

# From the Bag

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## Justice William R. Day

James W. Ely, Jr.

On March 2, 1903, Harry Burns Hutchins of the University of Michigan Law School wrote to the school's most prominent alumnus, the recently nominated Supreme Court Associate Justice William R. Day. Hutchins had been commissioned by the editor of the university's *Alumnus* magazine to write a biographical sketch of Day. The new Justice responded on March 10 with a short letter, a copy of which is among the William R. Day Papers at the Library of Congress. It is reprinted below, with an introduction by Professor James Ely. To better situate Justice Day's response, we also excerpt the opening of Hutchins' letter here. The full version, which merely catalogs information Hutchins desired, is available on the *Green Bag's* web site, [www.greenbag.org](http://www.greenbag.org).

Hutchins was an important figure in the legal community in his own right, the founding dean of the Cornell Law School and then dean at the University of Michigan Law School. He was also an early contributor to the original *Green Bag*, see Harry B. Hutchins, *The Cornell University School of Law*, 1 GREEN BAG 473 (1889), and to the women's movement in law discussed in Barbara Allen Babcock, *Making History*, 2 GREEN BAG 2D 65 (1998). See Virginia G. Drachman, *Women Lawyers and the Quest for Professional Identity in Late Nineteenth-Century America*, 88 U. MICH. L. REV. 2414, 2425 & n.36 (1990).

— The Editors

**A**PPPOINTED TO THE Supreme Court by President Theodore Roosevelt in 1903, William R. Day served for nineteen years. He retired in 1922, less than a year before his death. Day's contribution to the work of the Court can best be understood in the context of the political climate in the early twentieth century. His tenure overlapped the

Progressive era, during which reformers urged a more active role for government at both the state and federal level in regulating the economy and redressing social problems resulting from the new industrial order. But statutes regulating the workplace inevitably curtailed contractual freedom and the right of owners to utilize their property. Accordingly, the most

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important issues before the Court during Day's tenure concerned challenges to governmental regulatory activity.

Day was generally receptive to the exercise of police power by the states to regulate the economy and promote public health and safety. He dissented in *Lochner v. New York* (1905), where the Court invalidated a statute limiting the work hours of bakers. Day similarly authored a dissenting opinion in *Coppage v. Kansas* (1915), defending the power of the state to ban yellow dog contracts. In *McLean v. Arkansas* (1909) he wrote for the Court sustaining a state law that governed the method of calculating wages owed to miners.

Committed to federalism and state autonomy, Day was more cautious with respect to national regulatory authority. Although he upheld congressional power to bar shipments of impure food and drugs across state lines, to pursue a vigorous anti-trust policy, and to control interstate railroads, Day did not recognize plenary federal power over all aspects of commerce. He insisted that manufacturing was a subject reserved to the states. In *Hammer v. Dagenhart* (1918), for example, Day, writing for the majority, reasoned that a federal statute banning from interstate commerce goods pro-

duced in a plant that used child labor invaded state jurisdiction over manufacturing in violation of the Tenth Amendment.

Day also wrote landmark decisions in other areas of law. Day affirmed congressional authority over the overseas territories acquired after the war with Spain. In *Dorr v. United States* (1904) Day, speaking for the Court, adopted the incorporation theory under which Congress could determine the political status of the island possessions and need not provide trial by jury. Day formulated the federal exclusionary rule in *Weeks v. United States* (1914), ruling that the use of illegally seized evidence in federal courts violated the Fourth Amendment. Further, in *Buchanan v. Warley* (1917) Day wrote for a unanimous Court, ruling that local residential segregation ordinances constituted a deprivation of property without due process of law. In this case a broad understanding of property as encompassing the right to use and alienate land was instrumental in producing a key victory against racial discrimination.

In addition to his judicial duties, Day also performed diplomatic service while on the Court. In the 1920s, he was a member of an American-German war claims commission.



## Professor Hutchins' Letter

My dear Judge Day –

The editor of the *Alumnus* has asked me to prepare for that publication a brief biography of you. I shall gladly comply with his request if it is agreeable to you for me to do so and if you can furnish me with a few data. Of course, I know in a general way about your life since you left the University, but I must make my knowledge more definite if I am to prepare the article asked for. Will you kindly give me the following information: [at which point Professor Hutchins detailed the variety of information he desired].



