

## CHIEF JUSTICE WILLIAM HOWARD TAFT

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*Delivered at the Yale University ceremonies commemorating the centennial of the birth of William Howard Taft.*

WE commemorate a centennial. In an arbitrary sense, the passage of a hundred years, like any other unit of measure, is in itself neither important nor unimportant; its only significance derives from the transactions and changes to which it is applied. But, from the standpoint of perspective and, more especially, as a review of the course of a dynamic country which, by history's reckoning, still is young, but which within ten decades has attained the position of foremost influence in the free world, it is a long period ponderous with implication. The population has grown from less than 32,000,000 to more than 165,000,000; it has been a time of extraordinary mechanical and scientific progress; abroad, old civilizations have fallen and new societies take their place; ancient values have been tested and some have been dismissed and some revised; the world has grown smaller in every way. Considered in these terms the century, and the seventy-two years which William Howard Taft spent in it, assume stature, dimension and character.

Apart from the pervasive personality, the Taft story is a review of the compilations of Martindale, the Ohio Blue Book, and the Official Register of the United States. Actually, it is an odyssey, the narrative of a long journey beset with detours, delays, distraction and a sometimes receding destination. It is a tale of adventure, filled with augury; there are formidable, even mythological adversaries to overcome; there is imperious duty which long denies release; there is disappointment cheerfully suppressed; there are heroic compulsions, strivings, exertions; there are majestic compensations and the ultimate attainment; always there is the beat of a great heart and the sound of gentle laughter. If fate served a *duces tecum*, Providence for a season intervened.

Let a visiting Englishman, Mr. Charles Dickens, set the stage:

"Cincinnati," he wrote, "is a beautiful city; cheerful, thriving, and animated. I have not often seen a place that commends itself so favourably and pleasantly to a stranger at the first glance as this does: with its clean houses of red and white, its wellpaved roads, and footways of red tile. Nor does it become less prepossessing on closer acquaintance. The streets are broad and airy, the shops extremely good, the private residences remarkable for their elegance and neatness . . . I was quite charmed with

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the appearance of the town and its adjoining suburb of Mount Auburn . . . Cincinnati is honourably famous for its free schools, of which it has so many that no person's child among its population can, by possibility, want the means of education . . . The Judges here were gentlemen of high character and attainments . . . The society with which I mingled was intelligent, courteous, and agreeable. The inhabitants of Cincinnati are proud of their city . . . and with good reason."

Project the scene a few years to September 15, 1857, and be present at the birth of a Yale man. The family is "intelligent, courteous, and agreeable." Like those other New Englanders, the Adamses of Massachusetts, its sons, in successive generations, devote themselves to public service. The father is one of those Judges "of high character," who may, or may not recall the fact that this is the fiftieth anniversary of the close of the Burr conspiracy trial. The mother, if her thoughts stray from her immediate surroundings, may remind herself that little Will must share the date of his birth with his elder, Mr. James Fenimore Cooper, also a Yale man.

The child grows; he attends those excellent "free schools," and in due course, graduated from Woodward High, he is dispatched to the College traditional with his clan where, to the tune of *Mr. Dooley*, he learns to sing—

"O Mister Eli! Oh Mister Eli!  
You've seen some famous people graduate,  
But still the great Class, the up-to-date Class,  
Is seventy-eventy-eventy-eventy-eight!"

But he acquires knowledge even more edifying; he wins prizes and honors. As a freshman, he achieves a scholarship and a premium for the solution of mathematical problems. As a sophomore, he distinguishes himself in English composition for both the first and the second term. As a junior, he demonstrates his virtuosity and fecundity, at the Battell Chapel, on March 22, 1877, with an oration on *The Vitality of the Democratic Party*, and receives an award of ten dollars for his pains. As a senior, he delivers the Latin Salutatory. He is master of ceremonies at the freshman class supper, given at the Crocker House, New London, June 23, 1875. He pledges the forthcoming vacation, at the junior banquet, in the Hotel George, Black Rock Beach, June 20, 1877. He proposes the toast to the senior year, at the Grove Palace, Savin Rock, on the evening of June 19, 1878. He is admitted to several Greek-letter societies, including Phi Beta Kappa. He is a member of Skull and Bones and of Linonia. He affiliates himself with several eating clubs. He is very popular. Perhaps he is so much loved because there is of him so much to love. It is written of that Class that "the average weight is 151.47 pounds. Our heaviest man, W. H. Taft, weighs 225 pounds, and is without an equal."

