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# Harlan's Formative Period: The Years Before The War

By DAVID G. FARRELLY\*

JOHN MARSHALL HARLAN'S sister, Elizabeth, remembered about his birth that Aunt Betty had rushed into the kitchen of the old stone farmhouse near Danville, Kentucky. "Another big red-headed boy," she exclaimed.<sup>1</sup> There was an unconscious prophecy in the baptismal name which James Harlan provided for his youngest son. Some might observe that the newborn baby was destined for the U. S. Supreme Court from the moment he entered the world. More prosaically, Father Harlan was an ardent admirer of the great Chief Justice, and he chose this way of paying homage to a statesman whose beliefs corresponded with his own. The lad of Danville was still a toddler when his namesake John Marshall died in 1835.

James Harlan, born in the same house as his son, made an early decision that he did not want to farm for a living. At the age of sixteen he began to earn his own way at business in nearby Danville. For five years he struggled to make ends meet, but commercial enterprise did not satisfy him. He was attracted to the study and practice of law, and it was this endeavor that enabled him to make his mark in Kentucky life. In rather short

\* Associate Professor of Political Science, University of California (Los Angeles). Ph.D. Princeton University. This article is based on the first four chapters of a manuscript I prepared in 1955 and which I am still writing. Materials used in my study were drawn principally from two sources: a collection of Harlan letters and scrapbooks at the University of Louisville Law School, and the Harlan Family Papers. It was my privilege to have custody of the latter papers from 1949 to 1955; their use was made possible through the kindness of Elizabeth Darby and John M. Harlan, grandchildren of John M. Harlan of Kentucky.

Two articles are devoted to Harlan's life previous to his appointment to the U.S. Supreme Court in 1877. See Louis Hartz, "John M. Harlan in Kentucky, 1855-1877," 14 *Filson Club Hist. Q.* 17 (1940) and David G. Farrelly, "A Sketch of John Marshall Harlan's Pre-Court Career," 10 *Vand. L.Rev.* 209 (1957).

<sup>1</sup> Elizabeth Hatchett to J.M.H., June 2, 1893, Harlan Papers.

order, James Harlan acquired a reputation as a good lawyer. Then, as a Whig, he ran for Congress and was elected. He served two terms, from 1835 to 1839. During this period the family moved from the old farm to Harrodsburg, taking their few slaves with them. In 1840 James Harlan was appointed Secretary of the Commonwealth and the family moved to the state capital. Young Harlan, then only seven, recalled the ride from Boyle County to Frankfort with the family "plunder" piled high on a wagon.

Successful practice of the law occupied the remainder of James Harlan's years, although he maintained an active interest in politics. He was one of the men who compiled the Kentucky Codes, and he served a term in the state assembly. Appointed Attorney General of Kentucky in 1850, he was twice elected to that position, serving from 1850 to 1859. President Lincoln commissioned him a United States District Attorney in 1862, the post he occupied at the time of his death the following year.

James Harlan exerted a strong influence on the mind and interests of his youngest son. This can be seen in the several phases of John Harlan's life: his religion, his choice of a profession, his political sympathies, his active political career, and his antipathy toward the institution of slavery.

While the Harlan family was originally Quaker in religion, it became firmly Presbyterian after two generations on this side of the Atlantic. While in Virginia, it was said, the Harlans found it necessary to give up their Quaker faith and turn to Presbyterianism in order that they could fight the Indians with a clear conscience. John Marshall Harlan remained staunchly in the church of his father throughout the course of his long life. His children, in turn, were raised in surroundings where the Bible was a constant source of strength and guidance.

Although James Harlan owned slaves until the time of the Civil War, he possessed them through inheritance. The slaves were carefully looked after, not only physically but morally. He felt that there was nothing much to be done with his slaves but to accept the responsibility for their welfare. He did, however, recognize unusual ability in his slaves and during the 1840's he made it possible for two of his men to purchase their own freedom. Each year, for several years, he paid these two slaves the money equivalent of half a year's wages. One of the freed men

went to California in 1849 and struck it rich in the gold fields. Several years later this ex-slave presented Elizabeth Harlan a fine piano as a bridal gift upon her marriage to Dr. James Hatchett. The other servant eventually purchased his own freedom too, and he later became a Pullman porter.

There was an inborn hatred in James Harlan against the institution of slavery, and this feeling was transmitted to his children. One incident, in particular, drove home to John Harlan the evils that came with slavery. One Sunday morning in Frankfort, about 1857, when John Harlan was accompanying his father to church, a company of slaves was being driven to a slave market in a nearby town. Able-bodied men and women were chained together four abreast; little Pickaninnies walked beside them unbound. This band of slaves was in the charge of a brutish white man who applied his black-snake whip frequently. The sight so stirred James Harlan that, although he could do nothing to liberate them, indignation swelled uncontrollably within him. Rushing to the middle of the street, he angrily shook his forefinger in the face of the slave driver shouting: "You are a damned scoundrel. Good morning, Sir." Relieved of his emotional feelings, James Harlan continued on to church. Young Harlan remembered that it was the nearest thing to swearing he had ever heard from his father's lips.<sup>2</sup>

During John's formative period he was exposed constantly to his father's views on the Constitutional system. James Harlan was a devoted disciple of Chief Justice John Marshall and subscribed to the views of constitutional construction which that great jurist embodied in his Supreme Court opinions. As young Harlan knew, his father always contended that Marshall held to a constitutional philosophy which would give this country a strong government—one supreme and paramount in respect to all matters entrusted to the central government; yet the general government's powers were not to be exerted so as to infringe upon the rights which remained with the people of the several states.

James Harlan was equally ardent in his opposition to the constitutional views of Thomas Jefferson. He believed that Jefferson's theory was based upon a narrow, literal construction of the words

<sup>2</sup> Malvina Harlan, *Some Memories of a Long Life (1854-1911)* (unpublished manuscript, 1915), Harlan Papers.

of the Constitution which, in time, would so minimize the functions of the general government as to place it completely at the mercy of the states. Time after time young Harlan was to hear that Jeffersonianism was an evil that needed to be watched and overcome. Young Harlan, as John Marshall's namesake, absorbed much of the great Chief Justice's viewpoints indirectly from his father.

Politically, the main opposition to Jeffersonianism came from statesmen like Daniel Webster and Henry Clay. James Harlan was a follower of the latter; he gloried in being a Whig and an opponent of the Democratic party. Moreover, Clay was a warm, personal friend of the Harlans. That young Harlan could escape from exposure to politics in the midst of his father's environment would have been close to miraculous. As it was, James Harlan's activities in public life were such that his sons grew up with practical political talk in the air. Son John, in particular, showed an affinity for politics.

When John was a mere boy of eleven he began to take an interest in the political movements of the day. He was aware that Henry Clay was defeated in his bid for the presidency in 1844. He remembered that many of Mr. Clay's friends talked of their champion's loss to Polk as meaning the ruin of the country by the Democrats. As Clay's political activities were followed closely by James Harlan, the father must have unburdened himself many times before his son John.

In 1846 Henry Clay invited James Harlan to hear one of his speeches at the market place in Lexington. John went with his father. Although he knew only that the address was about the Mexican War, John remembered that during the whole time of Clay's speech he sat at his feet. "I was charmed with his magnificent, bugle voice," wrote Harlan years after the event.

Perhaps it was Clay's eloquence, more likely it was the persuasive influence of his namesake Henry Clay Harlan, but at thirteen John Harlan enlisted for the Mexican War. At the call for volunteers John's elder brother organized a company with himself as captain. Destined to die an untimely death, Henry Clay Harlan had the earmarks of a promising politician even though he was only sixteen years of age. John admired this older

brother very much and the two were boon companions.<sup>3</sup> John became one of the company's five sergeants and brother James was one of five corporals.<sup>4</sup> The company was part of the 22nd Regiment of the Kentucky Militia and these youthful soldiers were eager for battle. They were issued the usual equipment for war: picks, flints, shot pouches, horns, loose balls, and powder. Passed over in the first call for active duty, the young men continued to drill and prepare for war. In 1847, upon a second call for volunteers, more Kentucky Troops were offered than could fill the War Department's requisition. The captains were obliged to cast lots to determine which companies should go, but Captain Henry Clay Harlan was a loser. Peace soon followed, and the young Harlan boys turned their minds back to civilian pursuits.

The question of the hour in 1848 was, Who will be the Whig candidate for President? Harlan's father was a Whig delegate to the National Anti-Democratic convention in Philadelphia. All the Whig delegates from Kentucky, except one, voted for the nomination of Zachary Taylor. It was James Harlan who stuck with Clay and refused to make the nomination unanimous. Upon his return to Frankfort, Harlan discussed with his son John the action he had taken. As evidence of the local Clay supporters' affection for Harlan, they raised funds to purchase a gift. Young Harlan was present when these friends gave a silver pitcher to his father.

Young Harlan recalled also that Clay wrote to his father in 1851, during Fillmore's term in the White House, urging Harlan to accept a \$6,000 position on a Board of Commissioners set up to settle land claims in California. After seriously considering the post, Harlan decided to remain in Kentucky rather than take his family to a distant place, among a strange people. Years later John Harlan speculated on the question of whether he would have become a justice of the U. S. Supreme Court if his father had taken him to California.

In terms both of education and politics, Frankfort was the ideal place for the Harlan family. It was a large family—six boys and three girls. There were no difficulties in regard to schooling.

<sup>3</sup> Henry Clay Harlan maintained a notebook while he was at Centre College and gave it to John when he went there.

<sup>4</sup> Franklin Roundabout, April 4, 1835. Harlan Papers.

