American Federation of Labor and the railroad brotherhoods, and that the Act "legitimized the independent unions" (p. 371), when in fact they were already legitimate. What the Act did do was forbid employers to interfere with the rights of workers to organize and bargain collectively, thereby making some company unions illegitimate. It is said in one place that J. Warren Madden, the first chairman of the National Labor Relations Board, held that office from 1935 to 1948 (p. 371). The next paragraph, however, correctly indicates that he held it from 1935 to 1940, becoming a judge of the United States Court of Claims in 1941. These mistakes are admittedly elementary, and escaped editorial scrutiny, but to find them at all is a little like finding the wrong sum in Einstein's arithmetic.

11. 198 U.S. 45 (1905) (hours regulation).

12. 247 U.S. 251 (1918).

13. *Adkins v. Children's Hosp.*, 261 U.S. 525 (1923), overruled in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937), invalidated a 1918 federal statute authorizing a board to fix minimum wages for women and children in the District of Columbia. The Court in fact approved state legislation imposing a special rule limiting hours of labor for women in *Muller v. Oregon*, 208 U.S. 412 (1908).

Certain of Douglas's animadversions seem wholly gratuitous. He talks about "The Witch Hunt in the New Deal" (p. 377), by which he means the congressional hearings and Court decisions in the late 1940's and 1950's, ten years after he joined the Court. Of Alger Hiss: "Certain it is that the inference that Hiss was 'framed' was strong" (p. 379). He tells of the later motion of Hiss's lawyers for a new trial on the ground that the famous typewriter had been a "forgery" of the original, and stresses that he was the only one who voted to grant review (p. 379). Douglas has words of sympathy and praise for Harry Dexter White, "an unusually able man in monetary and financial matters" (p. 382), and Owen Lattimore, "able and brilliant" (p. 382). Although Douglas has District Judge Luther Youngdahl dismissing a perjury indictment against Lattimore in 1955, the fact is that Youngdahl dismissed four counts of seven on May 2, 1953, and expressed doubts about the remaining three.¹⁴ On July 8, 1954, the court of appeals restored two of the counts, and sustained dismissal of the perjury count.¹⁵ On June 28, 1955, however, the Attorney General ordered all charges dismissed.¹⁶ The trouble with Douglas's remarks about the "witch hunt" of the 1940's and 1950's is not the inaccuracy of some of his statements, and it is certainly not his distaste for the inquisitors and his sympathy for those defamed and intimidated, harassed and blacklisted. The trouble is that he makes judgments about cases that are not before him, which involve real people in actual litigations of which he was not a part.

Justice Douglas's self-portrait is full of splashy color. He was once mistaken for Casey Stengel; he thinks he looked like his friend Spencer Tracy, for whom he was also once mistaken; he taught at both Columbia and Yale law schools, holding his Columbia classes at 8:00 A.M. because it left the rest of the day free, which makes him sound a bit more like Professor Kingsfield in *The Paper Chase* than Mr. Chips. When Robert Hutchins invited Douglas to join the Yale law faculty Douglas had to ask him where Yale is. He also did some teaching at the Harvard Business School in the 1930's and says that he found it the liveliest intellectual center at Harvard except for the philosophy department, a dictum that will amuse those of us there at the time who thought that the business school was more interested in the nature of goods than in the nature of the Good. When John Foster Dulles helped Douglas on with his coat after a job interview, Douglas, who had resented his pontifical manner throughout the meeting, tipped him a quarter.

Douglas disliked New York City when he lived there. Although it offers great cultural rewards, "for me none of them is worth a

14. N.Y. Times, May 3, 1953, at 1, col. 3 (late city ed.).

15. *Id.*, July 9, 1954, at 1, col. 3 (late city ed.).

