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Chief Justice Earl Warren

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INTRODUCTION—A TRIBUTE TO JUSTICE DOUGLAS

By CHIEF JUSTICE EARL WARREN

The decision of the University of Washington Law Review to commemorate the twenty-fifth anniversary of Mr. Justice Douglas on the Supreme Court of the United States is doubly appropriate.

In the first place, his achievements during that important period of his life are in all respects worthy of review and contemplation. Secondly, it is fitting that a University of the great Northwest should make the synthesis at this midway stage of his brilliant judicial career because he is as much a Westerner in the old tradition as is to be found in public life today. Born in the Midwest, reared here on the Pacific Coast, and after a meteoric rise as lawyer, scholar, teacher, administrator and distinguished jurist on the Atlantic Coast, he was drawn as by a magnet to re-establish his home here in the State of Washington, whose mountains, forests, waterways and people he loves so much.

Justice Douglas, a generation or two ago, regardless of where he might have been born, would undoubtedly have been a pioneer of the West. Perhaps he might even have come by sea with George Vancouver in 1792, or more likely a decade later as a member of the Lewis and Clark Expedition to chart a trail across the Continent, but still more likely he might have explored the West with Captain Fremont and Kit Carson. At all events, he would have been as restless and indefatigable as were these two intrepid souls until he had seen it all. But, unlike these Argonauts, he would have preserved for future use everything he saw and heard and felt. Like Hubert Howe Bancroft, he would have written copiously on the West from Alaska to Patagonia, and because of his unbounded energy, his lightning-like mind and his prodigious work habits, he probably would have surpassed the thirty-nine volumes of that noted historian. But he would have written more in the vein of Henry David Thoreau, the devoted

naturalist and powerful social critic who championed the individual against social organization and materialistic civilization. These are speculations, of course, but at all events Justice Douglas would have left trails, both physical and literary, throughout the West.

And so it is with the jurisprudence of the Supreme Court. Douglas trails are to be found everywhere;—in the fields of economics and federalism and in every phase of human rights. These trails do not merely take us along the easiest passageway to intermediate points. Often they chart a way over high ground and through narrow defiles to more distant places beyond the horizon. But, regardless of the level on which we find them, they are bold in concept and well marked. The markings are to be seen in Volumes 306 to 375 of the United States Supreme Court Reports.

I shall not comment on his decisions for two reasons—first, it is not timely to appraise the product of an author or a jurist until the last touch is given to his work. Mr. Justice Douglas is both of these, and he is presently at the height of his productive capacity. He might well surpass the thirty-three years and nine months of service of Mr. Justice Field on the Supreme Court and without going far beyond the three score years and ten milepost. Secondly, I cannot with objectivity pass upon his work. In the past eleven terms of the Court, I have joined so many of his opinions, have disagreed with so few, and have cited as authority for my own opinions so many of his which were written during the fourteen years before my appointment to the Court that it would be self-serving to say the least for me to write an omnibus appraisal of them. Our brotherhood on the Court is such that in the long run our individual appraisals of the work of our colleagues can best be made on a case by case analysis, leaving it to the learned societies, the law schools and legal periodicals like your own to draw broader conclusions if they desire to do so.

This is your opportunity to scan the work of a quarter of a century by a distinguished jurist. What you write will be a part of the history of the Supreme Court. I am sure you will scan it critically. If consulted, I know he would want you to do no less. He recognizes that there are at least two sides to every legal question. He abhors conformity whether it stems from compulsion or complacency and, like Mr. Justice Holmes, he thrills at the mere thought of a clash of ideas. So I leave to you, in this volume of your Law Review, the analysis of the service of Mr. Justice Douglas.

I end with the observation that few men have served the Court as long as he has. Only 17 of a total of 94 members have served as long as a quarter of a century. Still fewer have served that long through times that were as critical, as controversial and as kaleidoscopic. He served in the great depression, throughout World War II, the Korean conflict, and the cold war to date. It has been said that over a period of years, in a cyclic way, every problem of the American people comes to the Supreme Court of the United States. That statement is particularly true in the fast moving and turbulent world in which we are now living. Justice Douglas has served the Court through more than one such cycle. He has approached these problems with diligence, boldness and compassion for humankind. In doing so, he is leaving his lasting mark on every facet of American life.