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THE ENVIRONMENTAL JUSTICE

by Adam M. Sowards. Corvallis, OR: Oregon State University Press, 2009. 208pp. \$24.95. Paperback. ISBN: 9780870715679.

Reviewed by Helen J. Knowles, Department of Politics, Whitman College. Email: knowlehj [at] whitman.edu.

pp.602-606

William O. Douglas remains the longest serving member of the U.S. Supreme Court. During his thirty-six years as a member of that institution (1939-1975), the volatility and irascibility of his personality strained his relations with his colleagues, as did his extra-judicial activities. Well-documented in the scholarly literature, many of these aspects of Douglas's life and work will be familiar to the readers of this review. Many of us can enliven our Supreme Court and constitutional law classes with at least one Douglas anecdote. It is unsurprising that one Douglas biographer chose to title his book WILD BILL (Murphy 2003); and we should not be shocked that in his detailed study of the history of the extra-judicial activities of the Justices, William Cibes describes Douglas as "[t]he champion speaker of all the Justices" (between 1921 and 1960) (Cibes 1975, 1354). What is not well documented, however, is the Justice's lifelong commitment to the cause of environmental conservation. In THE ENVIRONMENTAL JUSTICE, a beautifully written and highly readable book, University of Idaho historian Adam M. Sowards makes the convincing argument that this commitment should be taken seriously.

The book proceeds chronologically, taking us on a fascinating journey from the intellectually formative years of Douglas's youth, many of which were spent embracing the landscape and wilderness of the Pacific Northwest; through the 1950s and early 1960s when he led protest marches in the name of conservation; to the late 1960s and early 1970s when, as a member of the Court, Justice Douglas frequently found himself writing passionate dissents in environmental cases. However, each chapter does so much more than tell a story about a particular point in time. Douglas's quest for environmental justice was defined by certain characteristics. Some of these figured prominently throughout his life (such as playing the role of public educator), but others only rose to the surface of Douglas's activities at specific times (for example, as chapter five shows, Douglas found the writing of dissenting judicial opinions to be a particularly effective (in his mind) tool for articulating his opposition to bureaucratic 'meddling' with the conservation cause). Every chapter of THE ENVIRONMENTAL JUSTICE makes this clear by identifying the particular characteristic that was most prominent in Douglas's work during the period of time covered in that chapter.

The defining characteristics of Douglas's environmental justice, and the ways in which they relate to the American conservation movement, are summarized in an introductory chapter, which opens with a quotation from an article that Douglas published in the LADIES' HOME JOURNAL in 1964 [*603] (one wonders how many members of the Court have written for this

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magazine). Douglas encouraged the readers to consider the impact of their lives on their natural surroundings. He urged them to “leave behind a land where those yet unborn will have an opportunity to hear the calls of loons and come to know that they are more glorious than any whirl of motors” (Douglas 1964, p.77, quoted on p.1). Sowards does not ignore the fact that Douglas often played upon, and exaggerated his now well-documented “challenging experiences in the rugged outdoors” (p.5) in order to personalize such calls to environmental arms. However, as we see in chapter one, the fact remains that Douglas’s upbringing greatly influenced his conservation work.

In 1939, when he sought to fill a vacancy on the U.S. Supreme Court, President Roosevelt believed that the ‘ideal’ nominee would have true ‘western’ credentials; consequently, Douglas’s years of work on the east coast led the President initially to question the case for nominating him. Ultimately, in appointing Douglas there can be no doubt that Roosevelt brought to the Court a Justice whose personal and moral compass was oriented away from D.C., and in the direction of his adopted and beloved Pacific Northwest. However, as becomes immediately evident in chapter two, Douglas’s desire to pursue environmental justice was in no way limited by geographical and regional boundaries.

Chapter two, which is home to some of the most compelling sections of the book, does an excellent job of drawing the reader into the mindset of Douglas. It describes the two really quite extraordinary social protest hikes led by Douglas (extraordinary in terms of what we expect from Supreme Court justices), highlighting both the passion with which the Justice pursued his quest for environmental awareness, and one important characteristic of his approach: Douglas felt that he knew the one right way to achieve this awareness. In January 1954, Douglas wrote to the WASHINGTON POST, publicly criticizing the paper’s editorial that had expressed support for a National Park Service plan to develop the Chesapeake & Ohio Canal. The Justice challenged the editors to join him on a hike along the 189 miles of the canal that ran from Cumberland, MD to Washington, D.C. The accepted challenge, and the subsequent walk (note, the editors did not complete the entire walk on foot) represented an impressive piece of social activism. However, as with the Olympic Beach Hike that Douglas led four years later, it was founded upon Douglas’s firmly held belief that, particularly during this, the automobile age, the public needed to realize that enjoying what mother nature had to offer should (although Douglas might say here ‘could’) not be pursued by building facilities, such as campgrounds and scenic parkways, that made these sites easily accessible. Instead, Douglas was certain that “more primitive recreation opportunities” were preferable, a position that Sowards notes “seemed elitist and anti-democratic” (p.37).

Another defining characteristic of Douglas’s environmental work was his quest to unite local and national activists, bringing harmony and strength to the broader American conservation movement. This is demonstrated in chapter four, which takes us from the [*604] mid-1960s into the early 1970s. It discusses the Justice’s work on behalf of wilderness politics projects in the Cougar Lakes Limited Area of Washington State, the Big Thicket region of East Texas, and (again) the Potomac Basin. Douglas believed that the most effective way to unite the disparate elements of the movement was to engage in collective action through the formation of organizations that Sowards calls “committees of correspondence.” It is not clear whether Douglas labeled these associations as such, but nevertheless it is an appropriate appellation.

