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**The Evolution of United States Supreme Court Jurisprudence under the Leadership of
Chief Justices Melville Fuller and Edward White from 1888 to 1911**

**By
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HIS 490 History Honors Thesis**

**Department of History and Classics
Providence College
Fall 2019**

I am dedicating this thesis to my parents for their love, support, and guidance.

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INTRODUCTION

The phrase “What is Old is New Again” is a timeless adage. It has been quoted by a disparate group including Winston Churchill, Mark Twain, and even Stephen King. While this turn of phrase traditionally relates to the rise and fall of cultural trends, the sentiment is not limited to recurring fashion or musical genres that recycle in and out of popular culture. Indeed, on a deeper level, this concept can relate to political issues and governmental problems. Questions about how involved the federal government, especially the judicial system and Supreme Court, should be in the lives of the public tend to repeat themselves. A close reading of today’s headlines about monopolistic power as it relates to technology and the rise of Google, Facebook, Amazon, and Apple harkens back to similar issues and concerns at the turn of the nineteenth century as the United States moved from the Gilded Age to the Progressive Era.

The law and legal system do not exist in a vacuum. They are a product of constantly changing times and the members of the judiciary are often called upon to be the arbiters of society’s most pressing and legal and cultural issues. These principles are particularly evident in three seminal United States Supreme Court decisions from latter part of the Gilded Age and the heart of Progressive Era: *Lochner v. New York*, *Muller v. Oregon*, and *Standard Oil of New Jersey v. United States*.¹ These landmark cases exemplify the change in ideology from Gilded Age *laissez-fairism* to Progressive Age social and political reform. Although the cases were adjudicated over 100 years ago, the decisions and the Supreme Court’s role in society remain relevant today.

It is naïve to say that the problems the government and legal system faced over a century ago have been definitively resolved. The contemporary concerns regarding monopolistic power in

¹ *Lochner v. New York*, 198 U.S. 45 (1905); *Muller v. Oregon*, 208 U.S. 42 (1908); *Standard Oil of New Jersey v. United States*, 221 U.S. 1 (1911).

the financial, retail, and technology industries are not new. Rather, today's issues echo fear of the Standard Oil Trust and other industries controlled by robber barons during the Gilded Age. An article published in *The Wall Street Journal* on September 7, 2019, titled, "A Safety Net Undone by the Rise of Finance," reflected on these present-day concerns and the perceived rise of new monopolistic power for, "[j]ust as political systems a century ago had to adjust in response to the social dislocations produced by industrial capitalism, today they are adjusting to the social consequences of the financial revolution of the late 20th century."² Indeed, while the protagonists and facts at issue today may differ from those in the late nineteenth century, contemporary society is facing recurring questions of how to deal with monopolistic power. However, unlike the industrialists of the Gilded Age and Progressive Era, modern monopolies are expansive tech titans rather than industrial tycoons in the steel and oil industries.

During the Gilded Age, the United States Supreme Court addressed questions involving the role of government in reigning in and addressing the excesses of the time. At the end of the nineteenth century, members of the Supreme Court shared the national stage with legislators, captains of industry, and labor leaders. As reformers pushed legislative remedies at both the state and federal level, the American judicial system was increasingly called upon to adjudicate the most pressing issues of the day. Then, as now, the courts found themselves as arbiters of compelling and transformative societal and legal issues. Cases that reached Supreme Court's docket during this time would eventually reflect the evolution of societal beliefs.

The makeup of the United States Supreme Court during the period 1888 to 1911, when *Lochner*, *Muller*, and *Standard Oil* were decided, changed significantly. *Lochner* was litigated at

² "A Safety Net Undone by the Rise of Finance," *The Wall Street Journal*, September 7, 2019, p. C2.

the height of the Gilded Age and the Court's decision to embrace "freedom to contract" at the cost of any governmental health and safety regulations reflected a literal reading of the Fourteenth Amendment's due process protections (an interpretation later repudiated by the Court), and the then prevailing societal notions of *laissez-faire*. Three years later, the decision in *Muller* demonstrated an incremental shift in the Court's willingness to endorse governmental regulation for health and safety reasons when supported by a factual record. In 1911, the decision in *Standard Oil* reflected the Court's willingness to utilize the Sherman Antitrust Act to break up what had become the most dominate economic power of the day—John Rockefeller's Standard Oil monopoly. Justices Melville Fuller and Edward White were involved in these decisions as either Chief Justice or as Associate Justice and their tenure, leadership, and influence helped to shape these decisions and also reflected changing public opinion about the role of government and the Court in American society. These decisions are reflective of the make-up of the Supreme Court, the leadership of Chief Justices Melville Fuller and Edward White, and changing public opinion.

As the composition of the Supreme Court changed over time, the Court's reasoning about the role of government also evolved from the Gilded Age philosophy of expanding industrialization and urbanization, operating under a *laissez-faire* regulatory ideology, to adopting the reform ideas of the Progressive Movement. This evolution became evident in the decisions rendered by Chief Justices Fuller and White and the Courts they led. The impact and effect of these cases and the majority opinions are still evident today. Historians and current judges still reflect on the decisions made during this complex judicial era. And, while over a hundred years have transpired, even a cursory review of the headlines confirms that the core issues regarding the role

of government in regulating commerce and the philosophical makeup of the individual Justices on the Supreme Court remain equally robust today—indeed, what is old is seemingly new again.

The Gilded Age and Progressive Era are two periods in American history that have been thoroughly examined and written about by historians and academics. However, several of these eminent historians—such as James Ely, H. Wayne Morgan, and Vernon Parrington—have perhaps failed to examine fully the connection between how the Supreme Court is reflective of the times; how the Chief Justices and Associate Justices ebbed and flowed through the Court during the late Gilded Age and Progressive Eras; and how cases such as *Lochner*, *Muller*, and *Standard Oil* were a product of the changing times and changing public opinions. While scholarly and thorough in their respective analyses, the work of these historians arguably does not fully acknowledge the macro perspective in regard to how these themes relate to one another and the cyclical nature of these societal and legal issues. This thesis seeks to review and analyze these interdependent themes.

