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Douglas: An Almanac of Liberty

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AN ALMANAC OF LIBERTY. By William O. Douglas. New York: Doubleday & Co., 1954. Pp. xx, 409. \$5.50.

The first book written by William O. Douglas (law school case-books are rather collected than *written* by their "authors") was called *Democracy and Finance*; it dealt with the ins and outs and underneaths of corporate money-stuff and the "Democracy" in its title was less a political concept than a publisher's come-on; it was a summation, of sorts, of Douglas' work on the Securities and Exchange Commission, which sparked his appointment to the Supreme Court's financial-expert seat at Justice Brandeis' retirement. The latest book written by William O. Douglas is called *An Almanac of Liberty* and the *Liberty* in its title means liberty. No book written by Professor-Commissioner-Justice Douglas or by anybody else is called "From Finance to Liberty"—but such a title might be used to tell the story of the slow shift, over a fifteen-year span, of the focus, the thrust, the main concern of Bill Douglas' mind and heart and major work.

For the man who went to the Supreme Court as much a novice in the field of law-and-liberty as he was a past master in matters of law-and-finance has grown to become the nation's most perceptive and passionate official defender—or, far too often, would-be defender—of human freedom. He has defended or fought to defend it on the Court and off, not only in judicial opinions but in constant extra-curricular talking and writing, not only for Americans but for all the peoples of the world. His *Almanac of Liberty* is a staccato statement of his credo, a symphony in 366 parts on the same theme. More than that, it symbolizes even in its mechanical make-up the unconcern for conformity that is hand-maiden to freedom of the mind: Who else has published a day-by-day almanac that did not begin with the first of January? Douglas begins with the fourth of July.

From the Declaration of Independence on through July third—where the text of the book ends with a prayer by Rabindrinath Tagore for "the mind . . . without fear and the head . . . held high"—Douglas has fitted each day of the year as best he could to some event concerned with liberty that happened on that date. The event may have been a victory or a defeat for liberty; September 22 goes to the Salem witchcraft hangings of September 22, 1692; July 14 goes, not to the fall of the Bastille in 1789, but to the not unrelated passage by the United States Congress, precisely nine years later, of the first Sedition Act; Senator McCarthy, hand-in-hand with Roy Cohn, has his day. Yet, not even the prodigious research that must have gone into this little book could dig up for every date on the calendar an apt event of which to tell the tale or from which to fashion an object-lesson in liberty; hence many days are given over to lively and epigrammatic reflections on now this, now that aspect of the history of human freedom and unfreedom.

The reach and range of this *Almanac* have no boundaries in space or time. For September 20, on Trial by Ordeal—that is, by fire, water, or battle—the

dramatic account of those bygone horrors leads off with a quote from Manu, "the ancient Hindu lawgiver"; for May 17, the crisp story is of the Supreme Court's outlawing of racial segregation in public schools on May 17, 1954. No review could begin to summarize the thousands of subjects and sources that have here been packed into 366 parables, each the potential subject of a whole book in itself—and many already the subjects of several books. A ten-day list of titles, running from December 16 through December 25 may be suggestive: "The English Bill of Rights"; "Military vs. Civil Trials"; "Our West Coast Japanese" (where Douglas deliberately casts doubt on the wisdom of one of his own old decisions); "When Government is Ignoble"; "The Trial of Thomas Paine"; "Runaway Seamen"; "Prejudicial Conduct of Prosecutors"; "The Federal Reserve System" (a hark-back, but with a libertarian twist, to the financial-expert days); "Remonstrance Against Religious Assessments"; "Jesus of Nazareth" (for Christmas, of course). And a literally random selection of ten consecutive index listings reads: "Block, Herb" (the cartoonist); "'Blue ribbon' juries"; "Boccaccio, *Decameron*, suppressed"; "*Body of Liberties, The*, in Massachusetts Colony"; "Bolivia, on Moroccan question"; "Bone, Homer T." (the former Senator); "Bonneville Dam"; "Bonus Army of 1932"; "*Book of Acts*, rights in"; "Books, Milton on." How contain in a mere review a work so unbounded in reference as well as in space and time?