Father Harlan's large law practice and his elective positions with the state enabled the children to be provided with reasonable, or better than average, education. The first school that John attended was kept by Kean O'Hara who had trained many distinguished men, including Zachary Taylor. But the teacher with whom young John Harlan spent the longest time was B. B. Sayre who ran a select school. Among his other pupils, and a contemporary of young Harlan, was George G. Vest who was later to become a United States Senator from Missouri.

While at Mr. Sayre's school there arose one of those peculiar situations which so vitally affect the fortunes of men. Schoolmaster Sayre urged upon James Harlan the idea that young John should be trained as a merchant. However, Father Harlan had other and fonder hopes for his son than mercantile pursuits. Perhaps his own brief experience in business helped him to resist Sayre's advice. In no uncertain terms James Harlan said that he had always intended John to be a lawyer and so fixed had he been in this purpose that he had named him for John Marshall.<sup>5</sup>

There was sufficient money within the family to finance higher education for the boys. Given the desire for further formal learning and the financial backing, there remained only the choice of institution. Centre College, at Danville, was well known to the Harlan family. Not only was it familiar because of its location within a few miles of the old Harlan farm, but it was a Presbyterian college. The deep religious instruction received by the Harlan children undoubtedly was a factor that determined the choice of Centre. Also, Danville was easily reached by stage from Frankfort, some 40 miles due south of the capital. Close and distant relatives were numerous in the Danville area so that Centre provided a hospitable atmosphere. Moreover, Henry Clay Harlan had just completed two years there and his enthusiasm for the school must have been contagious.

In the fall of 1848 John Harlan entered Centre College with his brother James. During the two years the boys were at Centre the college was enjoying a rather unusual popularity in the state. The town of Danville had a reputation for its healthful climate and was distinguished for the moral and religious character of the population. Parents were urged to send their sons to Centre

<sup>5</sup> Autobiographical letter (1911), Harlan Papers.

because there was "no place where their morals and health would be more secure." The students avoided "such disorders as are frequent in many institutions." At the time the young Harlans entered, officials of the college pointed with pride that three or four years had passed without the necessity of any exercise of discipline beyond admonition. Not only the town and the college, but the character of the students who were attracted to the campus was largely responsible for such wholesome conditions. Patronizers of the institution were of a class whose children were usually trained under strict moral and religious influence in the home.

The Centre student body numbered from 150 to 185 while the Harlans attended. Their graduating class, the Class of '50, contained twenty-five members. All but one of the graduates went into law, the ministry, or medicine. Yet in everything but the spirit of scholarship and goodness, Centre was a poor institution. Many years later, of course, its football team—the Colonels—defeated Harvard University and achieved immortal fame for the school.

As a small Presbyterian college, Centre had goals above that of inculcating in its students a narrow sectarian doctrine. Its objectives were to teach the broad principles of Christian living, high ideals of public service, and a love of liberty and fair play. These ideals and worthy purposes were exemplified in its honor graduate of 1850—John Marshall Harlan.

To John C. Young, the president of the college, Harlan recited in logic and rhetoric. Imagination and writing ability were cultivated by frequent essay assignments and speeches. Classmates remembered John Harlan best for his argumentative abilities. We have an early example of his writing when he penned, at fifteen, some thoughts on the impact of the American Revolution:

And unless we greatly deceive ourselves, the consequences of [the Revolution] have not been less distinctly marked upon other nations. The inhabitants of Europe and of Spanish America . . . had no rights,—no liberties,—no privileges, but such as the condescension of their kings saw fit, out of their most princely pleasure, to grant. . . . Our country was the birthplace of modern freedom; [and] will



continue to impart it until Truth and Freedom and Justice shall cease to have a name among men.<sup>6</sup>

One of John's notebooks contains a list of books which were recommended by his professor in a course of reading. Historical works, philosophy, and biography were the three categories. Throughout his long life Harlan found his chief mental diversion in books on history and biography. While at Centre his interests may have been quickened in this direction, but at sixteen he had already developed a fondness for history and biography. For his own records at the time John made a list of some forty volumes that he had already read. In addition to the history and biography works, he noted a bit of poetry and plays by Shakespeare plus several "miscellanies" such as one of the Waverly novels. (When Justice Harlan's own sons were at Princeton University, he urged them to read novels as a means for improving their use of language).

John's notebooks show that he amused himself by practicing various ways in which to sign his name. Within a few years he was to settle on two signatures: John M. Harlan or Jno. M. Harlan.

There is one effort at poetry in his handwriting:

A place in thy memory dearest,  
Is all that I claim  
To pause and look back when thou hearest,  
The sound of my name.  
Another may woo thee nearer,  
Another may win and wear,  
I care not though he be dearer,  
So I am remembered there.

Remember me not as a lover,  
Whose hopes have been crushed.  
Whose bosom can never recover  
The light it hath lost.  
As a young bride remembers her mother  
She loves though she never may see,  
As a sister remembers her brother  
Oh dearest, remember me.

Remember me then oh remember  
My calm light love

<sup>6</sup> Material on Harlan and Centre College included in the Harlan Papers. Two important items are Harlan's Notebook and Centre College Catalog of 1850.

Though bleak be the blasts of November  
My life may prove.  
That life though lonely, may be sweet  
If its brightest enjoyments may be  
A smile and kind word when we meet  
And a place in thy memory.

At seventeen, John Harlan left Centre College carrying a diploma of graduation with honors signed by Dr. Young and the faculty. "Before turning my face homeward," wrote John, "I called at his residence to bid him good-bye. President Young could not have received one of his own children with more loving kindness than he exhibited on that occasion. His parting words, 'God bless you, my son,' will never be effaced from my memory."<sup>7</sup>

Possession of a bachelor's degree was an unusual achievement in a day when the vast majority of young men ended their formal education at the common school. It was still more novel to attend a graduate school in that period before the age of specialization came upon the United States. If John's mother had had her way, however, he would not have undertaken further education at the university level.

It was Mother Harlan's habit to work out the preliminary plans for the children before she took up such matters with her husband. Absorbed in his profession and the business problems connected with the maintenance of his large household, James Harlan found that this husband-wife arrangement generally worked out well.

Immediately after John graduated from Centre, his mother put into effect a plan which she had nurtured for some time. Years before she had become acquainted with a relative in Philadelphia whom she had met when James Harlan served in Congress. Now she wrote and asked her kinsman to arrange for John to be apprenticed as a clerk in a business firm in the Quaker City. She reasoned that a husband and one or two sons trained in the law was enough for one family. All the preliminaries for John's trip had been arranged. The mother had gone so far as to

<sup>7</sup> Harlan's remarks at Centre College June 10, 1891 when memorial tablets were unveiled. Univ. of Louisville. A clipping from *The Enquirer*, November 15, 1908 states that Harlan "founded at Centre the Dinologian Society, the oldest at the college and one which has a membership of all the prospective Associate Justices of the Court to this day." Filson Club, Louisville, Ky.

pack his trunk. Then she took up the matter with her husband, telling him of her reasoning and of the plans that had been perfected. Without hesitation James Harlan said "it would never do, but that John too was to be a lawyer." John would begin at once upon his legal studies and prepare to enter his father's office.<sup>8</sup> So John commenced to read law with his father. However, James Harlan had just been appointed Attorney General of Kentucky, and it is probable that this new responsibility made it impossible for him to work closely with John on his legal training. A decision was made that John should go to law school.

In nearby Lexington, some 25 miles southeast of Frankfort, was Transylvania University. Like Centre College, Transylvania enjoyed a popular reputation in mid-nineteenth century Kentucky. The first institution west of the Alleghenies to establish a school of law and a medical college, Transylvania for a time became the peer of Harvard and Yale. By 1850 its reputation had diminished somewhat, but its law department was in its heyday. In late October, 1850, John Harlan went to Lexington to study law.

The school term at Transylvania began on November first and continued until March first of the next year. Daily examinations on portions of textbooks, plus explanations by the professors, constituted the course of instruction. Once each week a moot court was held by one of the instructors. For the 1850-51 term, Harlan and the other juniors were expected to attend classes and to recite. During their senior year they were privileged to attend class, and if present they could be called on to recite. A degree was awarded after the successful completion of a comprehensive examination.<sup>9</sup>

Transylvania's law faculty during Harlan's two years included George Robertson, LL.D., professor of constitutional law and equity, and Thomas A. Marshall, LL.D., professor of the elementary principles of the common law and laws of pleading, evidence and contract. Madison C. Johnson and A. K. Wooley were adjunct professors in each department. Years later Harlan

<sup>8</sup> This anecdote is taken from Malvina Harlan, *Some Memories of a Long Life*, supra note 2. It is possible that it relates to the same incident that is alleged to have taken place in 1848, supra note 5. One difficulty in working with the Harlan Papers is that much of the memoranda written by Harlan was put on paper years after events actually took place. Both his memoranda and Mrs. Harlan's Memories need to be checked carefully for discrepancies and accuracy.

