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"I love judges, and I love courts:" Chief Justice William H. Taft and reform in the federal judiciary.

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“I Love Judges, and I Love Courts:” Chief Justice William H. Taft and Reform in the Federal Judiciary

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During his time as Chief Justice from 1921 to 1930, William Howard Taft transformed the federal court system from a clunky, localized nineteenth-century institution to a national institution of efficiency, rigor, and clarity. Taft not only proposed two major judicial reform bills, but he also improved the judicial management of the federal courts and promoted the unity of his own Court. Taft redefined the role of the chief justice in an unprecedented manner, characterizing the position as the true executive of the judiciary. These transformations enabled the Supreme Court to serve its true purpose: interpreting the 1787 Constitution and its amendments, especially the Fourteenth Amendment.

In order to interpret Chief Justice Taft's success, one must consider the historical context surrounding his tenure on the Court, why Taft took on the enormous task of reforming the federal courts, and how these changes shaped the federal courts for years to come. Taft achieved reform through a variety of methods unique to him, including employing his charm and networking skills, utilizing his experience as a jurist and politician, gaining support from his brethren on the Court, and using the larger culture of reform during the Progressive Era at the time to his advantage.

Taft expanded the power of the federal courts in various areas and expanded the power of the chief justiceship. However, this expansion raises a central issue: whether or not Taft stepped outside of the power granted to him as Chief Justice of the Supreme Court to create this change. It is true that the federal courts needed structural reform; the crowded dockets and inefficient strategies used by federal courts delayed the delivery of decisions, which according to Taft, was

an outright denial of justice.[1] The way in which Taft brought reform to the federal court system was not an overextension of his power. However, it cannot be denied that Taft engaged in reform partially out of self-interest, but not necessarily in a negative or self-aggrandizing fashion. His love for the judiciary was obvious, and serving as Chief Justice proved his greatest joy in life.

A Life Chasing the Bench: William Howard Taft 1857-1930

To this day, Taft is the only person in United States history to serve as both the president of the United States and the Chief Justice of the United States Supreme Court. His legacy, however, is not limited to these two positions. Born on September 15, 1857 in Cincinnati, Ohio to Louise and Alphonso Taft, Taft grew up in a large family of moderate means in a suburb of Cincinnati. In time, he left Ohio to attend his father's alma mater, Yale University, for undergraduate studies. His popularity and reputation began there where his classmates believed him to be the most admired and respected man in his class.[2] Once he graduated, it was no question that Taft would go on to study law. It was a family tradition, considering that his father and all of his brothers attended or planned to attend law school. Compared to the rigor of his undergraduate courses at Yale, "the pace for Will Taft dramatically lessened in intensity while he

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[1] William Howard Taft. "Three Needed Steps of Progress," *American Bar Association Journal* 8, (1922): 34.

[2] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative.* (Cambridge: Cambridge University Press, 2012), 7-8.

was at law school."[3] In 1880, he graduated from Cincinnati Law School and was admitted to the Ohio bar in the same year.

Taft remained in Ohio to begin his career, starting out as "assistant to the Cincinnati prosecutor" where he served barely a year.[4] Thanks to his father's prominent political status in Ohio and the fact that "Will Taft had no enemies,"[5] in January 1882 President Chester A. Arthur offered Taft the post of collector of internal revenue in the federal district headquartered in Cincinnati.[6] A job removed from his training as a lawyer, Taft felt pressured to accept the position because of his father's political status, as well as the fact that the president of the United States offered Taft a position at such a young age. Fresh out of law school, Taft lacked a drive to pursue a serious career in the legal field. He was undeniably bright, however, Taft attended law school much to his father's prodding and pushing rather than out of his own desire. Taft's predetermined education contributed to his initial lack of interest; nonetheless, "Will Taft in time would happily embrace a career in law in the judiciary."[7]

In fact, despite his future career path, Taft began to resent politics as tax collector. He found the work "uncongenial and . . . sometimes demeaning as well."[8] He met the realities of the

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[3] Ibid., 9.

[4] Ibid., 10.

[5] Ishbel Ross, *An American Family: The Tafts, 1678 to 1964.* (Cleveland: World Publishing Co., 1964), 8-9.

[6] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 10.

[7] Ibid., 8.

[8] Ibid., 11.

machine politics of Ohio, not uncommon in the late nineteenth century, head on, and found it undesirable. He made clear that he "would have no part of any corrupt dealings," and that he might overlook it in others, but never in himself.[9] Taft had no interest in the details of politics, corrupt or not, simply because the process and practices did not appeal to him. He even went so far as to proclaim that "'Politics . . . make me sick.'"[10] Unsurprisingly, Taft again held this position for a short period of time, ending it when he "convinced President Arthur of his real desire to begin the 'active practice of law,' and his resignation was accepted without rancor."[11]

However, within two years of resigning as tax collector, Taft found himself in his next major life change. In 1884, his future wife, Nellie Heron, became the main focus of Taft's life. They married in 1886, and "Until his death almost forty-four years after their marriage, Taft never wavered in his total devotion to Nellie or his total need for her encouragement and support."[12] Taft's ambitions were clear from the start; he had always aspired to take center seat. Nellie, however, had a much different vision for her husband.

From a young age Nellie dreamed of "marrying a future president."[13] Growing up, the relationship between Nellie's parents provided evidence that a wife could influence her

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[9] Ibid., 12.

[10] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," *American Bar Association Journal* 55 (1969): 35.

[11] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 12.

[12] Ibid., 15.

[13] Carl Sferrazza Anthony, *Nellie Taft: The Unconventional First Lady of the Ragtime Era.* (New York: HarperCollins, 2005), 82.

husband's career in a less than positive manner. In fact, Nellie's father had longed to serve on the bench, but had to prioritize money over personal passions. As a result, Nellie's father lived a life of continual disappointment, and each painstaking refusal of appointment to the bench "convinced [Nellie] that the bench could never be anyplace for a husband whose wife had ambitions of her own for him and their family."[14] Much to Nellie's surprise, however, "whether it was Nellie working on her own again (while also managing a family) or working on his career, Will would never tell Nellie what to do with her life."[15] Taft respected Nellie as his intellectual equal and career partner. To Taft, Nellie's opinions were of utmost importance and he often looked to her for guidance, advice, and reassurance. Overall, Nellie "enjoy[ed] more influence over Will than anyone else within or without the Taft family."[16]

In January 1887 Governor Joseph Foraker appointed twenty-nine-year-old Taft to the Ohio Superior Court for an unexpired term of fourteen months, becoming one of the youngest judges to sit on that court. In April of the succeeding year, Taft won election and secured his full term.[17] Happy to be removed from Ohio politics, Taft cherished his time on the court as he crafted and researched his opinions. The Ohio Supreme Court confirmed his expertise as a jurist, mostly upholding Taft's opinions. Additionally, it validated Taft's long-term goals, allowing him to realize "that a judicial career would be the most rewarding goal he could attain."[18]

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[14] Ibid., 30.

[15] Ibid., 60.

[16] Ibid., 10.

[17] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 19.

[18] Ibid., 20.

However, in 1889 President Benjamin Harrison called Taft away from his treasured seat on the bench and offered him an appointment as the Solicitor General of the United States. Naturally, Taft moved to decline the appointment, but both Nellie and Taft's father encouraged him to accept the offer. The position of Solicitor General was not a simple one; it involved representing the United States in cases before the Supreme Court, advising the Attorney General, and even advising the President on certain occasions. All of these duties were "areas in which Taft previously had not needed nor acquired any expertise." Taft accepted the offer, again allowing himself to be persuaded to accept a "position he did not really desire."[19] In his two years as solicitor general, he "argued a total of eighteen cases before the High Court—winning sixteen of them."[20]

Another opportunity awaited Taft in 1892. Taft returned to his true calling by accepting an appointment by President Harrison to the Sixth Circuit Court of Appeals. Indeed, "for the next eight years, Taft found satisfaction and challenge in his work," and "wrote enough opinions to provide indications of his judicial values."[21] Revealing his judicial philosophy of classical legal thought, "Taft left his mark on the law especially in the fields of labor relations and industrial regulation."[22] On the Court of Appeals, "Taft moved the law forward from its current position. If his opinions can be described as conservative, they represent a dynamic if not

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[19] Ibid., 25.

[20] Ibid., 26.

[21] Ibid., 29.

[22] Jonathan Lurie, *The Chief Justiceship of William Howard Taft* (Columbia: University of South Carolina Press, 2019), 2.

progressive conservatism, reconciling changing industrial conditions with long-held expectations of due process, precisely the goals of the Progressive Era."[23]

While Taft enjoyed his time on the Court of Appeals, Nellie's dream of marrying a future president dwindled. Nevertheless, Nellie's quest toward the White House was derailed when in 1900, President William McKinley summoned Taft to the White House. To both Will and Nellie's surprise, President McKinley "wished to appoint the Ohio jurist to the Philippine Commission," in which Taft served as chief civil administrator and later as civil governor.[24] Nellie confessed that "her husband's resignation from the circuit court was 'the hardest thing he ever did,'" yet on April 17, 1900, the Taft's set out for the Philippines.[25]

Hardly a year later, President Theodore Roosevelt extended an appointment to the Supreme Court to his dear friend Taft. In line with his personal character, dedication, and allegiance to his task at hand, Taft declined because he "felt a duty to the Filipino people at the time of economic crisis."[26] Roosevelt tried to appoint Taft to the Supreme Court again in 1906, except this time, Nellie "viewed Roosevelt's 1906 offer of an associate justiceship as an attempt to take Taft out of the running for president, and she insisted that he reject it."[27] Abiding by Nellie's wishes, Taft again rejected the opportunity to fulfill his lifelong dream.

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[23] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 33.

[24] Ibid., 39.

[25] Jeffrey Rosen, *William Howard Taft,* ed. Arthur M. Schlesinger Jr. and Sean Wilentz (New York: Henry Holt and Company, 2018), 32.

[26] Ibid., 37.

[27] Ibid., 41.

Nellie's dream of being married to the president began to take form in June 1908, when the "Republican Convention in Chicago nominated William Howard Taft to be its candidate for the president of the United States."[28] Taft hated campaigning, and "beneath a happy armor of avoirdupois he carried in his most sensitive heart a realization that he was not meant to be President."[29] Against his own inner desires, Taft won the presidency with "51.6 percent of the vote" thanks to the enthusiastic support of Roosevelt and the Republican Party.[30]

Taft's presidency is remembered as one of mediocrity, in which he "encountered a variety of setbacks and difficulties, as his judicial temperament made him a mundane contrast to the charisma and excitement of Roosevelt."[31] Taft employed judicial-based strategies while in the White House, where he "presided over cabinet meetings as if they were judicial conferences. He weighed all sides of an issue before reaching his verdict without consulting others. He based his decisions on legal rather than political considerations."[32] Much of Taft's agenda as president reflected his predecessor, and Taft vowed to "put President Roosevelt's policies on protecting the environment, prosecuting the trusts, and keeping the peace on firm legal and constitutional

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[28] Ibid., 42.

[29] Carl Sferrazza Anthony, *Nellie Taft: The Unconventional First Lady of the Ragtime Era,* 9.

[30] Ibid., 12.

[31] Lewis L. Gould, *Chief Executive to Chief Justice: Taft betwixt the White House and Supreme Court* (Lawrence: University Press of Kansas, 2014), 9.

[32] Jeffrey Rosen, *William Howard Taft,* ed. Arthur M. Schlesinger Jr. and Sean Wilentz, 56.

grounds."[33] Often putting constitutional principles above party matters, Taft's presidency also concerned free trade, tax reform, and foreign affairs—nothing out of the ordinary.

Taft's decline in health while in the White House reflected his loathsome attitude toward the position, considering Taft "had gotten very fat as president. He now weighed in the neighborhood of 350 pounds, and his blood pressure had soared to dangerous levels."[34] On the other hand, Nellie embraced her "role as first lady with enthusiasm and style," lavishly decorating the White House all while securing her reputation as an independent, intelligent, pro-suffrage First Lady.[35] To her detriment, Nellie suffered two strokes during her long-sought after White House years, further preoccupying the president.

In time, while Nellie recovered from both strokes, Taft was relieved of his presidential duties when Democratic nominee Woodrow Wilson defeated Taft in the election of 1912. Taft ran against both Wilson and his failed friend, Roosevelt, in which Taft "won the fewest electoral votes by an incumbent president," while Roosevelt split the vote and "won the most electoral votes ever received by a third-party candidate."[36] Taft welcomed defeat with open arms, and only "days after the election, Taft set off for a meeting in New Haven, Connecticut, where the president of Yale University offered him the Kent professorship of law on the spot."[37] Taft

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[33] Ibid., 70.

[34] Lewis L. Gould, *Chief Executive to Chief Justice: Taft betwixt the White House and Supreme Court,* 10.

[35] Jeffrey Rosen, *William Howard Taft,* ed. Arthur M. Schlesinger Jr. and Sean Wilentz, 61.

[36] Ibid., 104-105.

[37] Ibid., 105.

served as Professor of Law at Yale University from 1913 until his appointment to the Supreme Court.

On Christmas Eve, 1920, President-elect Warren G. Harding met with Taft and engaged in an extensive conversation. To Taft's relief, Harding asked the question Taft waited to hear his entire life: "'Would you accept a position on the Supreme Bench?'" Taft replied with an ultimatum of sorts, and responded, "'it was and always has been the ambition of my life' and explained why he turned down TR's earlier offers of such an appointment . . . 'I could not accept any place but the Chief Justiceship.'" Harding did not question Taft's request. However, Taft's position was not secured quite yet. At Harding's inauguration, Chief Justice Edward White still occupied the center seat despite serious illness and his expressed interest in holding the seat for Taft to "give it back to a Republican Administration."[38] Upon March's arrival, Taft grew restless, going as far as visiting the ailing Chief Justice. To Taft's disappointment, White mentioned nothing of retirement in Taft's visit; nevertheless, Taft would only have to wait two months longer. May 19, 1921 Chief Justice White died at the age of seventy-five. On June 30, Harding finally "sent Taft's nomination to the Senate, which did not even bother to refer it to the Judiciary Committee."[39] Taft's lifelong pursuit of the chief justiceship became a reality.

A Brief History of the United States Federal Courts and Federalism

Prior to examining Taft's reforms and the effects of these reforms, a brief overview of the history of the federal courts prior to Taft's chief justiceship and the federal courts' relationship with federal power is warranted. The ever-shifting nature of the United States federal courts

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[38] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 190.

[39] Ibid., 191.

contributes to the circumstances surrounding Taft's judicial reform movement, as well as the long-term effects of Taft's changes.