THE GILDED AGE AND THE PROGRESSIVE RESPONSE

Industrialization and unfettered capitalism marked the Gilded Age. The era was a tumultuous time during the late nineteenth century in post-Civil War America. The Gilded Age is often thought of as a time in which America grew into itself and became a powerful global entity. During this era, the United States experienced fundamental and drastic changes. However, the title given to this period is misleading. While the term “Gilded,” in a traditional sense, means covered in gold, and indeed the economy grew exponentially, this time in American history was also filled with political and social conflicts. Indeed, “[t]he dictionary defines ‘to guild’ as ‘to give an attractive but often deceptive appearance.’ So, the word itself implies deception, hypocrisy, and dishonesty. It conjures a vision of pleasant appearances hiding the ugliness underneath.”³ While the United States experienced profound economic growth and positioned itself as a world power, a majority of its citizens did not share in the benefits associated with the expansion. The disparity between the “perception” of the Gilded Age and the “reality” of the era arguably set the stage for subsequent reforms advocated during the Progressive Era.

The United States experienced fundamental social changes during the Gilded Age. After the American Civil War ended in 1865, the country was still predominately a rural nation with most of the population living in small towns and farms largely unconnected to one another. Aided by federal land grants authorized by Congress, railroad construction began to expand dramatically. In 1869, the completion of the Transcontinental Railroad led to the rapid expansion of the rest of the United States. Other railroad lines were subsequently built across the country, creating vast networks of travel, transforming the economy and uniting the country in the trade of goods and

³ James O’Hara, “The Gilded Age and the Supreme Court: An Overview,” *Journal of Supreme Court History*, n.d. 123.

services.⁴ This new infrastructure changed not only the face of America, but it greatly influenced the American economy. A sharp movement away from an agricultural economy which relied heavily on farming sparked a more industrial economy which utilized machinery to supplement and complete the work of man. By 1920, for the first time in history, over half the United States' population lived in urban areas.⁵ An intricate web of transport connected the nation and its citizens would reap the rewards, as well as face the consequences, of this interconnectivity and massive industrial transformation.

An influx of immigrants to the United States marked the Gilded Age. This influx of new residents would drastically change the face of the country. American wages increased dramatically compared to wages in Europe. Consequently, the United States saw a mass influx of millions of European immigrants seeking to join the workforce in the late nineteenth century. These immigrants were primarily Greek, Italian, Irish, Polish, Slovakian, Serbian, Russian, and Croatian. The majority of immigrants were Roman Catholic or Eastern Orthodox. Many of these individuals did not speak English and democratic political freedom was new to them, as was the American culture.⁶ Many immigrants began living in American cities and formed ethnic enclaves out of familiarity. They formed areas such as "Little Italy," "Chinatown," or "Greektown." Immigrants lived in these patchwork neighborhoods, primarily in poor tenement buildings, until they could afford apartments that would improve their living conditions. It is important to note that despite

⁴ "Railroad Colonization Plan: Transcontinental Lines to Induce Immigration to the Southwest," *New York Times*, February 2, 1902), 9.

⁵ Benno C. Schmidt, "The Court in the Progressive Era," *Journal of Supreme Court History*, 1997, 15.

⁶ Steven J. Diner, *A Very Different Age: Americans of the Progressive Era* (New York, NY: Hill and Wang, 1998): 77.

the atrocities of tenement housing, many of these European immigrants had no intention of obtaining permanent citizenship in America. They sought to take advantage of the higher wages which they would send back to their families, and many planned to return home themselves.⁷ However, many did seek out a new long-term life in America. Cities grew like wildfire as a result of rapid industrialization.

Industrialization greatly increased the need for workers in the nation's factories. The availability of these factory jobs for unskilled workers was a reason many immigrants made the decision to travel to the United States. Working conditions in these factories were very poor and unsafe, but workers were desperate for a way to make a living. Workers had little choice but to comply with conditions or risk losing their job to another unskilled worker. Historian Benno Schmidt, in his journal article, "The Court in the Progressive Era," gives an overview of how American society changed at the turn of the twentieth century from the Gilded Age to the Progressive Era, noting the excesses which took place and the Supreme Court's role in addressing these issues as "[m]ost Americans worked between fifty-four and sixty hours per week. Many worked seventy-two hours or more."⁸ Throughout the Gilded Age, economic disparities between workers and factory owners became apparent and chilling. Schmidt exposes the wealth inequality which was rampant during this time period, estimating that, "[o]ne percent of Americans owned forty-seven percent of the nation's wealth and received fifteen percent of the national income."⁹ Factory owners lived lavish lifestyles as a result of the hard work of their employees.

⁷ Roger Daniels, "Immigration in the Gilded Age: Change or Continuity?," *OAH Magazine of History* 13, no. 4 (1999): 21.

⁸ Schmidt, "The Court in the Progressive Era," 15.

⁹ *Ibid.*, 15.

These extremes led to excesses. During the Gilded Age, children began to be used as sources of cheap labor.¹⁰ Children were useful because they were able to fit into small spaces in factories or mines where adults could not fit and could be paid much less than adults. It would take public reflection and reform to make child labor illegal. Between 1902 and 1915, Congress passed federal laws restricting child labor as part of the subsequent Progressive Movement.