His degree earned and bestowed, he returns to Cincinnati. He is there on the eve of his twenty-first birthday. He is writing to an aunt, acknowledging a draft for twenty dollars. He tells her that, with his "mother's approbation," he will expend the present on the purchase of a pair of "sleeve buttons and a

locket, all black and white onyx set solidly in gold." He will have his "initials engraved on each of them," and it is certain that he will "always remember the giver." He continues:

"Today is the 14th and in as much as the law recognizes no fractions of a day, by law I am able to vote, to make a will or do any thing else which becomes a man. It hardly seems possible that I have arrived at manhood for I feel like a boy yet. Manhood doesn't properly come I think until one is thirty years of age.

"For the last month I have been reading law. It isn't as pleasant as one's fancy might paint it. The heat too has been so overpowering as to prevent hard study. However the fact of being in the office and in the midst of business has the effect of making me absorb some of the practical working of the law."

The weather changes; he masters his profession—the pilgrimage is begun.

He enrolls in the Law School of Cincinnati College and emerges in May 1880, dividing first honors and holding an LL.B. He is admitted to the Bar and enters the office of his father. For a time he reports the proceedings of the Courts for the *Star-Times* and later for the *Commercial*. In January 1881, he is appointed Assistant Prosecuting Attorney of Hamilton County, an office which he resigns a year later to become Collector of Internal Revenue of the First District of Ohio, by appointment of President Arthur. In March 1883, he resumes private practice in association with Major H. P. Lloyd, lately a partner of his father who has gone to Europe as Minister to Austria-Hungary. In January 1885, he becomes Assistant County Solicitor for Hamilton County simultaneously continuing his general practice. In March 1887, he is appointed to fill out an unexpired term as Judge of the Superior Court of Cincinnati, and in the following April he is elected to the full five-year term by a majority of more than five thousand votes.

In September 1889, Governor Foraker addresses His Excellency, the President, with respect to the vacancy on the bench of the Supreme Court of the United States, occasioned by the death of Mr. Justice Stanley Matthews, formerly of Ohio:

"Allow me to recommend to you William H. Taft, now one of the Judges of the Superior Court of Cincinnati. Judge Taft is a man of exceptionally good qualities for judicial work. He is well-educated, a thoroughly equipped lawyer, and a judge of some three years experience, who in that time has given to the bar of Cincinnati, the highest degree of satisfaction. He is a man of strong physique, of positive convictions, fine address, and in every way well adapted to fill the place with credit, both to himself and to your administration. His appointment would be satisfactory to an unusually high degree, to the Republicans of this state, and no Democrat could justly criticize it."

But the recommendation does not prevail, and the President's failure to accept it may be set down as the first deferment. Instead, Mr. Taft, in 1890, is appointed by President Harrison Solicitor General of the United States. In that office, he appears on behalf of the Government in a number of important

cases, among them the *Bering Sea* case, the case involving the validity of the McKinley bill, and the case revolving around the action of Speaker Reed in counting a quorum of the House of Representatives. On March 17, 1892, he is commissioned United States Circuit Judge for the Sixth Circuit, and a year later succeeds to the post of Senior Judge of that Circuit. By June 1896, he is Dean of the Law Department of the University of Cincinnati, and when it is combined with the older Cincinnati Law School, he becomes Dean of the now-united schools. America is extended into noncontiguous territories, and early in 1900 William McKinley appoints Mr. Taft president of the United States Philippine Commission. On July 4, 1901, he becomes Civil Governor of the Islands.

He is in Manila in the autumn of 1902 when Theodore Roosevelt invites him to become an Associate Justice of the Supreme Court. By way of acknowledgment, Mr. Taft dispatches a long cable, which reads in part:

"Great honor deeply appreciated but must decline. Situation here most critical from economic standpoint . . . Look forward to time when I can accept such an offer but even if it is certain that it can never be repeated I must now decline."