The debate surrounding the appropriate power of the federal judiciary has long been disputed, beginning with the Founders in the formation of the United States. Alexander Hamilton recognized this ongoing debate and addressed the power of the federal judiciary in the *Federalist Papers*, specifically papers 78 and 81. In Federalist 78, Hamilton deemed the judicial branch as the "least dangerous" of the three branches while defending the structure and function of the judiciary. He acknowledged that life tenure of judges and the appointment system seemed concerning considering it protected the judiciary from political manipulation and democratic accountability. Despite this criticism, Hamilton argued that this structure proved necessary to a republican style of government to prevent the judiciary from being overshadowed by the other two branches.[40] In Federalist 81, Hamilton addressed the inferior federal courts which may be established in the future by the legislative branch. He defended the necessity of the inferior federal courts, arguing that without such federal courts, the state courts would handle national issues improperly as a result of regional biases. He further defined the authority and jurisdiction of the federal courts, noting that the inferior federal courts were designed to handle cases of original jurisdiction, while the Supreme Court's appellate jurisdiction is of law and fact.[41]

Hamilton recognized that the Constitution established the structure and vague jurisdiction of the federal judiciary without truly defining its role or purpose in regard to the extent of power the judiciary holds. However, Hamilton "predicted 'Tis time only that can mature and perfect so

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[40] Alexander Hamilton, *The Federalist Papers* No. 78.

[41] Alexander Hamilton, *The Federalist Papers* No. 81.

compound a system, can liquidate the meanings of all the parts, and can adjust them to each other in a harmonious and consistent WHOLE.' Nearly two centuries later, observers are still pointing to the maladjustments and imbalance within the federal system."[42] Hamilton made his support for judicial review clear in Federalist No. 78, further upholding the idea that the Court must settle into its power.

Hamilton's political opponent, Thomas Jefferson, held a different view of the federal judiciary's power. Jefferson "thundered against the power of the Supreme Court and the construction it was putting upon the Constitution in exalting and broadening the national sovereignty and minimizing the power of the States. But it was all to no purpose, and he had the irritating disappointment of finding his own appointees . . . concurring in the views of [Chief Justice] Marshall and making the decisions of the Supreme Court consistent from the first in a Federalistic construction of the fundamental instrument of government."[43] Although support for a developing and expanding third branch was not agreed upon by the Founders, this debate suggests that Article III's vague verbiage was not only intentional, but was implemented to allow future generations decide how to interpret and apply the language of the federal judiciary.

Following the official founding of the United States, three stages of judicial federalism ensued as outlined in historian Edward F. Mannino's book, *Shaping America: The Supreme*

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[42] John W. Winkle III, "Dimensions of Judicial Federalism," *The Annals of the American Academy of Political and Social Science* 416 (1974): 75.

[43] William Howard Taft, "In Order to Form a More Perfect Union," in *The Collected Works of William Howard Taft: Volume V Popular Government and the Anti-Trust Act and the Supreme Court,* ed. David H. Burton (Athens: Ohio University Press, 2003), 89.

Court and American Society, with two stages leading to and including Taft's tenure on the Court. Ranging from roughly "1789 to the outbreak of civil war in 1860," the first phase of judicial federalism "sought to build federal judicial power and encourage the growth of American commerce under Chief Justices John Marshall and Roger Taney."[44] In the Court's earliest days, its focus on federal power consisted of protecting the federal taxing power, exercising jurisdiction over states, declaring state legislation unconstitutional, enforcing the supremacy clause, interpreting the powers of the federal government, and building and establishing national commercial law.[45] The power of judicial review as established in *Marbury* v. *Madison* (1803) served as the most expansive provision of the era, equipping the Court with a powerful tool extracted from the Constitution's vague outline of judicial power.[46] Marshall's legacy is reflected in this early period of the federal courts, establishing Marshall as a justice who prioritized and "kept Federalist principles alive long after the Federalist Party itself had disbanded."[47]

The first era of judicial federalism also dealt with the problem of slavery, further classifying slavery as a federal problem. The Court's infamous decision of *Dred Scott* v.

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[44] Edward F. Mannino, *Shaping America: The Supreme Court and American Society.* (Columbia: University of South Carolina Press, 2009), 2.

[45] Ibid., 9.

[46] *Marbury* v. *Madison*, 5 U.S. 137 (1803).

[47] Howard Gillman, "Party Politics and Constitutional Change," in *The Supreme Court and American Political Development,* ed. Ronald Kahn and Ken I. Kersch (Lawrence: University Press of Kansas, 2006), 144.

Sandford (1857) invalidated the Missouri Compromise, rendered slaves as property under the Fifth Amendment, and further denied the citizenry of African Americans whose ancestors were imported to the United States through the slave trade.[48] The reach of the federal judiciary in this case established unified, national case law regarding the status of slaves in the United States, further complicating the relationship between the states and the federal government in regard to slavery.[49]

Both Marshall and Taney provided significant contributions to the formation of national commerce and economic development. The Marshall Court paved the way for interstate commerce, "announcing an expansive definition of Article I, Section 8, of the Constitution, which conferred the power on Congress, among a long list of other subjects, 'to regulate commerce . . . among the several States.'"[50] This expansive reading in *Gibbons* v. *Ogden* (1824) established the foundations of the Commerce Clause, which has since been extensively broadened.[51] In addition, despite the fact that Taney's reputation as Chief Justice is stained from the egregious *Dred Scott* decision, "Taney is generally ranked by legal historians and other professionals as one of a handful of great justices . . . Taney's careful balancing of federal and states' rights was acclaimed in the commercial law area."[52] Taney's high ranking is best

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[48] *Dred Scott* v. *Sandford*, 60 U.S. 393 (1857).

[49] Edward F. Mannino, *Shaping America: The Supreme Court and American Society*, 32-34.

[50] Ibid., 46.

[51] *Gibbons* v. *Ogden*, 22 U.S. 1 (1824).

[52] Edward F. Mannino, *Shaping America: The Supreme Court and American Society*, 31.

reflected in *Charles River Bridge* v. *Warren Bridge* (1837).[53] In this case, the Court upheld the Warren Bridge Charter under the Contracts Clause, serving as a "break from the Marshall era's polestar interpretation of the Contracts Clause to protect the 'adventurers.' In its place a more subtle and nuanced view emerged, recognizing other interests," namely property rights, "worthy of protection . . . for a growing economy and a nation of diverse interests."[54]

The second era of judicial federalism spanned from 1865 to 1960, and "began as a period of relative passivity, in which the Court regularly limited federal and state regulation of all forms of commercial activity."[55] The federal courts' role then transitioned to the "almost exclusive responsibility for protecting rights" and civil liberties.[56] Prior to the inundation of cases regarding economic liberty, the introduction of the Civil War Amendments provided ample opportunity for a major shift in judicial federalism. The first major shift in this era came with the decision of the *Slaughterhouse Cases* (1873). Serving as the first interpretation of the Fourteenth Amendment, the Court established that the Privileges and Immunities Clause guaranteed rights in areas controlled by the federal government, limiting the reach of the clause. More specifically, the rights sought to be protected by the butchers bringing suit under the Privileges and Immunities Clause "were not rights of a citizen of the United States, and the Louisiana law was a valid exercise of the police power which" belongs exclusively to the States.[57] In addition

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[53] *Charles River Bridge* v. *Warren Bridge,* 36 U.S. 420 (1837).

[54] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 50.

[55] Ibid., 2.

[56] Alan Tarr, "The Past and Future of New Judicial Federalism, *Publius* 24 (1994): 65.

[57] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 63.

to *Plessy* v. *Ferguson* (1896), the majority in *Slaughterhouse* restricted the reach of the Fourteenth Amendment, unlike other major cases of the era.[58]

The Court then turned its attention to the "emergence and growth of industrial capitalism," further limiting the power of the federal and state government through the use of substantive due process.[59] Best exemplified in *Lochner* v. *New York* (1905), a prevailing judicial attitude from the late 1890s to 1937 placed emphasis on the idea that "the Fourteenth Amendment also provided *substantive* protections to corporations and other persons against arbitrary legislative action." In fact, in this period, "some 184 state laws were struck down under the Due Process and Equal Protections clauses of the Fourteenth Amendment."[60] Although Lochner-era decisions struck down regulations and limited the reach of the federal government, the judiciary still exerted federal power. Instead of handing down decisions that favored federal power in a broad sense, justices wielded federal power from the bench through legal reasoning and judicial activism. As Associate Justice Oliver Wendell Holmes Jr. argued in his dissenting opinion, the case had been decided on an economic theory with which a large portion of the country disagreed. By inserting its own set of opinions, the majority perverted the meaning of "liberty" as used in the Fourteenth Amendment.[61]

The Court handed down the *Lochner* decision during the early stages of the Progressive Movement. As a result, Progressives and the public opposed the Court's decision, viewing it as

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[58] *Slaughterhouse Cases,* 83 U.S. 36 (1873).

[59] Edward F. Mannino, *Shaping America: The Supreme Court and American Society*, 75, 85.

[60] Ibid., 85.

[61] *Lochner* v. *New York,* 198 U.S. 45 (1905).

a judicial obstacle to social reform.[62] In time, it became clear that "*Lochner* stood at odds with certain other cases expressing a broader federal power to regulate harm through the commerce power, and in the next decade, there would be significant opportunities to rethink the impact of protection on citizenship."[63] Significantly, "*Lochner* did not usher in a reign of terror for social legislation."[64] In fact, only a few years after *Lochner*, the Court handed down two cases, *Muller* v. *Oregon* (1908) and *Bunting* v. *Oregon* (1917) that broke away from traditional Lochner-era rulings.[65] *Muller* sustained a maximum-hour law for women, while *Bunting* buried *Lochner* "without even citing it, upholding a conviction for employing a worker in a flour mill more than ten hours in a day without paying overtime."[66]

Although the downfall of *Lochner* seemed imminent, President Harding made four crucial appointments to the High Court during his short presidency. After Chief Justice White's death in 1921, Harding appointed Taft to take White's place at center seat. In 1922 Harding appointed George Sutherland and Pierce Butler to the Court, followed by Edward Sanford in

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[62] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 88.

[63] Carol Nackenoff, "Constitutionalizing Terms of Inclusion," in *The Supreme Court and American Political Development,* ed. Ronald Kahn and Ken I. Kersch (Lawrence: University Press of Kansas, 2006), 389.

[64] David P. Currie, *The Constitution in the Supreme Court: The Second Century, 1888-1986* (Chicago: The University of Chicago Press, 1990) 49-50.

[65] *Muller* v. *Oregon*, 208 U.S. 412 (1908) and *Bunting* v. *Oregon*, 243 U.S. 426 (1917).

[66] David P. Currie, *The Constitution in the Supreme Court: The Second Century, 1888-1986,* 103.

1923. Most notably, however, "two of his appointments—Sutherland and Butler—joined with two justices already serving on the Court—Willis Van Devanter and James McReynolds—to form what pro-New Deal commentators would call 'The Four Horsemen' for their apocalyptic opposition to government regulation of business."[67]

Adkins v. *Children's Hospital of District of Columbia* (1923) exemplified typical decisions favoring economic liberty carried by the Four Horsemen. In this case, the Court held that the guarantee of minimum wage to women and children employed in the District of Columbia violated liberty of contract under the Due Process Clause of the Fifth Amendment.[68] In his majority opinion, Sutherland revived the use of substantive due process, with *Lochner* forming "the cornerstone of Justice Sutherland's opinion."[69] In fact, even "Chief Justice Taft, a consensus builder who filed only four dissenting opinions in his eight years on the Court," dissented in this case, arguing that *Lochner* had been overruled by *Bunting*, and that no real difference existed between regulating hours and wages.[70] For the remaining tenures of the Four Horsemen, liberty of contract and substantive due process served as common judicial tools.

Trust busting also preoccupied a portion of the Court's attention in the second era of judicial federalism. Enacted on July 2, 1890, the Sherman Anti-Trust Act outlawed monopolistic business practices, stemming from concerns regarding various agrarian movements, the rapid

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[67] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 89.

[68] *Adkins* v. *Children's Hospital of District of Columbia,* 261 U.S. 525 (1923).

[69] David P. Currie, *The Constitution in the Supreme Court: The Second Century, 1888-1986,* 144.

[70] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 91.

growth of the railroad business, and interests favoring small businesses.[71] Beginning with *United States* v. *E.C. Knight Company* (1895), the Supreme Court has long debated the guidelines of the statute. Delivered by Chief Justice Melville Fuller, the Court declared the Sherman Act constitutional in *Knight*. However, the Court limited the reach of the Act by deciding that it did not apply to manufacturing; this decision allowed the monopolization of manufacturing to continue—in this case, refining sugar.[72] The decision in *Knight* again provided insight into the Court's attitude toward federalism: "Fuller's opinion stressed the importance from a federalist perspective of preserving some power in the states to regulate monopoly, stating that 'it is vital that the independence of the commercial power and of the police power . . . should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government.'"[73]

The Historical and Political Context of Taft's Supreme Court Tenure

Both from the bench and through separation of powers, the factors contributing to the balance of federal judicial power formed the context in which Taft would craft his reforms. The history of the federal courts provides the necessary context to measure Taft's exercised power as Chief Justice as contrasted to his predecessors. In addition to the historical context of the United States federal courts as a whole, the historical context surrounding Taft's Supreme Court tenure

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[71] George J. Stigler. "The Origin of the Sherman Act," *The Journal of Legal Studies* 14 (1985): 7.

[72] *United States* v. *E. C. Knight Company*, 156 U.S. 1 (1895).

[73] Edward F. Mannino, *Shaping America: The Supreme Court and American Society,* 94.

influenced various decisions made by Taft and his brethren as well as contributed to the outcome of the federal court reforms Taft pursued. Wedged between both World Wars and in a time of intense government expansion, the 1920s proved to be one of the most evolutionary and culturally rich eras in United States history.

Generally, citizens' lifestyle changes in the 1920s reflected "the new age of film, radio, motor cars, and consumer capitalism," and Americans had more leisure time than ever before.[74] The impact of the radio was profound, and for the first time in history "one person with a microphone could speak to many, influence them, and perhaps change their lives."[75] As a result, public interest was not as focused on politics in the early twenties as it was in the war years, and news of judicial reform proved uninteresting to news outlets and the population alike. Thus, Taft squeezed in reform without the intense scrutiny of the general population. Moreover, "public disinterest [in politics] was partially attributable to the recovery of the American economy which had begun around late 1923. Unemployment had fallen to 5 percent and average earnings had started to rise slowly."[76] With more spending money in their pockets, the release of wartime pressure, and increased opportunity for leisure time activity, the population had other interests to tend to rather than politics.

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[74] Niall A. Palmer, *The Twenties in America: Politics and History* (Edinburgh: Edinburgh University Press, 2006), 111.

[75] Tom Lewis, "'A Godlike Presence': The Impact of Radio on the 1920s and 1930s," *OAH Magazine of History* 6 (1992): 26.