As the United States became connected through rail travel and immigrants joined the workforce, leaders of industry emerged that would soon monopolize aspects of the economy and alter the face of American business. The men who amassed great wealth during the Gilded Age were referred to as “robber barons.” Often used and viewed as a derogatory phrase, the term refers to American businessmen who used questionable and corrupt methods to gain power, prestige, and wealth. These robber barons changed the face of America for better or for worse. Their names will forever be entrenched in the history books for their effect on industry and the immense wealth they amassed throughout their lifetime.¹¹

One historian, H. Wayne Morgan, in his book, *The Gilded Age: A Reappraisal*, reflected on the effect these monopolies had on American society and business, stating that “[s]ize alone was sufficient to change fundamental social and economic relationships; by sheer magnitude the large industrial corporation overshadowed the society around it.”¹² Those captains of industry remembered for their effect on American life include: Andrew Carnegie, steel tycoon; John

¹⁰ Schmidt, “The Court in the Progressive Era,” 17.

¹¹ Dewey W. Grantham, “What Manner of Men: ‘The Robber Barons,’” *The Georgia Review* 16, no. 2 (1962): 132.

¹² H. Wayne Morgan, *The Gilded Age: A Reappraisal* (Syracuse, NY: Syracuse University Press, 1963): 16.

Pierpont Morgan, banker and railroad owner; Henry Ford, automaker; and John D. Rockefeller, creator of Standard Oil Company.

While business and commerce exploded exponentially and owners became wealthier, workers suffered great income inequality and disparity. The more sinister side of the prosperous Gilded Age was hidden in the backdrop. Money was concentrated in hands of the wealthy and inequality expanded dramatically. European immigrants became the workforce engine in factories, and factory owners greeted the rush of cheap labor with zeal. Selfish interests of factory owners prevailed over the protection of their workers. Therefore, the term “Gilded Age” arguably only applied to the business owners, bankers, and tycoons who obtained unimaginable wealth at the hands of the working classes.

During the Gilded Age, as power and wealth became concentrated in the hands of a few, reform movements became prevalent as a way to combat the abuse and excess which became a hallmark of the Gilded Age. Morgan, in discussing the push towards introspection and reform which followed the Gilded Age, contended that, “[e]ither the corporation had to be made to conform to American institutions and principles, or those institutions and principles had to be changed to accommodate the corporation.”¹³ It was impossible to continue with the way things were in corporate America. The Gilded Age evolved into the Progressive Era, a time period in which Americans sought to curb the abuses of power which were increasingly apparent in realms controlled by politicians, industrialists, and bankers in the Gilded Age. These reform movements sought the help of the government and the courts to address the excesses of American society.

¹³ H. Wayne Morgan, *The Gilded Age: A Reappraisal* (Syracuse, NY: Syracuse University Press, 1963): 20.

Broadly, the Gilded Age can be examined in several ways. The era is defined by immense transition and far-reaching development, as well as exponential growth and change. However, as noted, the Gilded Age is worth reassessing to acknowledge the more sinister side of this period in American life and to find faults between the perception and reality of this era. This is perhaps captured best by Vernon Louis Parrington, who in 1930, in his book, *The Beginnings of Critical Realism* observed that, “[i]n the confused interregnum between reigns—America would be little more than a welter of crude energy, a raw unlovely society where the strife of competition with its prodigal waste testified to the shortcomings of an age in process with transition.”¹⁴

Morgan is also heavily critical of this period in American history and his views align with those of Vernon Parrington. Morgan contends that, “[t]he generation of the Gilded Age was an interregnum of waste, corruption, and inefficiency.”¹⁵ For many academics and historians, the praise the Gilded Age has received has been met with pushback and proposed reappraisal. This reassessment is worth exploring especially in the context of the Supreme Court’s role in interpreting and adjudicating some of the leading cases of the era. As a result of the perceived excesses of the Gilded Age, State and Federal legislators sought to advance reforms designed to protect workers, advance industrial safety, increase competition and level what many believed had become an unfair economic playing field. While arguably the seeds of the subsequent Progressive movement were spread as a result of the excesses of the Gilded Age, the reforms advanced to address the excesses were not uniformly accepted at first. As demonstrated in the trilogy of cases of *Lochner*, *Muller* and *Standard Oil*, the process of reform was gradual, not instantaneous. The

¹⁴ Vernon Louis Parrington, *The Beginnings of Critical Realism: 1860- 1920*, vol. 3, (New York, NY: Hartcourt, Brace and Company, 1930), 4.

¹⁵ Morgan, *The Gilded Age: A Reappraisal*, 3.

Supreme Court's decisions during this period, in connection with these important cases, reflect the evolving nature of the public's acceptance of an increasing role of governmental regulation of commerce.

The period of history which succeeded the Gilded Age is referred to as the Progressive Era. In contrast to its counterpart, the Progressive Era was a time of social activism and vast political reform which took place in the early twentieth century. At the turn of the nineteenth century, many Americans suffered from the ill effects of unfettered capitalism from the Gilded Age. While the Gilded Age turned the United States into a powerful economic entity on a global scale, there was also a deeper more sinister side which occurred as a result. Society and everyday Americans suffered from domestic political corruption, class inequality, and rising urbanization. Progressive reformers recognized that society could not continue to function without fundamental reform.

Against this backdrop, the Progressives stepped forward to advocate solutions to these complex societal issues. Historian Kermit L. Hall, in his book, *The Magic Mirror: Law in American Society*, accurately summarizes the concerns which the American people faced during this time:

The question that stirred this generation was not whether there should be economic growth (there was a wide consensus that there should be), but how that growth should be managed and for the benefit of which social interests. Nor was the debate concerned with whether government should be involved in the economy, but instead whether government's role, both in Congress and in state legislatures, should emphasize economic promotion or regulation.¹⁶

The Progressive Era was a time of self-reflection on how society should function and how the government should be involved in the lives of its citizens.

¹⁶ Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: NY: Oxford University Press, 1989), 190.

Perhaps the historian, Harold Faulkner, in his book, *The Quest for Social Justice*, best summarized the traditional liberal view of the Progressive Era when he said, “[t]o many thoughtful men in the opening years of the twentieth society it seemed that America in making her fortune was in peril of losing her soul.”¹⁷ The Progressive Era forced Americans to reevaluate how the federal government should function and support its citizens.

