

WILLIAM HOWARD TAFT AND HIS OVERLOOKED CONTRIBUTIONS TO THE AMERICAN LEGAL SYSTEM

BY C. ELLEN CONNALLY

If you mention the name William Howard Taft, most people are quick to respond: Wasn't he the fattest president? Those with more knowledge of presidential history will recall that in 1910 Taft was the first president to throw out a ceremonial pitch at a major league baseball game. But there are other interesting facts about our 27th President relating to his time on the Supreme Court that have been overlooked.

Taft was the first president to have an automobile, changing the White House stables to garages. He was the first president to use the Oval Office; the first president to play golf as a hobby; the last to have facial hair and the first buried in Arlington National Cemetery.

Of the 26 lawyers who became president, Taft was the only one to have experience in the judiciary. And, of course, he was the only person to serve as both president and Chief Justice of the United States. His love for the judiciary and his desire to be chief justice was evident throughout his career and impacted his presidency.

During his six years as president, Taft made six appointments to the United States Supreme Court, setting the record for a one term president. Having turned down three offers of appointments to the Supreme Court from his close friend Theodore Roosevelt, Taft was in the awkward position of naming others to the post that he had dreamed of all his life.

Several Taft biographers assert that upon the death of Chief Justice Melville Fuller, in 1910, Taft planned to appoint former New York governor, Associate Justice Charles Evans Hughes as Chief Justice. Biographer Jeffrey Rosen argues that "Taft could not bring himself to appoint the forty-eight-year-old dynamo, whose youth and perfect health suggested that he would outlive Taft." In a last-minute switch, Taft elevated Hughes' colleague, Associate Justice Edward Douglas White, who at sixty-five, was the oldest chief justice ever nominated. Taft, ever hopeful of becoming chief justice, was hedging his bets.

Never losing sight of his dreams of the Supreme Court, when Taft was sworn in as president, he broke with the tradition of using a family Bible, selecting the Supreme Court's century-old Bible. When he returned it to the court's archives, he wistfully remarked that if he were ever sworn in as chief justice, he would use the same book.

Graduating from Yale in 1878 — second in his class — and from the University of Cincinnati College of Law in 1880, Taft, a native of Cincinnati, started his legal career as an assistant county prosecutor in Hamilton County. In 1887, at age 30, he became a judge of the Superior Court in Cincinnati (comparable to today's Common Pleas Court) thanks to an appointment and the influence of his father, Alphonso who had served as Attorney General under President U. S. Grant. Taft was subsequently elected to a full term, the only office to which he was elected before becoming president.

In 1886 he married Helen Herron Taft, daughter of a politically connected Ohio family. As a teenager she visited the White House and had dreams of being first lady. Her encouragement, support and ambition pushed Taft up the political ladder throughout his career.

In 1890, with some reluctance, Taft accepted an appointment from President Benjamin Harrison to serve as Solicitor General of the United States. It was during this time that he made the acquaintance of Theodore Roosevelt — a bromance that would change American history.

In 1892 Harrison appointed Taft to be a Judge of the Sixth Circuit Court of Appeals. At 34, Taft was the youngest person ever appointed to a federal appeals court. He described the eight years served on that court as the happiest days of his life.

But when duty called Taft resigned his lifetime judicial appointment and accepted an appointment from President William McKinley to serve as Chair of the Philippine



Islands Commission. He would later serve as the first governor-general of the Philippines. In both capacities he demonstrated administrative ability. Being distant from Washington, however, he could make decisions on his own — as he did as a judge.

When Theodore Roosevelt became president after the death of William McKinley, Roosevelt named Taft Secretary of War. He served admirably in the role, as Roosevelt's political handyman and all-purpose trouble shooter, frequently representing the President on foreign missions and playing a major role in the construction of the Panama Canal. When Roosevelt was away from the White

House, Roosevelt felt confident that the portly Taft was “sitting on the lid” to forestall trouble while he was absent.