On that same day, he confides to the Secretary of War, Mr. Root: "I long for a judicial career but if it must turn on my present decision I am willing to lose it." Mr. Roosevelt, however, is adamant. He writes his "dear Will," presenting beguiling arguments and friendly persuasions:

"I am awfully sorry, old man, but after faithful effort for a month to try to arrange matters on the basis you wanted I find that I shall have to bring you home and put you on the Supreme Court. I am very sorry. I have the greatest confidence in your judgment; but after all, old fellow, I am President and see the whole field. The responsibility for any error must ultimately come upon me, and therefore I cannot shirk this responsibility or in the last resort yield to anyone else's decision if my judgment is against it."

For a time it is touch-and-go. The Governor reports, in a private message to his family, that his wife is "disappointed that I should be shelved on the bench at my age," but, in the end, Taft's obstinacy proves superior to T.R.'s; he is allowed to remain at his post a while longer. His mother's aspirations approve his choice; she writes:

"You are doing good work in an honest way that satisfies your conscience—what no one else could do so well—not for glory but for your own satisfaction. Your declining the appointment . . . has made a great impression, calling forth encomiums from all sorts of people. Even Carnegie who is a conspicuous *Anti* Imperialist sets you up as a hero . . . That you are to become President seems to be a foregone conclusion . . . You know Mr. Conkling said in reference to the Supreme Court, that he 'preferred some other mode of burial.' You are too young to be content with that inactive life of hard grinding work, with limited means in proportion to the style of living expected. I would rather see you fighting corruption in the Senate or winning prizes in the open arena at the Bar."

But eventually he is recalled to Washington where, as Secretary of War, he administers three great "trusts": the Army, the Islands, and the Isthmian Canal Commission. From his home on K Street at seven o'clock in the morning of March 14, 1906, he writes an earnest and anxious letter to the President, reviewing his recent history and explaining his attitude toward the most recent offer of an Associate Justiceship:

"I have said to my wife several times that I had become so absorbed in the work that I had concluded to stick to it and not seek at your hands or accept any appointment to the Bench unless you offered me the Chief Justiceship which is so great an office that I could not resist the temptation to accept it whatever the considerations advanced to oppose my taking it. In so saying and determining, I knew that I was probably giving up the hope and ambition of my life to be on the Supreme Bench, but I was willing to accept the chances. In my heart, I felt that if your administration were to end and my present trusts were to be taken from me and given to another, I should prefer then not to go back to Cincinnati and practice law but rather to be on the Supreme Bench as an Associate Justice. Still I had made up my mind cheerfully to go back to the practice and let the future take care of itself. I may here allude to a phase of the situation which many deem to be of importance, to wit the prospect of my being nominated and elected President. You know, Mr. President, that I am sincere in saying that in my judgment the prospect is most remote and second that great as the office is, my personal preference is for a judicial rather than a political future. I know that you think the probability of my nomination and election much greater than I do and that you would be gratified if they could be brought about, and that if you thought that I had presidential ambitions you would not press upon me the appointment to the present vacancy."

Theodore Roosevelt acquiesces; he tells Mr. Taft:

"I think I have been in error as to your feeling. You say that it is your decided preference to continue your present work. This I had not understood . . . As I see the situation it is this. There are strong arguments against your taking this justiceship. In the first place my belief is that of all the men that have appeared so far you are the man who is most likely to receive the Republican Presidential nomination and who is, I think, the best man to receive it, and under whom we would have most chance to succeed . . ."

Still, the relinquishment oppresses the spirit of Mr. Taft, who, privately soliloquizes:

"While the doctrine of probabilities would lead me to think that I shall have another opportunity to go on the Supreme Bench, I have a presentiment that this which I am now declining will be my last chance. If so, it will be a great disappointment to me, but I have made up my mind what my obligation is, and I presume I can get along."

