



Life Story: John Marshall Harlan

A Kentucky lawyer and politician who fought for the Union Army and became Associate Justice of the Supreme Court and a voice for “equal protection” for U.S. citizens.

John Marshall Harlan was born on June 1, 1833 in rural Boyle County, Kentucky, in the midst of pre-Civil War **sectionalism**. Named after **Chief Justice John Marshall** who initiated **judicial review** in *Marbury v. Madison* (1803), no one could have imagined that John Marshall Harlan would live up to Marshall’s judicial legacy. James Harlan, his father, was a prominent lawyer and a member of the **Whig Party**. His mother, Eliza Davenport Harlan, was a homemaker. The Harlans were considered southern **aristocrats** and owned several enslaved people who primarily worked in their home.

James and Eliza had nine children together, six sons and three daughters—John was the sixth child and fifth boy—and raised their children to follow the **Presbyterian** faith. **Robert James Harlan**, seventeen years older than John, was the son of an enslaved woman and white man (possibly James). Robert was raised alongside the other Harlan children as an understood member of the family. Robert was educated at home and, because he was light-skinned, traveled freely around Kentucky, although he remained enslaved until 1848 when he requested his freedom from James to participate in the **California Gold Rush**.

Education and Family Life

A bright boy, John’s parents raised him to join the family law firm. He attended the local school with his brothers. As he grew, he developed a close relationship with his older brother, Henry Clay Harlan. John followed in Clay’s footsteps and attended the prestigious Centre College in Danville, Kentucky. There, he earned an education and developed **oratory** skills that he used to promote his beliefs in American patriotism and **unionism**. John graduated from college with honors and enrolled in Transylvania Law School. After his formal schooling, he **apprenticed** with his father to finish his legal education.

1853 was a momentous year for John. He passed the Kentucky bar and met his future wife Malvina “Mallie” French Shanklin, the daughter of an Indiana businessman. The couple courted for three years, falling deeply in love, and married right before Christmas in 1856. Mallie and John had six children together, three boys and three girls, and remained happily married until John’s death.

Political Involvements

As John was establishing himself as a lawyer, sectional tensions continued to increase between the Northern and Southern states. This was due to debates over enslavement and other economic, cultural, and political issues such as immigration. The Supreme Court’s 1857 *Dred Scott v. Sanford* decision further divided the American people and would later be cited by John as a source of

frustration. The majority opinion declared that the Constitution never intended Black people to be citizens.

On one hand, John criticized abolitionists and their vocal opposition to enslavement for contributing to increasing sectional tensions between states. On the other hand, though part of a slave-holding family, John struggled with slavery. Robert, considered by some to be his half-brother, showed him first-hand that African Americans desired and were capable of freedom. Additionally, his wife, Mallie, and her family opposed slavery and often shared their beliefs with him.

Though John detested the Court's opinion in *Dred Scott*, he did not want to risk everything the Founding Fathers, and his own relatives, had fought for during the American Revolution. He believed the Union needed to be preserved at all costs. John became an **anti-secession**, pro-Union Southerner and delivered speeches across Kentucky in the hope of keeping his home state neutral. His popularity grew, and voters in Franklin County elected John to a county judgeship in 1858.

The Civil War and Reconstruction

In 1861, John worked hard politically to prevent his native Kentucky from joining the Confederacy. He also was among a small group of Union supporters to receive a stockpile of weapons from the federal government to help the state defend itself from a possible Confederate invasion. He then recruited hundreds of soldiers for the Union Army and served as Colonel for the 10th Kentucky Infantry. John fought for **two** years, returning home to care for his family when his father died. Soon after, Kentuckians elected him Attorney General. Despite his pro-Union sentiments, John disagreed with President Abraham Lincoln's use of **martial law** in Kentucky which some Union commanders used to allow enslaved people to travel to freedom. He also did not support the **Reconstruction Amendments**. John did not free the Harlan family's enslaved people until the ratification of the Thirteenth Amendment in 1865.

