

BOOK REVIEWS

THE LIFE AND TIMES OF WILLIAM HOWARD TAFT. By Henry F. Pringle. New York: Farrar and Rinehart, Inc., 1939. Two volumes. Pp. xii, 1106. \$7.50.

Mr. Pringle brought to the task of writing this biography a good equipment. First should be mentioned the experience gained in writing two earlier ones, those of Alfred E. Smith and Theodore Roosevelt; second, a seemingly good insulation against the pressures which the basic documents and materials used by the biographer bring to bear on him either to deify or talk down the subject of his study. Mr. Pringle has done neither. His viewpoint is objective but not hypercritical, and he is fair to both the central figure of his narrative and to those who opposed him. Moreover the story is well told throughout, and the competent reader will find plenty to sustain his interest to the end of the 1100 pages. The book is "authorized" but not "official," the author tells us; which means that he had full access to the nearly half million letters and documents in the Taft collection and the aid and cooperation of the family, but that the method of treatment and the judgments expressed are entirely his own.

The life of William Howard Taft (1857-1930) offers potentially a richer reward for the efforts of the biographer than do those of most public men of his generation. In 1881 at the age of twenty-four, he was appointed assistant prosecutor of Hamilton County, Ohio, and thereafter for the remaining forty-nine years of his life was in public office except for short intervals. The posts held included those of assistant county prosecutor, United States collector of internal revenue, judge of the Superior Court of Cincinnati (a trial court of general jurisdiction), United States Solicitor General in the Benjamin Harrison administration, judge of the United States Circuit Court for the Sixth Circuit, Chairman of the Second Philippine Commission and first civil Governor of the Philippine Islands, Secretary of War for six years under President Theodore Roosevelt, President of the United States, and Chief Justice of the United States Supreme Court. Under President Wilson he served for a time as joint chairman of the War Labor Board. In his private capacity, he had been a cub reporter, a practicing lawyer, and had served as Dean of the Cincinnati Law School and its professor of property and years later as Kent Professor of Constitutional Law at Yale University. He was the only person to head two of the great departments of the federal government; and only John Quincy Adams, who died in his eighty-first year, exceeded him in the length of his public service and rivaled him in the variety of positions held. It was significant of his character and temperament that only thrice did he stand for popular election (twice succeeding) and that he never sat in a legislative body.

Taft's first office of national importance was as chairman of the Philippine Commission, to which he was appointed by President McKinley in January, 1900. In July of the following year his status became that of civil governor of the islands. His task was to establish a civil government in a

land long impoverished by war and misrule. That he performed the job well, without military show or bluster, and at the same time won the love and respect of the Filipino people, was to his high credit. The first American "viceroy" suddenly found himself with a high reputation as an administrator. In February, 1903, President Roosevelt who had several times before importuned him to come home, now sent an invitation to which there could be no negative answer to accept the position of Secretary of War from which Elihu Root was soon to retire. "If there were only three of you," the impetuous Roosevelt wrote, "then I would put one of you on the Supreme Court * * * one of you in Root's place as Secretary of War * * * and one of you permanently governor of the Philippines." Mr. Taft sailed from the Philippines at the end of the year.

The office of Secretary of War was to be no sinecure, what with Negro regulars shooting up Brownsville, Texas, the digging of the Panama Canal, which was in charge of the department's engineer corps, a revolution in Cuba calling for armed intervention, not to mention the oversight of the Philippines, which had been placed under War Department jurisdiction. Nevertheless Secretary Taft's performance made him the logical nominee of the Republicans for the Presidency in 1908; and Roosevelt willed it so. The logic of events pushed him on toward a goal which, we are led to believe, he would never deliberately have set for himself. "Of course, you are not enjoying the campaign," Roosevelt wrote him. "I wish you had some of my bad temper! It is a real aid to enjoyment." The four White House years and the election campaign which preceded them are the story of the struggle of a man to play certain parts for which he had a deep distaste. Only at this point in the Taft career would the playwright find drama.

