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Justice William Rufus Day

THE University of Michigan, when measured by the standard of public services rendered by its graduates, must certainly be accorded an honorable rank. For a quarter of a century the number of its alumni occupying high official station has been large. The list includes state executives, judges of state courts of last resort, senators and representatives in the national congress, cabinet officers, and members of important commissions raised by the general government for international and executive purposes. The character of the services has in some cases been conspicuous for its excellence and in all cases such as to bring honor to the incumbents and credit to their Alma Mater. The distinction of being the first of our graduates to be called to a seat upon the highest tribunal of the land belongs to the subject of this sketch.

If there be anything in parentage that tends to shape the career of a man, Justice Day may be said to have come naturally by his abilities as a lawyer and judge. His father, the Hon. Luther Day, when at the Ohio bar, was one of its most capable trial lawyers. He is described as an advocate of marked ability and great eloquence. But he was not, as is so often the case, so entirely an advocate that he was unfitted for judicial service. He had the rare ability and temperament, as has his distinguished son, that enabled him to be an advocate when it was his place and duty to be one and a most impartial and discriminating judge when called to administer even justice upon the bench. He was for many years a member of the supreme court of Ohio,

and his opinions, characterized as they are by lucidity of statement and comprehensiveness of view, place him in the front rank as a judge. The mother of Justice Day was the daughter of Judge Spalding, also of the supreme court of Ohio, and for some time a member of congress from the Cleveland district, and the grand-daughter of Chief Justice Swift, of Connecticut. With such a parentage and with the environment that it must have brought, it is plain that Justice Day must, in his youth, have lived in an atmosphere that would be a perpetual and powerful stimulus to a career at the bar and upon the bench.

Justice Day was matriculated at the University of Michigan in the Department of Literature, Science, and the Arts in September, 1866, and was continuously in attendance until his graduation in June, 1870. During the last three years of that time, it was the privilege of the writer to know him with the intimacy that usually comes from membership in the same college fraternity. When a man has gained distinction, his past becomes a subject of interest, and, if he has been liberally trained, that part of it spent at the university becomes particularly so, because of a natural tendency to inquire as to whether or not his achievements as a man were in any way foreshadowed in his life as a student. I doubt if any of Justice Day's classmates or student acquaintances would, when at the University, have predicted for him the remarkable career as a public man that he has enjoyed; and yet those who knew him best can now, I am sure, look back and see that while at the University he gave

evidence, though in a very quiet and unassuming way, of an intellectual grasp much above the average, of a capacity to master thoroughly whatever he seriously undertook, and above all, of a temperament that led him to reach conclusions only after a careful consideration of the question from all points of view. Even as a student he gave evidence, on many occasions within the recollection of the writer, of that poise of judgment that has been so characteristic of him in his professional and public life. We called it then "Day's good common sense," the most of us not realizing that the discrimination and judgment that give success in the activities of life are simply "good common sense," informed and strengthened and made mature by study and experience. At the University as now, Justice Day was modest and retiring, never obtruding his opinion, but always giving it when the occasion demanded in a brief, clear, and comprehensive way. He was low spoken, inclined to be silent, never demonstrative, but withal companionable. He had about him that air of breeding, refinement, and cultivation that marks the gentleman. Though not engaging in them to any great extent, he was always interested in the athletic sports of the time. As a student his standing was good but in no way remarkable. Class-room tasks he easily mastered, but he never manifested a desire to excel in them. Instead of striving for academic distinction, he apparently preferred to take advantage of the general opportunities afforded by a university residence. To university honors, as usually understood, he was indifferent, but not to university culture.

Justice Day began his preparation for the bar at his home in Ravenna, Ohio, soon after his graduation from the University. And here began his devoted and persistent work as a student. Although possessed of a mind and temperament admirably fitted for the law, his success has been due in

no small degree to the habit of study and patient investigation that has characterized his entire professional life. His first year of preparatory study was spent in the office of the Honorable George F. Robinson, of Ravenna, and the next in the department of law of this University. He was admitted to the Ohio bar July 5, 1872, and soon thereafter formed a partnership for the practice of law at Canton, Ohio, with William A. Lynch, under the firm name of Lynch & Day. Mr. Lynch was at this time in full general practice and was also the prosecuting attorney for Stark County. During his entire career as a lawyer, Justice Day was a member of this firm, although its style was changed from time to time as its membership changed. He was the senior member of the firm when summoned to public duties by the late President McKinley. With the exception of one year, when he was on the common pleas bench of the ninth judicial district of Ohio, Justice Day was continuously in the practice of the law from 1872 until 1897, when he was called to Washington. During this time he had a large general practice in the state and federal courts of northern Ohio and was recognized as a safe adviser and an exceptionally able trial lawyer. His cases were always thoroughly prepared and clearly presented. His association with the late President began in 1872. For a quarter of a century he was Mr. McKinley's most intimate friend and trusted adviser. After the latter's retirement from the practice of the law, Justice Day became his counsel in legal matters, and he is now one of the administrators of his estate. None knew so well as did the lamented President the extraordinary intellectual gifts, the sound judgment, and the genuine worth of this diligent and painstaking lawyer, and when he came to the responsibilities and perplexities of his great office, he naturally turned to him for assistance and advice.

It has been mentioned that Justice Day served for one year upon the common pleas bench. His period of service began in 1886 and ended in 1887. He resigned his judgeship, not because judicial duties were uncongenial or because he felt himself unfitted by temperament for work upon the bench, but because he found it impossible to live upon the salary and make proper provision for his family. His conspicuous qualifications for judicial services were early recognized, and he was frequently urged to accept judicial honors. In 1889, the late President Harrison appointed him United States district judge for the northern district of Ohio, an appointment that he desired to accept, but he was led to decline the honor by reason of a threatened breaking of his health.

