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Taft: The Court Should Preserve Framers' Governmental Structure

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The U.S. Supreme Court is a law court, of course, but it is primarily a political institution that guides the destiny of the nation. Its rulings mark the boundaries of power between the branches of the federal government and those between the federal and state governments, as well as determining the scope of liberties enjoyed by the citizenry.

William Howard Taft, the lone American to serve as both president and Chief Justice, was acutely aware of the impact of the Court on the life of the nation and the influence of individual Justices on both Court and country. Only a handful of jurists have made a truly significant imprint on their age and the long history of America, and Taft sought to assemble them through the exercise of his appointment power under the Constitution.

In a letter to old friend and former Justice William Moody, Taft explained that the duty of the Court was "to preserve the fundamental structure of our government as our fathers gave it to us." Taft's nomination of five Associate Justices and one Chief Justice, all men whom he deemed to be "sound conservatives," would, he be believed, provide the requisite preservation of the founding fathers' system of government. Taft's friends and peers toasted to his success: "Mr. Taft has rehabilitated the Supreme Court."

Judicial scholars have written with insight about the various factors that often guide presidential nominations to the Supreme Court: judicial experience, governmental service, ideology and party affiliation, geographical considerations, a president's own political interests and, in recent years, race and gender. President Taft was as determined as any of his predecessors, and perhaps more than most, to pack the Court with jurists that reflected his own political values and views.

His conservative majority, he hoped, would protect the Constitution from the attacks leveled by Theodore Roosevelt and his new Progressive Party. Taft told reporters that he had declared to his team, "Damn you, if any of you die, I'll disown you." Taft was disappointed in the longevity of his nominees who, for reasons of retirement and death, served for just four, six and ten years. His Chief Justice, Edward White, served for ten years.

Taft, then, like most presidents in our nation's history, was denied his dream of a long-term impact on the Court and the Constitution. His nominees, unlike his successors' nominees, were not miserable disappointments. Certainly, he did not experience a Theodore Roosevelt or Dwight Eisenhower degree of disappointment in his nominations.

Roosevelt famously denounced Justice Oliver Wendell Holmes, whom he had nominated with great pride. A couple of Holmes's opinions so angered Roosevelt that the president declared, "I could carve out of a banana more backbone than Holmes possesses." Eisenhower, who named to the Court two game-changers—Chief Justice Earl Warren and Justice William Brennan—was beyond disappointment as he read his nominees' opinions. One day at a press conference, in answer to a reporter's question of possible mistakes that he had made as president, Eisenhower said, "The biggest damn mistake

I've made was in naming Warren and Brennan to the Court."

Some of President Taft's nominees to the Court were men of distinction who exerted historical influence on the Court's jurisprudence and historical direction. Others, we might say, were curious appointments.

When Taft entered the White House, he said he was disturbed by the aged Court, under the leadership of Chief Justice Melvin Fuller. He shared with friends his concerns about the "pitiabile" condition of the Court and the "old fools" who clung to their posts.

It was surprising, to say the least, given his concerns about the aging Justices that President Taft, with his first opportunity to remake the Court, named his old friend and colleague from the U.S. Circuit Court of Appeals, Horace H. Lurton of Tennessee. At the time of his nomination, Lurton was nearly 66 years old. The explanation behind the nomination? Like so many others who have risen to positions of power, Taft was compelled by considerations of friendship and professional association. Lurton remains the oldest person to ascend to the Supreme Court. Taft was sentimental about the appointment of his old friend to the nation's High Bench. He wrote, "there was nothing that I had so much at heart in my whole administration as Lurton's appointment."

Justice Lurton was a southern Democrat and confederate veteran who shared Taft's conservative values. Shortly after his appointment to the Court, Lurton delivered a lecture to the Virginia and Maryland Bar Associations on the topic, "A Government of Law or Government of Men?" Appraisals of the talk described it as an uninspired rendition of conservative judicial values that added nothing to the discussion. If those criticisms of Justice Lurton's contributions were, at

best, modest, they were consistent with the appraisal of his career on the bench by his eulogist, who observed that the Justice had rendered "no startling or sensational decisions."

If President Taft's nomination of Horace Lurton to the Court fell short of history's standards, his subsequent nominations did not. They included, among others, Willis Van Devanter of Wyoming, Charles Evans Hughes of New York, and Edward White, prodigal son of the Confederate South, to whom we turn next week.

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