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Book Review

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BOOK REVIEW

A SUPREME COURT JUSTICE IS APPOINTED. By *David J. Danelski*.†
Pp. 242. Random House, New York, New York, 1964. \$2.95.

Professor Danelski has written an interesting monograph on the selection and appointment of Associate Justice Pierce Butler to the United States Supreme Court in 1922. The book is well organized into three clearly defined sections. Part One examines Justice Butler's background and generally sets the stage for his appointment; the second part covers the details of Butler's selection; nomination and confirmation; finally, in the last section, there are several "exploratory" chapters in which the author aims to consider "some basic problems of political analysis and fashion tools for future research."

Part One, like most introductory biographies, is rather brief and has a superfluity of names and events. Obviously the author's intention was to evaluate Butler's appointment rather than Butler himself; nevertheless, more extended biographical material would have enriched and clarified the story of the appointment. For example, a closer examination of Butler's temperament and personality would enhance the reader's knowledge of the man; the references to Butler's judicial background and political ideas are too general to acquaint the reader with his qualifications for the Court. In fact, everyone but the reader seems certain that Butler is well qualified for the judicial appointment; the reader hasn't been told enough about Butler to decide for himself. Also, it might be interesting to determine the reasons why Butler was a Democrat; his early life, his legal defense of the railroads and his intellectual commitment to *laissez faire* are not generally synonymous with that party's professed tenets in the late nineteenth and early twentieth centuries.

The Chapter on "Harding and Company" is a useful review of that regime and of the Ohio Gang, and places Butler's appointment in historical perspective.

Part Two is the core of the book and is most interesting and informative on the political factors involved in the selection of Justice Butler. The political maneuvering when a justice's retirement from the bench is imminent; the various candidates proposed to the President to fill the vacancy; the assessment of the political as well as judicial qualifications of each candidate being considered—all of these are part of the drama which the author unfolds. Of particular interest is the unfortunate fact, that a candidate can be eliminated immediately if someone of judicial or political influence is opposed to his nomination.

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Although a multitude of persons were instrumental in obtaining Butler's appointment, it would appear that the most influential was Chief Justice William Howard Taft. The author makes it clear that he, ably assisted by Associate Justice Van Devanter, worked indefatigably to influence Harding and those close to him to give Butler the appointment. Taft's close relationship with Harry Daugherty in this regard is interesting and is usually not noted either in general works covering this period or in Taft biographies. Indeed Taft's political manipulations, "quietly and discreetly" for Butler's nomination, show him to be a much better politician on the Court than he was as President. This kind of political finesse would have served him and his party well in 1912.

The story of Butler's appointment recalls the inept, if not pitiful, figure of President Harding. The strong pressure on any President to nominate candidates whom he does not know, and the difficulty of making the final decision are evident to anyone familiar with the Presidency. But when these pressures are applied to the genial, inexperienced, suggestible Harding, they are more potent and make him an easy target for those who would manipulate him. Considering the influence which Daugherty and Taft had on Harding, it is fortunate that they were in Butler's corner; otherwise a man of lesser ability might have been appointed. Second thoughts on Harding's personality suggest that it was fortunate that he had others to advise and manipulate him; otherwise his term could have been much more disastrous than it was.

Although Danelski recognizes the impossibility of being completely objective, he has made a commendable effort in this direction. He presents the various contemporary arguments for and against Butler and others who were being considered for the court appointment. He discusses the Senate liberals, under Norris and La Follette, who fought Butler's confirmation on principle even though they knew the fight was fruitless. The author, although not seemingly impressed with the arguments of the liberals against Butler, does note later in his chapter on "Consequences" that many of the liberal's fears of Justice Butler's judicial opinions were subsequently justified.

The last part of the book is problematical. Basically the author is attempting to analyze the reasons for the appointment of Justice Butler by use of what may be called the scientific method. To do this, he utilizes mathematics, physics and psychology, together with the particular and specialized vocabulary of these disciplines. He reviews such concepts as power, influence and personality and then applies them to the Butler appointment. Even analytical charts are used as part of the scientific approach.

If one agrees that this section needs to be included in the book, then it may be suggested that a serious revision is necessary with a view to-

ward clarification. The section is heavy with technical and conceptual terms which, although they might activate the intellectual enzymes of a philosopher, are less meaningful to the college student and certainly to the general reader. Danelski's scholarly approach to an analysis of Butler's appointment is certainly commendable. But he complicates this unnecessarily; it could be done more simply and directly, with less technical jargon and verbal involvement. One forceful chapter, an expansion of his "Epilogue," could draw all this together in a meaningful and scholarly manner. As it stands now, Part Three is confusing, loses its force and fails to achieve its purpose.

This recommended clarification is predicated on the assumption that this last section is really necessary to a fuller understanding of Butler's appointment. Danelski obviously believes that it is necessary, and expresses the hope that, with his inclusion of this analysis, "the value of the study will go beyond the description and explanation" of Butler's appointment to the Court. But it is debatable whether the study needs to "go beyond" the appointment! Without Part Three, the study is a well integrated contribution to our historical and political knowledge. It may also be asked whether Part Three, at least in its present form, lends any real "value" to the study in the final analysis!

In general, the book is well written for the college student and for the enlightened layman. It would be most valuable as collateral reading in American Government and American History courses. The author writes well and sometimes with an effective dramatic touch, particularly at the end of a chapter.

Danelski's bibliography is rather impressive. In addition to the effective and full documentation from manuscripts and other primary sources, he utilizes interviews and unpublished doctoral dissertations.

One final thought: Since sources were available to prepare this study of Butler's appointment, then additional research may uncover enough material to produce similar studies of other Supreme Court appointments. If even a dozen appointments to the Court were as interesting and politically-oriented as Butler's, a series could be developed to further explore the political ramifications of judicial appointments. This would be a contribution to political science and to constitutional history. For example, the appointments of Justices Brandeis and Black, attendant as they were with colorful and controversial circumstances, might be a point of departure for such a series. In any event, Professor Danelski's book is a pioneer study and a scholarly contribution to historical and political literature.

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