

wisdom, knowledge obtainable only in a life of strife and struggle and an unending quest for the unobtainable.

Reviewed by HENRY REGNERY

A Subversive Security

Points of Rebellion, by William O. Douglas, *New York: Random House, 1970. 95 pp. cloth \$4.00; paper, Vantage Books, 1970. \$1.95.*

WILLIAM ORVILLE DOUGLAS, an Associate Justice of the United States Supreme Court for thirty-one years, will be seventy-two on October 16. Born in Minnesota, most of his early years were lived in the State of Washington, where he was graduated from Whitman College with a B.A. Degree in 1920. He taught in the Yakima High School 1920-1922, then went to Columbia Law School, where he received his LL.B. in 1925 and was admitted to the Bar in 1926. Such private law practice as he engaged in ended in 1927. He was a member of the Columbia Law School faculty from 1925 to 1928 and of the Yale Law School faculty from 1928 to 1934, when he became a member of the Securities and Exchange Commission, and in 1936 he became its chairman.

All his life Mr. Douglas has been the recipient of a considerably higher than average living provided by the taxes paid to the federal government and by the contributions (to Columbia and Yale) of those who have labored, and many who have greatly risked, to make our free enterprise, market system economy the most effective of any in the world and the prop of free and open economies and social systems throughout the world. Yet he has persistently criticized the order from which all men, and he particularly, have greatly profited. He has

preached the virtues of challenge, adventure, dissent, nonconformity, reform and rebellion; but just as persistently he has, above all, sought for himself the security that is found only in stable and affluent organizations. If Arthur Krock's account of the circumstances incident to the appointment of Mr. Douglas to the Supreme Court is accurate, the craving of Mr. Douglas for security was one of the coincidences leading to the appointment.

In his Memoirs, Mr. Krock relates that at one of the evening "bull sessions" that were part of the social and political life of Washington in the F. D. R. New Deal era, he followed Douglas out of the room to question him about his resignation as Chairman of the Securities and Exchange Commission to return to the Yale Law School faculty, which Douglas had just announced. Krock asked him why, to which Douglas replied, "Security." Krock said he felt that Douglas was especially qualified for "the vacancy on the Supreme Court." Douglas, not having heard that Justice Brandeis had that very day resigned, inquired, "What vacancy?". After a little more conversation it was agreed that Krock would talk with Attorney General Frank Murphy, a great favorite of President Roosevelt, which he did. Mr. Murphy thereupon submitted to the President the name of Mr. Douglas; and although Krock tells us nothing about other measures Mr. Douglas may himself have taken to secure the appointment the fact is that he did receive the nomination and was confirmed.

Nothing in our society combines as much security and prestige as being one of the nine members of our Supreme Court. Yet Mr. Douglas has not been content with the material security it confers. With his exalted position as a launching pad, he has, while being consistently and violently critical of our social, economic and governmental system, been most industrious in the way of adding to his personal material security by lecturing for fees, by writing books and by lending his name (for an annual fee) to a tax-exempt foundation, one that,

according to numerous items in the news, has the dubious distinction of being funded with profits largely derived from Nevada gambling casinos. In June a former executive of the corporation providing the foundation's funds testified before a Congressional Committee that he paid \$50,000 to Nathan Voloshen, a close and long-time friend of Speaker John McCormick, in an attempt to influence the Securities and Exchange Commission to lift a ban on trading of the stock of the corporation.

From one who waxes as indignant as does Mr. Justice Douglas about the mores of the "Establishment" (yes, he, trained to be a lawyer, and long a Justice of the Supreme Court, does erect and belabor, without definition, that moth-eaten scarecrow) we might have expected, that if he must do more to satisfy his craving for personal security, he would do it in more savory ways. Nor, if his current publication, *Points of Rebellion*, is a fair sample of his books (it's the only one this reviewer has read), is the flood of his writings (some twenty titles are listed) beyond suspicion of having been a device for getting money under false pretenses. Did *Points of Rebellion* not bear the name of a Justice of the United States Supreme Court it is most unlikely it would have been published. Its real nature and worth are—unconsciously doubtless, but aptly—described by the Justice in the third paragraph of this slim volume (ninety-five small pages of large widely spaced type), where he writes: ". . .the customary manner of dissent in America, . . .has been pamphleteering." Those who may have been led to buy the book (on the basis of its title and because it is written by a prominent and elderly jurist) expecting to be enlightened by a philosophical and historical discussion of rebellion have been defrauded. It is solely political pamphleteering, a warmed-over rehash of propaganda for more of the nostrums that Mr. Douglas has been peddling for forty years—measures that have been about as effective as the concoctions of a medicine show barker and which the American public is beginning,

one hopes, to have gained enough sense to shy away from. But the unabashed Justice makes his pitch with the same fervor and with the generalized, misleading and pejorative language for which he is noted, if not famous.