Justice Day's notable public services began with his appointment as Assistant Secretary of State, in April, 1897. Up to that time he was practically unknown in Washington and by the public at large. But even before this appointment, he was an influence in public affairs, for to him the President frequently turned for advice upon the many new and important questions with which he was confronted. And to render aid in this quiet and modest way rather than through the holding of official place was his desire. For him the official life of Washington had no charm. It has been said that he avoided it as eagerly as many men seek it. But it early became apparent that Secretary Sherman by reason of age and disabilities was unequal to the diplomatic emergencies that were developing. He had surrendered his seat in the senate to accept the state portfolio, and under the circumstances it was not probable that his resignation would be forthcoming in the near future. A strong man was needed as assistant secretary, a man of discrimination, judgment, courage, a man who, though occupying a subordinate rank, would be capable of performing the duties of secretary to the satisfaction of the

country and in a way that would not wound the feelings of his superior. The situation called for a man of exceptional ability and extraordinary tact. In his tried and trusted lawyer friend and associate, the President knew that he would find such a man. The only appeal that could reach him and induce him to assume the responsibilities of public office was one based upon personal friendship and public duty, and to this Justice Day yielded. The step involved not only great pecuniary sacrifice and the risk of impaired health, but also the chance of failure, for the field was for him an untried one. That he accepted under the circumstances shows the stuff that is in the man. Of Justice Day's services as Assistant Secretary of State a recent writer says: "He performed the duties of Secretary of State, except those ceremonial functions which the nominal Secretary of State could perform and attendance upon cabinet meetings, which became purely ceremonial on the part of the Secretary of State, Assistant Secretary Day going over the State Department business with the President before or after cabinet meetings. It was hard to do this day after day without offending the nominal Secretary of State or impairing the dignity of that venerable statesman's position. But Mr. Day showed by his manner, as he did by his work, that he was a natural diplomat in the best sense of the word; and he preserved to the end that courteous fiction which the circumstances demanded. Everybody who had serious business with the state department went to Assistant Secretary Day, because that was the way to get it done; but none of his callers ever heard him put into words what they all recognized as the extraordinary and unprecedented situation of the department. . . . If they had any considerable conversation with him, they discovered that they were dealing with a singularly strong and silent man. They found that he never said too

much or too little for his own purpose, that he was absolutely truthful and straightforward, and that he spoke with unusual clearness and cogency and candor, but above all with the most discreet reticence and perfect self-possession. In Washington where every official secret is open and the 'executive sessions' of the senate only emphasize the fact, the new man's ability to keep his own counsel and that of the President, whose representative he was as well, deepened the impression of power which what he did say made, and helped on the idea, soon generally accepted, that he would be able to cope with any circumstance and with any antagonist."

In May, 1898, Justice Day became Secretary of State. At that time the country generally did not know, as it now knows, that the promotion involved for him little change so far as duties and responsibilities were concerned. It has been said "that it really involved nothing more than moving from one room into the next, drawing a larger salary, and attending formal cabinet meetings and occasions of ceremony." The limits of this sketch will not admit of a description in detail of his achievements during the few months that he was at the head of the department of state. He brought to his duties the mental habits of the thoroughly trained lawyer. In this public capacity he served the country with the same faithfulness and devotion that had characterized him in the service of his clients. No man could have a higher standard than was his. The brief period of his service demanded prompt action almost daily upon grave questions of international importance, and in every instance he proved himself equal to the emergency. The mental grasp, the judgment, the discrimination, and the discretion of the man are apparent when we remember that he had to meet the grave responsibilities of his office without previous training in public affairs and without diplomatic experi-

ence; and his straightforward and genuine character is manifest in the condition upon which he accepted the trust, that Professor John Bassett Moore, a democrat in politics, should be appointed assistant secretary because of his acknowledged attainments in international law. Justice Day's most conspicuous and masterly service as secretary was undoubtedly rendered in the negotiations connected with Spain's request for our terms of peace. His determination and prompt action brought to an end difficulties that under the jurisdiction of a weaker man would undoubtedly have resulted in prolonged diplomatic correspondence, if not in more serious results. The remarkable tribute paid to Justice Day by the late President when speaking of his services in the state department, "Judge Day has made absolutely no mistakes" was undoubtedly merited.

With the closing of hostilities, Justice Day felt that he might honorably retire from the state department. To this President McKinley reluctantly consented, upon condition that he should go upon the Peace Commission appointed to negotiate the Paris treaty with Spain. This appointment was in line with the diplomatic work in which he had been so successfully engaged, and was generally recognized as most appropriate. The dignified and effective part that he took in the Paris negotiations contributed largely to the success of the commission.

The framing and signing of the treaty of peace having been accomplished, the time had come when Justice Day could return to his professional work. He had aided the President during the most critical and trying period of his administration, and he had given to his country the best service that it was in his power to render. Notwithstanding his success in the difficult role of secretary and diplomat, he always regarded his services in this field as temporary, and felt that his life work should be in

his profession. An opportunity that was in the direct line of his ambition came to him in February, 1899, when he was appointed United States circuit judge for the sixth judicial circuit. His eminent fitness for service upon the federal bench was at once apparent, and it very soon became a foregone conclusion that his promotion to the supreme bench would not be long in following. This came in February of the present year, his

appointment being universally regarded both by the people and by the profession as most appropriate and deserved. Justice Day enters upon his new duties conspicuously qualified by temperament and training for their successful discharge, and if health and strength are spared him, we may confidently predict, a most brilliant and effective career.

Harry B. Hutchins, '71
Ann Arbor