

## Smedley Darlington Butler: From Equal Laws for all to Something Different

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The reason Smedley Darlington Butler is of interest to us is mainly because of how his views about enforcing the laws changed during his two years here. But first a little background on the person.

### Background

Smedley Darlington Butler was born in 1881 into a prominent Pennsylvania Quaker political family based in West Chester. His father and grandfather were U.S. Congressmen. The family also was Quaker. In 1898 in the “Remember the Maine” hysteria he joined the Marines, fought in the Spanish-American War and did see limited action in Cuba. Later he was in the Phillipines, and in China in 1900 putting down the Boxer Rebellion and rescuing stranded Europeans. He and got wounded twice in China. He went to Haiti and also Nicaragua and Mexico. He won two Medals of Honor in WW I, and was one of the most decorated service men of his time. He was called “Old Gimlet Eye” and “Duckboards” and “The Fighting Quaker.” Prior to arriving in Philadelphia in 1924 he headed up the Marine base at Quantico. He drank heavily until he started fighting for Prohibition and then never drank again. He got permission from the President to be detailed to Philadelphia. He left Philadelphia at the end of 1925, asked by Mayor Kendrick to step down – and we’ll get into the reasons why -- and returned to the Marines heading up their base in San Diego. He was forced to retire early from the military in 1931 following strong criticisms he made of General Mussolini. Many prominent leaders at the time were suggesting that the U.S. follow the fascist model. After retiring he went on a speaking tour in which he crusaded against using the military to support U.S. Corporate interests abroad. He would speak to anyone who would listen and this included veterans groups and

meetings of socialists. Half of his earnings went to funds for relief of the poor. He published articles in socialist magazines and in 1935 published “War is a Racket” in which he compared the use of American troops in foreign places to protect corporate interests as a racket. He was wildly popular with veterans during the Depression, who were trying to get Congress to advance them a retirement benefit that was not scheduled to be given them until 1945. Because of his popularity with veterans, a group of wealthy industrialists approached him with a plot to take over the White House and remove President Franklin D. Roosevelt from power. This was investigated by a Congressional Committee [SLIDE] which was focusing on un-American activities on both the political left and the political right at the time. Archer [SLIDE] in his book provides some information about that plot. You also have read a chapter from Schmidt’s volume. He continued speaking out strongly against U.S. involvement in European affairs, and died at the Naval Hospital in South Philadelphia in 1940.

Of most interest to us here is the shift in Butler’s view about the behavior of law. About three weeks before arriving to take up his position as Director of Public Safety, in charge of both police and fire, he gave the following quote to a local newspaper about enforcing the laws. [SLIDES]

Butler’s suspicions grew during his time here that one of the problems with enforcing Prohibition laws was Philadelphia judges. In Pennsylvania, judges are elected, not appointed by the governor. One report on Philadelphia courts dated 1931 indicated that only about 1/3 of local judges had law degrees. Judgeships were even more political then than they are now. Butler became convinced early on that the judges’ actions in letting people arrested on liquor violations go was a result of their alignment with local political bosses in the wards. And we will get into some of the details of that. But Baldwin makes the case later that Philadelphians’ in general were not in favor of equal law enforcement, regardless of the status of the offender. [SLIDE]

Here is another quote from Butler, from a local newspaper, in September of 1925, just a couple of months before his time here ended. As you can see, there has been a remarkable shift in his views. What happened?

Freeland Kendrick who won the 1923 election by a fantastic amount owed his victory to Vare and the Republican Machine. Kendrick got over a quarter a million votes to his opponents 37,000. It is hard to fully appreciate how fully the Republican machine at the time controlled city politics. Kendrick had promised he would bring in a military man, from outside, to restore law and order. He selected Butler.

Butler was installed as the director of public safety, in charge of both police and fire, on January 7, 1924, with an office in City Hall. He went to work immediately, moving a cot into city hall. As Baldwin describes in his article, he started closing saloons, going on 48 hour blitzkrieg where many saloons would be raided in a short period of time. Much of his efforts were centered in the “Tenderloin” District, with its center at 8<sup>th</sup> and 9<sup>th</sup> and Race, and extending up and down 8<sup>th</sup> Street. The neighborhood was home to businesses, a pharmacy selling leeches, “flophouses,” movie theatres, and, of course, many saloons and speakeasies. [SLIDE] As you can see from the map, this was one of the lowest SES areas in 1930, at least judging by median rents at the time. So there was extremely vigorous enforcement against businesses in areas where they were likely to be frequented by low SES patrons.