John lost his re-election campaign for Attorney General and converted to the **Republican Party** after being a member of the dissolved **Whig Party** and the **nativist Know Nothing Party**. He ran as the Republican nominee for governor of Kentucky in 1871 and 1875. Though unsuccessful both times, his efforts spread the ideas of equal citizenship and suffrage for all men throughout his home state.

In 1876, John led the Kentucky delegation to the Republican National Convention. There, he played a key role in securing the presidential nomination for Republican **Rutherford B. Hayes**. Highly contested, there was no clear winner in the election of 1876. Thus, it fell to the House of Representatives to decide the next President of the United States. They negotiated the selection of

Rutherford B. Hayes on the condition that he would remove federal troops from several southern states. This was known as the **Compromise of 1877**.

Determined to reunite the United States, President Hayes assigned John to the Louisiana Commission. The Commission's report enabled President Hayes to remove federal troops from formerly confederate states. Despite assuring the Commission they would follow the Reconstruction Amendments, Louisiana, like many states, passed discriminatory **Jim Crow** laws. These laws ushered in an era of segregation, restricting and disenfranchising Black Americans.

Supreme Court Nomination

When a vacancy opened on the Supreme Court in 1876, President Hayes felt appointing a southerner would continue his national reunification efforts. He was pleased with John's service on the Louisiana Commission. On November 16, President Hayes nominated John as a Supreme Court Justice and submitted his name to the **Senate Judiciary Committee**. Republican Senators received numerous complaints opposing John's nomination due to his previous stance on enslavement. Many of John's friends and colleagues, including Robert Harlan, rushed to Washington to **lobby** on his behalf. On Thanksgiving morning, after a rousing game of soccer with his children, John received a telegram announcing his nomination had made it out of committee. The Senate unanimously confirmed John Marshall Harlan on November 29, 1877. He took the judicial oath of office on December 10, 1877.

The Great Dissenter: Associate Justice of the Supreme Court

Justice John Marshall Harlan served nearly 34 years on the Supreme Court. During his **tenure**, the Court began accepting more cases involving significant constitutional questions. By 1910, the Court was called upon to resolve Constitutional questions that had an impact on **public policy**. For example, the Supreme Court addressed several cases involving private business and growing state and federal regulations. In *United States v. E.C. Knight Co.* (1895) the Court sharply limited the scope of the **Sherman Antitrust Act**. This narrow interpretation of the Constitution's **Commerce Clause** restricted the power of Congress to confront antitrust violations. John **dissented**. In *Lochner v. New York* (1905), the majority opinion struck down a New York law that limited working hours for bakery employees. John disagreed and wrote in his dissenting opinion, "*I take it to be firmly established that what is called the liberty of contract may, within certain limits, be subjected to regulations designed and calculated to promote the general welfare or to guard the public health, the public morals, or the public safety...*"

John's most notable dissents involved racial discrimination. He passionately believed that the words "equal protection" in the Fourteenth Amendment meant full equality for Black Americans. This was revolutionary for his time. For instance, when the Supreme Court held in the *Civil Rights Cases* (1883) that the **Civil Rights Act of 1875** was not justified under the Reconstruction Amendments, John dissented. He argued for a broader interpretation of the Thirteenth and Fourteenth Amendments

and explained that private entities like rail transportation served a public function. Thus, Congress had the authority to enforce regulations even though the businesses were privately owned.

Again the lone dissenter in 1896, John disagreed with the Supreme Court's controversial *Plessy v. Ferguson* decision. The seven-member majority upheld racial segregation determining a Louisiana law enforcing separate rail cars for Black Americans was constitutional. This decision legitimized Jim Crow laws throughout the United States. John passionately argued, "*The white race deems itself to be the dominant race in this country...but in the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color blind and neither knows nor tolerates classes among citizens.*" (John was not a civil rights hero for all non-dominant groups, for example he supported the **Chinese Exclusion Act** that prevented people of Asian descent from becoming citizens.) Eventually, the *Civil Rights Cases* and *Plessy* opinions were overturned and the position John expressed in his dissents became the law of the land.