<sup>9</sup> Charles Kerr, "Transylvania University's Law Department," 31 *Americana* 3 (1937); Transylvania Law School Catalogue, 1850.

wrote: "No law school that has ever existed in this country or, in my judgment, in any other country, has had at the same time as professors and teachers of the science of law four greater lawyers. . . . If George Robertson and Thomas A. Marshall had been placed upon the bench of the Supreme Court of the United States in their early years, they would have left a reputation as great as that of Chief Justice Marshall. No greater lawyer . . . ever lived in this country . . . than Madison C. Johnson. He deserves to be ranked by the side of Daniel Webster, Rufus Choate and lawyers of that kind."<sup>10</sup>

Long after he graduated from Transylvania Harlan remembered one of Professor Robertson's introductory lectures:

The Constitution should never be stringently construed like a penal statute, but always more liberally, as the charter of a great public trust for the welfare of the people, and for the maintenance of the harmony and justice of the Union; and as the best safeguard, therefore, of liberty, peace, and security.<sup>11</sup>

Harlan's graduating class listened to Professor Robertson deliver the valedictory address. It was a memorable speech, considered by many as one of the most unanswerable arguments ever made against the Kentucky Resolutions of 1798.<sup>12</sup> Those resolutions, charged Robertson, contained the germs of national disaster; they bred a growing sentiment in favor of disunion and indefensible constitutional interpretation. Robertson forecast a great civil strife as the inevitable result of the indoctrinated idea of nullification.<sup>13</sup>

The student body was immensely impressed by the oration, and some months later three members of that graduating class formed a committee which petitioned the University authorities to have the address printed. Urging that publication "will have the tendency to check the monstrous doctrines of nullification and secession," were John M. Harlan, George G. Vest, and V. H. Lynn. A decade later Vest and Harlan, fellow students of Judge Robert-

<sup>10</sup> Kerr, *supra* note 9 at 39.

<sup>11</sup> George Robertson, *Scrap Book on Law and Politics, Men and Times* (1855).

<sup>12</sup> Written secretly by Thomas Jefferson, the Kentucky Resolutions were a sweeping protest against the Alien and Sedition Acts of July 1798. John Taylor was the author of the companion Virginia Resolutions.

<sup>13</sup> Robertson, *op. cit.* *supra* note 11 at 246-256; Kerr, *supra* note 9 at 20.

son, were officers in opposing armies; and each affiliated with a different political party.

Harlan's entire career indicates that he absorbed the two main admonitions which Robertson instilled in his students. First, "meditation is necessary to the full knowledge of the law." Second, "talents however bright, knowledge however great, will be unavailing or pernicious without habitual industry, systematic prudence and perfect honor."<sup>14</sup>

In March 1852 John M. Harlan left the campus at Lexington for his father's home in Frankfort. Not quite nineteen years of age, in robust health, with red hair crowning his growing six foot-one inch frame, the young man was exceptionally well prepared to follow the Centre College creed—"sound scholar and worthy citizen." Life was promising.

## 2

Fresh from his formal legal studies, young John Harlan returned to Frankfort to prepare himself for admission to the bar. Law and politics were the main fields which were to occupy his interests and energies for the next several years. However, his actual entry into the annals of Kentucky had come the year previously, and in a way he left Transylvania to carry on the duties of a public post to which he had been recently appointed.

In April 1851, at the end of his first year of law school, Harlan became a clerk in the office of the Second Auditor at the capital. At that time John L. Helm had but recently succeeded to the governorship. Kentucky's adjutant general, Peter Dudley, suddenly decided to resign after twenty-two years in office. One day Governor Helm walked into the Auditor's office and stopped at John's desk.

"John, the office of Adjutant General is vacant, and I have a notion to appoint you."

"Governor, you are jesting," replied Harlan. "I am only eighteen years of age."

"No matter," answered the Governor, "you can fill the place."

Governor Helm went back to his office, and to Harlan's surprise there shortly came to him his commission as Adjutant Gen-

<sup>14</sup> Kerr, *supra* note 9 at 40.

eral of the Commonwealth.<sup>15</sup> He was immediately dubbed "General" by his office mates, and the title stuck. Harlan served in this position for eight years, being re-appointed by Governors Lazarus Powell and Charles Morehead.

Although to a youth of less than nineteen the adjutant generalship may have appeared important, the position was not one of any special consequence. Kentucky had no military organization that was centrally controlled, and no military skills were required to hold office. Under the Constitution of 1850 the state militia was composed of all able-bodied males between 18 and 45 (Negroes, mulattoes, and Indians excepted). By legislative enactment militia duty consisted of meeting musters at the company, battalion and brigade levels. So Harlan's duties hardly qualified him as a trained soldier and he did not command troops. "I had nothing to do," he wrote, "except to keep some old military papers connected with the War of 1812, to draw quarterly a salary amounting annually to \$250, and to perform certain duties connected with two military institutes."<sup>16</sup> Occasionally he participated in public ceremonies of a martial nature. At the funeral of former Governor James T. Morehead Harlan was the marshal, and at the dedication of Henry Clay's monument on July 4, 1857 he was deputy marshal in charge of one division of the parade.<sup>17</sup>

The adjutant generalship did not interfere with John's legal career. He was admitted to the bar in 1853 at twenty years of age. The following year he was elected city attorney of Frankfort, and in 1856 he was re-elected to that office.<sup>18</sup>

During his first year as city solicitor, Harlan prosecuted about 35 cases. The offenses consisted of breach of the peace, tippling, and selling liquor to slaves. In the vast majority of these cases Harlan secured convictions for which the penalty was always a fine, ranging from \$1 to \$60. Usually a jury trial was involved, but sometimes the case was simply held before a judge.<sup>19</sup>

Possibly John's experience as a prosecutor of tipplers impressed upon him an awareness of the evils of drink. Perhaps

<sup>15</sup> Harlan, "My Appointment as Adjutant General of Kentucky and My First Meeting with James G. Blaine" (undated). Harlan Papers.

<sup>16</sup> *Ibid.*

<sup>17</sup> Frankfort Roundabout, April 4, 1885.

<sup>18</sup> Johnson, *The History of Franklin County* (1912).

<sup>19</sup> Harlan's Law Ledger 1854. Harlan Papers.

his religious upbringing, or his father's counsel, or political considerations came into play. Whatever the motive, in 1855 John joined the Younger Brothers of Temperance Society.<sup>20</sup> How long he remained in the organization we do not know, but for a time, at least, he was on the side of the angels. Within a few years we know that he smoked cigars and drank beer. In later years he became a connoisseur of fine Kentucky whiskey, smoked cigars regularly, and enjoyed a chew of plug tobacco. From later letters we find him extolling the merits of whiskey such as "Old Howard" and "Yellowstone." In 1881, during President Garfield's unsuccessful struggle to recover from an assassin's bullet, Harlan sent him a bottle of rare old Kentucky bourbon with the hope that it would aid his recovery.

As city attorney John was not precluded from private practice of law. At the June 1854 term of the circuit court he handled some 15 cases for various clients. All of the litigation concerned suits for the collection of debts.<sup>21</sup> Sometimes he appeared for the plaintiff and at other times for the defendant. His usual charge was five per cent of the sum involved, and this rate brought him fees ranging anywhere from \$10 to \$30. He argued in ten different counties, traveling as far away as 120 miles from Frankfort. For a fledgling attorney he was beginning to know at first hand the geography of his state. His business trips took him mostly to the north, south and east of the capital—the eastern half of Kentucky.

One of Harlan's earlier excursions took him nearly 150 miles west of Frankfort. During the late summer of 1853 he went to visit his married sister (Elizabeth Hatchett) who lived in Evansville, in the southwest corner of Indiana. Unknown to Harlan at the time, a young girl of fifteen peeked through the shutters of her home as he walked by. She was immediately attracted to "his magnificent figure, his head erect, his broad shoulders well thrown back—walking as if the whole world belonged to him."<sup>22</sup> The following February Harlan again went to Evansville, and this time he was introduced to Malvina Shanklin who recognized him at once as the interesting stranger who had caught her eye six

<sup>20</sup> Hartz, "John M. Harlan in Kentucky, 1855-1877," 14 *Filson Club Hist. Q.* 17, 18.

<sup>21</sup> Harlan's Law Ledger 1854. Harlan Papers.

<sup>22</sup> Malvina Harlan, *Memories*, supra note 2. These memoirs are the source of information on Harlan's courtship.

months before. John remained in Evansville for a week and during this time he saw Malvina every day. Prior to his departure, John asked Malvina to be his wife.

From Frankfort John wrote promptly to the Shanklins asking for their daughter's hand. His letter said nothing whatever of the worldly or material prospects of the marriage. After expressing the hope that he could make Malvina happy, Harlan referred Mr. Shanklin to some mutual acquaintances in Henderson, Kentucky. In that nearby town, he wrote, information could be obtained as to his character. Malvina's parents were impressed by Harlan's character and habits. They also ascertained their daughter's feelings in the matter and found she was anxious to wed. However, the Shanklins suggested a delay because Malvina was only sixteen at the time. Their counsel prevailed and for the next two years Malvina attended a finishing school at Glendale, Ohio. Young Harlan must not have had much time to reflect upon his fate as an impatient bridegroom. Already busily engaged in his father's law office at Frankfort, the political arena next attracted his energies.

In point of time, a few months after John Harlan met Malvina Shanklin, a group of political malcontents—Whigs, Anti-slavery Democrats, Free-Soilers—met at Ripon, Wisconsin to form the Republican party. Although the G.O.P. was later to win young Harlan's complete allegiance, the ante-bellum decade in Kentucky politics did not include organized Republicanism. The main opposition to the Democratic party in Kentucky had, for almost forty years, been led by Henry Clay. From 1832 until 1852 the Whig party had been the vehicle of his ambitions. Young John Harlan shared his father's political sympathies and love for Henry Clay. Yet, as John neared the age when he was entitled to assume the rights and privileges of full citizenship, Henry Clay died. On July 10, 1852 militia companies from many counties assembled in Lexington to pay tribute at Clay's funeral. John Harlan, present as the state's adjutant general, may well have realized at those solemn ceremonies what historians have since written: that the death of Clay also marked the end of the Whig party.