There were a host of issues he had to confront:

1. The police district captains owed loyalty to the local party boss in charge of the political ward. He reduced the number of districts from 40 or so to around 23. His successor, in 1926 after he left, undid his redistricting plan. So after his departure political ward lines matched up with police district lines, and political ward bosses were again influential in controlling the police. These conditions contributed to the widespread corruption that resulted in Grand Jury probes of police corruption in Philadelphia in 1928 and 1938.
2. He got control over all personnel matters from the Civil Service Commission except for firings. So he could demote and re-assign officers at will and he did.
3. There were complicated arrangements in relation to the federal prohibition enforcement, and he thought federal enforcement was questionable. He was concerned about the legitimate allocations of about half a million gallons of alcohol a month that was allowed under federal permits to over a 100 persons. In February of 1924 he said he was “astounded at the amount.”<sup>1</sup> In March of 1924 he charged that “withdrawal of alcohol in this district has been excessive and will be investigated,” which resulted in a Federal probe into “irregularities.”<sup>2</sup>
4. The courts’ reluctance to prosecute, which we will describe some more.

Early in 1924 he urged his captains and lieutenants to inspect 100 of the city’s 1500 saloons a day “But if you keep inspecting them often enough you will get the goods, and then I want you to make arrests... We can wipe out all the saloons in Philadelphia in a few months.” By January 11<sup>th</sup> he declared that 973 of the city’s 1200 saloons were closed.<sup>3</sup>

He continued his 48 hour raids city wide. On February 2<sup>nd</sup>, 1924, he concluded the 4<sup>th</sup> 48 hour series of raids which resulted in 194 arrests and announced ““Political pull won’t save anybody.””<sup>4</sup> In one location raided at 16<sup>th</sup> and Diamond, the drug store of Joseph K. Klingerman, they seized four cases and a half barrel of alleged whiskey. At the saloon of Michael McGalughlin at 11<sup>th</sup> and Norris they “confiscated alleged high powered beer.”

In the first two months of 1924 there were 4,000 more arrests than the same period the year before and “motor thefts nearly cut in half”<sup>5</sup> He vice war was having a crime prevention benefit.

Butler was clear he was trying to be even handed. Speaking to women of the Modern Club he said ““The present campaign of the police is not a political one but a moral one, and it is not for the benefit of any one individual.””<sup>6</sup>

At the same time there was growing concern about the courts letting people go. In one exchange with reporters he “took the opportunity of drawing public attention to discharges by magistrates of prisoners who, in the Director’s opinion, should be held. The director said he would follow the policy of announcing these cases without comment and ‘let the public judge the judges.’”<sup>7</sup> He also referred to a case where Horace T. Conrad of 17<sup>th</sup> St. near Montgomery, was arrested at the Sylvania Hotel dining room for having liquor. Conrad was released by Magistrate Holland. Conrad had said the pint ““had been thrown into his lap”” and the magistrate said ““it was a case of his word against the detective’s and I could only discharge him.””

In the summer of 1924 “several boys of respectable families in Overbook” were arrested by the police because of “complaints of neighbors who had been annoyed by them and whose arrest caused a storm of protest.” Black would probably tell us this was a case of upward law. Butler replied that the police must investigate complaints, but that they should be clear they are acting for the

complainant, not acting independently. He said “Name whoever makes this complaint and don’t make it appear the police are acting as anything but agents in this case.”<sup>8</sup>

As 1924 wore on there was increasing concern about the light sentences that bootleggers were getting. At a meeting of DAs in Harrisburg in August the DAs pledged to demand jail time, not fines. Butler addressed the conference and told them that “There is no politics in our police force in Philadelphia.... The men in the force are thoroughly sound and few remain who are crooked.”<sup>9</sup> He told the DAs he wanted to send the courts a thousand liquor violations a month. He told the conference that he was making 100 raids a day, but told them “he was not a crusader, but an enforcer of law.”<sup>10</sup> One tool he had available was a padlock law, which allowed him to close an establishment with a violation for a year.

Backups in the criminal justice system, and the revolving door of criminal justice are nothing new and plagued Butler. He proposed a special court for liquor law violations so charges could be heard speedily. He complained “when a defendant is held for court by a magistrate, he is released on bail and in most cases he immediately starts his illegal business again while waiting to come up for trial.”<sup>11</sup> At a later point he said that “The cases held for a further hearing for the most part are so that the magistrates can get their political lines straightened out. The bigger an offender’s political pull the less likelihood is there the he will ever get inside a court.”<sup>12</sup>

At the end of 1924, as Baldwin explains, President Coolidge permitted Butler to extend his leave for one more year. Public support for Butler trumped the displeasure of the political bosses. Baldwin makes the case that Butler was popular not because he was shutting down saloons, but because crime was dropping, well off neighborhoods were safer, and people felt better walking the streets downtown at night.