The case histories of Messrs. Roosevelt and Taft should be made required reading for all future Presidents-elect. The former left office generally acclaimed as the inflexible enemy of special privilege and of malefactors of great wealth, as the friend of the poor and oppressed, the champion of a square deal for all, and the rescuer of the country's natural resources from the spoilsmen. The latter on the other hand, had lost his "public" in four years because it was widely believed that he had surrendered to the "interests" and sat placidly by while his subordinates connived at the rape of the public domains. The facts of history show that there was little to choose between the two men in the matter of their devotion to the good of the common man, if judged by their deeds as chief executive rather than words and gestures. How did it all come about?

On the record of achievements in public life, one might well conclude that not a half dozen of the Presidents had come to office so well prepared for administering the government as Mr. Taft. He seemed to believe that if he did his work well this would bring its own reward. What he did not seem to know was that public approval was contingent upon a public comprehension that good deeds had been done. His was not the gift of advertising what he had accomplished; to hide the errors which he inevitably made; to parry the blows aimed at him; to distract attention from acts which were

unpopular by creating a diversion in another field; to attack as a means of defense. Perhaps more than an inability to do these things was a deep distaste for them. Mr. Roosevelt could consort with men of wealth and take the aid of machine politicians, and make the public forget it by denouncing in scathing terms other men of the same ilk. Mr. Taft's cooperation with such men was quickly noted and proclaimed as treason to the people's cause, and he had not the heart nor the finesse to divert their disapproval by play-acting. Several of his unfortunate public expressions would doubtless never have been made had his office been equipped, as is that of the present President, with a "public relations" staff.

The administrative achievements of the Taft regime make an impressive record when viewed in retrospect, certainly exceeding those of any other quadrennium since the Civil War. A pet project of Mr. Taft's was the Commission on Efficiency and Economy, to which he appointed men of eminence and distinction in the field of public administration. Students of government are apt to point to this commission as the precursor of the National Budget and Accounting Act of 1921, and of the various plans subsequently proposed for the reorganization of the federal administrative system. And meanwhile his able attorney-general, George W. Wickersham, was carrying on without ostentation a vigorous series of prosecutions under the Anti-Trust Act: eighty such suits were filed in four years as against forty-four in the seven years of the Roosevelt administration.¹

One might think that President Taft's years in the political arena were enough of public service for one man, but his *alter ego*, Judge Taft, had twenty-one years to his credit. The first four were as judge of the Superior Court of Hamilton County, eight as United States Circuit Judge for the sixth circuit, and nine as Chief Justice of the Supreme Court of the United States. Mr. Pringle at the outset candidly disclaims a knowledge of legal affairs, but his handling of Mr. Taft's judicial career is instructive both to the lawyer and to the layman. In whatever position he happened to be or whatever the clime, his soul's desire to serve on the Supreme Court was not dead. Much as the tom-tom in Eugene O'Neill's play, *The Emperor Jones*, it was always in the background, sometimes faint, sometimes loudly insistent. For one who honestly doubted his own fitness for every administrative post which was offered him, Mr. Taft's ambition when scarcely turned thirty to go on the Supreme Court, is somewhat amazing. It was the irony of fate that, when President Roosevelt was able to offer him such an appointment, he felt he could not in good conscience give up his Philippine task at that critical point; and that during his own incumbency of the Presidency he handed out five such positions, any one of which he would have considered preferable to the one he held. "There is nothing I would have loved more than being Chief Justice of the United States," he mourned as he signed the commission for Edward D. White. His time finally came in 1921 by virtue of White's death and the favor of another Republican President from Ohio.