It was the slavery issue, of course, that prevented the southern followers of Clay from moving into the new-born Republican



party. It would have meant political suicide for Kentucky Whigs to renounce the slave system even if they opposed it personally. Some, like the Harlans, were emancipators but they were always careful to refute any suggestion that they stood for abolition. When political opponents sought to pin the Abolitionist label on James Harlan he counter-attacked immediately: "He who applies it to me lies in his throat."<sup>23</sup>

Searching for issues, the Kentucky Whigs began to exploit the hostile feelings that were being directed against the flood of immigrants from Europe. In 1854 some 428,000 new arrivals reached this country. Most of those who were German settled in the Midwest, north of the Ohio River; yet Kentucky attracted large numbers. It should be noted that a German family named Brandeis arrived in Kentucky in 1851. Their son, Louis David Brandeis, was born in Louisville just one month before John Harlan's marriage.

As young Harlan readied himself for active participation in party politics, the Kentucky Whigs were casting about for issues and alliances. In the American party, founded in 1852, they discovered an organization that had come into existence for the purpose of excluding foreigners and Roman Catholics from all public offices. Behind the American party in Kentucky was the Know-Nothing Society. A secret organization, its motto was "Put none but Americans on guard." John Harlan became a member of the Know-Nothings, taking an oath that bound him to vote only for native Americans who were Protestants. He took the oath in 1854 when he was twenty-one. The exact circumstances are related by himself:

I was very uncomfortable when the oath was administered to me. My conscience, for a time, rebelled against it. For a moment I had the thought of retiring; for while I was intense . . . in my Protestantism, I did not relish the idea of proscribing anyone on account of his religion. But looking around the room in which the initiation occurred, I observed that the old Whig leaders of the city, including my father, were present, and I had not the boldness to repudiate the organization. So I remained in it, upon the idea that, *all things considered*, it was best for *any* organization to control public affairs rather than to have the Demo-

<sup>23</sup> James Harlan to a friend, August 5, 1851. Harlan Papers.

cratic party in power. That was the kind of political meat upon which my father fed me as I grew up. . . . I knew at that time that the Democratic party in fact pandered to and courted foreign influence, in order to get the votes of foreigners, and that in many parts of the country the leaders of that party were in league with Catholic priests—the latter, by their machinations with Democratic leaders, obtaining favors for their church (as in New York City), which were not accorded to Protestant churches. So I became reconciled to remaining in the Know-Nothing Society, notwithstanding its direct attack on the Catholic Church.<sup>24</sup>

The elections of 1855 gave the old Kentucky Whigs a chance to advance a slate of candidates that could capitalize on nativism and offer substantial opposition to the Democrats. From the secret meetings of the Know-Nothing Society came the nominees for political office. They ran openly, however, on the ticket of the American party. As head of their slate the Know-Nothings selected Charles S. Morehead to be the candidate for Governor. James Harlan, as incumbent Attorney General, was chosen to run for re-election. His son, John, tried his political wings in the campaign that followed. We have his own account of how he got started in practical politics in the summer of 1855.

During that campaign Thomas L. Crittenden spoke here and there for the Know-Nothing ticket.<sup>25</sup> He had an appointment to speak at Bridgeport, near Frankfort, and asked me to ride out with him. I agreed to do so, and went with him. He spoke in a country school-house which would not hold more than a hundred people, and spoke only about three-quarters of an hour. He seemed to have run dry in that time. When he concluded, it was raining very hard, and the people could not go out. Immediately some one cried out, "Let's hear from John Harlan." This surprised me, but I said nothing. The demand for me to speak became general and persistent. I said that I was only twenty-two years of age and had never made a political speech of any kind. They replied, all over the house, "That don't matter; tell us what you think." "Well," I said, "if I must, I must, seeing that the rain keeps you fast in the house."

<sup>24</sup> John Harlan, "The Know-Nothing Organization—My First Appearance as a Public Speaker and Participation in the Presidential Campaign of 1856—Election as County Judge in 1858, and Contest for Representative in Congress in 1859" (undated). Harlan Papers.

<sup>25</sup> Thomas L. Crittenden (1819-1893), son of Gov. John J. Crittenden who was a close friend of James Harlan.

So I commenced, and without notes, or previous preparation, spoke for about three-quarters of an hour. The crowd seemed to be much interested in what I said, and applauded me generously. It seemed to me that a new career was then opened up before me, and I felt that I have *some* gifts for talking to a miscellaneous crowd.

When I went home that afternoon (it was Saturday) and told my father what had taken place at the Bridgeport meeting, he seemed to be pleased, and said I had acted rightly. Turning the matter over in my mind, the next day, I concluded that as my profession would require me to talk, I must go farther, and speak in the city. So, on Monday morning, without consulting anyone, I went to a printing office and had handbills struck off, announcing that I would address the people of Frankfort at the court house that evening on the political subjects of the day.

The handbills were stuck up all around the city, and when I saw one of them, fear came upon me for the consequences; but I could not well retreat. So when I went to the court house in the evening (Monday) and saw a crowd of men and women that filled every seat in the room, I "trembled in my knees." But I went ahead, and my success on the occasion was very flattering, in that I was able to talk for an hour and a half without notes, and never halted for a word, although the words chosen may not have been the best. When the meeting closed, I was congratulated on all hands, and I went to bed that night feeling that a "big thing" had been accomplished.

The next morning's paper contained an account of the meeting, and some handsome things were said of me by the editors. There was at least one young man, of twenty-two years of age, who at that time thought himself "large" and began (to use a common phrase) to "feel his oats." I so felt, not because I imagined myself as possessing any particular power of oratory, in the true sense of that word, but because I had become conscious of a capacity to say what I desired to say, and to make myself understood by those who heard me.

By the next morning I had become quite confident and said to my father that, as my living depended upon speaking, I would make a speaking tour of the State if he would provide me a horse and give me a silver watch. He said, "All right," and I ordered handbills to be printed announcing appointments for about twenty different counties in the mountainous parts of Kentucky. These handbills were sent

to postmasters with request to have them put up. I took it for granted that if crowds came to hear me, it would be because they thought it was my father who was to speak.

In about ten days I left Frankfort on horseback, carrying no clothes except such as could be put in a pair of saddle bags thrown across my saddle. My first speech was at Danville, and from there I went into various counties—Large crowds came to hear me. It so happened that at every appointment some Democrat asked for a division of time—a debate—and I complied with his request. At some of the meetings my adversary would be a man of fifty years of age and a practiced debater. The result was many joint debates, in which I did not always suffer, in the estimation of my side. Those debates were of great value to me as a speaker. They destroyed whatever bashfulness I had, and gave me a readiness of speech and a steadiness of manner that served a good purpose when addressing juries. My father was evidently delighted, although he did not in words express his gratification.<sup>26</sup>

John's stump speeches impressed hundreds who heard him, and the newspapers quickly reflected a favorable public opinion. His arguments were based squarely on Whig-Know-Nothing principles; his advocacy included a demand for the repeal of state laws which then permitted unnaturalized foreigners to vote, and a plea for the modification of immigration and naturalization legislation. The effectiveness of his speeches was reported in the state's leading papers and, in particular, he received enthusiastic coverage in friendly organs such as the *Lexington Observer and Reporter* and the *Louisville Daily Journal*. At the conclusion of his speaking tour the latter newspaper carried this evaluation: "He came amongst us unknown to fame, and utterly unheralded, but he left an impression behind him that will not be effaced for a long time."<sup>27</sup>

The wine of victory must have been sweet as John and his father received reports of the August sixth election results. On the state-wide ticket the American party won handsomely, carrying every office against their Democratic opponents.

In five successive presidential elections, beginning in 1836, Kentucky had cast its electoral votes for Whig nominees. Loyal

<sup>26</sup> Supra, note 24.

<sup>27</sup> *Lexington Observer and Reporter*, July 25, 1855, quoted in Hartz, supra note 20 at 19.

support of Henry Clay had been a major factor behind Kentucky's voting behavior, but now the Great Pacificator was dead. From 1856 to 1868 the state was to undergo a period of political transition. Yet, as the 1856 presidential year came upon the old Kentucky Whigs, the vast majority of them must have been optimistic. Had they not just helped to score a smashing triumph in the state-wide elections?

Despite the local achievement of a successful Whig-American alliance in 1855, Kentucky's experience was not matched on the national level. Many Whigs went over to the new-born Republican party which nominated John C. Fremont as its candidate for the White House in 1856. Disgruntled Whigs held a national convention of their own and put forth the candidacy of ex-President Millard Fillmore. Running under the banner of the American party, Fillmore was badly defeated in the campaign that followed. He captured the electoral votes of only one state—Maryland. Nevertheless, in Kentucky the contest was close. It was a two-way race between the Democratic and the American candidates.

Meeting in state-wide convention, the Kentucky Americans chose their presidential electors. John Harlan, whom one newspaper called "the young giant of the American party," was made an assistant elector. This position, a relatively important one, meant that Harlan was given official party duties as a canvasser for the state at large. "I made another canvass," he wrote, "and appeared in about forty counties, having on every occasion a crowd of such size as to encourage me. If what the newspapers said was true, my speeches were well received, and I became generally known throughout the State." The content of his speeches was straight Know-Nothing scripture.<sup>28</sup>

Voters turned out in large numbers, 71 per cent of the potential electorate going to the polls. Out of a total popular vote of 142,000 Fillmore lost by only 7,000 as the Democratic candidates, Buchanan and Breckinridge (a native son), brought Kentucky into the Democratic column for the first time since 1832.<sup>29</sup> Disappointed as he may have been at the defeat of his presidential

<sup>28</sup> *Supra*, note 24.

<sup>29</sup> Shannon and McQuown, *Presidential Politics in Kentucky 1824-1948* (1950).

choice, John Harlan could console himself that he was lucky in love.