With Roosevelt’s announcement at the beginning of his term in 1905 that he would not seek re-election, Roosevelt named Taft his heir apparent. Taft easily obtained the Republican nomination and handily defeated Democrat William Jennings Bryan in the election of 1908.

But Taft was never happy as president. When speaking of his presidency in 1925, he told a friend that “in my present life I don’t remember that I ever was president.” Biographer Lewis L. Gould argues that Taft’s experiences on the bench were crucial to his political vision. He disliked the rough and tumble of partisanship, preferring the quiet of the study. Due to his lack of previous experience in political office, he lacked the professional skills and personality traits gained by others who had held political office. As president he consulted few people, weighed his options in isolation, and rendered political judgments as he had once delivered verdicts. With his heart always in the law, he surrounded himself with lawyers — six members of his cabinet were corporate lawyers.

Biographer Judith Icke Anderson argues that Taft reached his maximum weight of 340 pounds during his presidency due to an eating disorder stemming from his dislike for the position. He frequently traveled which allowed him to be absent from the White House for long periods of time. He played golf, almost daily, which he said took his mind off the pressures of the office.

When he was defeated in the election of 1912, largely due to the third-party candidacy of Roosevelt, Taft went to Yale to serve as a law professor, supplementing his income by giving speeches. It was a life in the law that he was happy to return to.

In 1921, with the death of Chief Justice White, fellow Ohioan, Warren G. Harding appointed Taft to the position that he sought his entire life — Chief Justice of the United States. After the ceremony Taft was quoted as saying “this is the happiest day of my life.” He was returning to the profession that he truly loved and was likely best suited for.

In considering Taft’s contributions to the Supreme Court, the first one stems from his days as solicitor general. As solicitor general Taft introduced the noble practice of “confessing error.” Simply put, this is the procedure whereby the government notifies the Supreme Court that, because of constitutional

or legal violations, the government should not have won its case. As Taft biographer Jeffrey Rosen states “The tradition of solicitors general ‘confessing error’ continues to this day, and it is a tribute to Taft’s honesty and his fervent belief that all conduct by the executive branch should conform to the Constitution and laws of the United States.”

As Chief Justice he had the ambitious vision of reforming the structure of the entire federal judiciary, making it equal in independence, power and dignity to the White House and Congress. He eliminated antiquated court procedures and streamlined court operations. He persuaded Congress to establish a judicial conference of federal appellate judges, led by the Chief Justice, a system that exist to this day.

He also created the Conference of Senior Circuit Judges, providing for the formal mechanism by which members of the federal judiciary could establish national administrative policies, provisions for the temporary reassignment of judges and recommendations for legislation.

Although he was always reluctant to petition Congress as president, as Chief Justice he encouraged the passage of the Judiciary Act of 1925 which gave the Court discretion in hearing cases and allowed it to focus on constitutional issues rather than being forced to hear mandatory appeals or less consequential disputes.

As Chief Justice, Taft emphasized teamwork among the associate justices and did not appreciate dissents, especially public dissents. During his eight terms on the court, in which he wrote 294 decisions, he dissented twenty times and submitted written dissents in only four cases.

Taft was the mastermind behind the building of the Supreme Court Building. He had long complained about the cramped quarters that

the Supreme Court utilized in the basement of the capital building. In 1928 Congress allocated money for construction of a new building. At the groundbreaking for the new building in 1932, Taft’s photograph was placed in the cornerstone. Chief Justice Charles Evans Hughes, having finally achieved the position, thanks to President Herbert Hoover, paid tribute to his predecessor by saying “... we are indebted to the late Chief Justice William Howard Taft more than anyone else. This building is the result of his intelligent persistence.”

In the ranking of presidents, Taft is generally described as mediocre. His defeat in 1912 was not a personal defeat — it was more of a relief. But his activism as a Chief Justice, far different from his relative lethargy as president, changed the federal judicial system to what it is today. For that, Taft should be long remembered.

Sept. 15, 2022 marked Taft’s 165th birthday.

Former Gov Bob Taft was kind enough to read several drafts of this article and made suggestions. Bob Taft is now a professor at the University of Dayton.



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