In its early years, the Progressive Era began as a social movement, which later turned political. Hall notes this transformation within the Progressive Era in his writing when he said that, “[t]he traditional ‘rights of the public,’ which had influenced early nineteenth-century American legal development, became coupled to a political reform movement that stressed the regulation and administration of economic activity.”¹⁸ Progressives, traditionally college-educated Americans, saw the government as a tool for change. They became discouraged with the then current status of American society and sought to right the wrongs of the past and fix the decisions made by those in power. It is overwhelmingly apparent that the United States experienced sweeping change during the Gilded Age. Some aspects of this transformation were positive; other components were not. For many, the devastating effects of this era only became apparent to the public in the years following vast economic growth.

Various social reformers became famous for their positive effect on American society during this time. Activists such as Jane Addams, Jacob Riis, and Ida Tarbel, among others, became influential and created a ripple effect in the changing world they lived in. They defended the rights

¹⁷ Harold Underwood Faulkner, *The Quest for Social Justice, 1898-1914* (New York, NY: Macmillan, 1931), 81.

¹⁸ Hall, *The Magic Mirror*, 197.

of women and African Americans, unearthed political corruption, and exposed the deadly agendas of established institutions as a result of “muckraking” journalism techniques.¹⁹

Progressivism took hold on a national level in 1901, when Theodore Roosevelt became the President of the United States. Roosevelt had an unlikely path to the White House. In the election of 1901, Presidential nominee William McKinley and Vice President Theodore Roosevelt won in a landslide victory against their Democrat counterparts, William Jennings Bryan and Adlai E. Stevenson. However, on September 6, 1901, after the assassination of President McKinley, Theodore Roosevelt took over as President of the United States amid the shock and turmoil.²⁰

Theodore Roosevelt served as the twenty sixth president of the United States from 1901 to 1909. Roosevelt was wealthy, a family man, well-cultivated and well-educated. Roosevelt chose to remake his image focusing instead on his masculinity. Author and Historian Edward Saveth, wrote about Theodore Roosevelt in a journal article, “Theodore Roosevelt: Image and Ideology.” Within the article he quoted one of Roosevelt’s famous lines from a speech he gave, “The Strenuous Life,” when he was the Governor of New York in 1899 while visiting Chicago, Illinois. Basing his speech off personal experiences, Roosevelt argued that overcoming hardship was an ideal to be embraced by Americans for the betterment of society and the nation. “I wish,” he wrote, “to preach not the doctrine of ignoble ease, but the doctrine of strenuous life, the life of toil and

¹⁹ Laurie Collier Hillstrom, *Defining Moments: Muckrakers and the Progressive Era* (Omnigraphics, 2010), 29.

²⁰ “Nation Grieves at Loss of President: Funeral Service Arranged for Thursday,” *The New York Times*, September 15, 1901), 1.

effort, of labor and life.”²¹ Roosevelt struggled with a childhood illness so as a result, his father pushed him “to make his body” and participate in sports and other physically straining activities.

In a State of the Union address in December 1901, Roosevelt mourned the death of President McKinley and addressed how the country needed to move forward amidst the shock of his assassination. He explained the dangers of anarchy and the need for order and social progress. However, in his speech, Roosevelt also addressed the dangers of corporations and trusts which had built the economy but had amassed dangerous amounts of power and wealth.

There is widespread conviction in the minds of the American people that the great corporations known as trusts are in certain of their features and tendencies hurtful to the general welfare...It is based upon sincere conviction that combination and concentration should be, not prohibited, but supervised and within reasonable limits controlled...²²

Theodore Roosevelt left a legacy of being a “trust-busting” president who attacked large “bad” trusts which controlled and manipulated the free market economy. However, Roosevelt was not against all trusts and believed in keeping “good” trusts which controlled an industry but provided fair and reasonable prices. He argued these trusts should be left alone unless they exploited labor and increased prices.

Theodore Roosevelt was an avid proponent of Progressive Era principles and ideas. While President, the country saw sweeping social and political change, which benefitted the masses and put large corporate trusts and monopolies in check. Historians Peter and William James Hoffer and N.E.H. Hull, in their book, *The Supreme Court: An Essential History*, analyze the Fuller Court and its decisions as well as the role Theodore Roosevelt played as a nominal leader of the

²¹ Edward N. Saveth, “Theodore Roosevelt: Image and Ideology,” *New York History* 72, no. 1 (January 1991): 47.

²² Theodore Roosevelt, State of the Union Address, December 3, 1901, <<http://www.theodore-roosevelt.com/sotu1.html>>

Progressive movement. They offer insight into the life of Theodore Roosevelt in their book and provide a comprehensive understanding of our nation's prior president noting that, "[h]e [Roosevelt] favored a rugged individualistic approach to getting things done, a bully determination to impose his will on recalcitrant nature, political foes, and economic problems. But this approach did not bar government activity. Indeed, he wanted government to inject itself into the economy with vigor—regulating food and drug companies."²³ In addition to his trust-busting activities, Roosevelt passed pro-labor laws, advocated for free trade, passed child labor restrictions, and implemented workplace safety rules.

The Progressive Era, however, was not without its shortcomings. In hindsight, the movement increased the political power of ordinary citizens, established a more equal playing field for businesses through trust-busting techniques, and eventually provided women with the right to vote. However, this time period also coincided with the Jim Crow Era, during which African Americans experienced intense segregation and discrimination. The very same courts which would rule against monopolistic business practices and uphold the legality of legislation to protect women, also legitimized the segregation of blacks in American society.²⁴ Specifically, the Supreme Court ruling in *Plessy v. Ferguson* (1896), upheld the constitutionality of racial segregation—a doctrine that infamously came to be known as “separate but equal.”²⁵ Progressive reformers spent very little time working to improve the lives of African Americans, but rather

²³ Peter Charles Hoffer, William James Hull Hoffer, and N.E.H Hull, *The Supreme Court: An Essential History* (Lawrence, KS: University Press of Kansas, 2007): 183.