There is another and even more admirable way in which Douglas, here and elsewhere, is just about unbounded; it is in the open and vigorous honesty with which he speaks his mind on political problems of the day, especially those affecting human liberty. This disdain of being meek and mealy-mouthed on the part of a Supreme Court Justice is not universally rated an admirable characteristic; *au contraire*. Thus, so able and generally liberal a historian as Gerald W. Johnson, reviewing *An Almanac of Liberty* in the New York Herald Tribune, starts off by chiding its author for coming "uncomfortably close to breaching the limits imposed upon a Justice" because, "like a man who has entered a monastery, he has lost certain rights that may be freely exercised by those who have taken no special vows. One is the right to comment freely and frankly on matters that may eventually come before the Court . . ." Other criticism along the same tack has been considerably less restrained.

I am moved to ask Mr. Johnson and those who join him in disapproval—Why? By whom or by what are those unspecified "limits imposed upon a Justice," and when were "taken" those shut-mah-mouth "special vows"? To the best of my knowledge, a Supreme Court Justice takes but one oath when he assumes office. It goes: "I, William Orville Douglas, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a Justice of the Supreme Court of the United States according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God." I'm afraid I read nothing there which forbids a Justice to "com-

ment freely and frankly" beforehand even on a specific case between two specific litigants, *much less* on a general political problem, some facet of which may some day reach the Court for review.

If Mr. Johnson or anyone else wants to read such a prohibition into the word "impartially"—on the ground that a judge cannot judge impartially after he has expressed a prior opinion—I would suggest that not even an oath can keep a judge from *thinking* about a problem before it comes officially before him and that he can make up his mind just as firmly without *speaking* his mind. Not that I mean to imply personal approval of a practice of announcing specific votes in specific cases before the cases are heard; yet Justices Van Devanter, McReynolds, Sutherland, and Butler did not *have* to announce how they were going to vote in the big New Deal cases for the whole nation to know how beforehand. And if Justice Douglas has the courage to speak up in public against our current "hunt for heretics" (which Mr. Johnson seems to applaud his doing) or to comment that the United States "connived with Britain to salvage an infamous British oil concession in Iran," despite the fact that a case or two involving oil-tankers may some day get to the Supreme Court (Mr. Johnson's sole illustration of alleged impropriety)—I see nothing in oath or conscience or judicial statesmanship to stop him.

Of course, the whole notion that Justices should not talk out of school, or out of Court, or out of Mr. Johnson's "monastery," stems from the well-nurtured nonsense that Justices are not in the active practice of that vulgar calling, politics, plus the companion canard that, in donning the robe, a Justice takes the political veil. Forgotten or conveniently overlooked, even by historians, are the facts of life about the Court and its members—from the time when John Jay, the first Chief Justice, did diplomatic errands for George Washington and twice ran for the New York governorship without resigning from the Court, to the time when Earl Warren, the latest Chief Justice, performed a distinctly and deliberately political service for his President, his party, and his nation in capably captaining his colleagues into unanimous abandonment of the Court's old sanction of discrimination against Negroes. If John Marshall, the great Chief Justice, could take open and active part in off-the-bench and from-the-bench politics without losing in retrospect any of his greatness, if Taney and Chase and Taft and Hughes and Vinson and all the rest could remain, as they did remain, more or less active in government affairs off the Court as well as, more obviously, on it, without being buried in obloquy—why all this nice-nelly insistence that Justices should *pretend* not to be politicians (or occasionally statesmen) right down to their bones? Is Douglas not, perhaps, a shade more honest and more democratic, in the deep sense, than the bulk of his twentieth-century predecessors and brethren in scorning the pretense that most of them indulge in by popular demand?

Improprieties or no, carping critics or no, blind belief in the political sterility of Justices or no, this latest book of Douglas' would rate high in the literature of liberty no matter by whom it was written. Straight and strong in

the twin traditions of American idealism and world humanity, it gives a lift to the spirit on every page. Indeed, for all who really believe in the freedom of man and his mind, *An Almanac of Liberty* should be unrequired reading.

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