[76] Niall A. Palmer, *The Twenties in America: Politics and History*, 111.

In contrast to stereotypical interpretations of the Roaring Twenties, Prohibition dominated 1920s popular culture. The Eighteenth Amendment banned the sale, production, and distribution of alcohol in the United States, while the 1919 Volstead Act enforced this ban. In addition to the cultural impact of Prohibition, it also "represented the greatest expansion of federal regulatory authority since Reconstruction."[77] Paired with progressive movements of the time, Prohibition expanded the power of the federal government contrary to popular culture expectations.

Prohibition followed the long-term efforts of the Temperance Movement, a moral-based crusade against intoxication and the negative effects of alcohol on society and the larger culture. Christian groups led the movement, "which believed that beer, bourbon, and other alcoholic drinks led not only to intoxication and addiction but the erosion of family bonds and the abandonment of Christian values."[78] A culmination of decades of campaigning, lobbying, and enlisting support through the Temperance Movement produced the Volstead Act; however, politicians were not united on the subject. In fact, "The *political* will for enforcement of the Volstead Act was also weak from the outset and disagreements cut across party lines. Pro-temperance progressives and some conservatives were happy to prod public morality along the 'right' path through federal legislation."[79] Eager to appease the growing movement, politicians, at face value, subscribed to the demands of the various temperance groups. In reality, however,

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[77] Robert Post, "Federalism, Positive Law, and the Emergence of the American Administrative State: Prohibition in the Taft Court Era," *William and Mary Law Review* 48 (2006): 2.

[78] Niall A. Palmer, *The Twenties in America: Politics and History*, 7.

[79] Ibid., 10.

politicians and the public alike were unsure of the new legislation, even outraged by its far-reaching qualities. A *New York Times* article from 1929 explains the sentiment surrounding the Volstead Act nine years after enactment:

> The Volstead act has not been enforced, and it is perfectly plain that it can not be except by such tyranny and cruelty as will destroy the spirit of a free people . . . It is no part of the duty of the State to enforce an unjust and unpopular law . . . Laws should be like clothes. They should be made to fit the people whom they are meant to serve. A wise and humane statesman would never undertake to enforce obedience to a statute which was met by the strong resistance of the nation.

The author of the article goes on to complain that all of those in favor of Prohibition were hypocrites, and that "in any country where people have any power, laws are often repealed by disuse."[80]

Political leaders themselves doubted the far-reaching nature of the Act, and "Available evidence suggests that . . . President [Coolidge], like Harding, Mellon, and William Howard Taft, doubted the wisdom of 'legislating morality' and considered the Volstead Act intrusive and unworkable."[81] Justices on both sides of the political spectrum on the Taft Court ruled in favor of Prohibition despite personal beliefs, which "contributed to the growing fear that the positive

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[80] Irving Fisher, "What Prohibition Has Done: Two Viewpoints: On the Results of Enforcement Since the Amendment was Adopted Ten Years Ago Professor Fisher and Clarence Marrow Reach Opposing Conclusions," *New York Times* (New York, NY), Jan. 27, 1929.

[81] Niall A. Palmer, *The Twenties in America: Politics and History,* 138.

law of Prohibition was somehow incompatible with deeply held national values . . . because it was proliferating wildly and increasingly detached from tradition and custom."[82]

In addition, as a result of the unprecedented reach of the Eighteenth Amendment and Volstead Act, "the nation lacked the institutional structures necessary independently to implement the Eighteenth Amendment."[83] As a result, citizens circumvented the law, opened speakeasies, bootlegged excessive amounts of liquor, forged prescriptions, and made their own alcohol at home.

Available evidence reveals that the Act achieved what was originally intended to a degree; however, it exacerbated other issues in urban areas. Prohibition violations varied by population density, with different strategies and viewpoints maintained in rural areas compared to cities. Rural populations assumed that Prohibition was a result of urban institutions, particularly saloons, believing that "saloon keepers encouraged drinking to excess," while "workers spent wages that should have been going to support their families."[84] As a result, rural inhabitants perceived their at-home drinking as morally acceptable, and "view[ed] their own continued drinking as legal and harmless."[85] The "Volstead Act outlawed naturally fermented cider and wine only if proven intoxicating," an ambiguous and difficult standard to police in

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[82] Robert Post, "Federalism, Positive Law, and the Emergence of the American Administrative State: Prohibition in the Taft Court Era," 72.

[83] Ibid., 6-7.

[84] David Kyvig, *Daily Life in the United States, 1920-1939: Decades of Promise and Pain* (Westport: Greenwood Publishing Group, 2002), 15.

[85] Ibid., 15.

rural areas. Most violations of the Volstead Act centered in urban areas and extended outward from city centers through smuggling, allowing bootlegging to become a "lucrative business in the 1920s since a substantial number of people, especially in big cities, were prepared to ignore the prohibition law."[86]

Prohibition also brought various issues to the federal courts, not only flooding their criminal dockets, but also presenting various constitutional questions. It "required progressives," on and off the bench, "to question the proper boundaries of the administrative state."[87] Additionally, federal district courts became burdened with criminal trials, and within a decade "prohibition violators accounted for over one-third of the 12,000 inmates of federal prisons while a glut of prohibition cases overloaded the courts."[88]

Conservative Republicanism dominated party politics of the twenties, with which Taft identified. He described himself as a "A lifelong Republican" and a "believer in 'progressive conservatism.' While this description may be less than accurate when applied to his later years as Chief Justice, it has some validity for his six selections to the High Court, as well as for his presidency as a whole."[89] Although not fully applicable to Taft's opinions on the Supreme Court, progressive conservatives placed "a strong emphasis on the rights of property, a deep attachment to liberty of contract, a distrust of regulatory legislation, and repeated emphasis on

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[86] Ibid., 17.

[87] Robert Post, "Federalism, Positive Law, and the Emergence of the American Administrative State: Prohibition in the Taft Court Era," 20.

[88] David Kyvig, *Daily Life in the United States, 1920-1939: Decades of Promise and Pain,* 1.

[89] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 120.

the limited power of the judiciary."[90] Throughout his career, Taft fell in line with all of these values, placing particular emphasis on the limited power of the judiciary as evidenced in *Adkins*.

In regard to his presidency, chief justiceship, and reform efforts, Taft preferred the explicit powers of the Constitution and leaned against implied powers. As opposed to his presidential predecessor, Theodore Roosevelt, Taft viewed the Constitution as a firm check on his authority, both as president and as Chief Justice; Roosevelt viewed the Constitution as a set of rules intended to be stretched to their limits. Other popular adherents of progressive conservative thought included "Robert M. La Follete, and George W. Norris" who "looked to government to ameliorate defects in the fabric of society."[91] All three of these politicians looked upon judicial activism with disdain, and preferred achieving reform through legislation or executive action.

The United States political landscape changed significantly when in 1920 women gained suffrage through the Nineteenth Amendment. This Amendment proved to be a monumental event that introduced the other half of the population to the political conversation in the United States. However, because of a variety of cultural and gender-based circumstances of the period, women did not produce high turnout rates at the polls until the 1930s. In fact, it was the "better educated middle class urban women" who rushed to the polls, leaving immigrant women and women of color behind. Realizing that the female vote still carried less weight than their counterparts, male politicians often turned away from women's issues, leaving suffrage as a

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[90] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* XIII.

[91] Peter G. Fish, "William Howard Taft and Charles Evans Hughes: Conservative Politicians as Chief Judicial Reformers," *The Supreme Court Review* 1975 (1975): 125.

mere opportunity in the twenties, rather than measurable change. Suffrage improved "women's general image, but it was far from clear that it elevated their individual circumstances."[92] Additionally, women of color remained disenfranchised, therefore voting the least of all and negatively influencing the overall voter turnout rate for women.[93]

Politics in general in the early twenties experienced a shift in political direction, with Republicans regaining control of the House and Senate for the 66th Congress. A sharp contrast from the Wilson administration, "Republican conservatives in Congress were determined that one of the campaign's major debates would focus upon the burgeoning size and power of the federal government. The war had permitted the Wilson administration to exert extensive control over almost all aspects of economic and social life to a degree unseen since the Civil War."[94] The White House shared this sentiment, with Harding declaring that "the country, after years of upheaval, needed 'not nostrums but normalcy,'" serving as the slogan of the Harding campaign.[95] In fact, Harding succeeded in his campaign mission. Harding emphasized limited government, and "except for mail delivery and prohibition enforcement" the reach of the federal government remained distant from citizens' personal affairs.[96]

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[92] David Kyvig, *Daily Life in the United States, 1920-1939: Decades of Promise and Pain,* 19.

[93] Lynn Dumenil, "The New Woman and the Politics of the 1920s," *OAH Magazine of History* 21 (2007): 22-23.

[94] Niall A. Palmer, *The Twenties in America: Politics and History,* 14-15.

[95] Ibid., 25.

[96] David Kyvig, *Daily Life in the United States, 1920-1939: Decades of Promise and Pain,* 4.

Although Republicans retained control of both chambers of Congress and had gained the White House in the election of 1920, the "sixty-seventh Congress was the most divided and rebellious to confront any incoming president for fifty years . . . members were disinclined to accept direction, either from the White House or from their own party leaders . . . Rampant factionalism plagued most legislative debates in 1921-3."[97] These factions consisted of ad hoc coalitions formed within each party, including the largest and most unified grouping, the farm bloc. Southern Democrats sympathized with this group and served as the farm bloc's closest ally. However, the most influential bloc was the Republican pro-business group.[98] Additionally, Senate irreconcilables were often divided among themselves on issues such as foreign policy, led by Republican Majority Leader and Chairman of the Committee of Foreign Relations, Massachusetts Senator Henry Cabot Lodge.[99] Taft faced an uncompromising and divided Congress from the outset of his reforms, presenting him with an onerous political test.

In a shock to the nation, President Harding suddenly died of a heart attack on August 2, 1923. Following his death, three scandals arose from his administration including the Veterans' Bureau Scandal, the Teapot Dome Scandal, and the Attorney General Scandal.[100] Nevertheless,

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[97] Niall A. Palmer, *The Twenties in America: Politics and History*, 36.

[98] Ibid., 37-38.

[99] James E. Hewes Jr., "Henry Cabot Lodge and the League of Nations," *American Philosophical Society* 114 (1970): 245, 251.

[100] Gary M. Pecquet and Clifford F. Thies, "Reputation Overrides Record: How Warren G. Harding Mistakenly Became the 'Worst' President of the United States," *The Independent Review* 21 (2016): 31-32.

his Vice President, Calvin Coolidge, stepped in his place and inherited a difficult political climate, eventually persevering and winning the "admiration and gratitude of the American people."[101] However, the political atmosphere in the White House and its political agenda did not change. Coolidge decided to keep Harding's cabinet "intact and at its first meeting . . . the new President confirmed that the 'Harding program' would be continued."[102] To Taft's relief, in addition to upholding Harding's policy plans, Coolidge endorsed and supported Taft's reform measures as Harding once did.

However, Coolidge differed from Harding in his strategies, ambitions, and political ability. While "Harding had been expansive in manner and appearance, Coolidge was thin, quiet, and peevish . . . [but], Coolidgean conservatism, rooted in this solid, Puritan environment, was for more resilient than Harding's. It also appealed to many Americans who, in the restless decade of the 1920s, wallowed in nostalgia for a vanishing and over-romanticized past, even as they excitedly welcomed socioeconomic and cultural change."[103] Compared to the administrations plagued with war and depression both before and after his, the "hallmarks of the Coolidge era were prosperity and peace."[104] Despite his resilient political platform, Coolidge's timid personality affected his ability to lead and to advocate for his agenda, considering that the 68th Congress did not welcome the new president with accommodation in mind. In fact, in the first twelve months of the Coolidge presidency, the 68th Congress failed to pass a single White

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[101] Thomas B. Silver, "Coolidge and the Historians," *The American Scholar* 50 (1981): 501.

[102] Niall A. Palmer, *The Twenties in America: Politics and History*, 96.

[103] Ibid., 102-103.

[104] Thomas B. Silver, "Coolidge and the Historians," 502.

House-sponsored bill.[105] Despite this difficulty, Coolidge settled into the presidency, and secured his legacy as a terse, small-government conservative.

Desperate Need for Reform: Crowded Dockets and a Spike in Litigation

Prior to Taft's appointment to the Court, problems in the federal judiciary prevented the federal courts from functioning at their fullest potential. One of the most pressing issues presented to the federal court system was the massive backlog of cases on the federal court dockets. At the turn of the nineteenth century, the federal courts "highly decentralized and still using cumbersome procedures like automatic appeals to the Supreme Court, were lagging behind the pace of change across the rest of America."[106] The overburdened docket created enormous delays in the delivery of opinions, served as a source of stress for the sitting justices, and delegitimized the federal courts' prestige and power.

In fact, when Taft took his center seat, he "confirmed his earlier impression that . . . his predecessor as chief justice Edward White had been unskilled in judicial administration. When Taft opened the October 1921 term, he found a backlog of almost 350 undecided cases."[107] Massive delays in the delivery of justice existed. In Taft's mind and in the opinion of many of his colleagues and counterparts, this delay was unacceptable.

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[105] Niall A. Palmer, *The Twenties in America: Politics and History*, 102.

[106] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," *The Journal of Politics* 69 (2007): 73.

[107] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 37.

Taft explained the delays of the Court best in a piece published in the *American Bar Association Journal*, where Taft sought to persuade the legal community at large that reform was desperately needed. He explained an observation of his:

> To be exact, I had the clerk give me the time taken between the filing of the transcript and the hearing of the last ten cases on the regular docket heard in the Supreme Court, and the average interval was 14 months and 16 days. This is due not alone to the number of cases filed, but also to the fact that with the increasing number of cases in which emergent public interest demands that a speedy disposition be had, many cases are taken out of their order and are advanced. Much of the time of the court is consumed in the hearing of such cases and the regular docket is delayed.[108]

As soon as Taft began his tenure, he realized that in addition to the gift of 350 undecided cases that White had left him, an even larger spike in litigation was imminent. With the influx of new statutes regarding commerce, labor, prohibition, and consumer safety, the impending wave of litigation loomed over the federal courts. Taft recognized this, identifying numerous acts and explaining:

> The Anti-Trust Law, the Railroad Safety Appliance Law, the Adamson Law, the Federal Trade Commission Law, the Clayton Act, the Federal Employers' Liability Law, the Pure Food Law, the Narcotic Law, the White Slave Law, and other acts, and finally the Eighteenth Amendment and the Volstead Act, have expanded the civil and criminal jurisdiction of the Federal Courts of first instance to such an extent that unless something is done, they are likely to be swamped.[109]

At this point, Taft knew that reform was imperative, not only to preserve the reputation and efficiency of his own Court, but to protect the Court's legitimacy and ability for generations to come.