While THE ENVIRONMENTAL JUSTICE is a book about William Douglas, most of the chapters demonstrate that it is as much about the evolution of environmental justice in the twentieth century as it is about the contributions to that evolution of the work of the environmental Justice. In this respect, chapter five is somewhat of a departure, because it focuses almost exclusively on the work of Douglas the Justice. As such, it is likely to be the chapter of greatest interest to the law and courts community, although there are elements of it with which this community might take issue. For example, Sowards does not do the legal realism movement

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any favors by arguing that its members, such as Douglas, “contended that lawyers and judges must acknowledge and use extra-legal evidence in their reasoning” (p.112, emphasis added). On the whole, however, Sowards’s discussion of the elements of environmental reasoning that we can see in Douglas’s Supreme Court opinions is very interesting. It will likely cause some readers to re-think their assessment of these opinions, particularly those with which we might not ordinarily associate principles of environmental justice (for example, KENT v. DULLES (1958) and EDWARDS v. CALIFORNIA (1941)). It should be noted, however, that Sowards has missed what might be viewed as a valuable opportunity to bring to his discussion of the opinions (a) references to Douglas’s law review defense of dissents (Douglas 1948) (after all, many of the opinions discussed in this chapter are dissents); and (b) the academic literature on the role (normative and empirical) of the Supreme Court and constitutional law as civic educators (see, for example, Eisgruber 1992, Strauber 2002).

These should not be considered major omissions from the book. Rather, I bring their absence to the attention of this review’s readers in order to make a larger observation about Sowards’s book. There is merit in the fact that this is a slim volume. Crisply and neatly edited, the book’s 150 pages make for compelling reading. It is important to note, however, that many readers will find themselves wanting to know more. In order to situate Douglas’s work within the context of the broader American conservation movement, Sowards makes use of an impressive body of material – including manuscript collections of the papers of many more environmental justice figures than merely the environmental Justice himself. There are times, however, when I felt that the book would have benefited from bringing some of this interesting material forward from the footnotes. Similarly, on occasion I felt that Sowards’s arguments might have packed a stronger punch had they been accompanied by more detailed discussion. This is perhaps most [*605] noticeable in chapter three, which analyzes the content and significance of the wilderness politics books penned by Douglas in the 1960s. Unlike MY WILDERNESS: THE PACIFIC WEST (1960), which profiled and celebrated the beauty of Douglas’s adopted home region, A WILDERNESS BILL OF RIGHTS (1965) focused on the ways in which Douglas believed that federal agencies had failed to justly and equitably handle environmental issues. Sowards demonstrates that this latter work evidences another characteristic of Douglas’s conservation work – its strong relationship to the rights-based liberalism with which legal scholars frequently identify Douglas’s jurisprudence. It was with great interest that I read about the Justice’s attendance at the Seventh Wilderness Conference (1961); for it was here that Douglas first publicly used the phrase that Sowards incorporated into the title of chapter three – a “wilderness bill of rights.” Sadly, readers who are intrigued by this concept, which consisted of “twelve principles to govern society’s relationship to nature” (p.75), will find relatively little substantive discussion of it in the book, (and not even a list of these principles).

In the conclusion to THE ENVIRONMENTAL JUSTICE, Sowards observes that two decades after its very public spar with Douglas over the fate of the C&O Canal, in 1975 the WASHINGTON POST paid tribute to the Justice who had finally decided to retire. The newspaper painted an incisive portrait of Douglas that included the following observations:

“Justice Douglas is always so insistently himself – so intensely individualistic – that he has attracted violent detractors as well as ardent admirers in his long career.... Physically rugged, an outdoorsman by inclination, gifted intellectually, temperamentally lonely and independent, he is as indigenously American as Uncle Sam. He loves his country passionately – its mountains and rivers and wild places if not its crowded cities – as he loves its great traditions and its ideals of personal freedom and opportunity.” (quoted on p.143)

In THE ENVIRONMENTAL JUSTICE, Adam Sowards has shown us that Douglas’s ideas about the relationship between the environment and personal freedom were passionately well meaning, but frequently very fixed. He felt that there were certain, specific reasons why and how people should celebrate this relationship. The ways in which Douglas sought to educate the

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public about these reasons sometimes generated prickly reactions – the underlying tensions between environmental protection and access made this inevitable, as did the Justice’s stubborn personality. Yet, as this thoroughly enjoyable book shows, this hitherto overlooked aspect of Douglas’s work commands our attention. Even though the environmental Justice frequently wanted environmental justice on his own terms, ultimately his use of the public and prestigious nature of his position on the Supreme Court played an important role in the country’s movement towards “democratized conservation.” (p.6)

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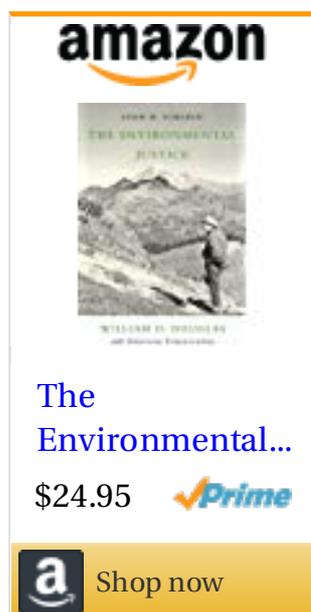
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