Two years later he is in a happier mood. Five days ago, at Chicago, he was nominated for the Presidency by the Republican National Convention. Tonight he is at the New Haven Country Club, attending a class reunion. It is

a sentimental moment. The toastmaster, the Reverend George Louis Curtis is talking; he is saying:

"There is one here tonight whom we all delight to honor, whose membership is of itself sufficient to make our Class historic, and whose presence here makes this Reunion memorable. He was nominated by our Class twenty years ago for the highest office in this country. We hesitated only into which of the two positions of greatest prominence, the President or the Chief Justiceship, to place him, as he was so admirably fitted for both. We have kept him in training ever since. How magnificently he has stood the test, both hemispheres bear witness . . .

"The best we can say of him is that, while the Pope praises, and the Kaiser courts him, he has remained true to what he then was, that the boy was father of the man, that he has fulfilled his early promise, and that he is just the same simple, strong, sane, sweet and lovable 'Bill' that he then was.

"It is a great thing to deserve well of one's country, for achievements made or service rendered. It may sound strange, but, in a sense, it is a greater thing to be worthy of such absolute confidence, such sincere affection, such wholehearted loyalty as the Class of Seventy-eight gives to this man, for we know him—know him better than even father or mother knew him . . ."

And now he is responding; he is saying that this is the great day of his life, and that no defeat, no disappointment, no sorrow can diminish the joy he feels in being with his classmates under the present circumstances. Then suddenly revealing the very essence of his nature, he exclaims:

"Fellows, I have come to the conclusion that the most important thing in life the only thing worth working for is character, and every man who strives nobly and does his appointed work the best way he knows how is the peer of any of us and deserving of equal honor."

His countrymen honor him with the Presidency. He spends four not too happy years in the White House, caught midway between what he considers the fires of radicalism and reaction. He succumbs to neither, and at the end of the term he is back in New Haven, this time as a resident. He is without bitterness and with customary cheerfulness announces that he has retired from the Presidency "with the full consent of the American people." He finds New Haven "a nice place with a great many comparatively new Professors and new Professors' wives." They constitute an agreeable "intellectual society . . ." He is "impatient to acquire enough knowledge, and to settle down to routine lecturing," because he feels that the discharge of duty after he has become competent will "be very pleasant here." He adds:

"I am to deliver nine popular lectures on government, in May, which it is very hard work to prepare for, but in the fall I begin two regular courses, one of lecture and instruction in the academic department, which will constitute two hours a week for the boys and will be marked and treated as any other study, and the same thing two hours in the law school a week, making four hours a week altogether. The latter subject is to be constitutional law also, but I shall treat it in a different way, giving

them the case system of study. Constitutional law is a difficult subject to teach, because it involves such enormous amount of reading. The cases are so long and indeed so numerous, on many questions, but it is a subject in which I have an intense interest and shall enjoy the preparation."

The busy years go by. On Christmas eve, 1920, he is away from home. Early in the morning he breakfasts on chipped beef, waffles, toast and coffee, with Warren Harding, the President-Elect. The two men discuss Cabinet possibilities. At one point, Mr. Harding abruptly changes the subject. Mr. Taft records the dialogue:

"By the way, he said, I want to ask you would you accept a position on the Supreme Bench. He said because if you would I'll put you on that Court. I said it was and always had been the ambition of my life. I had declined it twice . . . but I was obliged to say that now under the circumstances of having been President, and having appointed three of the present Bench and three others . . . I would not accept any place but the Chief Justiceship. He said nothing more about it and I could not make out whether he concluded that was satisfactory or whether he did not wish further to commit himself . . . I was non-plussed at the way in which he took me into his confidence and was nearly struck dumb when he asked me if I would go on the Supreme Court and felt I spoke in a confused way . . . I don't think it would hurt him in the country to make me Chief Justice but it would give some people a disgusted feeling."

The odyssey is nearly over. At the end of June, he is in Montreal, "per-spining," he said, "in as hot weather as any in Washington, sitting on a Board of Arbitration engaged in hearing closing arguments in a case to determine the value of the Grand Trunk Railway System," when word comes that the Senate has confirmed him as Chief Justice of the United States. To Mrs. Taft, he declares: "Well, that has happened which I have always doubted coming true." He is curious to know who the four were who voted against him, but he can guess. He must be off to Washington to take the oath of office because, as he remarks, "that begins my salary which is important." He "must confer with the Attorney General as to some legislation he has in mind about the courts." He must look about for a place to live. He must go to Philadelphia and resign an editorship. He must dispose of his New Haven home. It is a time of great activity.

