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William O. Douglas: An Appreciation

ABE FORTAS*

Soon after Mr. Justice Douglas' retirement as an associate justice of the Supreme Court, Herblock, the remarkable commentator-cartoonist, published a drawing which summed up the meaning of the Justice to mankind.¹ Herblock's cartoon showed a mountain on the crest of which the name of William O. Douglas is inscribed in great letters. Gazing intently at the mountain's peak are a mother and father and their two young children. There, they seem to say, is where we should be. There is our goal—the goal for us and for our children. There is the place where we could live in the beauty and freedom for which the human heart yearns.

It is, it will be, a long and arduous journey to reach the heights that Douglas has staked out for us. Generations will look at them with longing. Those who are in the vanguard will undertake the perilous climb; and the achievements of each generation will be measured by its progress toward the summit that Douglas has posted as humanity's ultimate homestead.

Throughout his life, Douglas has fiercely occupied high ground—the highest that life on this earth offers. He is, of course, an idealist; but, for him, ideals are not abstractions; they are objectives demanding present fulfillment.

As a boy, confronted by the mindless assault of crippling illness, he ferociously sought and secured not merely survival and recovery, but total conquest of the infirmity which the disease inflicted and a way of life which defied the disability that it had threatened to impose.

As a teacher and legal scholar, even though he specialized in the relatively arid field of corporate management and finance, he formulated new and higher standards of corporate behavior. He was the preeminent architect of techniques for relating law to the facts of life and to social standards—techniques which provide a model for lawyers and social scientists who seek to fashion instruments to achieve a better society through law.

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¹ See Washington Post, Nov. 14, 1975, at A18, col. 5.

As Chairman of the Securities and Exchange Commission, he set and enforced standards for Wall Street which ushered the financial community into a new age of social responsibility.

As a world traveler and writer, he formulated a vivid conception of a world inhabited by people of different customs and institutions, whose common objectives and entitlements he vigorously championed.

As a conservationist, he identified the conservation of nature with the preservation of man. To him belongs much of the credit for the relatively recent awakening of people to the necessity of protecting and securing our environment against the onslaught of exploitation. He viewed this not merely as an imperative for survival, but as a vindication of the right of each of us to the benign and inspiring experience of nature.

As an associate justice of the Supreme Court, he was adamant in his insistence upon principle. He was the strict constructionist without peer, adamant in his firm belief that constitutional principle must not yield to the pressures of the moment.

Today's nation is very different from that of 1939, when Douglas took his place on the Court. In the intervening years, we have passed many frontiers and have achieved new plateaus of decency and civilized standards. We have learned to use the law dynamically as an instrument for achieving the social goals which are implicit in our Constitution. We have accepted the principle that all of our economic activities—even "private" business—are charged with public responsibility.

Departing from the pre-1939 concept that the equal protection clause of the Constitution is the "usual last resort" and a "disguise for less noble feelings,"² the Supreme Court and the Congress have given substance and reality to the Constitution's precept of equality under law for all. Under the leadership of the Warren Court, we have eliminated many barbaric practices from the administration of the criminal law. We have embraced a new and enlarged concept of the right to privacy. And we have achieved a new and much more fundamental vitalization of the freedoms of speech, the press, and religion.

We have awakened to the need for protecting our environment and preserving the wealth and beauty of nature. We have accepted the fact that people are people—even those who live in the primitive areas long blighted by colonialism.

It is extraordinary to realize that in every one of these major advances toward the summit of human aspirations and the realization

² 2 HOLMES-LASKI LETTERS 942, 1089 (M. Howe ed. 1953).

of our ethical ideals, one man—William O. Douglas—has been a leading participant. He has shown the way. With fierce determination, remarkable persistence, and rare consistency, he has been the pioneer along the difficult and perilous road. His vision and dedication, his idealism, have grasped the human imperatives. It has often been his words that have formulated these imperatives so that the mind and conscience cannot escape their summons. His incisive intellect and generous understanding have demonstrated an inescapable, organic connection with our Constitution and basic ethical system. And with ferocious courage he has pressed home his beliefs so that, ultimately, they have won the adherence of the nation.

Mr. Justice Douglas has retired. No man has more greatly realized his potential. No man has more generously served his fellow man. And for decades to come, the summit on which his name is inscribed will continue to be the goal for the generations of humanity.