²⁴ Lee D. Baker, “Progressive-Era Reform Holding on to Hierarchy,” in *From Savage to Negro: Anthropology and the Construction of Race, 1896-1954* (University of California Press, 1998): 87.

²⁵ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

focused on the dilemmas of the white majority. In order to counter the injustices perpetuated against them, African Americans fought for equal rights, in, what later would be called the Civil Rights Movement.

At different levels of government, Progressives advocated for a wide range of disparate reforms. There were advancements made in specific cases, but it was difficult to achieve comprehensive societal reforms. The Progressive Era came to an end with the beginning of World War I as the movement lost popular support.

In the Gilded Age, *laissez-faire* ideology and social Darwinism crept into the minds of the public and even at the United States Supreme Court. The phrase “laissez faire” comes from the French word *laissez faire et laissez* which roughly translates to “hands-off.” A *laissez-faire* economy thus usually describes the economic policy of a government which emphasizes noninterference in business practices and supports unrestricted competition.²⁶ Theories of the day, including Herbert Spencer’s Social Darwinism, supported this ideology.

Herbert Spencer advocated for Social Darwinism in the late nineteenth and early twentieth century. Both evolutionary theorists, Charles Darwin and Herbert Spencer lived during the same time period and they share similar basic concepts in their work. However, Darwin is most-commonly remembered in today’s world for his profound publication on the evolution of species, while Spencer’s impact on society does not immediately come to the forefront. Spencer applied a concept of natural selection, similar to Darwin, which applied to human societies, social classes, and individuals. Spencer argued that social progress resulted from conflicts in which the fittest or

²⁶ George E. Simpson, “Darwin and ‘Social Darwinism,’” *The Antioch Review* 19, no. 1 (1959): 34.

best-adapted individuals or societies would prevail.²⁷ Social Darwinism has been used to justify some of the worst aspects of our society over the past century such as racism, eugenics, social inequality, and imperialism.²⁸

On the other hand, Charles Darwin proposed a theory of evolution which sought to explain biological diversity between plants and animals. Part of his argument surrounded the concept that species have descended and evolved over time from common ancestors. In 1859, he theorized that evolution occurs through a process of natural selection which he expressed in his book *On the Origin of Species*, “Keep steadily in mind that each organic being is striving to increase...; that each at some period of its life,... has to struggle for life, and suffer great destruction...The war of nature is not incessant...the vigorous, the healthy, and the happy survive and multiply.”²⁹ It is this concept of natural selection and survival of the fittest which Darwin constantly refers to in his work.

According to Darwin, this mechanism of natural selection acts to preserve and pass on advantageous genetic mutations onto offspring through the process of reproduction. This process is repeated over generations. As a result, disadvantaged members of the species die out, while advantaged members live to pass on their genetic code. In his writings, Darwin borrowed popular concepts such as “survival of the fittest” from Herbert Spencer and “struggle for existence” from economist Thomas Malthus. However, while Darwin’s theories draw on his counterparts, his conclusions are unique.

²⁷ Simpson, “Darwin and ‘Social Darwinism,’” 35.

²⁸ Ibid., 39.

²⁹ Charles Darwin, *On the Origin of Species by Means of Natural Selection* (London, UK: John Murray, 1859), 76.

Early Progressives rejected social Darwinism, but the doctrine took hold in the Gilded Age. Instead, Progressives believed society could prosper and eliminate problems such as racism, class warfare, violence, and poverty through proper education, a safer environment, and a more efficient workplace. Progressives denied Herbert Spencer's belief that the fittest individuals or, in other words, society's big business and Robber Barons, should survive and thrive at the expense of others. They believed instead in harnessing the power of the federal government to counteract the negative effects of *laissez-faire* social Darwinism. The public called for immense social and political reform caused by rapid industrial growth during the Gilded Age.

The lingering effect of social Darwinism and *laissez-faireism* can be seen in several seminal Supreme Court decisions of the early twentieth century. Out of the many court cases of the era, the Supreme Court's decisions involving the right to contract in *Lochner* (1905); protection under the law for women working in laundries in *Muller* (1908); and the dissolution under the Sherman Anti-Trust Act of John D. Rockefeller's oil monopoly in *Standard Oil of New Jersey* (1911) are worth analyzing.

These cases, although decided only within a short period, reflected a fundamental shift in the Court from a Court that endorsed *laissez-faire* ideology, to a Court that embraced and upheld reform legislation on narrow grounds, and finally, to a Court that approved the dissolution of a monopoly. The Supreme Court and the Chief Justices were not immune from the transformative societal changes taking place in the United States. As will be more specifically addressed below, during the six-year period from 1905 to 1911, there was a clear shift in the jurisprudence of the Fuller Court to the White Court. These Court rulings were based on specific factual and legal questions, but the decisions rendered also reflected a shift in public opinion regarding the appropriate role of the federal government in regulating commerce.

THE FULLER COURT

BACKGROUND OF THE UNITED STATES SUPREME COURT

Supreme Court Justices are nominated to serve by the President of the United States and follow a process in which they have to be confirmed by the Senate.³⁰ If approved by the Senate, a Justice serves a life-time appointment to the bench. This approach is designed to avoid any political corruption that might arise from serving for a stated term. Supreme Court Justices and, especially Chief Justices, are meant to be impartial fact finders who should be free to operate without fear of retribution or extortion which often follows with the desire to be re-elected.