By 1925 it was more of the same.<sup>13</sup> Police arrested a ton. For all of 1924 there had been 4,827 illegal possession arrests, compared to 416 in 1923.<sup>14</sup> That continued in 1925.

But Butler got more frustrated by late 1925 saying “enforcement hasn’t amounted to a row of pins” and releasing arrest and court information to the papers as shown in the tables below.<sup>15</sup>

Year	Arrests in speakeasies and saloon cases	Fined or discharged	Convictions
1923	1413	307	595
1924	5757	2488	1260
1925 (thru Aug)	6080	2847	212

Butler continued to try various re-organization plans within the police. For example in June he announced there would be 11 vice zones, independent of the police districts, with personnel hand picked by Butler, for a “war to the finish on vice and rum”<sup>16</sup> Butler said he hoped the new organization would “minimize, so far as possible, the avenues for graft open to police in the districts.” Notice that he is no longer saying most of the police are clean, rather is just saying he is trying to avoid it. He went on to recognize that he was fighting an uphill battle against vice: “battling vice, particularly liquor, is another problem which has the sympathy of numbers of persons and also is best by influences, backed with plenty of money.”<sup>17</sup>

He continued to feud with the Feds. Perhaps the most dramatic confrontation came in October of 1925 at 31<sup>st</sup> and Market Street. Confiscated liquor was held in a warehouse at 31<sup>st</sup> and Market,

across the street from 30<sup>th</sup> street station. Butler had gotten a tip and had plainclothes, undercover officers watching the warehouse. A U.S. Marshall in company with a Philadelphia police uniformed officer loaded up a truck with “30 cases of choice liquor.” The plainclothes officers stopped the truck. The U.S. Marshall was outraged, and said he had orders to dump this in the river. The police said where was the court order. The two groups had a standoff at gun point on Market Street.<sup>18</sup> Eventually the liquor was dumped into the river at 24<sup>th</sup> and South Streets, under the supervision of Philadelphia officers. Butler called for a Federal Grand Jury probe into irregularities.

Butler got more bitter, threatened to leave, the public came out and supported him, but they also questioned, as Baldwin pointed out, whether the liquor enforcement was equitable.

Baldwin makes the case that Butler got frustrated at the accusations that his enforcement was not even handed. In December 1925 a magistrate and two clerks raided a formal ball at the Ritz Carlton Hotel and seized bottles, later shown to contain illegal alcohol, bottles of wine and champagne. “On December 3<sup>rd</sup> Butler ordered his special prosecutor to bring padlock charges against the Ritz-Carlton.” He could have padlocked the place for a year. He said ““something must be done to teach these big fellows that they must obey the law as well as the little fellows.””<sup>19</sup>

Let’s talk about location. The Ritz Carlton was on the SE corner of Locust and Broad. That spot is currently occupied by the Doubletree Hotel. Across the street is the Academy of Music, where the Philadelphia Orchestra was playing at the time. Up the street a block is the Bellevue Stratford Hotel, another premier hotel venue in Philadelphia. These locations are smack in the middle of the upper class society cultural venues of the city at that time. This is still a center of upper crust arts activity today

In short, Butler was attempting to do law enforcement that was upward law, in Black’s terms. On behalf of the typical Philadelphian he was trying to move against the “big hotels” as he called

them, which represented significant financial interests, and which served as premiere locations for upper crust Philadelphians and Main Liners.

Baldwin goes on to say

In dismay, hotel managers argued that they had ordered their employees not to serve liquor, but could not prevent their guests from bringing it on the premises. Butler then charged that “young girls, some of them only sixteen and seventeen, have been given cocktails and other drinks.” This at least could be refuted. The mother of two debutantes who attended the ball at the Ritz-Carlton replied: “The conduct of the girls at this affair was in conformity with their behavior at all other functions my daughters have attended this season. Three dinners were given last week for my younger daughter, and at each of them the girls declined both champagne and cocktails.”<sup>57</sup>

The newspapers for once seemed at a loss for comment. Next year Philadelphia would celebrate the sesquicentennial of American independence with an international exposition, and she would need her hotels. Butler was unanswerably right in principle, but the thought of padlocking the Ritz-Carlton, or revoking the dance license of the Bellevue-Stratford, as he asked, staggered the respectable imagination. One could hardly say that the rich should have champagne if the poor were to be denied beer, but all sensed this to be in the order of things, perhaps even the poor, who had their own less spectacular ways of evading the law. Mayor Kendrick, whose role was to instruct City Solicitor Gaffney to draw up charges, said he would hold the

From the perspective of our theoretical framework, what would Black say?