Ed Johnson v. Tennessee and United States v. Shipp

In 1906, John again confronted racial discrimination in a matter involving Ed Johnson, a young Black man accused of raping a young white woman in Chattanooga, Tennessee. After hearing the account of the criminal trial, John felt there was substantial reason to believe Mr. Johnson was denied a fair trial. He issued an order **staying the execution**. His intervention triggered city-wide unrest in Chattanooga. On March 19, 1906, after the sheriff gave his deputies the night off, a **lynch mob** broke into the Hamilton County jail and kidnapped Ed Johnson. They murdered him on the Walnut Street Bridge. In his final words, Mr. Johnson declared, "God bless you all. I am an innocent man."

John, his fellow justices, Attorney General William Moody, and President Theodore Roosevelt agreed the authority of the Court must be protected. The Justice Department brought federal **contempt of court** charges against Sheriff Shipp, his eight deputies, and sixteen members of the lynch mob. The Deputy Clerk of Court for the Supreme Court served as special commissioner and presided over an evidentiary hearing in Chattanooga. Relying on that record, the Supreme Court held its first and only criminal trial. On November 15, 1909, Chief Justice Melville Fuller delivered the Court's majority opinion. They found six of the defendants, including Sheriff Shipp, guilty and sentenced them to 60-90 days in federal prison. Eighty-two years later, the first African American Supreme Court Justice, Thurgood Marshall, cited John's courage as the force behind the Court's decision saying, "*Shipp was perhaps the first instance where the Court demonstrated that the Fourteenth Amendment and the Equal Protection Clause have any substantive meaning to the people of the African American race.*"

Later Life and Death

Chief Justice Melville Fuller died of a heart attack on Independence Day 1910. As the most senior Associate Justice, John served as interim Chief Justice for the first half of the 1910 Term. Though he

hoped to be appointed Chief, President Howard Taft instead appointed Justice Edward Douglass White.

Justice John Marshall Harlan died suddenly of pneumonia on October 14, 1911, a few days after the first session of the Supreme Court's 1911 Term. While his loss was acknowledged nationally, the white legal community largely ignored his dissents in their tributes. His passing, however, was felt deeply among Black Americans. Thousands gathered at Black churches across the country for services held in his honor. Black newspapers such as the *Washington Bee* and the *Cleveland Gazette* published farewell commemorations such as, "*an entire race, today, is weeping because he has been taken from the bench*" and "*Justice Harlan—Ever may his name be said in reverence.*"

John is remembered for his commitment to what he felt was right, his astute legal reasoning, and his integrity. He was greatly impacted by his own life experiences and learned firsthand that enslaved people could "drink just as deeply of freedom a white man could." John Marshall Harlan's reputation endures because his interpretation of the Constitution has now become law in the United States. John's grandson, John Marshall Harlan II, was appointed to the Court by President Eisenhower in 1955. They are the only two directly related family members to have served on the Supreme Court.

Vocabulary:

- **Sectional:** (Sectionalism) the idea that a region's interests are more important than national interests. Prior to the Civil War, the country became increasingly divided between the agricultural pro-slavery South and the industrial North.
- **Judicial Review:** the authority of the Supreme Court to review the constitutionality of the acts of the legislative and executive branches.
- **Whig Party:** the conservative political party founded in 1833 by Henry Clay that opposed Andrew Jackson and Jacksonian Democracy.
- **Aristocrats:** a member of a privileged or superior class.
- **Presbyterian:** a type of Christianity.
- **Robert James Harlan:** (1816-1897) a civil rights activist and politician. Robert was born enslaved and raised by the Harlan family. He was elected to the Ohio House of Representatives in 1886.
- **California Gold Rush:** (1848-1855) after news of James W. Marshall's discovery of gold in Coloma, California, spread, 300,000 people rushed to the state in hopes of discovering gold.
- **Oratory:** formal speaking in public.
- **Unionism:** ideology supporting keeping the United States unified and opposing secession.
- **Apprenticed:** a paid job where the employee gains valuable experiences through on-the-job training and mentoring from an experienced professional.

