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Book Review

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Book Review

GO EAST, YOUNG MAN: THE EARLY YEARS.* By William O. Douglas,
Random House, New York, 1974. Pp. 493.

At the end of my first year in law school, Supreme Court Justice William O. Douglas came to Georgetown to deliver the annual Law Day address. Students, fresh from college in those heady days of peace marches and fanciful social revolution, packed the auditorium to see this living legendary figure, the left anchor of the activist Warren Court. My general impression of the "Great Dissenter" (as he had then become known on the Burger Court) was that the craggy-faced man with long, white hair was a relic of an earlier, more optimistic era. He came from a time when people really believed that an energetic government could improve the material condition of all citizens, not just the wealthy, and could set a standard of high idealism as an attainable social goal.

Douglas spoke radically that day, quoting from what he said was his best judicial opinion, that the First Amendment invites dispute and that free speech best serves its high purpose when it induces a condition of unrest and even stirs people to anger. Douglas also admonished the future lawyers that instead of "jumping on the golden gravy train" we should seek out more satisfying alternatives such as prisoners' rights, poverty law, and public interest work.

Justice Douglas offers this story of a more optimistic era—his first forty years before appointment to the Court. *Go East, Young Man* reads like a travelogue; Douglas blends American social history, descriptions of the countryside and bits of personal philosophy with the chronicle of his journey from boyhood poverty in the Far West to a seat on the Supreme Court. Douglas, according to his narrative, did not take the golden gravy train.

The Justice gives the reader a description of his early self-education in the culture of poverty. His family's privation forced him

* This review is being republished in anticipation of the sequel to GO EAST, YOUNG MAN, which is soon to be published. A review of that publication will follow. This review first appeared in the September 27, 1974, issue of *Commonweal* magazine.

to pick fruit with migrant workers and through these associations young Douglas became familiar with the Wobblies. Although those early American radicals were regarded as rabble by the political and ecclesiastical establishment of his home town, Douglas came to know them as warm-hearted people.

Douglas even relishes his childhood status as an outsider: "While there are many children's parties in Yakima, we were never invited to a single one, and we were far too poor to have one in our own home . . . if I had been united with the elite of Yakima by even so tenuous a cord, then to become accepted might have been a goal in later life, a leveling influence to wear the right hat, to say the right thing . . . then all the beauty would disappear in pontifical emptiness."

Although the good life of turn-of-the-century Yakima escaped Douglas, he found real beauty in the surrounding wilderness and began a life-long, nourishing symbiosis with nature. An early bout with polio drove him to hiking which became a life-long habit.

After working his way through Whitman College in Washington and a two-year stint teaching English literature at Yakima High, a spirit of adventurous confidence liberated Douglas from his provincial home and impelled him East on a freight car to New York City and Columbia Law School.

Douglas excelled at Columbia and moved to the faculty of Yale where he specialized in monitoring the "predatory" practices of high finance. Joseph Kennedy tapped him for the Securities and Exchange Commission and in short time Douglas himself was chairing that agency and informing it with his own brand of dynamism. The book's chapter on the bureaucracy is its best. Douglas restates his advice to FDR that an agency is capable of creative work only in its first decade and after that it must be abolished or it will inevitably become a captive of the industry it is supposed to regulate.

The reader gets the feeling that Roosevelt always found such viewpoints refreshingly unorthodox. The young SEC chairman became a regular at the President's Saturday night poker table and once starkly confronted FDR with the fact that his son Jimmy and friends were exercising a very lucrative form of extortion over certain regulated utilities.

Douglas talks about the various personalities of the New Deal and gives some fascinating inside, yet independent, comments on its programs. The author expresses his fondness for Roosevelt and says their close friendship grew out of a mutual love of the earth.

Despite a good deal of personal reminiscence on the early years, *Go East Young Man* is basically a public autobiography. Douglas only mentions his first wife and divorce in passing—a turn the curious reader might expect from the man who articulated the Constitutional right to marital privacy. Yet *Go East* is hearty fare for both the historian and the reader who is looking for moral inspiration.

Bill Douglas' formative years secured him in the mysteries of the wilderness and endowed him with a radical perspective and an energetic idealism. Those may be virtues of another era, but as long as Justice Douglas stays on the High Court American society will benefit from his amazing qualities.

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SIR EDWARD COKE AND "THE GRIEVANCES OF THE COMMONWEALTH" 1621-1628, By Steven White, University of North Carolina, (1979), Pp. 327.

Sir Edward Coke (1552-1634) was the most influential legal figure of the late Elizabethan and early Stuart periods. For centuries his works have been studied and adhered to by both English and American lawyers and judges. Despite this status and stature, relevant scholarship has failed to keep pace. The details of Coke's career have been overshadowed by such dramatic and celebrated incidents as his selection as attorney general by Queen Elizabeth over Sir Francis Bacon; his prosecution of Sir Walter Raleigh; his fight for the common law over ecclesiastical law; and his treason trial. Indeed, Coke was possessed of a brilliant intellect which produced a variety of profound thoughts, most of which have been ignored by legal scholars. Thus, for example, his well-reasoned concepts on fundamental law have remained largely undeveloped. Moreover, previous studies of Coke's theories have, to a great extent, recently been thrown out of context by dramatic shifts in scholarly treatment of the early Stuart period and the English revolution.