16. *Id.*, June 29, 1955, at 1, col. 3 (late city ed.).

weekend" (p. 142). He went to one opera, where he heard the great Caruso; he did not like the opera because it was too slow, said that he would never go to another, and never has. He did, however, enjoy the Ziegfeld Follies, W. C. Fields, Eddie Cantor, and Will Rogers, and has left his saddle to the Will Rogers Memorial in Oklahoma. He hates the vandals who are despoiling Texas; in 1967 he wrote a book called *Farewell to Texas*; and he believes that everything in Texas will eventually be converted into dollars. He has caught a fish with his fingers by stroking its belly (p. 233), believes in water witching (pp. 240-41), and has recipes for "cooking grasshoppers in deep fat" and "broiling a chicken hawk" (p. 407).

What comes through most strongly in the autobiography is a heroic quality of indignation, sometimes impetuous, often simplistic, never in doubt. Equality is the talisman and inequality and the hypocrisies by which it gains and maintains advantage are the vices to be stamped out—in small towns that distinguish the right from the wrong side of the tracks, in fields where the labor of migrant workers is exploited, in shops where the boss is lord, and in government offices where the servant acts like a master. It is a matter of fundamental morality and distributive justice, reflecting the most enduring American political values. The enemy is the cant, deceit, and cruelty perpetrated by preachers, bankers, professional patriots, and other mercenaries of an exploitative social order. Social change must be facilitated, although Douglas did not believe that the law—by and large, a system of rules benefiting the status quo—would be the agency through which it would take place. His sympathies lie with the helpless of all conditions—minority groups discriminated against because they look or talk differently, the forgotten aged, pensioners on Social Security, indigent defendants, the young—all who feel the heavy weight of money, influence, and force that political power and social class can and do use to deny them fulfillment and security. He is angered by the ruin that commercial pollution has brought to the running streams and the air we breathe, and he is outraged by the destruction of wildlife, wilderness, and wetlands for the benefit of real estate developers, ranchers, bankers, lawyers out for the fast buck, county courthouse cronies, hustling, fast-talking salesmen, corporate manipulators—all the frauds, crooks, bunco artists, and con men of the higher orders of the business world whose power exceeds their numbers and whose motivation is greed.

Two references may sum up the striving of Mr. Justice Douglas. Edward Corwin in *John Marshall and the Constitution* likened Marshall to Gregory VII (Hildebrand), the medieval pope who sought to establish the paramountcy of the Church over temporal powers, to command them, and to compel their obedience.¹⁷ Al-

17. E. CORWIN, *JOHN MARSHALL AND THE CONSTITUTION* 2 (1919).

though there is some plausibility in the parallel between Hildebrand and the John Marshall of *Marbury*, it cannot be pressed too far—Jefferson never did come to Canossa and the Court did not declare unconstitutional another congressional statute for a half century.¹⁸ But the ecclesiastical parallel is poetically suggestive and invites another. If Marshall could be Hildebrand, Douglas might just be another Savonarola in the “priesthood” of government service. His “bonfire of vanities” would certainly include rulings that exclude Indian war veterans from white cemeteries, contempt orders that punish black women who refuse to answer prosecutors who call them “Mary” instead of “Mrs.,” fake warrants that police refuse to show to defendants whose houses they are searching unlawfully, injunctions that would prevent the public from knowing the schemes of their government, the prohibitions of censors, electronic tools that permit unjustifiable intrusion into the private lives of the people, and other devices and procedures of police state immorality. In fact, the charges laid against Douglas in the impeachment proceeding started by Gerald Ford were very much the same as those laid against the fifteenth-century Dominican—that he had seen visions and uttered prophecies, and professed heresy and sedition. Although Douglas, unlike Savonarola, was never strangled and burned—Emmanuel Celler, chairman of the House Committee on the Judiciary opposed it—perhaps the Justice, like the priest, is a voice for a social and political Reformation long overdue.

The second reference is more personal to the author of a remarkable autobiography and it is brought to mind by the story of his textbook struggle from poverty to acceptance and stature. I believe it was Justice Holmes who said that the challenge of life is to touch the superlative all by one's self, and this is what the young man from Yakima did.

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18. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).