

Volume 8 | Issue 2

1957

We the Judges by William O. Douglas

Felix Rackow

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Felix Rackow, *We the Judges by William O. Douglas*, 8 W. Res. L. Rev. 234 (1957)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol8/iss2/15>

This Book Review is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

another," and "the democratic form of government was not included among the requirements for admission of a new member."⁸ But does not the process of securing democracy include also application of those principles to which the United Nations is devoted both in letter and in practice: humanitarian standards, majority rule and peaceful adjustment of the legal system to changes in power distribution in the community? Why not talk rather about introduction of democratic methods and principles into international procedure? This is a more realistic goal. For even states which domestically do not classify as democracies, may and do submit to international majority decisions. And the general improvement in the world picture, and the reduction of tensions, which does not seem feasible without a universal community organization, is the most likely source of the atmosphere in which authoritarian regimes begin to pay attention to the desires of their own peoples and thus open the gate to domestic liberalization and international mellowing.

I could not do better than to sample and to outline. And I am sure I did not use enough conditional propositions to present the thesis and antithesis in all subtlety. However, I do hope that the reader will find this review as provocative of thought as I found the book. It is a real contribution, which does not satisfy itself with an exhaustive but non-committal technical discussion. Such a commendation is more than one can give to long shelves of past and current scholarly production in the field.

JARO MAYDA*

WE THE JUDGES by WILLIAM O. DOUGLAS. New York, Doubleday & Company, Inc., 1956, 480 pages, \$6.00.

The material for this book was originally delivered as the Tagore Lectures at the University of Calcutta in July 1955. One suspects that the spoken lectures made better listening than do the written pages make good reading.

Justice Douglas' purposes are indicated by the book's subtitle: "Studies in American and Indian Constitutional Law from Marshall to Mukherjea." He divides his book into twelve chapters dealing with the dual system of courts; legislative prerogatives; the administrative agency; the commerce clause; due process; free speech, press and religion; the right to a fair trial; equal protection of the law; and the judiciary. His method is first to state the provision of the United States Constitution he is inter-

⁸ THOMAS & THOMAS, *op. cit. supra* note 3, at 370.

* Formerly Assistant Professor of Law, University of Wisconsin Law School.

ested in discussing, sometimes placing it in its political and historical setting, and then to examine some of the leading Supreme Court decisions interpreting that provision. Following this he notes the Indian counterpart to the American Constitutional provision and discusses the Indian court cases. Finally, he compares the two provisions indicating where they are similar and where they are different.

Thus we learn, for example, that the original jurisdiction of both Supreme Courts is similar. Both constitutions contain similar provisions pertaining to the equal protection of the law. Each of the Courts treat the delegation of legislative power in a similar manner. Each exercises the power of judicial review. Neither Supreme Court will examine the validity of the election of either governors or legislators, and will not take jurisdiction of a case involving the disciplining of a legislator by the legislature. Both adhere to the doctrine of political questions.

On the other hand, as would be expected, there are many differences between the two constitutions. Illustrative of these is that the appellate jurisdiction of the India Supreme Court is carefully defined in the constitution, whereas that of the American Court is left to the discretion of Congress. Although India is also a country federal in form, it has only a single system of state courts with a national Supreme Court at the top. Once the Supreme Court accepts a case from the state courts, however, it exercises jurisdiction over the entire case. The Indian Court is empowered to render advisory opinions. The American Constitution provides for free speech, but that of India limits this right. The Indian Constitution allows judges wider latitude when punishing summarily for contempt of court.

Readers picking up Justice Douglas' book might do so for three reasons. Unfortunately, the book does not satisfy any of them. Lay persons, wishing to learn something about the American Constitution and its law, will not obtain such knowledge from this book, for it is doubtful they will read beyond the first chapter. Justice Douglas is well known for his ability to present complex legal points in an easily understood manner — and he does so here. Unfortunately, he appears to be much less effective than he really is, for he chose to stud his text with citations to the U.S. Reports, Congressional hearings and other sources. Legal style calls for such authoritative references in a brief or a court opinion, but in a book that might be intended for lay readers they serve only to destroy the continuity of the prose.

Conceivably, this book might be used as a means of reviewing material already known. However, disappointment will follow here, too: first, because the study is incomplete in its coverage (e.g., Chapter 4, entitled "Legislative Prerogatives," is almost entirely an examination of Con-

gressional investigating committees and their abuses — and nothing else), and second, because there are easier methods available for making such a review.

Finally, there are those (as this reviewer) who might hope to learn something about Indian constitutional law. Expectations fall short here, too, for one has the feeling that the story is not complete. The author cites many Indian court cases, but too often he refers only to the text of the Indian Constitution. It has often been said that it is impossible for the stranger to get a picture of the American constitutional system merely by reading the American Constitution. For example, as Justice Douglas himself notes, the constitutional fiat, "Congress shall make no law abridging the freedom of speech" has not kept the Court from approving Congressional abridgment under certain conditions. One suspects that the six years of Indian constitutional law the book covers is simply too short a time to be billed as "Studies in Indian Constitutional Law."

All in all, here is an example of lectures that might well be left spoken and not transcribed to the printed page.

FELIX RACKOW*

* Assistant Professor of Political Science, Western Reserve University.