



John Marshall Harlan: The Last Whig Justice

Loren P. Beth

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Harlan. Known today to every student of constitutional law, principally for his dissenting opinions in early racial discrimination cases, Harlan was an important actor in every major public issue that came before the Supreme Court during his thirty-three-year tenure.

Named by a hopeful father for Chief Justice John Marshall, Harlan began his career as a member of the Kentucky Whig slavocracy. Loren Beth traces the young lawyer's development from these early years through the secession crisis and Civil War, when Harlan remained loyal to the Union, both as a politician and as a soldier. As Beth demonstrates, Harlan gradually shifted during these years to an antislavery Republicanism that still emphasized his adherence to the Whig principles of Unionism and national power as against states' rights.

Harlan's Supreme Court career (1877-1911) was characterized by his fundamental disagreement with nearly every judicial colleague of his day. His ultimate stance—as the Great Dissenter, the champion of civil rights, the upholder of the powers of Congress—emerges as the logical outgrowth of his pre-Court life. Harlan's significance for today's reader is underlined by the Supreme Court's adoption, beginning in the 1930s, of most of his positions on the Fourteenth Amendment and the Commerce Clause of the Constitution.

This fine biography is also an important contribution to constitutional history. Historians, political scientists, and legal scholars will come from its pages with renewed appreciation for one of our judicial giants.

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