For two and a half years John had been secretly pledged to Malvina Shanklin of Evansville, Indiana. Not until Malvina's parents sent out notices that they would be "at home" on December 23, 1856 did friends of the young couple have any idea that there would be a marriage. John readied himself for the wedding by borrowing \$500 from his father. In the presence of members of the two families and close friends, John and Malvina were married. John wore the traditional black dress coat and the flaring points of a high standing collar came well above the line of his firm and strongly marked chin. He had "a dignity and maturity beyond his three and twenty years," observed Malvina. "He had a wonderfully clear complexion and fine blue eyes. His beautiful sandy hair, which he wore quite long, he parted on the right side, instead of the left, as did all the young men of his family, giving them a most marked individuality."<sup>30</sup>

According to custom the couple spent the first week of their honeymoon at the home of her parents. Then the newlyweds left for Frankfort which for Malvina was a move into the South.

### 3

For the first four years of their marriage, John and Malvina lived under the ancestral roof (or roofs, for there were both town and country houses at Frankfort). The Harlan household was a large one consisting of Mr. and Mrs. Harlan, sons James and John with their wives, one unmarried son, and two unmarried daughters. Each summer their married daughter, Elizabeth Hatchett, and her two children visited from Evansville. There were from 10 to 12 slaves who lived on the premises. Malvina's memoirs contain many interesting and colorful incidents of this period. From them it is apparent that she contributed much to the happiness of the Harlan family group and to her husband's welfare.<sup>31</sup>

Noting the beauty of the Frankfort belles, Malvina often wondered why John "had gone so far from home to get so little." She finally concluded that their romance had been aided in the beginning by a mutual appreciation of music and her ability to

<sup>30</sup> Malvina Harlan, *Memories*, op. cit. supra note 2.

<sup>31</sup> *Ibid.*

sing and play the piano. Of greater importance, more and more John came to take special pride in his wife's musical accomplishments. Sometimes John would hear of a song and tell Malvina about it. On one occasion he became so fond of the *Marsellaise* that he asked her to learn it. Thereafter he requested it often. One evening, as she reached the climax of that French hymn, "March on, March on," a young female slave joined voice. To her prejudiced and partial ear the words sounded slightly different, and she burst forth with "Marse John, Marse John," The *Marsellaise* became *the* favorite song!

As with music, the newlyweds shared an interest in religion. The couple attended all the services of the Frankfort Presbyterian Church, and soon after her arrival Malvina was asked to take charge of a Sunday school class. Much to her embarrassment, John insisted on following his wife into the classroom on her first Sunday. "I was terribly upset at his presence," she recalled, "and was struck dumb before him." She fell back upon the device of making the youngsters repeat the Ten Commandments in verse:

Thou shalt have no gods but me  
Before no idol bend the knee. . . .

Some of the older teachers began to notice that John Harlan came regularly to Malvina's Sunday school class. He was soon persuaded to become superintendent of the entire school. From that point on and throughout his entire life, John Harlan nearly always taught a Bible class. At the time of his death in 1911 he presided over a large class of middle-aged men in the Sunday school of his church in Washington, D.C. From Malvina's account it seems certain that her church activities were responsible for deepening the religious interests of her husband.

In his chosen profession John Harlan struggled for two objectives: independence and reputation. Small as was the town of Frankfort, as the state capital it contained a plethora of distinguished lawyers. Most of the attorneys who practiced there were older men whose established positions attracted the best litigants. Therefore, it was necessary for John to "go on the circuit" in order to build up his practice. During the first four or five years of his married life John was away from home practically

half of each year, although he was gone for only a week or ten days at any one time.

This was a period of steady growth for him. It was beneficial as a preparation for politics and for his future judicial career. The contacts with comparative strangers and with men of learning in every walk of life widened his outlook greatly; he received an experience that he would not otherwise have had as an office lawyer. Many of his trips were made by stage coach; some were taken on horseback with only saddle bags to hold his clothes and law papers.

Throughout the state, and especially in Frankfort, Harlan's growing friendships included many older men. They inspired him and helped him in numerous ways. When he was in his own golden era of life the recollections of this early manhood led him to show great sympathy and interest in young men. As Blackburn Esterline stated shortly after Harlan's death: "He never failed in his interest and efforts for the young men of his time. For them he seemed to feel a real responsibility."<sup>32</sup>

John did not have to concern himself with money matters, thereby precluding some training and experience that might have been useful in his later years.<sup>33</sup> With an assigned place in his father's law office, remuneration for his part of the work was such as James Harlan could give from time to time. There was no legal partnership in which John would normally have received a regular percentage of the large practice. However, considering the lavish generosity of his father's household, life for John and Malvina was much easier, much richer that way.

Thus John was less the breadwinner, more the name-maker. Recognizing his ambitions as hers, Malvina was a true help-mate. As a general rule lawyers did their own writing in longhand and turned over what they could to copy clerks. A great amount of Father Harlan's close work devolved upon his son. Consequently, John was forced to snatch odd moments for writing his own briefs. Often he did them in such a desultory fashion that it was neces-

<sup>32</sup> Proceedings of the Bar . . . In Memory of John Marshall Harlan, December 16, 1911 (1912) at 34.

<sup>33</sup> Harlan lost heavily as a result of the depression of 1873, and for the rest of his life he was in financial difficulties. A few years after he ascended to the bench he thought seriously of resigning so he could get on an even keel again. He never seems to have been able to budget properly. And when he died members of the bar raised funds to give to Mrs. Harlan.



sary to prepare a cleaner copy for the printer. When John appealed to his wife for assistance she was overjoyed at being able to help him. Sometimes it would take Malvina an entire day to copy a brief, but this work formed part of her happiness.<sup>34</sup> Often the young couple was invited out for social occasions, although the pressure of work at times made it impossible for them to attend. When it was important for professional reasons to put in an appearance at some social function, Malvina would represent them both if John was swamped with work.

In the convivial atmosphere of the Harlan home, life was exceedingly pleasant for John and Malvina. One incident, however, marred their happiness. During the warm weather the center of Harlan hospitality shifted from the town house to a summer home. The summer retreat was located on Harlan's Hill, about a mile from the center of Frankfort. The ordeal of climbing "Harlan's Backbone" was compensated for by the view and friendly welcome. Joyous summers were spent on the hill, but it was also the scene of a tragic episode that took place in October 1858. The incident nearly cost John Harlan his life.<sup>35</sup>

The family was about to move into Frankfort for the winter and Mother Harlan had given the slaves orders to prepare for the move into town. One of the young servants, a child of the woman who had cared for John in his infancy, lagged behind in her duties. When everyone had retired for the night, this young colored girl went into the living room to mend some clothing by the light of the fireplace. As drowsiness gave way to sleep, she stretched full-length on the hearth. Moments later her clothes caught fire and her agonized screams awakened the household. Everyone rushed into the living room to see the poor girl "a veritable pillar of fire, or, like a wild animal making the circuit of the large room."

John caught the girl with one hand as she was about to rush out the door through which he entered. He held her closely to him while, with his other hand, he tore her burning clothes off as best he could. In the excitement of the moment all eyes were on the suffering girl. Malvina's attention was disturbed when she heard her husband give a muffled cry, and she turned toward him.

<sup>34</sup> Malvina Harlan, *Memories*, op. cit. supra note 2.

<sup>35</sup> *Ibid.*

As John held out his hands Malvina saw that one of them was "seared to the bone" and his right arm was badly burned. In pain he sank to the floor and waited with gritted teeth while others administered to the Negro girl. But there was nothing they could do for her; she lapsed into unconsciousness and died a few hours later.

Father and Mother Harlan and John received emergency medical treatment, but it was decided they should be moved into Frankfort as soon as possible. Malvina saw to it that special preparations were made for the sufferers' descent and that reception facilities were readied at the town house. A day or so later, when Malvina was returning from Frankfort she had proceeded halfway up Harlan's Hill when she noticed a horseman traveling down toward her at breakneck speed. The rider was the Harlan's overseer who paused long enough to tell Malvina that John had suddenly become very ill and that he was going for a doctor.

Whipping her horse forward, Malvina quickly reached the summer house. Inside, John was shaking with convulsions. "My poor husband's face was so changed as to be almost unrecognizable. He knew me, however, and in a short time he seemed more quiet." A physician was there doing what he could, but the paroxysms were severe. Two more doctors arrived shortly and administered sedation which gradually produced quiet. The family physician explained that John had undergone an alarming change, but that with perfect control he would recover. The spasms would return again, and still again, but gradually they would become less severe by degrees. He must remain under constant watch and with a doctor present.

Malvina was told that John's symptoms indicated tetanus or lockjaw. This was the diagnosis of the day-time physician who so informed his patient. Malvina gave him a tongue-lashing for frightening his charge instead of soothing him. The family physician said later that the attacks were caused by John's nerves which had been under great strain. After several days the crisis was over, but the scars—both mental and physical—remained with Harlan all his life.

When he was about seventy years old, the mental marks showed themselves in a strange fashion. One evening in Washington, six or seven years before his death, Harlan ordered a pot of

tea brought to him. As he poured the tea, the scalding liquid gushed over the same hand that had been so cruelly burned fifty years previously. He was immediately seized with a peculiar attack "which for an hour or so made him unable to give expression to the thoughts of his mind, although his utterance was perfectly clear." The attending doctor could not explain the attack until Malvina described the tragedy of the summer house at Frankfort. The physician then diagnosed the symptoms as due to a vivid association of ideas which had been brought on by the spilled tea. From this temporary "psychic stroke" Harlan recovered quickly, but at the time it was alarming to the family.

#### 4.

In August 1858, two months before the fiery tragedy at the summer house, John Harlan was elected judge of Franklin County.