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[108] William Howard Taft. "Possible and Needed Reforms in Administration of Justice in Federal Courts," *American Bar Association Journal* 8, (1922): 602.

[109] William Howard Taft. "Three Needed Steps of Progress," 34.

In addition, Taft realized that to achieve the necessary reform for the federal courts, it would be an arduous battle. He expressed his concerns, explaining: "When we come, however, to the two defects of delay and excessive cost of litigation, we have a problem much less easy." He continued: "The enormous expansion of our population, of our commerce at home and abroad, the tremendous increase in business and in the number of transactions that call in the ordinary course of things for litigation and resort to the courts, have swamped a system that was adopted in more primitive times."[110] Through this statement, Taft made a valuable observation. The Founders designed the federal courts to serve rural populations in a merchant-based economy. However, the vast industrialization of the United States rapidly altered its culture, and the federal courts fell behind the pace of the rest of the nation. On a structural basis, the federal courts were ill-equipped to manage such a revolutionary shift in the United States economy and society.

Taft's inspiration to reform the United States federal courts came from not only the glaringly obvious shortcomings of the current system, but also from the success of England's court system. England's industrial revolution occurred decades prior to the industrial revolution in the United States, providing the English courts with ample time to adjust to the rapid changes of society. Taft studied their strategies, concluding that "The history of court reform in England contains lessons of profound importance to us in this country."[111] England's use of "executive control vested in a council of judges to direct business and economize judicial force, to mould

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[110] William Howard Taft, "The Attacks on the Courts and Legal Procedure," *Kentucky Law Journal* 5, (1916): 11.

[111] Ibid., 14.

their own rules of procedure [and] . . . the consequent ease and quickness with which they dispose of cases" made the court system effective, successful, and economical.[112] These components of the English courts paralleled the reforms Taft implemented, specifically the transformation of the chief justiceship, the expansion in the number of federal judges, and the clarification of the code of procedure for the federal courts.

Federal court reform to the extent Taft pursued proved unique in the United States judiciary and legal sphere. Taft admitted this reality himself, explaining that "I am far from being blind to the defects and the weaknesses of the profession of the law . . . Lawyers are frequently a conservative class. They adhere to the things that are, simply because they are, and reluctantly admit the necessity for change."[113] The nature of the law—statutory law and common law—is based on tradition; precedent and common law are the foundations of the United States legal system. Rooted in tradition and custom, components of the law tend to act in the same way. Therefore, structural change in the judiciary occurs rarely, if at all. Taft succeeded, first and foremost, as a result of his honest commitment to change. Taft's unique skill of "point[ing] to real problems in need of a solution" proved invaluable.[114] The federal

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[112] Ibid., 13.

[113] William Howard Taft, "The Learned Professions and Political Government," in *The Collected Works of William Howard Taft: Volume II Political Issues and Outlooks, Speeches Delivered Between August 1908 and February 1909,* ed. David H. Burton (Athens: Ohio University Press, 2001), 212.

[114] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 77-78.

courts were Taft's pride and joy; however, Taft possessed the humility to admit that the federal courts consisted of burdensome procedures and constituted embarrassing inefficiency, reducing the federal courts capabilities. Through his unique viewpoint and experience, Taft identified overdue areas of reform in the legal system and corrected these issues.

Under Taft, the federal courts underwent reforms of great variety ranging from updating the judicial code to establishing a free-standing impressive Supreme Court building. The first and most structural reform Taft sought and achieved was the Conference of Senior Circuit Judges Act of 1922. After only one year as Chief Justice, Taft persuaded Congress to pass a bill that "provided 24 additional district court judges; granted the Chief Justice authority to transfer judges from overstaffed districts in one circuit to understaffed districts in other circuits; and established the 'Conference of Senior Circuit Judges.'"[115]

This conference has lasted, and it has become known as the Judicial Conference. At the time Congress passed the Act, the conference consisted of the Chief Justice, the Attorney General, and the senior circuit judges, in which they met to discuss "required reports from district judges and clerks as to the business in their respective districts, with a view to making a yearly plan for the . . . judicial force of the United States in those districts all over the country where the arrears are threatening to interfere with the usefulness of the courts."[116] This Act provided the federal courts with more effective communication for the first time, and as a result,

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[115] Ibid., 73-74.

[116] William Howard Taft. "Adequate Machinery for Judicial Business," *American Bar Association Journal* 7, (1921): 454.

facilitated teamwork across the different levels of federal courts as well as the different federal circuits.

Prior to the creation of the Judicial Conference, "the federal court system represented a number of mini judicial fiefdoms, with most state district lines as their boundaries." For the most part, each federal court in each respective circuit acted independently of each other, carrying out business within their individual hierarchies. It is true that "Congress created a hierarchy of courts but not of judges." The condition of the United States federal courts prior to and during Taft's tenure reflected this structural setback; burdened by cases, circuits with major cities fell behind the pace of the rest of the United States, but sparsely populated circuits had a surplus of judges. Indeed, "this inflexibility as well as the unfortunate effects of an excessive localism" prompted Taft to seek remedy.[117]

In addition, the structure of the Municipal Court of Chicago served as inspiration to Taft in constructing his Conference of Senior Circuit Judges. He spoke on its success to further persuade his colleagues to back his reform, explaining that "You in Chicago have had your city courts under some such organization as this, and I understand that it has worked well. There is not the slightest reason why into judicial work we should not introduce some simple and primary principles of business dispatch."[118] The fact that an institution already existed in the United States that practiced a centralized form of executing business vindicated Taft's ideas. The Municipal Court of Chicago organized "under the direction of a Chief [where] . . . the associate justices are massed at one point or another in respect of the litigation pending so that the

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[117] Jonathan Lurie, *The Chief Justiceship of William Howard Taft*, 62.

[118] William Howard Taft. "Three Needed Steps of Progress," 34.

increased speed in the disposition of cases is shown by the statistics to be marked and most satisfactory."[119] In time, Taft nearly replicated this structure through the Conference of Senior Circuit Judges Act of 1922.

This Act also expanded the power of the office of the chief justice and created a concrete definition of the role. Understanding the chief justice as the head of the judicial branch "seems uncontroversial today, when we are accustomed to seeing the chief justice testify annually before Congress on the state of the judiciary, but it was distinctly peculiar in 1921." Taft entered the Court at a time when the justices saw themselves as equals, with the chief justice being simply the first among equals. However, Taft sought to implement "executive principle" in the judicial branch.[120] The 1922 Act accomplished his goal. This Act solidified the role of the chief justice as the head of the judicial branch, establishing he or she as leader of the Judicial Conference. More significantly, however, it expanded the power of the chief justice dramatically; for the first time, the chief justice possessed the power to transfer district judges from circuit to circuit.

In addition to the establishment of the Judicial Conference and the expansion of the role of the chief justice, this Act added 24 additional district judges, again expanding the reach and power of the federal judiciary. Overall, this Act united the federal courts and established a culture of communication and unity across the federal judiciary. Taft lobbied for additional district court judges not only because they were needed to tackle the ever-growing docket of cases, but also to fulfill the "usual accoutrements of local patronage and political

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[119] William Howard Taft, "The Attacks on the Courts and Legal Procedure," 17.

[120] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 81.

considerations."[121] Remnant of his political past, this adjustment is one example in which Taft reformed the federal courts to his own advantage, yet he did so in a manner that did not unsettle too many important stakeholders in the federal courts.

But these additional judgeships were beyond the typical addition of extra seats on the federal bench. Taft envisioned "what he had once described as a 'flying squadron' of district court judges who could be dispatched to various locales where the need for additional jurists were manifest."[122] In the 1920s, a suggestion to spread the chief justice's power to federal courts across the United States was extraordinary. This would provide the chief justice with the ability to transfer judges from circuit to circuit altered the power of the federal judiciary, and Taft justified this expansion by explaining, "but already there has been introduced in a limited way the practice of using judges from one circuit and one district in another, and there is no reason why this principle should not be extended."[123]

He further defended this provision by outlining its purpose, explaining that "if the judicial force seems inadequate, then if business is not disposed of, it will be entirely easy to know how many judges should be added and in what districts and circuits they should be appointed."[124] Judicial administration served as the cornerstone of Taft's chief justiceship, and his flying squadron of judges further exemplified that vision. With additional judges, business would be handled more efficiently and in a timelier manner. The chief justice's oversight on the federal

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[121] Jonathan Lurie, *The Chief Justiceship of William Howard Taft*, 63.

[122] Ibid., 63.

[123] William Howard Taft, "The Attacks on the Courts and Legal Procedure," 16.

[124] Ibid., 16.

courts also provided the opportunity for increasing accountability of the lower federal court judges, which, in turn, increased productivity.

However, even after the great accomplishment of the Conference of Senior Circuit Judges Act of 1922, Taft pushed his power as chief justice even further. To accomplish his agenda, "Taft was unwilling . . . to regard the conference as the exclusive voice of the judiciary." In fact, he brought his ideas for reform straight to Congress on multiple occasions. Contrary to the traditional role of chief justice, Taft believed that the chief justice should also serve as the "national spokesperson for the cause of the administration of justice," and in turn, Taft made an effort to maintain his presence in Congress to discuss matters that were better solved outside of the conference.[125] He was not shy in his lobbying efforts, bringing his fellow members of the Court along with him to present their opinions and goals. Judicial executive action of this sort was unheard of prior to Taft's tenure, which further expanded and redefined the role of the chief justiceship.

The next major reform was the Judiciary Act of 1925, also known as the Judges' Bill. Previously, the Act of 1891 introduced discretionary jurisdiction to the Supreme Court over certain types of appeals. The Act of 1916 further expanded the discretionary power of the Court in regard to state court judgements.[126] The Judiciary Act of 1925, however, "convert[ed] much

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[125] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," *OAH Magazine of History* 13 (1998): 27.

[126] William Howard Taft. "Possible and Needed Reforms in Administration of Justice in Federal Courts," 602.

of [the Supreme Court's] obligatory jurisdiction into certiorari,"[127] and now required that "no case of any kind can be taken from the Circuit Court of Appeals to the Supreme Court of the United States without application for a *certiorari.*" It also required that "Obligatory appeals from all other courts . . . except from the federal district courts in a limited class of cases and from the state courts, are also abolished."[128] The exceptional cases Taft referred to are proceedings marked as original suits but are incidental to its appellate jurisdiction, including "applications for writs of mandamus, quo warranto, prohibition and habeas corpus." In addition, Taft recognized and preserved the cases that Congress cannot change the jurisdiction of under Article III Section 2 of the United States Constitution, which included "cases affecting Ambassadors and other public ministers and consuls and those in which a state is a party."[129]

Taft viewed obligatory jurisdiction in the Supreme Court as one of the many sources of the Court's lethargic tendencies, and reducing this jurisdiction served as a foolproof solution. Taft argued that as the highest court in the nation, as the court of last resort, and a third branch of the federal government, the Supreme Court need not hear every appealed case, explaining that "'no litigant is entitled to more than two chances' . . . In order to gain yet another review, 'there

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[127] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 73-74.

[128] William Howard Taft. "Possible and Needed Reforms in Administration of Justice in Federal Courts," 602.

[129] William Howard Taft. "The Jurisdiction of the Supreme Court Under the Act of February 13, 1925," *Yale Law Journal* 35, (1925): 7.

must be significant legal issues lurking within the litigation.'"[130] Significantly, "the Judiciary Act of 1925 gave the Court near-complete control over its docket for the first time in history."[131] Introducing the writ of certiorari to the Supreme Court alleviated much of the backlog of cases on the Supreme Court, freeing docket space for notable cases involving compelling constitutional questions.

Perhaps Taft's greatest achievement, the Judiciary Act of 1925, "represented a fundamental transformation of the role of the Supreme Court."[132] Scholars view the Supreme Court's use of discretionary jurisdiction as a necessary component of the Supreme Court's function in United States public policy today. The revolutionary idea of the Court's reliance on discretionary jurisdiction has grown to become the norm in the United States federal court system, and out of all the changes Taft initiated, this reform had the greatest impact on the role of the Supreme Court.

Not only did the burdensome appeals system add cases to the Supreme Court's docket, but, according to Taft, it also hurt the poor litigant. The damage to the poor litigant and the reduced access to justice motivated Taft to initiate reform, where he admitted that "If we could remedy the delay and reduce the cost of litigation, there would be very little practical reason to

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[130] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 71.

[131] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 82.

[132] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," *Minnesota Law Review* 85 (2001): 1273.

complain of our judicial system."[133] To elaborate, Taft argued that "too many appeals impose an unfair burden on the poor litigant. Gentlemen, speed and dispatch in business are essential to do justice."[134] The tremendous backlog in cases created a lengthy waiting period, and the longer the litigant had to wait, the larger the accumulation of legal fees and other detriments became.

In addition, Taft pointed out that the current "statutes defining the jurisdiction of the Supreme Court and of the circuit courts of appeal are not as clear as they should be. It is necessary to consult a number of them in order to find exactly what the law is."[135] It is obvious that Taft favored efficiency. The elaborate and confusing language served little purpose; Taft goes on to explain that the design of the statutes consisted of a trap for counsel in which many got caught. Therefore, Taft found it necessary not only to clarify the existing language on the matter, but also to "remove all technical penalties for mistaken appellate remedies."[136] These adjustments made the appeals system more accessible to all, litigant and counsel alike. In this respect Taft ascribed to traditional conservative judicial reform, which emphasizes "Economy, efficiency, speedy justice, and inexpensive litigation."[137] Above all else, Taft entrenched his

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[133] William Howard Taft, "The Attacks on the Courts and Legal Procedure," 10-11.

[134] William Howard Taft, "Possible and Needed Reforms in Administration of Justice in Federal Courts," 603.

[135] Ibid., 603.

[136] Ibid., 604.

[137] Peter G. Fish, "William Howard Taft and Charles Evans Hughes: Conservative Politicians as Chief Judicial Reformers," 145.

reforms in practicality and efficiency, in which he "intended to streamline the judicial process and make the administration of justice cheaper, quicker, and more predictable."[138]

Perhaps one of the most obvious changes to the federal court system was the establishment of a free-standing Supreme Court building. In his final two terms on the Court, Taft worked tirelessly to convince Congress to appropriate the necessary funds for the building. In fact, "it became something of an obsession for him." [139] Despite his failing health, Taft yet again used his talent for reform to persuade his connections how badly the building was needed. Taft succeeded in his last mission of judicial reform and improvement. He lobbied for and secured the funds to construct the separate building, "allowing the justices to move from the 'old Senate chamber' to the classic marble structure that graces Washington today."[140]

The Court and its justices needed a proper home. The old, cramped, Senate chamber complicated the justices' work, and Taft and his brethren recognized that. The old Senate chamber provided "no chambers for the justices . . . their robing room was across the hall from the courtroom . . . [and] the court conference room was so short of space that its books were piled high on shelves so as to virtually be out of reach."[141] As mentioned before, the litigation brought by the turn of the century and the 1920s itself overloaded the Court's docket even with

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[138] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development* (Princeton: Princeton University Press, 2012), 201.