- **Henry Clay:** an American lawyer and politician who represented Kentucky in both the Senate and House of Representatives. He also served as Speaker of the House and Secretary of State and unsuccessfully ran for president 3 times. Clay helped found both the National Republican Party and the Whig Party.
- **Know Nothing Party:** (1844-1860) a nativist political movement in the United States.
- **Nativism:** a policy of protecting the interest of native-born or established inhabitants over those of immigrants.
- **Ideology:** a set of ideas and beliefs.
- **Missouri Compromise:** federal law that balanced the desires of the northern states to prevent the expansion of slavery with the southern states desire to expand slavery.
- **Anti-secession:** against states formally withdrawing from the United States of America.
- **Martial Law:** temporary substitution of military authority for civilian rule and is usually invoked in time of war, rebellion, or natural disaster.
- **Reconstruction Amendments:** The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution that addressed questions related to the legal and political status of African Americans. They were adopted between 1865-1870.
- **Republican Party:** a political party in the United States. In the 1860s, the party platform included ending enslavement and preserving the Union.
- **Rutherford B. Hayes:** an American military officer and politician from Ohio who became the nineteenth president of the United States.
- **Jim Crow:** (1877-1960s) a racial caste system which operated primarily, but not exclusively, in the southern and border states. The system involved state and local laws aimed at restricting the freedoms of African Americans and maintaining segregation.
- **Senate Judiciary Committee:** a standing committee (group) of 21 senators who oversee the Department of Justice, consider executive and judicial nominations, and review pending legislation.
- **Lobby:** to seek to influence politicians or public officials on a particular issue.
- **Tenure:** the holding of an office or position.
- **Public Policy:** laws that address social problems and issues such as public health, criminal justice, and education.
- **Sherman Antitrust Act:** (1890) a federal law that prohibits activities that restrict interstate commerce and competition in the marketplace. It was put in place to address monopolies.
- **Commerce Clause:** gives Congress the power to regulate commerce (buying and selling) between the states.
- **Dissent:** when a Justice does not agree with the majority opinion on a case.
- **Civil Rights Act of 1875:** a law that guaranteed all citizens, regardless of color, access to accommodations, theaters, public schools, churches, and cemeteries.
- **Tenth Amendment:** (1791) rights reserved to the States and the People; "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

- Chinese Exclusion Act of 1882: the first significant law restricting immigration to the United States. The act, signed by President Arthur, provided a complete 10-year ban on Chinese laborers immigrating to the United States.
- Stay of Execution: a judicial order delaying a lower court order, for example, a death sentence.
- Lynch Mob: a group of people set on killing an alleged criminal outside the justice system, usually in a public manner, meant to punish and intimidate.
- Contempt of Court: the offense of being disobedient to or disrespectful of a court of law and its officers.

Discussion Questions:

- How did John's early life prepare him to be a Supreme Court Justice?
- Why did John want Kentucky to remain part of the Union?
- Which of John's Supreme Court opinions do you believe is the most important? Explain.
- How did John's personal beliefs change over time? Describe the personal and larger impact of those changes.
- What life lessons can be learned from John Marshall Harlan?

Extension Activities:

- Imagine you are writing a biography of John Marshall Harlan. What would you title the book?
- Using the information from the Life Story, write an obituary for Justice Harlan. Obituaries are notices of death that include a brief biography. What information do you think is most important to share about his life?
- Compare and Contrast: How are Justice Harlan and his namesake, Chief Justice John Marshall similar? How are they different? Use the **Life Story: John Marshall** as an additional resource.

Special thanks to author of [The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero](#), Peter S. Canellos for his review, feedback, and additional information.