It is a common belief that one Justice on the Supreme Court cannot have much an impact on the Court's decision-making or philosophical approach. American legal scholar Laurence Tribe expands upon this assumption in his article, "In the Supreme Court: What Difference Can a Justice or Two Make?" He notes that, "[t]here remains the fundamental assertion behind the 'one at a time' idea: each individual justice, or even a pair of new members, is said to be swallowed up by the institution of the Court, and is therefore not in a position to reshape its course."³¹ However, this is not necessarily or always the case. Much of our Court's history has been shaped by 5-4 split decisions arguably as much as unanimous 9-0 decisions. Tribe advocates against this commonly held belief and argues that each Justice is powerful in relation to the whole. In this case, these 5-4 decision splits, "serve as a reminder that one justice can, and does, make a difference in the choice among possible constitutional futures."³² During the time in which Melville Fuller served as the

³⁰ Richard Beth and Betsy Palmer, "Supreme Court Nominations: Senate Floor Procedure, 1789-2005," § 2006: CRS-1.

³¹ Laurence H. Tribe, "In the Supreme Court: What Difference Can a Justice or Two Make?" *ABA Journal*, 1992, 60.

³² Tribe, "In the Supreme Court," 60.

Chief Justice of the Supreme Court, the Fuller Court experienced many 5-4 decision splits, which impacted society in unforeseen ways.

Supreme Court decisions are a product of their times and as importantly, the Justices who comprise the Court at any given time. Their decisions and jurisprudence do not exist in a vacuum, but are a product and reflection of the historical context in which decisions are argued and decided.

The Court has reflected the spirit and tenor of its times, as reflected by the individual Justices who have comprised the Court throughout its history. This was also true in the case of the Court during the tenures of Chief Justice Fuller and Chief Justice White—the Chief Justices during the Gilded Age and Progressive Era.

James Ely writes about this sentiment in his work, *The Chief Justiceship of Melville Fuller: 1888-1910*. Ely articulates that despite the trailblazing decisions made during this time, the Fuller Court was a product of its time and place, and emphasizes that, “[t]he justices generally acted in accordance with the main currents of public opinion. Their work corroborates Lawrence M. Friedman’s insight that law is ‘a mirror of society’ and that legal developments are ‘molded by economy and society.’”³³ While the Supreme Court is charged with reviewing facts and law on a case by case basis, it is inescapable that the Court “mirrors society” and that public opinion, or at a minimum, public sentiment as reflected by societal norms, more broadly impacts the Court. The Court derives its legitimacy from the public, and its decisions must be based on the public’s willingness to accept the Court’s reasoning and conclusions. Each Chief Justice of the Supreme Court has unprecedented potential to shape and dominate the Court’s philosophical approach to cases. Although technically not politicians, the leadership and inter-personal skills of a sitting

³³ James W. Ely, *The Chief Justiceship of Melville W. Fuller: 1888-1910* Columbia, SC: University of South Carolina Press, 1995), 3.

Chief Justice can greatly impact the outcome of cases before the Court. The Supreme Court's decisions in *Lochner*, *Muller*, and *Standard Oil* are no exception to these principles.

PROFILE OF MEVILLE FULLER

Grover Cleveland appointed Melville W. Fuller, the eighth Chief Justice of the United States Supreme Court in 1888. He served until his death in 1910. Born on February 3, 1833, in Augusta, Maine, Fuller attended Bowdoin College and began studying law after graduation.³⁴ His father and two uncles were also attorneys, exposing Melville Fuller to the law, even at a young age. He moved back to Augusta, Maine, his birthplace, and became the associate editor of *Augusta Age*, a leading Democratic paper in Maine.³⁵

Despite his roots and early professional successes in Maine, Fuller traveled westward and relocated to Chicago. He was admitted to the bar in 1855, and took up a variety of cases ranging from real property, torts, commercial law, and contractual litigation.³⁶ Melville Fuller became a “jack of all trades” under the law and became proficient in many legal areas. In 1858, he married Calista Ophelia Reynolds and had two children. Sadly, his wife died in 1864, from tuberculosis and Fuller took over sole responsibility of raising his children. In 1866, Fuller re-married to Ellen Coolbaugh and the couple had eight children together.³⁷

In addition to the law, Fuller became involved in politics and experienced vast political success. In 1861, he became a member of the Illinois State Constitutional Convention. He served in the Illinois Legislature beginning in 1862, and in 1864, 1872, 1876, and 1880 he served as a

³⁴ Ely, *The Chief Justiceship of Melville W. Fuller*, 5.

³⁵ Moorfield Storey, “Melville Weston Fuller (1833-1910),” *Proceedings of the American Academy of Arts and Sciences* 51, no. 14 (December 1916), 875.

³⁶ James W. Ely, “Melville W. Fuller Reconsidered.” *Journal of Supreme Court History* 23, no. 1 (1998): 37.

³⁷ Ely, *The Chief Justiceship of Melville W. Fuller*, 10.

delegate to the Democratic National Conventions.³⁸ As a result of his involvement in Democratic politics, Fuller developed a close relationship with President Grover Cleveland. Historian James Ely, in Melville Fuller's biography, *The Chief Justiceship of Melville W. Fuller*, writes about the close relationship Fuller and Cleveland shared, acknowledging that, "[Melville] Fuller was an enthusiastic backer of the Cleveland administration and shared the President's commitment to frugal government, a hard-money policy, and the tariff reduction. The President was impressed with Fuller's ability, and the two began a frequent correspondence."³⁹

The sudden and untimely death of Chief Justice Morrison R. Waite on March 23, 1888, gave rise to Fuller's appointment to the Court by President Cleveland. James Ely, in his biography of Melville Fuller, explores how President Cleveland narrowed down his decision to nominate a replacement for Chief Justice Waite. President Cleveland noted that the Seventh Circuit had not been represented on the Supreme Court since 1877. James Ely reflects on this and explains President Grover Cleveland's thought process in deciding the next Chief Justice noting that "[e]ventually Cleveland determined that the new Chief Justice should come from the West. He based this decision partly on the need for a representative of the Seventh Circuit (Illinois, Indiana, and Wisconsin) on the Supreme Court."⁴⁰ In the eyes of President Cleveland, Fuller fit the job perfectly. However, those who had never heard of Fuller were hesitant his nomination to sit on the highest court in the nation.⁴¹

³⁸ Gustavus Myers, "Chapter XIV: The Supreme Court Under Chief Justice Fuller." In *History of the Supreme Court of the United States*, 578- 617. Chicago, IL: Charles H. Kerr & Co., 1912, 582.

