

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].