The book is impossible to review objectively because its premises are so general, undemonstrated and biased; and it is difficult to discuss it briefly because its dogmatism, its nonsequiturs and false implications invite voluminous analysis and rebuttal which space here does not permit. There are a few pages in which the Justice concisely describes many of the problems and much of the malaise of our society (and who, if but half literate, cannot describe woes that have forever afflicted mankind and those that have become both more acute and chronic by reason of almost forty years of domination of our society by the self-proclaimed Liberals), followed by some thirty pages of preposterous fiats concerning their causes and a repetition of prescriptions for their cures that have, in different guises, been the "program" of Justice Douglas and his more radical fellow Liberals for forty years: measures and programs that already have proved self-defeating.

Forty years ago Mr. Douglas was an apostle of reform. He was one of the elite of the New Deal years who concocted its reforms. He was for years the administrator of the reformed federal securities laws, and in his thirty years as a Supreme Court Justice he has done all that he could to change, to reform, our Constitution. "Reform" isn't fashionable today and the vogue word is "restructure," so Justice Douglas now couches his same old panaceas, most of which have been utterly valueless and many of which have been harmful, in terms of "restructuring" our society and government. And, despite the domination of our government and society by the Liberal "reformers" for these many years, Justice Douglas has the effrontery to blame all our social ailments upon the "rightists" and to hold out as our only saviors the more radical of

the same bemused, blind, elitist, arrogant crew who have steered our country's course in its flight from reality. He is the American counterpart of Mao Tse-tung. If one revolution doesn't work the cure is to foment another and yet another. Nor is he above the basest kind of argument, including the tactic of "guilt by association" (with which the Liberals flailed the late Senator Joseph McCarthy), as witness the snide analogy with which Justice Douglas seeks to dispose of the need for restoration of a greater degree of "law and order":

. . . The powers-that-be faintly echo Adolf Hitler, who said in 1932:

"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.

To the young, to the gullible, to the wishful thinkers who believe there are solutions for all the problems of society (many of the most troublesome of which, in forms that differ with different eras, have always, and will forever, plague mankind because of the very nature of human beings), this latest potboiler by Mr. Justice Douglas may appear to have significance; but to the more thoughtful members of his own tribe his shopworn banalities are a considerable embarrassment. One of them (echoed by others) has sought to counter its damage to the already frayed Liberal cause by treating it as the "silly" but well-intentioned and essentially harmless crochet of a great man who has seen better days. Silly it is, but "silliness" in men in powerful positions in government can hardly ever be harmless, and the Justice certainly didn't intend it to be so. Indeed the key title word, "Rebellion," is most loosely used. There is a difference between rebellion and revolution but the proper distinction between the terms is not that which is drawn by Justice Doug-

las. In the context of this political pamphlet, any kind of resistance to governmental, economic and social dictates of which he disapproves is proper rebellion, whereas one may be sure that were Justice Douglas and his cohorts to obtain complete command of all the political, social and economic forces of our country, determined opposition thereto would become vile revolution. W. O. Douglas started his public career as a partisan of leftist viewpoints and despite his tenure of more than thirty years on the bench of the United States Supreme Court Justice Douglas has not acquired either a judicial or a judicious temperament.

Should one feel he must read *Points of Rebellion*, let him by all means buy the cheaper paperback edition, itself an expensive bargain at \$1.95, and use part of the money thus saved to acquire Burke's *Reflections On The Revolution In France*. If one wants to grapple with the anatomy of revolution, here one will find grist for one's mill. Justice Douglas has always been and always will be a troublemaker, but a profound or responsible thinker—never!

Reviewed by DEAN TERRILL

Principle vs. Pragmatism

The Supreme Court and the Idea of Progress, by Alexander M. Bickel, *New York: Harper & Row, 1970. 210 pp. \$6.50.*

THERE ARE a good many Americans named Brown, and more than one has appeared as a petitioner or appellant in the Supreme Court of the United States. Two of their more interesting cases have led to encounters with the jurisprudence of Oliver Wendell Holmes. In 1921 Robert B. Brown,