As Nestor of the constitutional convention that created the office of county judge in Kentucky, Benjamin Hardin made this observation: "God forbid that they should be lawyers. Good lawyers could not afford to take the office, and a little lawyer is the biggest fool in the world. He has just enough law in his head to drive out common sense. He is like an oyster smack with the canvas of a man-o'war. Every flaw of wind capsizes him. The convention intended that these judges should be farmers."<sup>36</sup> So spoke the Bardstown philosopher, a former Secretary of the Commonwealth and a colleague of James Harlan when he served in the House of Representatives.

A young attorney of twenty-five could hardly have shared Ben Hardin's cynical views. John Harlan certainly did not. The courthouse, not the counting room, was the real center of political affairs in Kentucky. It provided a judicial forum where open contest could determine those best fit for further duty in the legislative, judicial and executive branches of government. The position of county judge was itself one of some responsibility although the office had only civil jurisdiction. Besides, John was drafted to run for the judgeship. We have it in his own words: "my political party in Franklin County insisted that I should become its candidate for County Judge."<sup>37</sup>

<sup>36</sup> Washington Star, April 16, 1905. Harlan Papers.

<sup>37</sup> *Supra*, note 24.

The election was held in August, and the two contestants for the judgeship put on a hard campaign. John Harlan was the candidate of the American party and his opponent was Robert A. Thompson, a Democrat. Franklin County was politically close. During the 1856 presidential election sixty-eight per cent of the nearly 2500 potential vote had turned out as Fillmore carried the county with 89 more votes than Buchanan. Harlan knew he had a fight on his hands. During the course of the campaign in 1858 he "visited every house and shook hands (as was the fashion) with nearly every man, woman and child in the county, and spoke nearly every day."<sup>38</sup> His efforts were rewarded at the polls for he beat Thompson, 868 to 749 votes. Harlan's 119 majority was the largest of any of his associates on the ticket, and he was out-run in only three places—Bridgeport, Bald Knob, and Fork's Precinct.<sup>39</sup>

We know very little of Harlan's subsequent experience as county judge. The *Franklin County Court Order Book* shows that on September 6, 1858 "John M. Harlan produced in court a commission from his excellency the Governor of Kentucky appointing him presiding judge of the Franklin County Court with a certificate of his having taken the oaths prescribed by the Constitution as judge and thereupon a court was held." There were eleven judges on the county bench, but they did not sit en bloc. Records indicate that Harlan usually held court alone in Frankfort. At least twice, in 1858 and in 1859, he served as judge of election contests and received \$14 each time for this additional work. His service on the Franklin County Court lasted for two and a half years. He formally resigned on May 4, 1861 a few months after he moved away from the state capital.<sup>40</sup>

The duties of the county judgeship did not constitute a full time occupation, and Harlan continued to be associated with his father in the practice of law. Moreover, there were no restrictions on participating actively in partisan politics. Less than a year after he acquired the title "Judge," John was asked by his party to try to change it to "Congressman."

<sup>38</sup> Ibid. Election statistics from Shannon and McQuown, op. cit. supra note 29.

<sup>39</sup> Frankfort Commonwealth, August 9, 1858.

<sup>40</sup> Order Book N, 1854-1862. Copy of Harlan's resignation is in the Harlan Papers and the date corresponds with that in L. F. Johnson, *History of Franklin County* (1912).

Kentucky's Eighth Congressional District was known as the famous Ashland District. It was Henry Clay's old constituency and the name was taken from his Lexington homestead. In addition to the Great Pacificator, the area had produced a remarkable array of Representatives. One writer has claimed that during the nineteenth century the electorate sent more brains to Congress from that district than from any other in the entire United States.<sup>41</sup>

Until the 1850's the Ashland District had been safe Whig territory. Several of the Bluegrass counties—Bourbon, Clark, Fayette, Madison—were among the strongest Whig areas in the state. It was John C. Breckinridge, the successor to Henry Clay in Kentucky hearts, who first pushed the Eighth Congressional District into the Democratic column. He did so by winning two remarkably hard fought elections. In 1851 he defeated Leslie Combs. He returned to Congress two years later, beating Robert Letcher, a veteran Whig leader, ex-Congressman and ex-governor. In 1855, the year John Harlan campaigned so strenuously for the American party, Alexander K. Marshall of Nicholasville won the Congressional seat away from the Democrats. Yet two years later the Democrats bounced right back, and James B. Clay of Lexington attracted national attention as he defeated Roger W. Hanson, a Know-Nothing, to win his father's old seat. Young Clay's majority was only 113 votes which serves to underscore the marginal character of the Ashland District during the 1850's.

To John C. Breckinridge, then thirty-eight and on the rise politically, it was particularly important that the Democrats retain the Eighth Congressional seat in Kentucky. This was his stamping grounds and now, as Vice President of the United States, it would not do to have his own constituency represented by a man of the opposition. The next year, 1860, was presidential election time and Breckinridge nursed the hope that he would emerge as candidate of a united Democratic party. Unfortunately, the incumbent, first-term Congressman, Jimmy Clay, was not interested in going back to Washington (a fine son of Henry Clay he turned out to be!). Much as he disliked to admit it, Breckin-

<sup>41</sup> "Savoyard" in Washington Post, October 26, 1902. Harlan Papers. Ashland Congressmen were: Chilton Allan, James Clark, Garrett Davis (later U.S. Senator), Richard Hawes, Thomas A. Marshall (Harlan's instructor at Transylvania), Thomas F. Marshall, Charles Morehead (Governor of Ky.).

ridge knew the Ashland Congressional contest would be a close one.

Meeting at Lexington, the shrine of Henry Clay, Old Whigs, Know-Nothings and Americans held an Opposition convention on May 18, 1859. Present among the Franklin County delegation was John Harlan. Several candidates were placed in nomination, but the main contest, and a warm one, was between Roger W. Hanson of Fayette County and George S. Shanklin of Jessamine County. As the party's nominee for Congress two years previously, Hanson had run an excellent race and he now had many supporters who urged that he be given a second chance. Shanklin had the backing of many delegates who knew of his record in the lower chamber of the Kentucky legislature.

Both Hanson and Shanklin failed to gain the nomination, nor did it go to one of the oldtimers. Instead, the candidate who emerged as choice of the convention was young Judge John M. Harlan. Democratic newspapers said later that the party veterans did not wish to face certain defeat, but other sources indicated that the twenty-six year old Harlan had antagonized many older politicians when he accepted the nomination.<sup>42</sup> It is likely that Harlan was a compromise selection who was put forward to compose differences between the Hanson and Shanklin forces.

In his own words, Harlan told what happened at Lexington.<sup>43</sup> "In the progress of the balloting, Thomas T. Vimont, of Bourbon, to my great surprise, rose and said, with great vehemence of voice and manner, that the party needed a young man as its candidate, and he placed me in nomination. I was sitting at the time in the rear of the hall; greatly agitated by the fact that I was to be voted for by some of the delegates, I started to jump up and say that I was not a candidate and could not think of being one. But a member of the Franklin County delegation, who was delighted at the suggestion of my name to the convention, pulled the skirt of my alpaca frock coat so strongly as to tear it nearly off. The balloting proceeded before I could say anything, and to my amazement I was nominated. Immediately a cry arose that I should take the stand. I did so, and when I turned to address the delegates, the condition of the skirt of my coat was so manifest

<sup>42</sup> Louisville Weekly Journal, June 1, 1859 in Hartz, *supra* note 20 at 21.

<sup>43</sup> Harlan Memorandum, *supra* note 24.

that I referred to it as proof of my efforts to prevent my being nominated. I commenced my talk, intending to decline. But the crowd said, 'No, No,' and I concluded by accepting."

Back in Frankfort the next morning, John told his father what had occurred. "He was greatly surprised," said John, "if not annoyed." Nevertheless, Father Harlan was somewhat moved by the fact that the political party to which he was so devoted had expressed confidence in his son. He pushed his heavy, gold-rimmed spectacles upon his forehead, a sign that he was prepared for lengthy conversation. They discussed the forthcoming election and agreed that the chances of a successful outcome were not very encouraging. John determined that he would make the most of his candidacy.

The Ashland District Democrats nominated Captain William E. Simms, a veteran of the Mexican War and an erstwhile Whig who was relatively new in Democratic circles. This was considered a break for Harlan as many Democratic voters were less than enthusiastic for Simms. By the same token Know-Nothings and Whigs found it hard to forgive an apostate and were thus exceedingly hostile toward him. Even Democratic party leaders had not been fully agreeable to his nomination.

Still another bit of good luck came with the entrance of a Mr. Trabue into the race as an independent. For a time it seemed that a three-man race was in prospect. The *Paris Western Citizen* suggested that Trabue was put in the campaign "to do the dirty work of dogging Mr. Harlan and abusing an imaginary body which he is pleased to call 'The Frankfort Clique.'"<sup>44</sup> A paper friendly to Harlan, the *Citizen* alleged that Trabue was a political hack who had never had the good fortune to be the right man in the right place. However, before the contest shifted into high gear, Trabue resigned in favor of Simms.<sup>45</sup>

A hundred years ago grass-roots democracy was in full flower in Kentucky as well as in the other states. In those days joint debate was traditional and as candidates for public office faced one another the voters were provided with an opportunity to judge the character and intellect of the men who sought to represent them. To start the ball rolling, Harlan wrote Captain Simms

<sup>44</sup> *Paris Western Citizen*, June 10, 1859. Harlan Papers.

<sup>45</sup> *Frankfort Tri-Weekly Yeoman*, June 21, 1859 in Hartz, supra note 20 at 22.

that he would open his canvass in Georgetown, Scott County, the last Saturday in May. He outlined a series of appointments for them both, extending over a period of some 40 days.<sup>46</sup>

The first meeting of the opponents came off as scheduled and Harlan had the advantage from the start. At Georgetown, Vice President John C. Breckinridge was in the audience. At the conclusion of the debate Breckinridge is reported to have told Simms, "If you don't do better that young fellow will beat you."<sup>47</sup> Sensitive to the audience's favorable reaction to Harlan's speech, Breckinridge was not pleased at the results in a county which had voted 61 per cent Democratic three years previously.

