



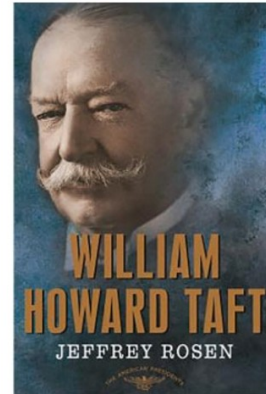
Written by [Steve Byas](#) on December 24, 2018

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The President Who Obeyed the Constitution

William Howard Taft, by Jeffrey Rosen,
New York: Times Books, 2018, 137 pages,
hardcover.

Today William Howard Taft is remembered as the president who got “stuck” in the White House bathtub (he weighed well in excess of 300 pounds), or as the first president to throw out the first ball at a major league baseball game. Many conservatives are even better acquainted with his son, Senator Robert A. Taft — a hero to many in the “Old Right.” But William Taft should be remembered for other things.



Jeffrey Rosen, president and CEO of the National Constitution Center, presents an excellent overview of one of our least-remembered presidents. The picture of William Howard Taft that emerges in a new biography is that of a president who revered the Constitution and firmly believed that it created a republic, not a democracy. Conservatives today who agree with those sentiments will find multiple examples herein to like, but also some areas of disagreement with Taft.

Taft summarized his political philosophy in his book *Popular Government*, written while a law professor at Yale (where he had a chair, but alluding to his weight, he said he could have better used a couch). “Now popular government is not an end. It is a means of enabling people to live together in communities, municipals, state and national, and under these conditions to secure to each individual and each class of individuals the greatest measure of happiness.”

Rosen contends that Taft, as president, “approached each presidential decision by asking whether it comported with the Constitution.” In his book *Liberty Under Law: An Interpretation of the Principles of Our Constitutional Government*, Taft wrote, “We are not a pure democracy governing by direct action, and the great men who framed our fundamental law did not intend that we should be.”

Taft was the son of Alphonso Taft, a founder of the Republican Party in the 1850s, and a founder of the secretive and elitist Skull and Bones club at Yale. William Howard Taft would also be a member during his time at Yale, where he finished second in his class. He married Helen Herron, who pushed him to run for public office. As a girl, she had visited the White House, telling friends that she would someday be the wife of a president.

Taft’s dream, on the other hand, was to be a judge, like his father, and ultimately serve as chief justice of the Supreme Court. President Warren Harding nominated Taft in 1921, making Taft the only person to serve both as president and, later as chief justice. The path to chief justice included a stint as solicitor general under President Benjamin Harrison.

When President William McKinley asked Taft to take over governing the Philippines, obtained by the United States after winning the Spanish-American War, Taft was at first reluctant. He spoke no Spanish, he told McKinley, and besides that, he had opposed the war, and especially he opposed any



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transition of America from a republic into an imperial power. But as a good Party man, he took the job. President Theodore Roosevelt had developed a liking for the jovial Taft, naming him secretary of war in 1903. When Roosevelt (reluctantly) honored the no third-term tradition in 1908, both T.R. and Taft's wife pushed Taft to be a candidate for president himself in 1908. He won easily.

As president, Taft could not have been more different than his predecessor, and these differences would eventually lead to a rupture of their friendship, with both men contending for the Republican nomination in 1912. Whereas Roosevelt took the view that a president should be able to do anything he wished, so long as the Constitution did not forbid it, Taft held the position that a president could not act unless the Constitution permitted him. "The thing which impresses me most is not the power I have to exercise under the Constitution," Taft said at the end of the 1908 campaign, "but the limitations and restrictions to which I am subject under that instrument." This fundamental difference in philosophy can be illustrated with a few examples.

Taft inherited an \$89 million deficit from the free-spending "progressive" Roosevelt, but reduced it to a mere \$11 million in 1910, and finally produced small surpluses in both 1911 and 1912. As president, Taft told Congress the federal government had an obligation to balance the budget and make the burden of taxation as light as possible.