Steven White has spent over 10 years in researching and writing this important and readable book, which hopefully represents the onset of a new period for scholarship in this area. His concentration on the Parliaments of the 1620's presents a self-contained and yet important phase of Coke's career. While examining the variety of concerns that faced Coke and the Parliament, White focuses upon the forces that influenced Coke, and how he, in turn, became an influencing force. Particular attention is paid to Coke's speeches, which were frequently more illuminating than his writings with regard to the relationship between legal institutions and the Commonwealth-at-large.

This focus on the "small picture" and the interstices of historical change is typical of such newer histories of the law as *The Transformation of American Law, 1780-1860* (1977) by Morton J. Horowitz. Further, while it is not cited, the concept of PARADIGM as formulated by Thomas S. Kuhn in *The Structure of Scientific Revolutions* (2d ed. 1977) seems to influence the analysis.

White separates Coke's later "parliamentarian career" into two phases, the early and the late 1620's. The parliaments of 1621 and 1624, while essentially traditional, were also transitional. The pri-

mary purpose of parliamentary meetings traditionally was to consider specific "grievances" in the context of consensus and satisfaction about the governance of the kingdom. Individual members of the Court and specific acts were the focus of attention. There was neither opposition party, nor even a sense of serious threat to the generally accepted legal and economic norms. Despite this, there is evidence to suggest that at least some of the members of Commons sensed that the House was a separate body which had a special role in the government, a role which occasionally mandated opposition to the court. Clearly, this view was a portend of the future.

The two issues which dominated the interest of these Parliaments were religion and the "grievances of the commonwealth". Religion was to play a significant, if not primary, role in parliamentary history up until the Glorious Revolution. It is this factor that White considers "central" to the erosion of those attitudes of mind that made parliamentary compromise possible. However, it is to the legal and trade grievances that White looks to delineate Coke's role. The specific legal grievances included "excessive legal court fees, the corrupt practices of court officials, delays in justice, the characters of juries, and the use of legal procedures for the purposes of harrassment and avoidance of legal obligations." The abuses in trade were "patents of monopoly, specific practices of trading companies, corruptions in the customs system, [and] problems in the organization of the wool and cloth trades." Each of these grievances is treated in some detail with special attention given to Coke's views as they developed.

The dearth of new statutory law, economic depression, and widespread political and legal corruption tended to sever the ties between the House of Commons and the Court. Had fear of both internal and external papism not been present, it is probable that many would not have been lead to view the isolated grievances as all of a piece, and it is possible that revolution may never have come. As it was, however, the ineptitude of Charles I caused him to ignore the advice of Parliament on matters of religious significance, and resulted in disastrous and expensive foreign entanglements. These factors heightened Parliament's hostility to the Crown and lead it to seek more power.

Coke's views tended to parallel those of Parliament, as evidenced by his focus on parliamentary privileges in his speeches. Clearly, he offended the King and was imprisoned in 1621. Whether his attitude had been formed prior to his arrest, or whether the arrest triggered his thinking, Coke's subsequent role

as leader in parliamentary attempts to transform privileges into prerogatives was foreshadowed in these earlier sessions.

As reflected in his activities in the sessions of 1625, in assessing the causes and cures for grievances Coke became aware of the interconnections between various political-economic structures, but remained of the view that Buckingham and other personnel were the causative agents. It was not until the paradigmatic shift, reflected in the agenda of the parliament of 1628, that Coke saw the primacy of structural reform. In Coke's view, capricious arrest, arbitrary taxation and pervasive military power had prevented consideration of economic and legal grievances in the Commonwealth.

White devotes the final portion of his narrative to the gestation and parturition of the Petition of Right, which Coke left as his child's "greatest inheritance." At this point the narrative becomes, despite its analytical style, dramatic if not poignant. Coke had accepted the royal prerogative regarding arrest up through 1621. During debates preceding the Petition of Right his statements were used to embarrass him. Periodic losses of memory and "flights of oratory" created a leadership vacuum which the next generation of lawyer-scholars, such as Selden, inevitably filled. Nevertheless Coke's eloquence and commitment filled the breach when, towards the end of the struggle, Lord and the King counterattacked.

This book permits study of the fragility of personal and political change and its lack of inevitability. On the other hand, the significance of structure as a constraint on change is patent in each section of the book. The importance of paradigms of perception is substantiated. An instrumentalist view of the law is partially pre-figured by Coke, but because of such limiting factors, he has less freedom to pursue social and economic change than later lawyers and judges.

Finally, the footnotes, 1108 in number, are a repository of the scholarly disputes about early Stuart England. Note after note identifies the warring camps, often taking sides or breaking new ground. White appears to have a mastery of the sources, both original and secondary, that is both awesome and inspiring. Among the best of the longer footnotes is the following:

The views expressed here differ markedly from those of historians who emphasize Coke's firm opposition to legal change. Gardiner says that Coke was by nature "a bigoted adversary of all reform." Holdsworth stresses his "conservative prejudices." Prestwick likens him to Lord

Eldon. Niehaus claims that he "symbolized the corrupt and inefficient legal system of his day." And H. R. Trevor-Roper characterizes him as "The cracked, pedantic, unimaginative idolator of the existing common law, with all its abuses" (citations omitted).

All in all a book to both enjoy and work with.

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