

# PATHFINDER

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## Justice Butler

Some years ago when Albert Nelson Marquis went about the compilation of his biennial "Who's Who in America," he was presented with a peculiar problem. In the "B" section he found three men whose names, respectively, were Pierce Butler, Pierce Butler and Pierce Butler.

On the basis of alphabetical precedence there was no choice. But because he was a member of the United States Supreme Court, Justice Butler was finally ranked ahead of the Professors Pierce Butler of Tulane and Chicago Universities.

Had Publisher Marquis consulted the left-wing liberals of the country, his choice would have been easier. Long before, editors of the "New Republic" and "Nation" magazines had moved Butler up a notch on the alphabetical scale by calling him not Pierce, but "Fierce."

To many, the strapping, heavy-jowled Butler has been "fierce" almost since the beginning of his career. When he finally came to the Supreme Court in 1923, he was known as the foremost corporation lawyer of the Northwest. His success was only rivaled by his unpopularity.

As a raw-boned youngster, Butler had fought his way up from a backwoods schooling to become assistant, then full attorney for Ramsey County, which includes the city of St. Paul. After serving the people for eight years, he achieved enough prominence to go into private practice in 1897.

Two years later he was retained as general counsel for the Chicago, St. Paul, Minneapolis & Omaha Railroad, and his trust-bristling career was fairly under way. Before it was done, he had represented half a dozen prominent railroads, including the Great Northwestern, the Great Northern and the New York Central. Hardly less important as his clients were the public utility companies of St. Paul and Minneapolis. At the peak of his career as a corporation lawyer, his fee was reputed to be \$1,000 a day.

On one occasion he helped the Minneapolis Gas Light Co. into a technical receivership which resulted in consumers' prices being raised by 60 per cent. In 1907 he appeared as chief counsel for the Northwestern Railroad in a case which won a judgment that the state was powerless to fix intra-state railroad rates.

During the war Butler acted as counsel for the Minneapolis Steel and Machinery Co. to combat a compensation award made by the War Labor Board to the workers of the firm. Later he waged a similar fight for the public utilities of the Twin Cities.

Perhaps the capstone of lawyer Butler's private career was his appearance before the President's Conference for the Valuation of Railroads. From 1913 to 1918 he represented a group of western carriers in the conference hearings. It was in no small part his work which resulted in a final national valuation of railroad properties at \$19,000,000,000. This figure, on which transportation rates were based

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until 1928, was generally thought to be much too high.

Simultaneously with his onward and upward march in the field of law, Pierce Butler had become a substantial citizen. A year after he had become assistant attorney for Ramsey County, he had married Annie Cronin, like himself Irish and devoutly Catholic. By 1906, she had presented him with eight children, the last two being twins, Anne, a girl, and Kevin, a boy.

A year later the substantial Mr. Butler became a member of the Board of Regents of the University of Minnesota. Naturally forceful and driving, he was soon one of the Board's most prominent figures.

During the war it was Butler's insistence that resulted in the dismissal from the faculty of several liberal professors on the grounds that their teachings at such a time were "dangerous." He took to patriotic platforms often enough to earn the title of "professional flag-waver."

So it was that when Butler was appointed to the bench in 1922 a howl went up from the liberal Northwest fully as loud as the plaudits that were sounding in Washington. Like Justice Sutherland a few months before, Butler was tagged "stand-patter" and "reactionary."

On the Minnesota campus in particular, feeling was bitter. An anonymous professor wrote a long letter to liberal Senators Ladd and LaFollette, arguing passionately that Butler was a man of too violent prejudice to be trusted with high judicial position. Another professor gleefully and publicly announced that he would not oppose Butler's appointment because it would bring a boon to the University—the lawyer's resignation from the Board of Regents.