Another contrast with Roosevelt was in Taft's view of foreign policy. He insisted that the Constitution gives the power to declare war to Congress, not to the president. An opportunity arose in 1911 for Taft to put this philosophy into practice. "When he read a dispatch in May [1911] reporting that four Americans had been killed in Mexico," Taft told his wife he wanted to prevent war. During a White House reception in August, Taft's close aide Archie Butt recalled, Taft "broke down and wept" over the pressure being brought upon him to go to war.

Taft stationed troops near the Mexican border, so they would be ready if needed, but he refused to do more. He said, "I seriously doubt whether I have such authority [to invade Mexico]," and that he would do nothing "without express congressional approval."

Roosevelt publicly criticized Taft's public statement as a lack of "leadership in foreign affairs."

Relations between Taft and Roosevelt declined greatly during the second half of Taft's term, as their differences in political philosophy became more apparent. Roosevelt became increasingly strident that Taft was abandoning the progressive political philosophy.

Several examples of these differences are related in the book, but Taft's decision to file an anti-trust lawsuit against U.S. Steel, owned by Roosevelt's friend J.P. Morgan, was certainly a major breach. During the Panic of 1907, Roosevelt allowed Morgan to purchase the stock of Tennessee Coal and Iron, perhaps U.S. Steel's primary competitor. The reason given was that such a purchase would revive optimism in the economy — after all, if one of the richest men in the country thought it was good to invest, the economy must not be all that bad.

Taft, however, had made no such promise, and from his reading of the law, the purchase had violated the Sherman Anti-Trust Act. Roosevelt was understandably infuriated — and so was J.P. Morgan. When Roosevelt challenged Taft for the Republican nomination in 1912, Morgan's money backed him. Taft held off Roosevelt's challenge, but Roosevelt ran on the third-party Progressive Party ticket. The division within the Republican Party elected Democrat Woodrow Wilson, another progressive, who



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differed sharply with Taft's limited-government views.

Curiously, Rosen does not mention another reason that Morgan opposed Taft's reelection: Morgan was among the prime instigators of the creation of the Federal Reserve System, and Taft opposed it.

Conservatives should like many of the things that Taft said and did as president, but he clearly had his faults. For one, Taft favored the creation of a federal income tax, as long as it was used only in emergencies, as was the case when it was used during the Civil War. He specifically opposed its use "for the purpose of permanently restraining great wealth." He naively predicted it would not exceed two percent of income. Of course, the 16th Amendment, which gave Congress the power to enact a federal income tax, enabled progressives (now dubbed liberals) to ramp up government revenue in order to enact much of their agenda, including taking from some to give to others.

An even graver problem, however, was Taft's advocacy of "an interlacing and interlocking series of treaties comprehending so many countries as to lead to the formation of an international court." In supporting the creation of a World Court, Taft said in 1910, "I don't see any more reason why matters of national honor should not be referred to a court." The Senate, however, wisely refused to go along with this idea, which could have had a terribly negative effect upon America's national sovereignty.

In his own role as chief justice of the United States, Taft almost always took the view that all laws should conform to the Constitution. When the Affordable Care Act reached the Supreme Court in 2012, Justice Antonin Scalia cited an opinion written by Chief Justice William Howard Taft in the 1920s. One might recall that Chief Justice John Roberts saved ObamaCare by calling the health insurance mandate a "tax." But Taft, in the 1922 case *Bailey v. Drexel Furniture Company*, along with the rest of the court, concluded that a tax on businesses employing children under the age of 14 was not a permissible attempt to raise tax revenue but rather an impermissible attempt to intrude on the state's authority to regulate hours of labor — and thus unconstitutional.

Rosen wrote, "Taft worried that upholding the law as a tax would remove all limits on Congress' power to regulate interstate commerce."

Perhaps John Roberts should read Taft, as well.

All in all, this is a valuable book on the shelf of any conservative who cares about the Constitution.



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