Mr. Taft's judicial career is examined by his biographer chiefly from the

1. Jenks, Jeremiah and Clark, W. E., *The Trust Problem*, 244.

viewpoint of his responsiveness to the need for progressive change in the substance of the law and in the implements of its administration. Among his more important decisions, those on labor are the most numerous and they did the most to bedevil him when he entered politics. In his best known Superior Court case, *Moore & Co. v. Bricklayers' Union No. 1*,² he declared the secondary boycott illegal; and the same ruling was subsequently applied in two circuit court cases.³ In all, he carefully affirmed the legality of labor unions and their right to withhold their labor, but a combination for the purpose of compelling a breach of contract was unlawful and a conspiracy.⁴ Two other circuit court cases showed more skill in the craftsmanship of the law. William Voight, an express company employee, had been seriously injured in a railroad accident. Before entering upon his duties, he had signed a waiver releasing his employers from all liability in the event of his injury. Judge Taft held that the contract was void as contrary to public policy;⁵ but he was later reversed by the United States Supreme Court.⁶ In the second, he ruled that the state, through its police power, could make an employer liable for injuries in spite of an implied assumption of risk contract.⁷ A year later when an employers' liability law was being urged in New York, Mr. Taft was referred to slightly by a railroad attorney as "one of those western labor judges!"

As Chief Justice, Mr. Taft was to write the opinion of the court in a half dozen labor cases of importance. In *American Steel Foundries v. Tri-City Central Trades Council*,⁸ he explicitly recognized the right to picket and attempted to set the point at which it became intimidation and hence unlawful. The latest ruling of the court had made all picketing unlawful or extremely hazardous.⁹ In *Truax v. Corrigan*,¹⁰ the Chief Justice ruled against that portion of an Arizona statute which denied the use of the injunction in labor disputes unless irreparable damage was threatened for which there was no other adequate legal remedy. Truax's restaurant business was property, the court declared, and the statute's attempted experimentation with fundamental right amounted to a denial of the equal protection of the laws. In another Fourteenth Amendment case,¹¹ Mr. Taft ruled out a Kansas statute which imposed the compulsory settlement of

2. *Moore and Co. v. Bricklayers' Union No. 1*. Weekly Law Journal and Ohio Law Journal, Jan. 20, 1890.

3. *Toledo, A. A. & N. M. Ry. v. Pennsylvania Ry.* (C. C. N. D. Ohio 1893) 54 Fed. 730; *Thomas v. Cincinnati, N. O. & T. P. Ry.* (C. C. S. D. Ohio 1894) 62 Fed. 803.

4. *Thomas v. Cincinnati, N. O. & T. P. Ry.* (C. C. S. D. Ohio 1894) 62 Fed. 803, 818.

5. *Voight v. Baltimore & O. S. W. Ry.* (C. C. S. D. Ohio 1897) 79 Fed. 561.

6. *Baltimore & Ohio Southwestern Ry. v. Voigt* (1900) 176 U. S. 498.

7. *Narramore v. Cleveland, C., C. & St. L. Ry.* (C. C. A. 6, 1899) 96 Fed. 298.

8. (1921) 257 U. S. 184.

9. *Hitchman Coal & Coke Co. v. Mitchell* (1917) 245 U. S. 229.

10. (1921) 257 U. S. 312.

11. *Wolff Packing Co. v. Court of Industrial Relations* (1923) 262 U. S. 522.

labor disputes and forbade strikes and lockouts while the case was pending. While restricted to certain essential industries as food, clothing and fuel, the court found the statute an unreasonable regulation of the freedom of contract. Mr. Taft's vigorous dissent in the District of Columbia Minimum Wage case¹² became the rule of the court fourteen years later.¹³ A federal child labor law, applicable to workshops and factories in general and built around the taxing power, came up in *Bailey v. Drexel Furniture Co.*¹⁴ The sanction was a ten percent tax on the net profits of all establishments not complying with the law. Taft carried all other members of the court, except Clarke, with him in an opinion which declared that the imposition was a penalty and not a tax. He also had the entire court with him in *Coronado Coal Co. v. United Mine Workers*¹⁵ in holding that a labor union although only an unincorporated association was suable. In this and the opinion in *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association*,¹⁶ to which he subscribed, the court held that although labor in coal and stone production was not interstate commerce, its acts might fall within the Sherman Act if they amounted to "the suppressing and narrowing" of the interstate market. The distance down the road from this point to the *Jones & Laughlin* marker was not too great.¹⁷