# Justice Day's Response

Washington, D.C.  
March 10, 1903.<sup>1</sup>

Professor H. B. Hutchins,  
University of Michigan,  
Ann Arbor, Mich.,

My Dear Hutchins:

I am in receipt of your communication of the sixth inst.

When the editor of the *Alumnus* wrote me that he intended to ask you to furnish a sketch of me for publication, I wrote him in reply that, while I felt that I had no right to ask it, I would be gratified if you would undertake the work.

As to the points upon which you desire information, I would say:

I spent one year in the study of the law in the office of George F. Robinson at my home in Ravenna, Ohio; studied one year at the Ann Arbor Law School; and was admitted to the Bar by the District Court at Ashland, Ohio, July 5, [1872].<sup>2</sup> Up to that time I had lived in Ravenna, but on the tenth of October, 1872, I moved to Canton, Ohio, and formed a partnership for the practice of law with William A. Lynch of Canton, then Prosecuting Attorney for Stark County, Ohio. Mr. Lynch was then in full general practice and has since become one of the leading lawyers of his State. This partnership continued for ten years, and in about 1882, Austin Lynch was admitted to the firm under the style of Lynch, Day and Lynch. Mr. W.A. Lynch shortly after retired and the firm became Day and Lynch, and afterward by the admission of my brother

David B. Day, became Day, Lynch and Day. The firm had a large general practice both in the State and Federal courts of Northern Ohio. With the exception of the year when I was on the Common Pleas Bench, I was continually in the practice of the law from 1872 until 1897, when I came to Washington.

As to public offices, I was Common Pleas Judge for the ninth judicial district of Ohio for one year, from 1886 to 1887. I resigned from that place because I was unable to live on the salary and make provision for my family. In 1889, President Harrison appointed me United States District Judge for the Northern District of Ohio, but a threatened impairment of my health led to a declination of that office. In April, 1897, I became Assistant-Secretary of State, and in May, 1898, Secretary of State. In September, 1898, I resigned to go upon the Peace Commission in negotiation of the Paris treaty with Spain. In February 1899 I was appointed United States Circuit Judge for the sixth judicial circuit and continued in that office for four years. On February 19, 1903, I was appointed Justice of the Supreme Court and took the oath of office on March 23rd. The Paris Peace Commission was in session for three months. I dare say that if you will drop a line to John Bassett Moore, Secretary

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<sup>1</sup> This date seems inaccurate; the letter appears to have been written after Justice Day took the oath of office, on March 23. Presumably, Justice Day dated the letter when he began drafting it.

<sup>2</sup> The original reads "1972."

of that Commission, now Professor of international law in Columbia University, he will give you some details in connection therewith.

As to my association with the late President McKinley, it [began]<sup>3</sup> shortly after my removal to Canton, and continued until his death. After his retirement from the practice of law upon his entering Congress, I was his counsel in legal matters and now one of the administrators of his estate. It is, of course, hard to say how much one is influenced by such an association, but I hope I profited by the example so constantly before me of patriotism, self-respect, and high ideals of duty, both public and private.

My father, Luther Day, was regarded as one of the most capable trial lawyers of his time in Ohio, and was for many years upon the Supreme Bench of that State, as you doubtless remember. I think the qualities of clearness of statement and comprehensiveness of view are those which most characterize his opinions. While at the Bar, he was [an] advocate of

ability and eloquence, and while a Democrat at the breaking out of the war for the Union, he became an ardent advocate of the cause of his country, and made many public speeches in Ohio and elsewhere. My mother, who died when I was very young, was a daughter of Judge R.P. Spalding, of the Supreme Court of Ohio, and for some time a member of Congress from the Cleveland District. She was also a grand-daughter of Chief Justice Swift of Connecticut, author of Swift's Digest.

I married Mary E. Schaefer, daughter of Louis Schaefer, August 24, 1878, a prominent lawyer and resident of Canton, and we have four sons, William L., Luther, Stephen, and Rufus.

I enclose you a sketch from the Washington Times of today but I do not know how much it will help you. I have also asked to have forwarded to you a copy of the Review of Reviews for — 1898.

With best wishes to you and yours, I am  
Very cordially, your friend. *JD*

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<sup>3</sup> The original reads "became."