But his exultation is tempered by misgivings. He writes:

"The task which I face is one of incessant labor and great responsibility. It involves a return to a kind of work in which I had acquired facility by eleven years of experience but that was twenty years ago. I must brush up on my knowledge of practice and cases, especially the modern ones. I shall stumble at first, but I hope after a reasonable time to acquire again that 'feeling at home' in the work which makes for dispatch and confidence in conclusion. I am hopeful that my executive experience in the Philippines, the War Department and the White House may stand me in good stead in the class of governmental cases which forms the bulk of those which come into the Supreme Court. Since I left the White House, I have spent eight years in teaching Federal Constitutional law . . . and one must study to teach, so that on the whole I feel that I am better

prepared to take up the duties, than had I been practising law in the interval because in a general practice U. S. Supreme Court cases are quite exceptional. However, it is going to be very hard for me, and I need the prayers of my friends to sustain me."

It is a remarkable expression of humility by a man more abundantly equipped by training and experience than any other who has ever sat on that Court, and as well qualified by temperament to lead as any of the Chief Justices. Congratulations poured in. The Secretary of State, Mr. Charles Evans Hughes, writes:

"I know that you will be a great Chief Justice, and I am glad that you will have this opportunity to round out in a unique manner your most distinguished career."

He replies:

"I cannot but think that I am to sit in a seat that would have been yours by right had you not responded to what you deemed the highest call of duty, in two instances."

He has not bitterness. He rejoices that the breach with Roosevelt long ago was healed. As to the disaffection, he writes: "Had he died in a hostile state of mind toward me, I would have mourned the fact all my life. I loved him always and cherish his memory."

In a strict sense, the Court years are not epilogue but climax. They are the culmination of a life devoted to the welfare of the country, to the strengthening of its institutions, and to the promotion of its interests throughout the world. Holmes used to say that "we live by symbols." In Taft's case, the symbol, the tag, the label usually attached to him is "conservative." It is certainly not of itself a term of opprobrium even when bandied by the critics, but its use is too often confused with "reactionary." Taft, like other Presidents, had his troubles with the "reactionaries" of his day, and when Congress, at his urging, enacted laws establishing the United States Postal Savings System and the corporate income tax, he was accused in some quarters of advocating socialism. As Chief Justice, his opinion in the *American Steel Foundries* case, upholding the right of picketing, and the one sustaining federal control of the Grain Exchange met with like rebukes from the same quarter. In any event, symbols have only relative significance and become meaningful only in the light of the times and the persons using them. Mr. H. G. Wells once said that "All Americans are, from the English point of view, Liberals of one sort or another."

Certainly Mr. Chief Justice Taft gives himself completely to his office. He is always absorbed in its problems and its exactions. His opinions, 253 of them, are to be found in 24 volumes of the Supreme Court Reports. They cover a great variety of subjects. They will be reappraised often as time passes. But we will never know exactly what his lifetime influence has been on our constitutional law because, as the only Ex-President ever to sit on the Court, he appointed five of its members and advanced another to the Chief Justiceship.

We will never know precisely what his contribution was to the Conference of the Court because that is something that is not recorded, and none of his Associates live to tell us. But we do know that his sense of judicial responsibility, his innate fairness, his jovial disposition, and his devotion to the Court as an institution commanded the respect and affection of his Associates who were of such different views. His outstanding contribution is, perhaps, his constant advocacy of judicial reform and Court reorganization, giving it discretionary power to take up only the most important cases. The calendar becomes manageable. The two-year backlog is wiped out, and the foundation laid for current calendars to this day. He sponsors the legislation for and organizes the Senior Judges of the Circuits into what has since become the Judicial Conference of the United States for a more efficient administration of Justice throughout the federal system.