[139] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 181.

[140] Doris Kearns Goodwin, *The Bully Pulpit: Theodore Roosevelt, William Howard Taft, and the Golden Age of Journalism.* (New York: Simon & Schuster, 2013), 749.

[141] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,*181.

efficient judicial administration. Due to this influx and the nature of the Court itself, the ever-growing paperwork, records, and decisions could not continue to fit in the old Senate chamber.

In addition, the Supreme Court justices were not particularly young. Specifically, Associate Justice Harlan Stone struggled to navigate the close working quarters of the old Senate chamber and wrote to Taft complaining about the difficulties of the inadequate office space. Taft shared Stone's concerns, and in addition to the impracticality of the space, Taft believed that "as a coequal component of the federal structure, the judiciary and in particular his court deserved an appropriate home."[142] In order to establish the federal judiciary as the true third branch of the United States government with the same appreciation and esteem as both the executive and legislative branches, it follows that the Court must have a proper place to call home.

Taft moved to make his goal a reality and after securing the funds from Congress, he selected prominent American architect Cass Gilbert for the construction and design of the building. Again, Taft used his connections to his advantage in this choice, considering that Taft "shared not only Gilbert's devotion to the Republican Party, but also his love of majestic grandeur as a characteristic of his civic structures," as well as the fact that "Taft considered Gilbert a close personal friend." Taft chose Gilbert not only out of close connection, but also for their shared love of grand white marble structures, hoping to cause a reaction against the "silly modernistic movement" popular in the 1920s.[143]

To Taft's detriment, he succumbed to his poor health before he could ever see the completed structure stand. However, he still played a significant role in its development prior to

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[142] Ibid., 181.

[143] Ibid., 183.

his death. During his last term on the bench, Taft viewed a model of Gilbert's design, learned about Gilbert's intended innovations, and observed drawings of the structure.[144] Indeed, Taft inserted his own opinions and saw a tangible plan in front of him, and even "played a leading role in selecting the site."[145] Although he never saw it completed, the building is representative of Taft's dedication and passion for his one true love. He provided his Court with a proper home, and to Taft, the Supreme Court building served and continues to serve as a symbol of the Court's true identity: "the bulwark of American society."[146]

Judicial Management, Political Connections, and Taft's Expertise in Action

In United States history, "As a judicial architect, Taft is without peer. None shared his unconquerable desire to refashion judicial organization and procedure."[147] Considering Taft's incomparable legacy, his judicial management strategies, network, personality, prior realizations in his career, the help of his own Court, ideology, and place in history set him apart from his predecessors and successors. All of Taft's reforms last as indicators of Taft's long shadow and long judicial legacy. Each act possessed the same underlying purpose "and common benefactor: both were motivated by performance concerns about efficient judicial administration, and both

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[144] Ibid., 185.

[145] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 36-37.

[146] Ibid., 37.

[147] Ibid., 39.

were made possible—overcoming the 'muted fury' surrounding federal courts at the time—by Taft's political entrepreneurship."[148]

The acts alone were not sufficient to solve the overt dilemmas of the federal courts. Taft influenced fundamental functions of the Court through his day-to-day actions as Chief Justice. The weight of his presence on the Court can be measured by his judicial management skills. He differed from other chief justices in the fact that "Taft viewed the federal judiciary as a *coherent branch of government to be managed*, and he viewed the chief justiceship as the source of that management."[149] Perhaps from his experience as president, through his genuine love for the Court, or through his deep understanding of judicial functions, "No other Chief Justice in U.S. history has exercised the administrative skills utilized by Taft."[150]

To further put Taft's administrative efficiency into context, one must understand that chief justices are usually evaluated by how well they "administer the day-to-day functioning of the Court. They are scrutinized for their handling of small emergencies and for their ability to dispose efficiently of routinized institutional necessities like assigning opinions or moderating the Court's conferences." Taft exceeded the expectations surrounding these tasks. He was "ruthlessly efficient, moving heaven and earth to force the Court to diminish its embarrassingly

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[148] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development* (Princeton: Princeton University Press, 2012), 200.

[149] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," 25.

[150] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 199.

large backlog of cases."[151] To illustrate his skills, Taft "persuaded by example, discouraged dissents, exploited personal courtesy and charm, maximized the assignment and reassignment powers and relied on the *expertise* of his associates."[152]

To accomplish the goals of the Court, Taft first "maximized the limited powers of the Chief Justiceship as none of his predecessors."[153] Taft's judicial management strategies as chief justice did not end at the Supreme Court. He stretched his duties across all federal courts, and "enthusiastically embraced a sense of generic responsibility for the overall functioning of the federal judiciary." If judges in the lower courts failed to decide cases for long periods of time, Taft would write letters to the judges to encourage them to remain on track. By doing so, he not only allowed the administration of justice to be delivered efficiently, but he created "lines of accountability" that were never before seen in the federal courts.[154]

Effective judicial management was not based on the ability to dispose of and delegate work alone. It also depended on "the Chief's ability to lead his colleagues without driving them or hurting their egos."[155] Taft exploited this remarkable ability of his, combining his "Good

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[151] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," 24.

[152] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," *American Bar Association Journal* 55 (1969): 38.

[153] Ibid., 35.

[154] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," 27.

[155] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 39.

humor, willingness to compromise, and instinctive understanding of practical psychology, [and] the co-operation of certain colleagues who shared his respect for the Court as an institution," to mold whatever group at hand, whether it be his Court or Congress, into one of compromise, harmony, and adaptability.[156]

Particularly in the beginning of his tenure, suppressing dissents served as one of Taft's greatest skills. He disfavored dissents and believed that an important part of the chief justice's role was to promote teamwork in the Court in order to give weight and solidarity to the Court's opinions. Taft dissuaded his colleagues from dissenting in cases such as *United Mine Workers* v. *Coronado*, *Hill* v. *Wallace*, *Railroad Commission of California* v. *Southern Pacific Co.*, *Opelika* v. *Opelika Sewer*, and *FTC* v. *Claire Furnace Co*.[157] His talent in persuasion and his willingness to go extraordinary lengths to modify opinions to meet in the middle with his colleagues aided him in this ability. Indeed, Taft "Sometimes . . . reassign[ed] an opinion to another Justice, or—as happened on more than one occasion—take the insights of a threatened dissent and turn them into an opinion that ultimately commanded the votes of the entire Court."[158]

United Mine Workers of America v. *Coronado* (1922) offered one of the best examples of Taft's skill. Famous for his lengthy dissents and opinions, Associate Justice Louis D. Brandeis

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[156] Ibid., 39.

[157] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1311-1312.

[158] Jonathan Lurie, "Chief Justice Taft and Dissents: Down with the Brandeis Briefs!" *Journal of Supreme Court History* 32 (2007): 182.

and Taft were often at odds with each other. In addition to the irritation Brandeis incited in Taft through his obsession with facts and footnotes, "he least trusted the political and judicial values of Brandeis."[159] In *United Mine Workers of America,* the Court examined whether a labor union could be sued for anti-trust violations. Through the cooperation of both Brandeis and Taft, Brandeis persuaded Taft that "by emphasizing the illegality of the union's conduct . . . instead of the antitrust approach, one could rely on common law damages for trespass and property destruction."[160] Taft utilized Brandeis's arguments and "handed down a unanimous opinion that built so heavily on Brandeis's arguments that [Brandeis] never filed his proposed dissent."[161] Through listening to his colleagues, manipulating arguments, and perfecting the art of compromise, Taft managed his Court in a manner that "reflected his desire not to antagonize anyone if at all possible, especially those in power," as well as his hunger for efficiency and compromise.[162]

Early in Taft's tenure, the Court embodied a "'norm of consensus,' eagerly nurtured by the chief justice."[163] Taft was the primary consensus builder, and his "Justices preserve[d] their differences, but they each assume[d] that in the absence of strong reasons, these differences

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[159] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 162.

[160] Ibid., 31.

[161] Ibid., 32.

[162] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 119.

[163] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 209.

should be put aside so that the Court [could] present a united front to the public."[164] Often the justices agreed to disagree, with Taft facilitating deliberations on each case. Overall, throughout his eight full terms, Taft suppressed "at least two hundred dissenting votes," eager "to stand by the Court."[165] This incredible number reflects his dedication to judicial management, as well as his talent in doing so.

Despite Taft's unique skills in judicial management, within the context of the time period, norms against dissent remained a prevailing attitude at the Supreme Court. In fact, these norms were "so prominent in the 1920s that they were explicitly embraced in Canon 19 of the American Bar Association's 1924 edition of the Canons of Judicial Ethics."[166] The idea of the Supreme Court standing in unity was not unique to Taft's Court; nonetheless, compared to other chief justices and their Courts in a similar time period, Taft was unrivaled in his methodology of suppressing dissents and of judicial administration. His expertise is best validated by comparing the unanimity rates held at conference between justices, and the rates held when delivering opinions: "Within the complete set of 1200 conference cases the unanimity rate, as measured by a unanimous vote at conference, was only 50%. The unanimity rate for the published opinions of the conference cases was by contrast 86%."[167] These statistics reveal that sometime in the period

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[164] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1344.

[165] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative*, 182.

[166] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1284.

[167] Ibid., 1333.

after the conference and before the delivery of the opinion, a steady number of justices had switched their vote. During this lengthy period of time Taft persuaded his colleagues most effectively, often writing to them and altering his own opinions to meet the desires and concerns of the other justices.

Reflected in his record of opinions, Taft disfavored dissents on a personal level. From "1921 to 1929, he wrote some 249 opinions for the court and filed only three written dissents," a number unheard of in today's Supreme Court norms.[168] Even so, Taft and other members of the Court disagreed with each other on countless occasions. It was true that Taft "dissented less than a score of times while Chief Justice," while "on rarer occasions still did he write his objections to a majority opinion."[169] His reluctance to outright reject his colleague's opinions represented his eager to please predisposition, and his appreciation of the idea ". . . that in some instances, to get along, one needs to go along."[170]

However, Taft could not hold off the dissents of Justices Holmes and Brandeis for too long. Considering his declining health and aging mind, Taft's final two terms were difficult for him to manage. In a letter to his daughter Helen in 1927, Taft explained his concern: "'I don't know whether I am right about it, but I occasionally think I find greater difficulty than I used to in arranging the expression of my thoughts in an opinion . . . and it seems to me that it takes

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[168] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 23.

[169] Allen E. Ragan, *Chief Justice Taft.* (Columbus: The Ohio State Archaeological and Historical Society, 1938), 38.

[170] Jonathan Lurie, "Chief Justice Taft and Dissents: Down with the Brandeis Briefs!" 182.

longer than it used to.'"[171] The number of dissents produced by the Court also reflected Taft's decline in health. In Taft's final three terms, his norm of consensus "transformed into a norm of acquiescence, sometimes accepted willingly, in other instances with regret by the justices."[172] Taft failed to persuade his colleagues in a compelling and enthusiastic manner as once before; Taft's brethren began to comply with the Chief Justice with quiet discomfort. However, by 1927, Taft had lost much of the flexibility that allowed him to compromise and to craft the decisions of the Court by his own accord, but "Now he clung . . . to the values of 'certainty, stability, and predictability'" more than ever.[173] By 1929, however, Taft recognized to his dismay that "dissents in his court were not uncommon."[174] These facts considered, his final terms on the Supreme Court do not detract from Taft's judicial impact.

The way in which Taft oversaw the Court was not only unrivaled by other chief justices, but innovative for his time. One must consider that "Today it is natural for us to conceptualize the Supreme Court as overseeing a co-ordinate branch of the federal government."[175] Most significantly, when Taft took center seat in 1921 this view of the Court was unconventional. Judicial scholars did not view the federal courts as autonomous entities which possessed power; the federal courts served as a necessary but slower cog in United States government alongside

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[171] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 180.

[172] Ibid., 209.

[173] Ibid., 162.

[174] Ibid., 211.

[175] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1272.

the legislative and executive branches. Taft remodeled the judiciary into a de facto co-equal branch of United States government and gave the federal courts the foundation to become the tribunals of today.

It is clear that Taft's impeccable judicial management skills led him to redefining the federal court system. In addition, Taft's far-reaching network and jovial nature contributed significantly to his success in reforming the federal courts. Based off of his experiences as both a jurist and politician, ". . . Taft brought a set of reputations with him to the Court"—positive and negative. His deeply rooted political connections served as an advantage, however, conceptions of Taft varied widely: "His time as president alone offered contrasting portraits of a would-be reformer, on the one hand, and a weak and bumbling amateur, on the other."[176] These negative opinions of Taft were few, and over time, Taft proved his opponents wrong through shifting his focus to the federal courts. Upon escaping his loathed position as president, "in 1913, he campaigned untiringly for judicial reform."[177] Stemming from both an effort to redeem himself in the eyes of the public, his desire for appointment to the High Court, and his deep respect for fulfilling his duties as Chief Justice, Taft demonstrated his drive for federal court reform at numerous points in his career. Masked by a forced political career, Taft's true potential and ability rested in the judiciary, and "On the bench, he found a welcomed respite from all of this."[178]

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[176] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 78.

[177] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 36.

[178] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 20.

Through his cogent and convincing articles on reform and his political skills and ties, Taft laid old opinions of him to rest and secured his proposals for reform of his beloved federal courts. To his advantage, Taft

> curried favor with the media and key interest groups. Contacting newspaper editors directly, he encouraged (and received) press support of his proposals, provided written critiques of his opponents, urged editorials against a proposal to withdraw the Court's diversity jurisdiction, and generally utilized the press to inform lawmakers and the public about his reforms and to repel future attacks against them. Similarly, Taft spared no effort to enlist the support of organizations of lawyers, especially the American Bar Association.[179]

In lobbying for his proposals, on his own initiative, Taft "mobiliz[ed] his numerous contacts within Congress."[180] Taft not only made history by being the first former President to be appointed Chief Justice, but, in 1921, he became the first Chief Justice to appear before the Senate Judiciary Committee. In this hearing, Taft "appeared before the Senate Judiciary Committee to endorse and explain his perception of the federal judiciary. This in itself was dramatic enough, but the fact that Taft was at the same time a former president made his testimony before the senators even more noteworthy."[181] Despite the fact that his true love was the judiciary, Taft wore several hats over his lifetime and while on the Supreme Court, and he left his mark on all three branches of government. Both acts of reform by Congress "were

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[179] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development*, 206.

[180] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," 26.