1. When Butler was raiding saloons owned by lower income Irish, or Italians or Jews at locations like the Tenderloin or 17<sup>th</sup> and Montgomery, these are relatively lower status locations and lower status offenders. Shutting (or attempting to shut) down locations like that was acceptable to wealthier Philadelphians. These instances are clearly **downward law** (Black, p. 24). That the courts let these people go speaks to the political connections between saloon keepers and the local Republican machine at the time, and the public's ambivalence about prohibition enforcement at the time, and the local discrepancies between local enforcement of local laws and local enforcement of federal laws. Put simply, for Philadelphia judges, and for many Philadelphians, these were not serious crimes.

2. Black also would probably talk about centrifugal law (p. 50) which is applied to the more marginal members of society. Law applied outward is usually more substantial than law applied inward, toward those members who are central members of society. In the 1920s Philadelphians of Irish or Italian or perhaps Jewish ethnicity were perhaps regarded by some as more marginal members of society. So applying law outward to them was relatively acceptable. We have not talked yet about this topic, but we are getting to it.

3. Shutting down the Bellevue-Stratford because of liquor violations at an up-scale debutante ball with 400 wealthy (probably mostly) whites watching was, according to Black, an attempt to apply both upward law and centripetal law. It was upward law because it was enforcement against the wealthy. Black tells us (p. 21) "law of every kind ... is more likely to have a downward direction than an upward direction." So upward applications of law like this are most unexpected and most unsettling.

Further, Black also tells us that upward law is rarely penal, and more likely to be compensatory (p. 29). To put it too simplistically, rich folks often get off with fines, while poorer folks

go to jail more often. Here, an institution that was an essential social venue was going to be punished. This would strike people as extremely harsh since upward law is rarely penal.

4. Black also would probably interpret this action as centripetal law – applied to the center of society (Centripetal) rather than toward the edge of society (centrifugal). The function that was getting raided was the type of event written up in the society pages. Black tells us (p. 50) “centrifugal law is greater than centripetal law.” So this is a second way the Bellevue raid was unexpected.

There is another element here as well. Who is doing the offending defines how seriously the crime is defined. Black tells us (p. 31) “criminality varies inversely with rank.” So, if someone is consuming illegal alcohol, or cocaine, how serious we define that crime depends on who is doing it. [SLIDE – speakeasies SLIDE - big hotels]

In short, Butler’s December, 1925 move against one “big” hotel struck at the heart of upper crust Philadelphia society at the time. This type of enforcement was extremely unexpected, given how law usually “behaves” according to Black. To put it differently, according to Black, people may not want the law to be applied equally to everyone.

Mayor Kendrick backed the big hotels, and Butler left Philadelphia for San Diego in January, 1926. What he learned about enforcing laws and about the actions of agents of justice provides a nice illustration of how the unequal enforcement of laws comes about, which interests in society go along with that unequal enforcement, and what happens when someone comes to town with sterling credentials, no political ties, and a wish to enforce the laws fairly and vigorously.

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<sup>1</sup> Temple University Urban Archives Smedley D. Butler Microfiche Card # 27. Card Title “War against liquor and gambling 1924.” Referred to as TUA # 27

TUA # 27 2/27/1924

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<sup>2</sup> Temple University Urban Archives Smedley D. Butler Microfiche Card # 27. Card Title “War against liquor and gambling 1924.”

<sup>3</sup> TUA # 27 1/11/1924

<sup>4</sup> TUA # 27 2/2/1924

<sup>5</sup> TUA #27 3/14/1924

<sup>6</sup> TUA # 27 3/14/1924

<sup>7</sup> TUA # 27 2/11/1924

<sup>8</sup> TUA # 27 6/18/1924

<sup>9</sup> TUA # 27 8/25/1924

<sup>10</sup> TUA #27 8/23/1924

<sup>11</sup> TUA # 27 3/11/1924

<sup>12</sup> TUA # 57 12/7/1925

<sup>13</sup> Temple University Urban Archives Smedley D. Butler Microfiche Card # 57. Card Title “War against liquor and gambling 1925.” Referred to as TUA # 57

<sup>14</sup> TUA # 57 1/30/1925.

<sup>15</sup> TUA # 57 9/11/1925

<sup>16</sup> TUA # 57 6/23/1925

<sup>17</sup> TUA # 57 6/23/1925

<sup>18</sup> TUA # 57 10/24/1925

<sup>19</sup> Baldwin (1960) p. 566.