But the Justices labor under difficulties. In the summer of 1925, Mr. Taft informs Senator Reed Smoot:

"We have . . . come . . . to a situation where a majority of the Court is strongly in favor of the construction of a separate building for the Court. Most of the Judges are obliged to have their offices and official studies in their own houses or apartments. As Chief Justice, I have no office at the Capitol and must use the Conference Room and Library of the Court to meet any persons who come to see me at the Capitol, either officially or otherwise. Justice Stone is most embarrassed now by the inability to secure a decent room for himself at the Capitol where he can have his Law Clerk and Secretary do his work. I have pleaded with the Committee of the Senate having control of this matter, and have not been able to secure a proper room for him. The records of the Clerk's office are piling up in such a way as to prevent their being housed in an accessible place. The members of the Bar of the Supreme Court have no place to meet or confer except in the crowded offices of the Clerk. The Marshal's office is greatly congested with his employees. The Library of the Court is so crowded that the shelves have to be carried up to the ceiling and the books reached upon step-ladders. The place which has been usually selected by previous promoters of a separate building for the Court is the square corresponding to that of the Congressional Library on the north side of East Capitol Street. I hope that no effort will be made to unite other Courts or offices in a building with the Supreme Court. It seems to me that that Court, as the head of the Federal Judiciary, and, in a sense, the head of the Judiciary of the Nation should be confined to the uses of that Court. . . . I don't know of course what its cost would be, but with the authority of the Court, I write to you to ask your attention to the matter and to know what you think the prospect would be for such legislation."

At the end of February 1927, he returns to the subject in a letter to his daughter:

"Congress is dying. I have not got what I wanted but I did get through the \$1,500,000 to buy the Supreme Court lot. I think this fastens the project to the Government so that the building will come. I have had to fight for it from the beginning. My two predecessors were against it and so are four of my colleagues. The others were not enthusiastic but I car-

ried them with me. Then I had to get the House and Senate. I had one supporter who has been urgent not because he was interested in the Court but because he wanted the space we occupy for the Senate. We have been compressed into insufficient and inadequate space for some years, and it was shortsighted of those in our Court to oppose it. They did not look forward or beyond their own service in the Court as to its needs. After the condemnation proceedings are begun, we must then look for adequate appropriations for the building. We hope that Cass Gilbert who has already drawn plans which seem adequate will be selected as architect. What I am praying for is that I can live and be on the Court until we can move in. But that is a good deal to hope for."

Actually, it is too much to hope for. But that unquenchable good humor never fails. In these days, he sometimes tells the story of a little girl who jumped across his path and said: "I know who you are!" He asked: "Well now, who am I?" She answered: "Why you are Chief Justice Taft and you used to be President Coolidge."

After a while his health—his robust health—fails him. He develops heart disease. On February 3, 1930, he withdraws from the Bench. From all parts of the world the mails bring messages of encouragement. One is written in the perfect script of Holmes, upon the official stationery of the Court. It reads:

"Dear Chief Justice

"We call you Chief Justice still, for we cannot quickly give up the title by which we have known you for all these later years and which you have made so dear to us. We cannot let you leave us without trying to tell you how dear you have made it. You came to us from achievement in other fields and with the prestige of the illustrious place that you lately had held and you showed in a new form your voluminous capacity for work and for getting work done, your humor that smoothed the rough places, your golden heart that has brought you love from every side and most of all from your brethren whose tasks you have made happy and light. We grieve at your illness, but your spirit has given life an impulse that will abide whether you are with us or away.

Affectionally yours,

Oliver Wendell Holmes  
Willis Van Devanter  
J. C. McReynolds  
Louis D. Brandeis  
Geo. Sutherland  
Pierce Butler  
Edward T. Sanford  
Harlan F. Stone."

Such assurances are powerful therapy; they soothe pain, they are priceless precious. But, within a month, as was said of another great American, Mr. Chief Justice Taft "belongs to the ages." Yet the spirit which gave a purpose to his life abides still, always looking forward and beyond its own service. And so it seems to be peculiarly fitting that in Washington the massive structure which bears *his* name should be a bridge across a beautiful wooded ravine named in keeping with his granite-like character, Rock Creek.