[181] Jonathan Lurie, *The Chief Justiceship of William Howard Taft*, 64.

indeed *Taft's* reforms."[182] His in-person testimony impacted Congress profoundly, and "it should be observed that everything he specifically sought was enacted, albeit not without some changes that reflected the political context in which Congress continually operates."[183]

The specifics regarding the reforms were Taft's own ideas, however, Iowa Senator and Subcommittee Chair Albert Cummins contributed significantly to the process of presenting Taft's bills to Congress and the subcommittee. Taft brought his ideas to Congress, but it was Cummins who "suggest[ed] to Taft that he and his fellow justices take the lead in drafting a statute for Congress to consider." Cummins introduced the Judges' Bill in February 1922 and served as the key spokesman for the bill once on the floor for consideration.

Support for the bill stalled, and in "1923 . . .Taft sought the intervention of President Coolidge." Taft's concerns for the legislation were heard, and "Indeed, in his first annual message to Congress, the new chief executive stated that Taft's court 'needs legislation revising and simplifying the laws governing review . . . and enlarging the classes of cases of too little public importance to be subject to review.'"[184] Despite the support among Taft's connections, efforts by Cummins, and Coolidge's advocacy, the bill did not pass until 1925.

Taft's vast political and judicial experience through numerous offices and positions also assisted him in achieving his goals for reform. His experiences, combined with his passion for the federal courts, provided him with preconceived plans about reforming the federal courts

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[182] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development,* 209.

[183] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 64.

[184] Ibid., 77.

before he ever arrived at the center seat. Despite his disdain for politics, as a politician and as a progressive conservative, Taft understood that "'men who enter [politics] for the purpose of keeping them pure and making them better are engaged in the highest duty.'"[185]

Taft inferred decades prior to his first term on the Supreme Court that "Continued lack of public confidence in the courts will sap their foundations."[186] For Taft, this was unacceptable and warranted major reform to avoid this reality. To him and to many with high regard for the federal courts, the federal courts "are the background of our civilization. The Supreme Court of the United States is the whole background of the Government . . . It is the last resort and the final tribunal."[187] Taft addressed this ideal to claim further that "And that is what so emphasizes the importance of an improvement in our judicial procedure in this respect."[188] A common theme in Taft's writings and career was the fact that the judiciary was of utmost importance: quite literally the backbone of the United States. It is an understatement to say that Taft realized the significance of the federal courts and felt motivated to spend the latter part of his career, the most enjoyable and rewarding part of his life, committed to preserving the federal judiciary.

On a more skills-based and literal level, Taft proved well equipped to exceed in his position as Chief Justice considering that "No president has ever been elected with as much

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[185] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 75.

[186] William Howard Taft, "The Duties of Citizenship Viewed from the Standpoint of a Judge on the Bench," in *The Collected Works of William Howard Taft: Volume I Four Aspects of Civic Duty and Present Day Problems,* ed. David H. Burton (Athens: Ohio University Press, 2001), 28.

[187] Ibid., 35.

[188] Ibid., 34.

judicial experience as that possessed by Taft."[189] As reflected by his time on the Ohio Superior Court, on the Sixth Circuit Court of Appeals, and as Professor of Law at Yale University, Taft knew his way around the courtroom and was dedicated to the law and judicial procedure. As a result of these experiences, Taft identified the importance of judges and justices symbolically, procedurally, and at the surface: "The judge retains control and pushes the trial, both because it usually results in a juster judgment and also because neither the time of the court nor the time of the jury ought to be taken up."[190] If, at their base level, the federal courts cannot deliver judgements or function in a timely manner, the entire system slowly disintegrates from the bottom up. Maintaining the supremacy of the law in the judiciary is integral to the success of the United States federal court systems.[191]

Political Scientist Justin Crowe best explains the impact of Taft's prior positions by discussing "The fact that [Taft] approached judicial reform in a different manner—more measured, more strategic, and with more external support—suggests a process of political learning from his presidential struggles."[192] In each position he held—whether it be major roles like the President of the United States or minor positions like tax collector—Taft drew from each of his prior positions to formulate his master plan. He "devoted much thought and energy to

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[189]Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 120.

[190] William Howard Taft, "The Duties of Citizenship Viewed from the Standpoint of a Judge on the Bench," 28.

[191] Ibid., 29.

[192] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 82.

hammering out specific correctives in judicial administration and to promoting their enactment" prior to and during his White House years, and "None of his predecessors had assumed such a large responsibility for the functioning of the federal judiciary."[193]

Outspoken about the problems the federal court systems were plagued with years before Taft's appointment to the Supreme Court, Taft wrote to a friend while on the Sixth Circuit Court of Appeals that "'the condition of the Supreme Court is pitiable, and yet those old fools hold on with the tenacity that is most discouraging.'"[194] Although speaking directly to the mental condition, efficiency, and age of the justices, Taft's complaints demonstrate that he had the ability to be critical of the federal courts and their condition, while designing specific reform to alleviate the federal courts' various headaches. To be specific, "Groundwork for Taft's major achievement—the 'Judges' Bill' of 1925—had been laid when he was a circuit court judge."[195]

Not only did Taft have political support, but Taft had the immeasurable support of his own Court. The typically laborious process of gaining the support of his brethren was eased by the fact that during his presidency, "he had selected a total of six Supreme Court jurists, more than any other single-term president in American history . . . although he did not know it, two of his choices would still be on the Court in 1921 when Taft became Chief Justice."[196] Although Associate Justice Mahlon R. Pitney served on the Court for only one year after Taft's

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[193] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 36.

[194] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 121.

[195] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 37.

[196] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 120.

appointment, Taft's other appointee, Associate Justice Willis Van Devanter, served as an essential component to Taft's reform measures.

In 1924 "instead of testifying before the Senate Judiciary Committee himself, [Taft] sent Justices George Sutherland (a former ABA president and Senate Judiciary Committee member), James McReynolds (a Democrat), and Willis Van Devanter."[197] Both Taft and Cummins strategically chose which justices to appear in front of the committee. Sutherland and McReynolds served as obvious choices to create a diverse panel to testify in front of the committee. However, considering that Van Devanter proved to be the "least productive member of the Taft Court," the public and politicians in general did not perceive Van Devanter to be the best of justices.[198] Despite Van Devanter's general reputation, Taft recognized that Van Devanter's greatest contributions occurred in conference and when debating and advising other members of the Court. Although Van Devanter wrote at a sluggish pace due to his obsession with perfectionism, he possessed a brilliant legal mind and often settled disputes between the Court. His own brethren realized that "'public evidences of his judicial activities conceal rather more than they reveal what his greatest service to the Court and to the public'" was, and that at the conference table he served as a "'tower of strength.'" Indeed, he proved most impressive in his ability to analyze a case with complete, manifest argumentation without overlooking any

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[197] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 80.

[198] Robert Post, "Chancellor of the Taft Court," *Journal of Supreme Court History* 45, (2020): 292.

points or leaving any promising possibility uninvestigated. In fact, Taft deemed him "the 'strongest Judge in this country'" and the most invaluable justice on the Court.[199]

Van Devanter served as the Court's expert on legal procedure and jurisdiction, and his testimony cleared up much of the confusion surrounding the adjustment of jurisdiction for the Circuit Courts and Supreme Court. Van Devanter explained that this bill was not an upheaval of judicial processes; but rather a bill to correct the fragmented statutes on the appellate jurisdiction of the federal courts. He emphasized that "[the bill] does not, however, take any case out of the appellate jurisdiction of the Supreme Court that is now within that jurisdiction. It merely transfers certain classes of cases from the obligatory jurisdiction to the discretionary jurisdiction."[200]

In respect to both Taft's opinion of dissents and the overarching teamwork of the Court, Taft emphasized that "It is much more important what the Court thinks than what any one thinks."[201] Unsurprisingly, Taft valued his colleagues' opinions on reform of the federal judiciary. He made sure to hear from multiple justices and ultimately used their opinions to his advantage when lobbying for his reform. In his defense of the Judges' Bill, he assured members of the ABA and Congress that "the bill has been recommended by the members of the Court only

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[199] Ibid., 296.

[200] U.S. Congress, House of Representatives, House Committee on the Judiciary, *Hearing on H.R. 8206*, 68th Cong., 2nd sess., December 18, 1924.

[201] Letter from William Howard Taft to Willis Van Devanter, December 26, 1921. Letter, Willis Van Devanter Papers, as cited in Robert Post, "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1311.

after a very full consideration of the subject. They are convinced that it is the best and safest method of avoiding arrears on their docket."[202]

Taft's justices also approved of Taft and applauded his abilities on multiple occasions. Even Brandeis and Holmes spoke highly of Taft, although both were far removed from Taft on the ideological spectrum. Holmes praised Taft's abilities, explaining that Taft "'is amiable and comfortable . . . [H]e carries things along with good humor and is disinclined to put cases over—so we get work done.'"[203] In addition, in an honest recount of Taft's accomplishments, Brandeis commended Taft for his admirable qualities, which "represented 'a great improvement over the late C. J. [White].' Yet 'it's astonishing he should have been such a horridly bad president, for he has considerable executive ability.'"[204] Taft maintained certain personal beliefs that were reflected in his efforts of federal court reform and in his courtroom management. Taft believed that the "two important elements of moral character in a judge are an earnest desire to reach a just conclusion and courage to enforce it."[205] In this statement, Taft reinforced his theory that no matter one's political allegiances, ideology, or method in deciding cases, as long as one honored the rule of law and stood by one's decision, a judge possessed good moral character. Taft

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[202] William Howard Taft. "Possible and Needed Reforms in Administration of Justice in Federal Courts," 603.

[203] Jonathan Lurie, "Chief Justice Taft and Dissents: Down with the Brandeis Briefs!" 181.

[204] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 62.

[205] William Howard Taft, "The Duties of Citizenship Viewed from the Standpoint of a Judge on the Bench," 296.

demonstrated his impartiality through his judicial management skills and reliance on his colleagues for support in his reforms.

In addition, Taft benefitted from the fact that his reforms aligned with the popular political movement of the time. Indeed, Taft's subscription to this belief system not only reflected the historical context of the period, but also served as "an identity that provided valuable political capital." Taft's ideas "were consonant with the progressive romance with the science of organization and management," which aided him in convincing his colleagues.[206] Judicial management and the efficiency of the federal court system were of Taft's highest priority, and he fully dedicated himself to implementing both of these concepts in a long-lasting way, both on and off the bench. His dedication to organization and management further "revealed his lawyerlike belief that the Republican platform represented a virtual contract that the Party was bound to fulfill."[207] To the legal community, little about Taft's reforms were out of the ordinary considering they "fell squarely into the mainstream of the conservative reform tradition so dominant in the world of the bench and bar."[208] Taft's beliefs further strengthened his political bonds and allowed him for better support.

It would be remiss to ignore another possible contributor to Taft's great success in reform: sheer chance. Taft's life represented a series of fortunate events; he admitted himself

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[206] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development,* 207.

[207] Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 119.

[208] Peter G. Fish, "William Howard Taft and Charles Evan Hughes: Conservative Politicians as Chief Judicial Reformers," 124.

that he "always had [his] plate the right side up when offices were falling," considering every major position Taft held was offered to him.[209] His luck continued, and at the time Taft pursued his plan of reform, "the prevailing congressional majority agreed with the substantive jurisprudential commitments of the judiciary and realized that it too would benefit from increased judicial power."[210]

The relationship that existed between Congress and the judiciary during Taft's tenure proved necessary. Taft explicitly addressed his need for congressional approval, explaining "I hate to be in the attitude of a continual beggar from Congress, but I seem to have arrived at the court just when it was necessary."[211] In this statement, Taft acknowledged the critical timing of his reforms while also addressing the added benefit of the timing of his appointment to the Court: a culmination of the federal courts' problems, the favorable attitude of Congress, and the lasting reinforcement of the Progressive Era. It is true that "political change does not occur independent of preexisting institutions and structures."[212] In Taft's case, the existing structure of both Congress and the judiciary of the United States government system served integral in the implementation of federal court reform.

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[209] Quote by William Howard Taft, as cited in Jonathan Lurie, *William Howard Taft: The Travails of a Progressive Conservative,* 12.

[210] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 75.

[211] U.S. Congress, House of Representatives, House Committee on the Judiciary, *Hearing on H.R. 10479,* 67th Cong., 2nd sess., March 30, 1922.

[212] Paul Frymer, "Law and Political Development," *Law and Social Inquiry* 33 (2008): 780.

Long-Term Impact of Taft's Reforms on the Federal Court System

The conditions of the federal courts at the time of Taft's tenure made the need for reform evident, and the methods Taft implemented to achieve these reforms proved sufficient. In addition, the positive impact these reforms had on the federal court system can be demonstrated by the fact that "the three main changes—the reorganization of the federal court system under the Chief Justice, the establishment of the Judicial Conference, the radical expansion of certiorari jurisdiction—persist today, more than 75 years after Taft left the Court."[213] The procedures and methods the federal courts use today reveal the impact of Taft's accomplishments alone; in fact, "All seven chief justices who succeeded him since 1930 have utilized his administrative innovations, while the numerous visitors to *his* court still gaze with awe on what his determinization accomplished."[214] Indeed, all of these changes have contributed to the contemporary functioning of the federal court system, especially the Supreme Court of the United States. Legal historian Jonathan Lurie goes as far as to argue that Taft's reform efforts proved "indispensable" to the federal courts' future.[215] This notion has been confirmed; alongside the judicial architecture crafted by Chief Justice John Marshall, Taft's legacy stands tall among other judicial powerhouses.

The enhanced power of the chief justice and the establishment of the Judicial Conference both contributed to the federal courts' autonomy and national unity—characteristics that were far

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[213] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 80.

[214] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 23.

[215] Ibid., 235.

from the compilation of independent tribunals and judges that existed prior to Taft's sweeping changes. Of course, "As a constitutionally specified branch of the federal government," by definition, "the judiciary was already autonomous in certain ways."[216] However, the judicial branch did not always operate as "a unified branch of government with functional obligations."[217] It is true of organizations, companies, or bureaucracies that they run better with some degree of "guidance, and the functional unification of the judiciary thus implied that the judicial branch be subject to 'the executive management' of 'a head charged with the responsibility of the use of the judicial force at places and under conditions where judicial force is needed.'"[218] Taft's active role as chief justice and the Conference of Senior Circuit Judges Act of 1922 transformed the federal judiciary from one which represented fragmented states and circuits, to one in which the symbolic leader of the Supreme Court maintained a more active role in the functioning of the judiciary nationwide.

In addition, the Judges' Act of 1925 served as the single most important piece of legislation lobbied for by Taft. Although it did not greatly influence all of the federal courts across the nation as did the Act of 1922, this Act changed a fundamental component of the Supreme Courts makeup: its jurisdiction. The Court was no longer required to examine and protect "*all* federal rights. Selecting only those cases that rose to national significance on the one

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[216] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 76.