Behind him, however, Butler had the ponderous figure of William H. Taft. In 1920 the Minnesota lawyer had appeared against the ex-President as counsel for Canada in a case which set the price which the Ottawa government paid for the Grand Trunk railroad. Soundly beaten, the 300-pound Taft had developed for the 220-pound Butler a deep respect such as only one big man can have for another. Together with ex-Attorney General Wickersham he had persuaded Harding to make the appointment. In the end, their will prevailed.

Butler did not change his ways after he took his Court seat early in 1923. Fifteen years have marked him as a firm believer in rugged individualism or, as some would call it, the law of the jungle. He seems loath to grant power to either Federal or State governments.

Two State cases are typical. In 1924 he helped invalidate a Nebraska law which fixed the weight of bread-loaves for the benefit of consumers, who sometimes paid pound-and-a-half prices for a pound-loaf. In 1927 he voted against a Pennsylvania law which required the licensing of steamship ticket agents. It had originally been passed to protect gullible and ignorant immigrants from being swindled when they bought tickets to bring their families to this country.

His record in regard to New Deal legislation has been similarly unbend-

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ing. Together with McReynolds, Van Devanter and Sutherland, Butler has formed the Big Four of the constantly dissenting Old Guard. He has voted "Aye" on only two important cases since 1933—the TVA and the Railroad Labor Act.

On the bench itself, he is scarcely more gracious. His temper is high, and he often reddens with impatience as he booms questions at long-winded lawyers.

His legal behavior, however, springs from no emotional fog, as does that of the alternately crusty and soft McReynolds. It cannot be explained as refusal to accept the changes caused by time, as can that of Van Devanter. It is a hurricane compared with the gentle conservatism of Sutherland.

Butler believes in few laws and little regulation because he himself grew up under a system of every man for himself and devil take the hindmost. While the law became Butler's living, it paid his friends no old-age pensions, collected no social security taxes for unemployment grants, fixed no prices, regulated no wages. When his father's cabin at Pine Bend, Minn., was burned to the ground by Indians, there were no government troops on the scene to protect the Butler property.

The Justice was born in a log hut near Northfield, Minn., on St. Patrick's Day, 1866. If father Patrick had tarried in New York City instead of migrating westward, son Pierce would possibly have grown up into a muscular Manhattan policeman. But on the Butler 80 acres he turned his brawn to plowing, harvesting and chopping wood. When he was not wrestling milk cans, it was one of his five brothers or a neighbor's boy who was the victim.

For his education he went to a country schoolhouse. When he wanted to learn more, the 16-year-old Butler taught school himself to earn funds.

When he graduated from little Carleton College at 21, he was still pressed for money, and it was money that he went after. As one writer remarked in 1922: "His talents were for sale to the highest bidder, and the highest bidder always got them."

Today Butler is worth an estimated \$1,000,000. Some \$700,000 of this came in the form of a bequest from his brother John, who with the four other Butler brothers had built a fortune as contractors and owners of some important iron mines in the Northwest.

For all his money, for all the stiffness of his judicial opinions, Butler is no crank. While he may have been called a "professional flag-waver," the fact is also on record that four of his sons went to war and that his daughter Mary died overseas in Red Cross service.

In private life he is one of the most sociable of the justices. He sees his children and his many grandchildren often. He spends many evenings out, and, as host in his frugally kept home on Nineteenth Street, has a reputation for telling stories which are side-splitters.

Like many another Irishman, he drinks and makes no bones about it. But he has sensible ideas about when

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drinking is safe and proper. In St. Paul he used to say of one of the chauffeurs who drove the Butler Packards: "I do the drinking—Gallegher does the driving."

The chief amusements of the burly Justice, however, are still outdoors. He is an ardent horseman, an atrocious golfer and a mediumly expert gardener.

A staunch Catholic, he once risked ridicule by being the only member of the Court to vote against the Virginia law which decreed the sterilization of third-generation imbeciles. Immediately the quip went about legal circles that "It evidently takes more than three generations to convince Justice Butler that a moron is a moron."