³⁹ Ely, *The Chief Justiceship of Melville W. Fuller*, 18.

⁴⁰ Ibid., 17.

⁴¹ "Mr. Fuller's Nomination: Senator Edmunds Will Delay His Confirmation." *The New York Times*, May 9, 1888, 5.

Despite his successful pursuits in Chicago, Melville Fuller's reputation outside Illinois was remarkably undistinguished. Historian Gustavus Myers wrote about Fuller's appointment and nomination for the position of Chief Justice. His book, *History of the Supreme Court of the United States*, published in 1912, gives insight into how Fuller was received by the outside world acknowledging that, "Fuller's appointment was a complete surprise to the large public; his name and career were utterly unfamiliar. But to corporations of all kinds his skill and service had long been intimately known and highly valued."⁴² Fuller's lifestyle, away from the public eye, had its benefits and drawbacks. Those who had done business with Fuller knew of his abilities, while those who had not crossed paths with him thought of him as unfit for the role of Chief Justice of the Supreme Court, a position they believed, required both a widely successful and well-known individual.

At the time of his nomination, leading newspapers on the East Coast expressed their concerns and doubts regarding Fuller's abilities. For example, the *Utica Herald* questioned Fuller's competency. In a May 1, 1888 article, the *Utica Herald* declared that "proof is required that Mr. Fuller possesses a single qualification for Chief Justice above ten thousand other lawyers scattered through the Northwest."⁴³ Fuller's largely unknown status did tend to impede his confirmation. There were also clear delay tactics used in the confirmation process of Melville Fuller to the Court. An article by *The New York Times* from May 9, 1888, discusses some backhanded tactics used against Fuller after he was nominated, such as that, "[s]ome of the Republican

⁴² Myers, "Chapter XIV: The Supreme Court Under Chief Justice Fuller." 582.

⁴³ *The New York Herald*, May 1, 1888. Newspaper reaction to the nomination of Fuller is collected in *Public Opinion*, vol. 5, May 5, 1888.

Senators think it will be ‘good politics’ to place Mr. Fuller in as bad a light as possible before confirming him.”⁴⁴ In many aspects, these concerns were purely political in nature.

As the newspaper reports of the day also suggest, there was no real legitimate reason to deny Fuller’s confirmation. One of the most supportive press comments of Melville Fuller’s nomination by President Cleveland came from *Harper’s Weekly* newspaper in New York. The article from May 12, 1888, observed that, “[c]haracter, ability, learning, temperament, age, locality – all the demands which are made by the great office have been apparently satisfied in the gentleman selected.”⁴⁵ *Harper’s Weekly* continually published promising press releases about Fuller’s nomination. James Ely discusses the positive reception to Fuller’s nomination in his article, “Melville W. Fuller Reconsidered,” emphasizing that, “[u]pon Fuller’s appointment to the Supreme Court, *Harper’s Weekly* declared that he ‘goes to the bench with probably a wider experience of all branches of the law than has been enjoyed at the bar by any member of the Court.’”⁴⁶

The New York Times supported Fuller’s nomination in an early May 1888 press release. The newspaper reiterated his competency and mentioned the respect Fuller has maintained from his colleagues, noting that, “[h]e has often been mentioned by the members of the Bar as one eminently fitted for the highest judicial office, and his appointment will receive universal approbation from all who knew him, regardless of their party affiliations or preferences.”⁴⁷

⁴⁴ “Mr. Fuller’s Nomination: Senator Edmunds Will Delay His Confirmation.” *The New York Times*, May 9, 1888, 5.

⁴⁵ *Harper’s Weekly*, May 12, 1888, 330.

⁴⁶ James W. Ely, “Melville W. Fuller Reconsidered,” 37.

⁴⁷ *The New York Times*, May 1, 1888, 5.

President Grover Cleveland appointed Fuller as Chief Justice of the Supreme Court on April 30, 1888, by a vote of forty-one to twenty Fuller was confirmed and he took the oath of office on October 8, 1888.⁴⁸ Fuller faced many daunting tasks as he joined the Supreme Court. Upon his confirmation to the position of Chief Justice, Fuller had to navigate many personalities on the Court. Perhaps one of the most challenging and problematic was that of Justice Stephen Field. James Ely notes the tension between Fuller and Field. He acknowledges that, “Justice Stephen J. Field, the most influential jurist of the Gilded Age, had coveted the Chief’s position for himself and was bitterly disappointed when Cleveland selected Fuller.”⁴⁹ However, despite this tension, Fuller eventually won the support of his Associate Justices with tact and deference to those that had served the Court before him.

In addition, Chief Justice Melville Fuller inherited a backlog of cases caused in large part by the inability of the federal court system to keep up with controversies arising from the growing economy. This resulted in a wide variety of cases on the Court’s docket. Jeffrey Morris, in his article, “The Era of Melville Weston Fuller,” analyzes how the Fuller Court handled their case load, noting that, “[m]ore cases were heard and decided with opinions on the merits by the Court under Fuller than by the Court under any other Chief Justice—5,465. The Court averaged 248 cases per year, second only to that of Waite.”⁵⁰ Chief Justice Fuller’s leadership and work ethic were instrumental to the Supreme Court reducing the case backlog.