[217] Robert Post, "Judicial Management: The Achievements of Chief Justice William Howard Taft," 28.

[218] Ibid., 26.

hand, and yet serving as the ultimate 'guarantee of all federal rights' on the other, represented two incompatible functions. The Judges' Bill sought to reconcile them."[219] This change shifted the Supreme Court's purpose and character in United States government, and with discretionary jurisdiction, the significance of each case heard by the Supreme Court was altered.

Legal scholar Robert Post captured the transition of the character of the Court accurately:

> No one today would think to characterize 'more than ½' of the Supreme Court's cases as 'of no considerable importance.' No one today would think to assert that '9 cases out of 10' on the Court's docket 'will decide themselves.' Every opinion published by the contemporary Court is, in one way or another, consequential; every opinion is, in one way or another, difficult. This does not mean that difficult and consequential opinions did not exist in the 1920s or before . . . My point is instead that the norms which define and sustain institutional practices of decisionmaking will likely be different in a Court whose docket contains a large proportion of 'trifling cases' than in a Court like our own, where almost every opinion is momentous.[220]

With obligatory jurisdiction, the legal problems embedded in case law brought to the Supreme Court were routine and repetitive, crowded with mandatory appeals on more inconsequential issues involving patents and copyrights.[221] At the time of adoption, Taft and his fellow justices envisioned the application of certiorari only "as a way of quickly dealing with claims that were either frivolous or plainly governed by precedent."[222] Taft admitted with confidence that in no case " would a constitutional question of any real merit or doubt escape our review by the

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[219] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 70.

[220] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1289.

[221] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 235.

[222] Edward A. Hartnett, "Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill," *Columbia Law Review* 100, (2000): 1715.

method of certiorari."[223] Regardless of what Taft said, it is important to remember that like most in the legal community, Taft had the utmost confidence in the Court's ability. Throughout his life, Taft repeated that those in the judiciary embody the highest tier of integrity, therefore trusting the current Supreme Court and the Supreme Court of the future with the wide discretion provided by the writ of certiorari.

However, with discretionary jurisdiction, case law and the Supreme Court shifted to adopt more of a public-policy approach. The Court's decisions became a matter in which the entire nation, as well as the nation's politicians, would feel the impact of each decision handed down. Now, "The Supreme Court not only chooses which cases to decide, but also chooses which questions to answer."[224] Certiorari has equipped the Supreme Court with an agenda-setting tool, whether or not Taft envisioned or predicted this current reality. Justices employ the practice of "defensive denial," in which "a Justice votes to deny certiorari—not due to the unimportance of the issue involved—but due to disapproval of the result the Court is expected to reach."[225]

Despite these practices, injecting politics into the Court is not a new phenomenon brought by the writ of certiorari. So-called "political entrenchment" attempts began as early as the turn of the nineteenth century, with the Federalist Party's introduction of the Judiciary Act of 1801.

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[223] Letter from Taft to Senator Copeland, as cited in Edward A. Hartnett, "Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill," 1715.

[224] Edward A. Hartnett, "Questioning Certiorari: Some Reflections Seventy-Five Years After the Judges' Bill," 1717.

[225] Ibid., 1725-1726.

The Party introduced the Act as one final attempt to retain Federalist principles in defiance of the incoming Jefferson administration. Similar attempts "would be antebellum efforts by Southern politicians to construct five federal circuits that exclusively covered slave-owning states . . . and post-Reconstruction efforts by the Republican Party to transform the federal judiciary."[226]

One critical distinction exists between the political entrenchment of the past and the political entrenchment offered by the writ of certiorari: the branch of government exercising their power. The Federalist Party, Southern Democrats, and the post-Reconstruction Republican Party all altered the federal judiciary through their respective authority, either legislative or executive. The writ of certiorari, however, vested power in the Court itself, allowing the sitting justices to exert political influence. Additionally, the writ of certiorari has contributed to the heightened political nature of appointments to the Court. Overall, Taft's motivation for federal court reform was wholly different than the political entrenchment attempts of the Court's past, despite the broad, unintended consequences of the introduction of the writ of certiorari.

Besides the increasing political nature of the Court, effects of the Judges' Bill can be best observed through statistics. For the last decade, the contemporary Court accepted on average 100 to 150 cases from its docket of around 7,000 each term. Accelerated by the Act of 1925, this statistic signifies a fundamental shift in the way in which the Supreme Court disposes of its cases, and "It is clear, then, that the Supreme Court during the 1920s was in the process of transition from an institution that used full opinions to dispose of a significant portion of its appellate docket, to an institution that used full opinions to decide only an infinitesimal

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[226] Howard Gillman, "Party Politics and Constitutional Change," 144-145.

proportion of that docket."[227] The use of full opinions provide a stark contrast to the Court's previous methods further revealing the impact of this change in jurisdiction.

This fact, paired with the shifting significance of Supreme Court case law, represents the legacy of the Judges' Bill. In addition, it is noteworthy that "In 1912 the Court decided about 47% of its appellate cases with a full Court opinion . . . The historical average of disposing of about 30% of its appellate docket by full opinion, which had persisted from 1916, shrank by almost 50% in three years. In the 1928 Term the Court wrote opinions in only 16% of its appellate cases."[228] Compared to the 1 percent of cases merely reviewed by the Court in today's terms, the 1912 rate of full opinions on appellate cases is astounding. Not only did this rate affect the speed in which the Supreme Court could dispose of cases, it reflected the sheer number of trivial issues that could be handled in the lower federal courts.

Prior to the 1920s, justices often decided cases in a rush due to a combination of the speed in which cases needed to be disposed of and the number of cases heard by the Court. However, in the federal courts of today, judges and justices do not feel the same pressure. To elaborate, the Taft Court averaged 60 days between argument and delivery of a full opinion.[229] In the 2019 term, the Supreme Court averaged 111 days between argument and delivery of a full

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[227] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1279.

[228] Ibid., 1278.

[229] Ibid., 1282.

opinion, allowing the justices more time to formulate each opinion.[230] In addition to Taft's efficient judicial management, the justices on the Taft Court could not afford to commit lengthy amounts of time to formulating full opinions. Unable to allow even minor delays in the Court's docket, Taft "occasionally felt impelled 'to take most of his cases away from [Van Devanter] and distribute them among other Justices'" as a result of Van Devanter's infamous slow pace in writing opinions.[231] The Judges' Bill alleviated much of this pressure, allowing the number of cases to dwindle. As a result, the 1925 Act enabled justices to dedicate the proper amount of time to observe more convoluted issues with significant and consequential problems.

Another distinction that sets the Taft Court and other Courts prior to the Act of 1925 apart from its contemporaries are rates of unanimity. Suggesting a shift in the subject matter of the case law, "Of the 1,554 full opinions announced by the Taft Court during the 1921-1928 Terms, 84% were unanimous."[232] In contrast, the Court's unanimity rate of the 587 cases heard in the 2012-2019 terms was only 35 percent.[233] The Taft Court's docket, at least until 1925, still

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[230] Harold J. Spaeth, Lee Epstein, et al. *Case Centered Data*, V1 (2020), distributed by 2020 Supreme Court Database, http://scdb.wustl.edu/data.php.

[231] Robert Post, "Chancellor of the Taft Court," 294.

[232] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1283.

[233] Harold J. Spaeth, Lee Epstein, et al. *Majority Votes Crosstab Report*, V1 (2020), distributed by 2020 Supreme Court Database, http://scdb.wustl.edu/analysisCrosstabsGen.php?var1=term&var2=majVotes&var3=brick_2020_01&var5=2001-TURNCOAT-8558&var6=0

consisted of routine mandatory appeals cases which explored similar legal questions. In addition to the norms of consensus at the time, relying on precedent served as a formulaic practice in cases with similar facts and issues. However, the establishment of discretionary jurisdiction allows the contemporary court to reject hearing repetitive cases with similar facts and issues, removing well-established, uncontested legal issues from the docket. As a result, contemporary justices are examining the most compelling legal questions, ones in which present controversial topics.

Of course, cases can reach the Supreme Court through numerous ways outside of the writ of certiorari. However, the success of the Act of 1925 can best be measured through observation of cases accepted through granting cert. In fact, "In the 1921 Term, 19% of the Court's opinions were issued in cases that came to the Court through the discretionary writ of certiorari. By the 1928 Term this proportion had almost tripled, so that 55% of the Court's opinions were issued in such cases."[234] The expansion of discretionary jurisdiction was evident, and the evolving jurisdiction of the Court can be attributed to the Act of 1925.

Criticism of Taft's Federal Court Reform

By the 1920s, most Americans had become indifferent toward the federal courts. United States citizens were recovering from the brutality of the First World War and adapting to the changing political culture around them. These historical events created a "national mood of ambivalence toward centralization," in which "Americans were simultaneously enthusiastic about the opportunities offered by an expanded national government and worried about

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[234] Robert Post. "The Supreme Court Opinion as Institutional Practice: Dissent, Legal Scholarship, and Decisionmaking in the Taft Court," 1330.

disintegration of local government that might accompany such expansion."[235] Postwar federal expansion occurred in the executive and legislative branches with the national focus resting on both of these areas of government. As a result, the expansion of federal judicial power faded into the background. The press had little interest in reporting on the reforms due to the lack of public interest "over an arcane issue—apparently of significance to only a small group of appellate attorneys."[236]

Although the legal community at large welcomed Taft's reforms with open arms, Taft's endeavors on occasion were met with criticism and resistance. Fortunately for Taft, he differed from his predecessors in the sense that they were not "either prepared or inclined to plunge into the shifting Congressional tides, but years of public service had educated [Taft] in the ways of party politics."[237] Taft's close network with Congress, the lasting friendships created through his presidency, and Taft's general likeability enabled him to rally support for his reform and outweigh his enemies in Congress. The main complaints from Congress ranged from the fact that the reforms "violated norms of judicial propriety" to the "speed with which it was being enacted."[238] Any criticism surrounding the bills stemmed from "sensitivity to the possibility of a claim that a group of justices on their own cobbled together a bill, volunteered to speak on its

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[235] Justin Crowe, *Building the Judiciary: Law, Courts, and the Politics of Institutional Development,* 202.

[236] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 70.

[237] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 36.

[238] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 80.

behalf, and lobbied Congress to do their bidding." As a result, although "such a scenario had minimal basis in reality, all parties to this legislation were anxious to avoid any apparent linkage to it."[239]

On numerous occasions, Taft welcomed criticism of the Court. Echoing the Founders, Taft admitted that "the opportunity freely and publicly to criticize judicial action is of vastly more importance to the body politic than the immunity of courts and judges from unjust aspersions and attack. Nothing tends more to render judges careful in their decisions."[240] Taft's transparency in this statement suggested that he was well aware of the conclusions his critics would draw from cases suggesting the unjustified expansion of federal power. Taft was not willing to jeopardize his precious reforms in such a fashion.

Taft met these objections strategically, in which he "downplayed his own role in the reform effort and minimized his rivalry with the Senate."[241] In this respect, Taft predicted potential objections to his reforms and deflected and redirected the comments of each critic. Indeed, Taft recognized the growing resentment toward the federal courts: "Within the last four years, the governors of five or more states have thought it proper in official message to declare that the Federal courts have seized jurisdiction not rightly theirs, and have exercised it to the detriment of the Republic, and to urge their respective legislatures to petition Congress for

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[239] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 85.

[240] William Howard Taft, "The Duties of Citizenship Viewed from the Standpoint of a Judge on the Bench," 295.

[241] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 80.

remedial action to prevent future usurpation."[242] Although these criticisms stemmed from particular decisions of the federal courts, the negative attitudes toward the federal courts did not help Taft's case for strengthening and altering the powers of the chief justice and procedural aspects of the federal courts.

As a result, from the start of his reform Taft conveyed his lobbying efforts through the lens of practical adjustments rather than explicitly arguing for expansion of the power of the third branch to safeguard himself from intense criticism or resistance. In fact, Taft argued against the idea that he intended to expand the power of the federal judiciary, explaining that genuine need for reform was the driving force in his endeavors. He explained that "It is not a delegation of great power to the Supreme Court. The court in formulating the rules will of course consult a committee of the Bar and committee of trial judges. Congress can lay down the fundamental principles that should govern and then the court can fill out the details. The procedure in the Federal Courts should be a model for all other courts."[243]

One specific objection that Taft addressed was the notion that "[the bill] gives too much power to the council of judges, and especially to the Chief Justice."[244] To counter this claim, Taft further drew from his connections, explaining that "The Attorney-General has been much impressed with the great increase in business in the courts, and has recommended to the

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[242] William Howard Taft, "The Duties of Citizenship Viewed from the Standpoint of a Judge on the Bench," 294.

[243] William Howard Taft. "Three Needed Steps of Progress," 35.

[244] William Howard Taft. "Possible and Needed Reforms in Administration of Justice in Federal Courts," 602.

President and to Congress the adoption of a law which, it seems to me, will much facilitate the dispatch of business in the courts of the United States."[245] Through this distinction, Taft emphasized the fact that the origins of this bill did not arise from federal judges or justices who were interested in expanding their own power. Increasing the efficiency and practicality of the federal courts served as the true underlying motive for creating, lobbying for, and passing both pieces of legislation.

Despite various objections, in general, both bills met little pushback. Originally presented to Congress in 1922, "In spite of Taft's eagerness for quick legislative approval, as well as his endorsement from the president, [the Judges' Bill] failed to emerge from the House committee. Other concerns occupied lawmakers . . . it was not until February 1924 that a subcommittee of the Senate Judiciary Committee turned to the measure."[246] It is important to note that legislators pushed aside the Judges' Bill not because of controversy, but because of other pressing matters, such as foreign policy, prohibition, and labor regulation.

The first House Committee on the Judiciary hearing in 1922 regarding the Judges' Bill yielded similar results. Representative Joseph Walsh of Massachusetts asked the only relevant question to Taft, wondering if "unless some relief is given in connection with this obligatory jurisdiction, that at the rate at which the court's business is increasing it will be but a short time before the docket will be very badly congested and you will be very behind with your work."[247]

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[245] William Howard Taft. "Adequate Machinery for Judicial Business," 454.

[246] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 77.

[247] U.S. Congress, House of Representatives, House Committee on the Judiciary, *Hearing on H.R. 10479,* 67th Cong., 2nd sess., March 30, 1922.

Taft responded with a firm "yes," explaining that the Court would take "18 months to two years to reach a case on the docket."[248] All of the other questions posed by the House drifted away from the heart of the bill, and regarded the Philippines and other territories of the United States, the federal circuit courts, and the Supreme Court reporter.