Mr. Taft had always been in the van of his judicial brethren in his conception of the commerce clause. In 1895 the Supreme Court in the *Sugar Trust*¹⁸ case had stripped that clause to the bone; which had the effect of robbing the Sherman Act of the greater part of its field. Three years later Circuit Judge Taft in *United States v. Addyston Pipe & Steel Co.*¹⁹ wrote an opinion which challenged that decision. "Contracts for the sale of such articles * * * across state lines * * * do not merely affect interstate commerce, but are interstate commerce," he contended. A year later he experienced that sweetest of judicial pleasures, the satisfaction of knowing that the United States Supreme Court on appeal had sustained unanimously his decision and on the grounds which he had chosen.²⁰ Mr. Taft's own opinions when the Packers' and Stockyards and Grain Futures Acts later came up for consideration were a frank adoption of the "stream of commerce" conception stated by Mr. Justice Holmes back in 1905.²¹ The court visualized the "free and unburdened flow of live stock from the ranges and farms of the West and the Southwest, through the great stockyards and slaughtering centers * * * and thence in the form of meat products to the consuming cities of the country in the Middle West and East."²² In *Dayton Goose*

12. *Adkins v. Children's Hospital* (1923) 261 U. S. 525.

13. *West Coast Hotel Co. v. Parrish* (1937) 300 U. S. 379.

14. (1922) 259 U. S. 20.

15. (1925) 268 U. S. 295.

16. (1927) 274 U. S. 37.

17. *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937) 301 U. S. 1.

18. *United States v. E. C. Knight Co.* (1895) 156 U. S. 1.

19. (C. C. A. 6, 1898) 85 Fed. 271.

20. *Addyston Pipe and Steel Co. v. United States* (1899) 175 U. S. 211.

21. *Swift and Co. v. United States* (1905) 196 U. S. 375.

22. *Stafford v. Wallace* (1922) 258 U. S. 495; *Board of Trade v. Olsen* (1923) 262 U. S. 1.

Creek Railroad Co. v. United States,²³ he sustained the "recapture" clause of the Transportation Act of 1920 as a valid exercise of the commerce power for the purpose of building up a system of railways "prepared to handle promptly all the interstate traffic of the country." Chief Justice Taft and some of his brethren broke judicial precedent by working actively for statutory changes which would enable the court to keep abreast of its work. These efforts bore fruit in the act providing for twenty-four new district judges and setting up the Conference of Senior Circuit Judges presided over by the Chief Justice and in the act²⁴ giving the Supreme Court by the use of *certiorari* the authority to say what cases might come before it.²⁵ Within a few years, the court was able to report annually that its work was "current."

Mr. Pringle at no point attempts a comprehensive analysis of the character and achievements of the central character of his narrative; but the attentive reader may see a pattern take form. There is a striking consistency in Taft's methods of procedure, whether undertaken as administrator, statesman, or judge. He would always work from the home base, which he had thoroughly surveyed, into the unknown, consolidating the new territory after each advance and not losing contact with the point of departure. Secondly, he would continue to advance; for quiescence was not a part of his universe and retreat seldom required. In the comparative freedom of his academic life at Yale, he had assumed national leadership in promoting the "League to Enforce Peace," and a few years later gave President Wilson valiant support when its central idea was embodied in the League of Nations. In this, his one seemingly idealistic project, he was inconsistent, for as a lawyer he was keenly aware of the historic process by which law and the courts had been progressively substituted for force; and he believed that the same substitution might gradually be made in the realm of international relations. The qualities and methods heretofore attributed to Mr. Taft are not enough for the person who would lead a people in a great cause or conduct an army into battle. Happily America's affairs are such that the need for such talents is only occasional.

In writing these volumes, Mr. Pringle has performed a work of distinction. He has not only written interesting history but has made a valuable contribution to our knowledge of the problems of various public offices. That the volumes are attractive in appearance, printed in large clear type, and provided with an adequate index, are details which will add to the reader's pleasure.

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LAW, THE STATE AND THE INTERNATIONAL COMMUNITY. By James Brown Scott. New York: Columbia University Press, 1939. Two volumes. Pp. xxiv, 613; vi, 401. \$8.75.

The author of this work is concerned primarily with jurisprudence and

23. (1924) 263 U. S. 456.

24. September 14, 1922, 42 Stat. 838, 28 U. S. C. A. (1927) sec. 218.

25. February 13, 1925, 43 Stat. 938.

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