The Gilded Age and The Supreme Court

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Overview of Today’s Lecture

- 13th 14th & 15th Amendments
- Harlan and the Rise and Fall of Civil Rights
- Fields, Laissez-faire economics, and the 14th Amendment
- Reconstruction Era
- The Switch in Time that Saved Nine
- Constitutional Revolution of 1937
Lincoln and the Constitution

Lincoln pushed many of the limits of executive power under the Constitution

– Created a much more powerful President moving in the future

– For the most part, Supreme Court upheld his actions
The 13th, 14th & 15th Amendments

13th Amendment passed December 1865, ends slavery
- Constitutionalizes the Emancipation Proclamation

14th Amendment passed July 1868
- Section 1
- Privileges and Immunities
- Due Process Clause
- Equal Protection Clause
The 13th, 14th, & 15th Amendments

15th Amendment February 1870

• Voting rights act of 1965 for the South to truly follow the 15th Amendment
Justice John Harlan and The Rise & Fall of Civil Rights

Appointed 1877, served until 1911

Was the only southerner and former slaveholder on the reconstruction era court

Famously was the Lone Dissenter on the Court’s decisions overturning civil rights
Justice John Harlan and The Rise & Fall of Civil Rights

The Civil Rights Cases (1882)
- Found the Civil Rights Act of 1875 unconstitutional
- 4th Amendment only applies to state action

Plessy v. Ferguson (1895)
- Court decided Louisiana could require separate railroad cars for blacks and whites as long as the accommodations were “separate but equal”
- Allows for the Jim Crow laws in the south
Plessy v. Ferguson (1895)

Harlan dissented from both of these cases claiming our Constitution is colorblind

Harlan becomes a hero in the Black community

• On his death, Black churches in the south held memorial services
Justice Stephen Field and Laissez-faire Economics

Appointed 1863, left office in 1897

At the time, longest serving Supreme Court Judge in history

First Californian appointed to the Court

Creates the notion of “liberty to contract” in the 14th Amendment’s Due Process Clause
Allgeyer v. Louisiana (1897) and Lochner v. New York (1905)

Both used Field’s notion of Liberty to Contract to strike down state regulation that supported labor

*Lochner* is considered one of the Court’s three anti-precedents

- Court overturned a maximum hours law that limited bakers to working 60 hours a week
- Said the law violated worker’s Liberty to Contract
- The law would not lead to safer bread; working in a bakery was akin to working in an office
Justice Oliver Wendell Holmes

Famously dissented in *Lochner*, stating “the 14th Amendment does not enact Mr. Herbert Spencer’s *Social Statics*”

Appointed to the court in 1902, left office in 1932

Already one of the most famous judges in the country before his appointment

Fought in the Civil War, wounded several times

The Father of Legal Pragmatism
Justice Louis Brandeis
First Jewish Supreme Court Justice

Appointed to the Court in 1916, served until 1939

One of the most famous progressive lawyers of his generation

Ends up making Holmes far more progressive than he would’ve otherwise been

Holmes and Brandeis together became known as the Great Dissenters
FDR’s New Deal comes to the Court

SCOTUS overturns much of FDR’s New Deal legislation

• Either a violation of the Liberty to Contract or of Congress’ power under the Commerce Clause

FDR comes up with plan to “pack the Court”

• Appoint a new Justice to “help out” every justice over the age of 70

• Would’ve taken court membership from 9 to 15, giving FDR 6 new appointees
The Switch in Time that Saved 9

In two key progressive legislative decisions, Justice Owen Roberts switches sides

• Leads to demise of the Four Horsemen of the Apocalypse and their hold on the Court

Ushers in what becomes known as the Constitutional Revolution of 1937

• The Court moves away from decisions regarding economic rights

• Begins era focused on civil liberties and civil rights