The Senate Judiciary Committee held a second hearing on the Judges' Bill about two years after the first on February 2, 1924. Justices Van Devanter, McReynolds, and Sutherland appeared before the committee to advocate for the bill and again address misconceptions and resistance to the bill. Senator Thomas J. Walsh of Montana brought the most criticism in and out of the hearing, complaining that the Judges' Bill gave the Justices unlimited discretion.[249]

However, it was not one of the justices who handled Walsh's criticism in the hearing. Once again, Taft's connections proved fruitful as Chairman of the Committee on Uniformity of Judicial Procedure of the American Bar Association, Thomas W. Shelton, combatted much of the criticism in this hearing. Shelton addressed Walsh, clarifying that "Now I want at this juncture to say just a few words with reference made to the bill by Senator Walsh . . . I want to say to you that when you read this that you read not what was presented to a big body of lawyers and only routine attention given to it," but a bill that has been distributed to every lawyer, published in the ABA Journal, and the press.[250] Shelton wanted to be clear in the fact that the bill had been meticulously planned with various groups, members of the legal community, and politicians

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[248] Ibid.

[249] Jonathan Lurie, *The Chief Justiceship of William Howard Taft*, 82.

[250] U.S. Congress, Senate, Senate Committee on the Judiciary, *Hearing on S. 2060,* 68th Cong., 1st sess., February 20, 1924.

involved in the process. Shelton further justified the involvement of judges and justices in the matter, illustrating that there are "few functions more highly technical than judicial procedure and which, when improperly applied, can become more wicked in results."[251] Shelton's remarks proved effective and after two antagonizing years for Taft, the Senate passed the bill by a lopsided margin of seventy-six to one.[252]

In the second House Hearing on the Judges' Bill in 1924, Van Devanter deflected much of the criticism regarding how the Court comes to a decision on whether or not to grant cert to a particular case. Van Devanter addressed this criticism outwardly, explaining:

> In conference these cases are called, each in its turn, and each judge states his views in extenso or briefly as he thinks proper; and when all have spoken any difference in opinion is discussed and then a vote is taken. I explain this at some length because it seems to be thought outside that the cases are referred to particular judges, as, for instance, those coming from a particular circuit are referred to the justice assigned to that circuit, and that he reports on them, and the others accept his report. That impression is wholly at variance with what actually occurs.[253]

Additionally, Van Devanter received questions from the Representatives, one being of particular importance. Representative Andrew J. Montague of Virginia lead Van Devanter in question, proposing "Although you ask for discretionary power, you propose to exercise it in the method you have heretofore exercised it," in which Van Devanter replied, "Certainly. Of course, we could not maintain the institution and make it accomplish its purpose unless we did, and there

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[251] Ibid.

[252] Jonathan Lurie, *The Chief Justiceship of William Howard Taft*, 88.

[253] U.S. Congress, House of Representatives, House Committee on the Judiciary, *Hearing on H.R. 8206,* 68th Cong., 2nd sess., December 18, 1924.

is no purpose to do anything else."[254] Van Devanter, in full transparency, again reassured the committee that this bill was not intended to provide the Court with powers that would alter the function, power, and purpose of the Court. Taft and his Court wanted to assure that justice be served, and both bills presented to Congress facilitated the delivery of justice, and nothing more.

The Chief Justice made closing remarks, addressing the common misconception that the Judges' Bill would deter justices from allotting the necessary time and care to a particular case on the docket. Taft made clear that the purpose of certiorari is the contrary; "the proposition is that if we are given greater scope in this regard we may be able to give [each case] more time . . . I don't think that anyone who has sat in the court as long as I have can be in the slightest degree influenced to the view that we do not give all the time necessary to these questions."[255]

The Judges' Bill in particular did not draw unusual attention. In fact, lawmakers did not fully recognize its importance and impact. Lurie called this fact to attention: "Considering the Judges' Bill proposed the most far-ranging changes in Supreme Court jurisdiction in more than thirty years, the lack of interest by the House is striking," especially considering "Only five congressmen spoke" at the second House Committee hearing.[256] Despite the ordinarily gridlocked Congress, Taft experienced an unanticipated lobbying and passage process.

The Unusual Origins of Taft's Reforms and his Relationship with Federal Power

Considering the historical context and political norms of the time, Taft's reforms lay far outside of the traditional role of the chief justice. However, "At every stage and in every major

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[254] Ibid.

[255] Ibid.

[256] Jonathan Lurie, *The Chief Justiceship of William Howard Taft,* 85.

development in our history the Court has been at 'the storm center.'"[257] Taft understood this trend, and in order to keep the Court in its proper place in history and to boost its power and prestige relative to that of the other two branches of government, Taft viewed reform as overdue and necessary. Whether the Court continued to be at the storm center of major historical turns in the United States was a cause or effect of Taft's reforms, this idea only further justifies the fact that Taft stepped outside of the traditional role of chief justice. The reforms implemented by Taft proved essential to the continued functioning of the federal courts, which, in turn, further solidified the Supreme Court's place in United States history and in all current events.

The origins of Taft's reform proved so unusual that it falls outside of two judicial reform theories: Congress-centered and Court-centered. To elaborate, "under 'Congress-centered' explanations, we should expect substantial and independent congressional interest in judicial reform," and under "'Court-centered' explanations, we should expect a landmark judicial decision embodying or announcing significant change," as the traditional stages of judicial federalism reflect. In Taft's reforms, however, neither theory applied.[258] Congress did not pursue such reform on its own; the federal court reforms passed by Congress during Taft's tenure were consequences of Taft's efforts. In addition, although the Taft Court produced notable cases and opinions that merit discussion, no single landmark case stands out and defines his judicial reform. Taft and his Court did not engage in judicial activism in this respect and did not manipulate cases brought to them in order to achieve reform; they used the government resources

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[257] Alpheus Thomas Mason, "President by Chance, Chief Justice by Choice," 39.

[258] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 75.

provided to them under the United States Constitution to implement needed structural and doctrinal reform. Overall, "In matters of federalism the record of the Taft period is mixed," revealing no substantive trends on matters of expansion of federal power.[259] Taft's reforms were unprecedented, which further begs the question whether these reforms were within his power.

Taft's opinion on the expansion of federal power, specifically of power granted to the president, is reflected in *Myers* v. *United States* (1926). *Myers* served as one of the few cases that provides insight regarding Taft's attitude toward federal power, which can be further applied to his willingness to push the traditional boundaries of the chief justiceship. This case proved unique in that the chief justice presiding over the Court examining the argument was a former president, giving Taft an unprecedented frame of reference. Without question, "Taft did not approach the *Myers* case as a blank slate. He held definite and strong preconceptions about presidential removal power, which he viewed through 'executive colored glasses.' He would bring to *Myers* the entire weight of his considerable presidential experience."[260] Indeed, Taft admitted that his opinion on this case was "one of the most important opinions I have ever written."[261]

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[259] David P. Currie, *The Constitution in the Supreme Court: The Second Century, 1888-1986*, 134.

[260] Robert Post. "Tension in the Unitary Executive: How Taft Constructed the Epochal Opinion of *Myers* v. *United States*," *Journal of Supreme Court History* 45 (2020): 172.

[261] Letter from William Howard Taft to Mrs. Frederick J. Manning, October 24, 1926. Letter, William H. Taft Papers, as cited in Robert Post, "Tension in the Unitary Executive: How Taft Constructed the Epochal Opinion of *Myers* v. *United States*," 167.

In *Myers*, the Court examined an 1876 statute that outlined the appointment and removal of postmasters of various classes by the president with the advice and consent of the Senate. The question presented before the Court was whether the act unconstitutionally restricted the power of the president. Delivering the opinion of the Court, Taft explained that in this instance the Constitution grants the president the power to act alone. Taft concluded: "The fact that the executive power is given in general terms, strengthened by specific terms where emphasis is appropriate, and limited by direct expressions where limitation is needed, and that no express limit is placed on the power of removal by the executive, is a convincing indication that none was intended."[262] Taft also drew argued that "on the merits, we find our conclusion strongly favoring the view which prevailed in the First Congress," therefore allowing Taft to strike down the 1876 Act.[263]

Overall, one of the most significant takeaways from *Myers* is that Taft's opinion and reasoning provided insight on the degree to which he valued practicality. Through his presidential experience, Taft gained appreciation of "the administrative needs of a nationally elected president for control, coherence, and efficiency. Taft regarded these virtues as paramount when threatened by the bickering, petty, local, and merely political concerns of Congress."[264] Through this perspective, Taft was again appealing to typical progressive conservative thought. Above all else, the practical effects of the reform were top priority. Even

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[262] *Myers* v. *United States*, 272 U.S. 52 (1926).

[263] Ibid.

[264] Robert Post. "Tension in the Unitary Executive: How Taft Constructed the Epochal Opinion of *Myers* v. *United States*," 187.

as president, "strikingly, Taft had also urged Congress to put all postmasters, including first-class postmasters like Myers, 'into the classified service' and thus remove 'the necessity for confirmation by the Senate,'" streamlining the entire process.[265] Perhaps out of the personal desire to avoid the lengthy process of Senate confirmation, to improve the circumstances of the presidency, or both, Taft searched for areas of improvement in other roles besides his chief justiceship.

In addition, Taft's opinion also revealed his preference for the executive branch over the legislative, heavily relying on the express duties of the president outlined by the Constitution. Taft felt that as the statute stood, the president was unable to "discharge his own constitutional duty of seeing that the laws be faithfully executed."[266] Taft recognized that the act's original purpose was to "prevent a president from substituting his judgement for that of an appointed subordinate."[267] However, Taft believed that the idea that the president was meant to serve as the "general manager of the administration" better aligned with the powers granted in the Constitution, therefore prompting him to declare the act as unconstitutional.[268]

On the surface it is easy to attribute Taft's opinion to his personal bias and previous experience. Of course, his prior role influenced his decision, but not in a way that compromised

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[265] Ibid., 170.

[266] *Myers* v. *United States,* 272 U.S. 52 (1926).

[267] Robert Post. "Tension in the Unitary Executive: How Taft Constructed the Epochal Opinion of *Myers* v. *United States*," 185.

[268] Rene N. Ballard. "The Administrative Theory of William Howard Taft," *Western Political Quarterly* 7 (1954): 73.

Taft's integrity as a jurist. Evidenced in his actions as president, it is true that he had sought to remove at least 175 postmasters, but "he had always scrupulously adhered to the statute, even when the Senate refused to consent to requested removals. He never once questions the constitutionality of the statue."[269] Considering Taft's judicial tendencies as president, Taft was not motivated to arbitrarily override Congress to remove several individuals from office, nor was he motivated to allow further presidents to do so; in fact, he respected the statute while in office.

In fact, "although Taft deeply believed in a 'law-governed presidency,' he was nevertheless clear that the president was 'no figurehead.'" For Taft, the Constitution equipped the president with the robust authority to carry out the duties accorded to him or her.[270] Taft believed in a strong executive, one who carried out his or her duties to the fullest extent of his or her granted powers. Most significant, Taft believed in an executive who acted within his or her proper sphere. By striking down this act, Taft was interpreting the Constitution using his own methodology within the powers of a Supreme Court Justice. The power to remove individuals from office no longer served the direct interests of an aging Taft; sitting on the Supreme Court was his final position.

Conclusion: Were These Reforms Outside of Taft's Powers as Chief Justice?

Although it has been well established that Taft elected reform out of a personal desire to better the federal courts, a desire to better a particular branch of government is not analogous to a desire to alter that branch for personal benefit. In fact, Taft's goal of reform "was not just more

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[269] Robert Post. "Tension in the Unitary Executive: How Taft Constructed the Epochal Opinion of *Myers* v. *United States*," 169.

[270] Ibid., 171.

judges or a lighter workload empowered judiciary; his focus was not on gaining power in the short-term but on consolidating it for the long term."[271] Taft undoubtedly understood his personal passion and appreciation for the federal judiciary in these changes. However, this dedication to maintaining and improving the federal courts reveals that his work proved to be tireless, selfless, and genuine. It is clear that Congress enacted Taft's reforms to improve the federal courts in the long run, not only to benefit his own Court, but more important, to shape the federal courts for decades to come.

Overall, Taft accomplished his own goals in reforming the federal courts by unifying the third branch of government and clearing up much of the federal docket, especially the Supreme Court's. His reforms resulted in various consequences, both unintended and ironic. The introduction of the writ of certiorari enhanced the Supreme Court's agenda-setting powers, allowing the Courts to hand pick which compelling legal questions they would prefer to hear. As a result, the number of cases actually heard by the Court has declined significantly, revealing the reaching effect of the Judges' Bill. Ironically, although Taft's reforms united the federal courts in terms of communication and branch cohesion and vested more power in the Supreme Court, the Supreme Court's ability to grant cert on only a narrow set of cases has allowed the federal circuit courts to become the de facto court of last resort for most disputes. Thus, this decentralized the federal courts to a degree. Taft's reforms are not the sole reason for this trend in litigation; the explosion of litigation in the latter half of the twentieth century along with a multitude of social and political factors have contributed to the evolving nature of the modern

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[271] Justin Crowe, "The Forging of Judicial Autonomy: Political Entrepreneurship and the Reforms of William Howard Taft," 80.

federal courts. These consequences should not take away from the importance of Taft's reforms and Taft's judicial legacy.

The fact that Taft's unprecedented reform measures carried some unintended consequences does not serve as evidence that they were outside of his powers granted to him under the Constitution. Indeed, "it is certainly true that he was more powerful—as a politician, as an administrator, and certainly as a policymaker—than most of his predecessors had been."[272] Evidence that Taft wielded more administrative power over his own Court simply reveals the strength of his judicial management skills on the Court compared to his predecessors and successors. The power Taft possessed, however, was not prohibited by the Constitution, and in reality, should be applauded and admired.

Considering all aspects of Taft's reforms, Taft's judicial leadership strategies and methods were not self-centered power grabs. Procedurally, Taft used the powers granted to him to their fullest extent. Nevertheless, he did not usurp or overextend the powers given to the chief justice and the federal judiciary. Article III of the Constitution provides little guidance on the exact structure of the federal judiciary, and the structure of the judiciary has been consistently altered through acts of legislation over the course of United States history. Taft followed the proper procedural steps to enact his reforms with extreme care, while Congress enacted each statute as delegated by Article I of the Constitution. The manner in which Taft redefined the role of the chief justice was not out of Taft's desire for more power. The reformed role of the chief

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[272] Ibid., 81.

justice symbolizes the unified third branch of government as well as Taft's relentless work ethic and judicial administration skills.

In addition to Chief Justice John Marshall, Chief Justice Taft completed the most significant structural change to the federal court system since the founding of the United States. To say that Taft's reforms acted as a catalyst for the growth of the federal judiciary and contributed to the current state of the United States federal court system is an understatement. Indeed, the impact of Taft's reforms can be felt across the United States almost one hundred years later. Taft served as a true judicial reformer, one who felt deeply about his cause and who possessed a clear vision of an effective, unified federal court system with one goal in mind: the proper and timely delivery of justice.

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