At the end of ten days on the hustings, Harlan noted that the general impression was one which indicated he had Simms on the run. Said one newspaper of Harlan's speaking ability: "It was glorious to see the edifice of argument erected by his opponent tumbling down under his few rapid but well directed blows." Here was a most agreeable speaker whose "personal appearance, and his dignified and manly bearing are exceedingly attractive, inspiring and commanding confidence in all his hearers."<sup>48</sup> Then occurred an incident which probably changed the course of the campaign to Harlan's disadvantage.

On Thursday, June 9, Harlan, Simms and Trabue held a formal debate in the court house at Paris, Bourbon County. In the local paper on Friday there appeared a lengthy account of the meeting (a wonderful blend of news reporting and partisan editorial opinion).<sup>49</sup> This same issue also contained an anonymous communication which severely arraigned Captain Simms for his political inconsistencies and his betrayal of Whig principles. The day after it appeared, Saturday, Harlan and Simms were scheduled for a joint debate in nearby Ruddel's Mills. When Harlan arrived in town the Paris paper had already been read by many residents. Friends told him that Captain Simms was enraged at the anonymous attack made upon him.<sup>50</sup>

Fireworks were not supposed to be on the agenda at Ruddel's Mills. Harlan opened the discussion and it was closed by Simms.

<sup>46</sup> Harlan Memorandum, *supra* note 24.

<sup>47</sup> "Savoyard" in *Washington Post*, October 26, 1902.

<sup>48</sup> *Paris Western Citizen*, June 10, 1859.

<sup>49</sup> *Ibid.*

<sup>50</sup> Harlan Memorandum, *supra* note 24.



When Captain Simms had concluded his remarks he called attention to the anonymous attack on him that had appeared in the Paris press. Said Simms, "the author of it, whoever he was, was a liar, thief and scoundrel." Up rose Garrett Davis in the audience. A friend and supporter of Harlan, Davis was a dyed-in-the-wool Whig who had served in Congress for eight years as representative from the Ashland District. In a large way he was "the stormy petrel of the Bluegrass—fiery, impetuous, very able, and brave to rashness."<sup>51</sup> Standing there in the audience Davis acknowledged that he was the author of the anonymous piece and forthrightly denounced Simms in unmeasured, merciless terms. Great excitement was produced in the hall, but there was no personal conflict. The Captain's only reply was that Davis could not, by further insult, satisfy Simms' charge that the writer of the article was a liar and a scoundrel.

On the following Monday morning Harlan reached Cynthiana where he and Simms had an appointment to debate. Upon registering at the hotel Harlan was surprised to observe that Garrett Davis was listed as a guest. "This annoyed me," said Harlan, "for a personal difficulty between my opponent and one of my prominent supporters was well calculated to arouse the sympathy of the Democrats who, in fact, were not too pleased with Simms' nomination and were quite lukewarm in his support." During the day Davis kept away from Harlan who assumed that his friend did not intend to embroil him in the Davis-Simms difficulty. Harlan wondered, however, what was to happen later in the day when the joint discussion took place.

It must have made Harlan's heart pound a bit faster when he and Captain Simms met in the court-room for their debate. There in the front row sat Garrett Davis. Yet nothing untoward happened during the discussion. Simms made no reference to his altercation with Davis. If he had, surmised Harlan, "no doubt there would have been bloodshed . . .; for Davis did not know what fear was and would not have submitted to any personal abuse of himself." When the debate was over, Davis sent a note up to Simms. It was a portentous transaction.

We do not know the contents of the note from Davis to Simms, but it was "so worded that Simms treated it as a challenge to

<sup>51</sup> "Savoyard" in *Washington Post*, October 26, 1902.

fight a duel." Harlan had an inkling that something was amiss, but he proceeded to his next scheduled debate with Captain Simms. When Simms failed to meet the appointment Harlan told the large crowd assembled "that according to popular rumor my opponent and one of my supporters had gone off to fight a duel, and that under such circumstances I would not speak." During the next ten days Harlan went to all the joint appointments, but Simms failed to appear. Each time Harlan declined to speak on the ground that his opponent was absent on account of the difficulties he was having with one of Harlan's supporters.

Meanwhile Davis and Simms had gone north of the Ohio River, bound, it seems, for a field of combat. Two prominent politicians followed them: Governor Charles Morehead, a friend of Harlan and Davis; James B. Beck, a Lexington lawyer and friend of Simms. Morehead and Beck eventually caught up with the would-be duelists at Cincinnati and took charge of the quarrel. A solution was hit upon and the matter was settled "by requiring each party to withdraw *simultaneously* all offensive epithets either had used."

Simms then returned to the campaign and joined Harlan for the remainder of the debates that had been arranged. Hurrahs greeted the return of the Democratic candidate. "I recall with distinctness," wrote Harlan, "the occasion when he joined me. He had a warm welcome from his political friends. The Democratic leaders who, up to that time, were lukewarm and indifferent, were aroused at what they regarded as the attempt of one of my supporters to 'bully' their candidate. It was manifest thence forward that my canvass was to be a very hard and spirited one and that the quarrel of Davis and Simms had done me great harm."

Party ranks closed up from that point until election day on the first Monday in August. Yet Harlan gave his opponent no rest: "I spoke every day, during the last month of the canvass at least twice a day, and during the last two weeks three times a day." What did Harlan talk about? What were the issues as he presented them?

Gone was the strident cry of Know-nothingism, "Americans should rule America." While the Democratic press reminded the electorate of his 1855 "inflammatory tirades against the political

rights" of naturalized citizens, Harlan spoke as if he had always been the champion of the immigrant.<sup>52</sup> Now he defended the rights of naturalized Americans to be exempt from military service when their home governments sought to draft them while they visited their native land. There were no more attacks on "foreigners" or "paupers" or "Papists." Harlan's adventure with the Know-nothing movement was closed.

Yet in at least one speech the youthful candidate's religious orthodoxy burst forth. Near the end of the campaign he lashed out at the Mormons and the practices of that sect. The reason for his attack is rather mystifying until we recall that Harlan was the Adjutant General of Kentucky. In the preceeding year the Federal government had determined to send an armed force to Utah with the purpose of bringing the rebellious Mormons to terms.<sup>53</sup> The state legislature authorized a regiment of volunteers and the response was highly successful—twenty-one companies, more than twice the number needed, were raised. Although the volunteer regiment was disbanded when the Mormons accepted proposals put to them by Washington, the quick and enthusiastic response by the militia may have indicated an anti-Mormon sentiment in the public conscience that a politician would seek to exploit. There was no "Mormon vote" to be alienated in the Ashland District; Harlan might attract some dormant support.

Slavery, however, was the principle issue in the Harlan-Simms race for Congress. As one would expect, both candidates were for it—unequivocally. Harlan's position was that it was Congress' "bounded duty, to pass such laws as might be necessary for the full protection of the rights of the slave-owner in the Territories, whenever the local Legislatures shall either attempt to destroy his right by unfriendly legislation or shall fail to pass such laws as are necessary for his protection."<sup>54</sup> He favored a national law to punish Negro stealing if a territorial legislature should fail to enact one, and if it were necessary.

Simms was branded by Harlan as a Douglas Democrat, one who would leave the slavery issue to the people of each state or territory. He charged that Simms and his local newspaper support were against Congressional interference to protect the slave-

<sup>52</sup> Frankfort Tri-Weekly Yeoman, May 24, 1859 in Hartz, *supra* note 20 at 21.

<sup>53</sup> Federal Writers Project, *Military History of Kentucky* (1939) 143 ff.

<sup>54</sup> *Paris Western Citizen*, June 10, 1859.

owner. Their only remedy for the wronged slave-owner, said Harlan, was resort to the courts. Captain Simms and men like him had sold "the rights of the Southern people to squatter sovereigns of the North to procure a union with Douglas Democrats."<sup>55</sup> Squatter sovereignty was a viscious doctrine in that it was based upon "the mobocratic idea which levels destruction of all written contracts by which the weak are protected against the strong, that majorities can make and set aside constitutions at pleasure."<sup>56</sup>

Standard strategy in political campaigns requires a candidate to slug the incumbent party. Hitting at the record of the Buchanan Administration, Harlan called attention to the "alarming increase in the public expenditures" and averred that the Democrats were guilty of waste, extravagance, corruption and incompetency. He opposed President Buchanan's "bankrupt project for placing State corporations at the mercy of the Federal Courts." His one concern in the field of foreign affairs was to favor the purchase and annexation of Cuba, but not if the money were placed "in the hands of the President in advance."

As the Congressional campaign neared the finish line the attention of the entire state was attracted to the Ashland contest. It had become close and bitter. Less than two weeks before election day the *Louisville Daily Journal*, a paper friendly to Harlan's side, reported ominously that the Democrats were importing into the district "outlaws from Owen and elsewhere" to shore up the vote for Simms.<sup>57</sup> On August sixth the *Frankfort Tri-Weekly Yeoman*, an enthusiastic supporter of Captain Simms, was forced to admit that "we have before seen party struggles here and elsewhere, but never anything to compare with the one that had just passed."<sup>58</sup>

It was now up to the voters and the party organizations. The speech-making was finished. "I came out of the canvass," said Harlan, "in splendid condition and with a debt on me of about nine thousand dollars and without any money to pay it off."<sup>59</sup> He also came out of the contest second-best. Simms was elected by

<sup>55</sup> Frankfort Commonwealth, July 29, 1859 in Hartz, supra note 20 at 22.

<sup>56</sup> Louisville Weekly Journal, February 23, 1859 in Hartz, supra note 20 at 22.

<sup>57</sup> Louisville Daily Journal, July 27, 1859 in Hartz, supra note 20 at 23.

<sup>58</sup> Frankfort Tri-Weekly Yeoman, August 6, 1859 in Hartz, supra note 20 at 23.

<sup>59</sup> Harlan Memorandum, supra note 24.

67 votes majority and received the certificate of election to the House of Representatives.

While the face of the poll books showed Harlan the loser, he was convinced that he had been "fairly elected by a majority of more than five hundred of the legal voters."<sup>60</sup> So strongly did his friends feel about the matter that they immediately raised \$10,000 and put it in a bank to enable him to contest the election. Harlan swung into action.

"The frauds against me," wrote Harlan, "were committed in Harrison and Nicholas counties, where all the officers of election were Democrats, although the statute required that each party should be represented on the election boards. I determined to investigate the matter, and to that end went to Harrison county first, where three or four friends from *each precinct* met me. Those men knew every voter in their respective precincts. According to the system then prevailing in Kentucky, the voting was *viva voce*, and the name of each voter was recorded in the poll-book. We got the polling-book of each precinct, and every name was scanned. The result was that nearly three hundred names were found upon the poll-books of Harrison County, of persons whom no one knew and of whom no one in the county had ever heard. We obtained evidence that many men were seen on the day of election to get off the railroad train at different stations and go to the polls. The same men went back on the train in the afternoon and never were seen again in the county. They were believed to be Irishmen imported into the county from Cincinnati and Covington, to vote the Democratic ticket."

"The same frauds were perpetrated in Nicholas County," continued Harlan, "and we found on the poll-books about two hundred and fifty names of persons of whom no one in that county knew anything whatever."

Harlan's political sagacity is seen as he weighed the question, Should the election be contested? "At that time there were only two great political parties in the country—the Democratic Party and the Republican Party—the latter being spoken of in Kentucky as the Abolition Party. I . . . belonged to a local political party known as the Opposition Party. Its members were all old Whigs by training and by association. We had, however, no national

<sup>60</sup> *Ibid.*

political alliance. If I had been given a seat in Congress it would have been by the votes of the Republican or Free Soil Party, and that fact alone would have sufficed to destroy our party in Kentucky and would have ruined me politically—so bitter was the feeling in Kentucky, at that time, against the Republican or Abolition Party.”

But John Harlan did not arrive at his decision by ignoring self interest. “Besides—and this consideration was at the time deemed by me controlling—a contest meant the taking of several hundred depositions, the loss of more than a year’s time, and a practical abandonment of my profession while preparing the case.” Under all the circumstances Harlan concluded that it would be unwise to contest the election, although he felt certain that he could have ousted Simms. The money that had been raised to meet the expenses of the contest was turned back to the subscribers.

Many times thereafter Harlan wondered what might have happened to his life if he had been sent to Congress in 1859. He reasoned that probably one session in Congress would have given him such a taste for political life “as would not have been consistent with professional success.” Therefore, he believed that “the men who conceived and carried out the frauds which gave my opponent a certificate of election did me a great service.” Unwittingly, too, they diverted his talents and energies back to the law from which they were later to emerge for the performance of far greater service to the Nation. In an extemporaneous speech at Lexington fifty years later, Harlan said: “If I had gone to Washington at twenty-six I might have lost all the character I had.”<sup>61</sup>

There is a sequel to the Ashland Congressional contest of 1859, and it illustrates the noble character of John Marshall Harlan. Captain Simms went on to Congress, but after Fort Sumter was fired upon he openly allied himself with the rebel movement. He was one of a score of Kentuckians who met at Bowling Green and declared the withdrawal of Kentucky from the Union. This band went through the farce of electing a provisional governor of the state and elected Simms as one of the Kentucky senators in the Confederate Senate. After the war he

<sup>61</sup> Newspaper clipping in Augustus Willson Scrapbook No. 11. Filson Club, Louisville, Ky. Clipping dated November 23, 1908.

returned to the North, a sorely disappointed man. In some way he had made enough money to take care of himself.

At the Grand Pacific Hotel in Chicago, in 1878, Harlan met Captain Simms at the breakfast table. He immediately recognized him, although the two had not met for eighteen years. Their meeting was friendly and Simms was pleased at the fact Harlan bore him no malice—no resentment, either for having been counted out in the race for Congress, or because they had served on opposite sides in the Civil War.

Several years after their chance meeting in Chicago, Simms wrote to Harlan that there was a bill pending in the House of Representatives which would relieve him from the disabilities incurred by reason of his connection with the Confederate government. Then an old man, Simms labored under the disabilities fastened upon him by the Fourteenth Amendment.<sup>62</sup> He assured Harlan that he would never again be a candidate for public office. What disturbed him was that his own children would always have to bear the stigma that he had incurred by service in the rebel cause. Simms asked Harlan to intervene in his behalf with some Senators who could bring about passage of the House bill.

Harlan wrote immediately to Senator George F. Hoar of Massachusetts, stating the facts and requesting him to facilitate the passage of the legislation. Senator Hoar promptly took charge of the matter and the bill was soon enacted. Within a day or so the measure was sent to President Cleveland for signature. Harlan then called on the President who sent for the bill and approved it in Harlan's presence. Thus Harlan was directly instrumental in bringing about the removal of a constitutional disability that had been placed upon his old political enemy. Surely this was a gesture of magnificence.<sup>63</sup>

After his defeat for Congress John Harlan went diligently to work practicing law. He had contracted considerable debt in his campaign, but after awhile he managed to pay it off. The

<sup>62</sup> Amendment XIV, Section 3: "No person shall be a Senator or Representative in Congress, or elector of President or Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by vote of two thirds of each House, remove such disability."

<sup>63</sup> Incident related in Malvina Harlan, *Memories*, op. cit. supra note 8.

election of a Democratic governor, Beriah Magoffin, probably occasioned Harlan's removal as Adjutant General for Scott Brown was commissioned in that position on September 12, 1859. Pre-occupation with law and his duties as county judge did not sideline Harlan when the next political game was played.

At least in Kentucky the old Whig party refused to lie down and die. The presidential election of 1860 provided a final opportunity for it to expire triumphantly, and then the circumstances of civil strife removed it forever from the American political scene.

Nationally both the Democratic and Republican parties were split in 1860. The Northern Democrats nominated Stephen A. Douglas for the presidency; the southern wing selected a native of the Bluegrass—John C. Breckinridge—who ran for the White House on the Democratic ticket. Of course Abraham Lincoln (by birth a Kentuckian) was the Republican's candidate for President. The rump of the old Whig movement picked John Bell of Tennessee as their selection, and he campaigned under the banner of the Constitutional Union party.

John Harlan was chosen as an elector on the Bell-Everett slate. Their platform, "The Union, the Constitution, and the Enforcement of the Laws," was a congenial one for the twenty-seven year old canvasser. He confined his persuasiveness to the Ashland area, engaging in joint debates with the electors of the Breckinridge-Lane and Douglas-Johnson tickets.

Confronted with a choice between two Democrats, the voters in that party quite naturally divided their support. Abe Lincoln could attract only 1400 votes throughout the entire state—less than one per cent. Forty-five per cent of the Kentucky electorate voted for the Constitutional Union candidate, and he won the state's 12 electoral votes.<sup>64</sup> Thus Harlan cast his elector's vote for John Bell as President when the electoral college met at Frankfort. But Bell carried only two other border states (Virginia and Tennessee) so John Harlan was once again on the losing side. Locally, the old Whigs with the new Constitutional Union label had captured 60 of Kentucky's 100 counties, but they realized that this was an ephemeral victory caused by the Democratic split.

As soon as Lincoln was declared elected, it became evident

<sup>64</sup> Shannon and McQuown, *op. cit. supra* note 29.



to John Harlan that serious times were ahead for the nation. He was greatly troubled about secession months before Lincoln was inaugurated. In large part his worries were complicated by a vexing personal situation.

Harlan's political friends were determined that he should again be a candidate for Congress. Wrote the young judge: "There was no dissenting view among them on that question. If I remained at Frankfort, my unanimous nomination was inevitable, and it would have been embarrassing for me to decline."<sup>65</sup> Besides, his own means were limited, and he knew from experience that another strenuous canvass might well bring financial downfall. Moreover, Harlan was full of confidence that a second try for Congress—"particularly with the certainty of election"—would have been ruinous to his professional career. He saw no way out of his difficulty except to leave the Ashland District and thus prevent his nomination.<sup>66</sup>

To leave Frankfort meant removal from under his father's roof. This would put young Harlan on his own resources, both domestically and professionally. It was no easy decision to make for his wife Malvina had given birth to their first children (Edith, in November 1857; Richard, in November 1859). Nevertheless, with supreme faith in his own abilities to succeed, Harlan determined to move to Louisville, the state's largest commercial center. In February 1861 the little family left Frankfort. Harlan formed a partnership with William F. Bullock and vowed to give his time exclusively to the practice of law. From Louisville Harlan sent back his resignation as judge of Franklin County.<sup>67</sup>

In April 1861 the entire country was stirred by the firing on Fort Sumter. The plans of John Harlan as well as millions of other Americans were upset by this event. For John M. Harlan, the period of his formative years was over.

<sup>65</sup> Harlan Memorandum, *supra* note 24.

<sup>66</sup> *Ibid.*

<sup>67</sup> Harlan Papers. For sketch of Bullock see M. Joblin, *Louisville Past and Present* (1875) 120-125.