Although many were hesitant about Melville Fuller’s rise to the position of Chief Justice, he quickly became acquainted with the sitting Justices and formed respectable relationships with

⁴⁸ Jeffrey B. Morris, “The Era of Melville Weston Fuller,” (1981), 41.

⁴⁹ Ely, “Melville W. Fuller Reconsidered,” 38.

⁵⁰ Morris, “The Era of Melville Weston Fuller,” 45.

the Associate Judges. Throughout his time as Chief Justice from 1888-1910, eleven new justices joined the bench and Fuller maintained good relations with all his colleagues. Historian James Ely, in his article “Melville W. Fuller Reconsidered” discusses Fuller’s demeanor on the bench and his interpersonal relations with his colleagues and fellow Justices, acknowledging that Fuller was a masterful social leader who, “harnessed the talents of his independent-minded associates and prevented destructive personal feuds from damaging a collegial working environment. To this end, Fuller inaugurated the practice of requiring each Justice to shake hands with other Justices each morning before Conferences.”⁵¹ Fuller worked to achieve cohesion on the Court among fellow Justices and the practice emphasized the mutual respect between colleagues.

In the spirit of collective action, Fuller also allowed, for the first time, his colleagues to write court opinions. This responsibility had previously been primarily the job of the Chief Justice. Jeffrey B. Morris writes about Melville Fuller in an article, “The Era of Melville Weston Fuller,” in which he explores the practice of Fuller allowing his colleagues and fellow Justices the opportunity to write court opinions. Morris questions Fuller’s motives for the implementation of this practice noting that, “[p]erhaps he [Fuller] lacked self-confidence; maybe he did not wish to be at the focal point of great national controversies; or perhaps it was a conscious strategy to facilitate intra-court harmony. Whatever the reason, it worked, and a responsibility which often has bred resentments, was largely free of them.”⁵² Fuller’s treatment of colleagues and other actions demonstrated his character and leadership abilities.

The period during which Melville Fuller sat as Chief Justice was a tumultuous time in American society and politics. Not only were there various Justices and, consequently,

⁵¹ Ely, “Melville W. Fuller Reconsidered,” 38.

⁵² Morris “The Era of Melville Weston Fuller,” 43.

personalities circulating through the Court, but also the face of American society was changing rapidly. Consequently, as often is the case, the law was being pushed to adapt. Nineteen Associate Justices served with Chief Justice Fuller during his time as Chief Justice. Eight of those came from the time of late Chief Justice Waite. Five of these men died within a half-decade of Fuller becoming Chief Justice: Stanley Matthews (1881-89), Samuel F. Miller (1862-90), Joseph P. Bradley (1870-92), Lucius Quintus Cincinnatus Lamar (1882-93).⁵³ During Fuller's time in the Supreme Court, its composition ebbed and flowed as Associate Justices died and openings in the Court were filled. Significantly, Chief Justice Fuller's successor, Chief Justice White, also served as an Associate Justice of the Supreme Court during Fuller's tenure as Chief Justice. Justice, and later Chief Justice White, would play an integral role in the Court's jurisprudence and in the evolution of the Court's reasoning in *Lochner*, *Muller*, and *Standard Oil*.

⁵³ Morris "The Era of Melville Weston Fuller," 37.

LEGACY OF THE FULLER COURT

The “Fuller Court” is a phrase that often ignites passionate conversation about the early stages of the Progressive Era’s legislative and judicial agenda and the discussion is often contentious. James Ely, in his work, “Melville W. Fuller Reconsidered” addressed how the Fuller Court experienced first-hand the changing nature of the United States through cases that came across the bench, stating that, “Fuller and his colleagues were the first to grapple with a myriad of modern issues arising from the economic transformation of the United States into an industrial nation.”⁵⁴ There was sweeping change in society and the Justices on the Supreme Court faced these issues head on with little historical legal precedents to follow.

The Fuller Court set the stage for crucial and well-known decisions, including *Pollock v. Farmers’ Loan and Trust Co.* (1895), *Plessy v. Ferguson* (1896), *Lochner* (1905), and *Muller* (1908). These decisions would end up setting precedent for future courts. The Fuller Court, however, is not without its critics. Historians have argued that the Fuller Court supported legislation that protected big business from federal laws that sought to regulate interstate commerce. They and argued the Court’s stance was too conservative and embraced a *laissez-faire* approach to progressive (and for many, much needed) reforms.⁵⁵ There is no question that many of the decisions of the Fuller Court reflected a prevailing position of the times that placed a premium on “economic liberty” as a preeminent constitutional value.

On the other hand, other historians argue that the Fuller Court did not follow any set economic theory when deciding cases. James Ely in his book, *The Chief Justiceship of Melville W.*

⁵⁴ Ely, “Melville W. Fuller Reconsidered,” 35.

⁵⁵ Mary Cornelia Porter, “That Commerce Shall Be Free: A New Look at the Old Laissez-Faire Court,” *The Supreme Court Review* 1976 (1976): 138.

Fuller, acknowledges this belief and disproves it, arguing that, “despite a professed faith in free-market forces, the Justices did not consistently follow any economic theory in resolving cases. They were far from doctrinaire adherents of *laissez-faire* principles.”⁵⁶ This era of Supreme Court history is rigorously debated with many historians disturbed by the classification of the Court as being overly supportive of unregulated corporate growth. Ely reflects on the Fuller era and analyzes how the Fuller Court treated cases which came to the attention of the Supreme Court stating that, “[t]he Fuller Court aggressively defended private property and contractual freedom as a means to limit the reach of government and thereby safeguard liberty. Hence, the hallmark of Fuller era jurisprudence was an embrace of economic liberty, not some dark scheme to serve corporate interests.”⁵⁷

A reappraisal of the Fuller Court is crucial to ascertain a better understanding of this contentious period in history. The Fuller Court did not break far from the past, but rather embraced and advocated a continuation of the themes of constitutionalism. An element of the Fuller Court, which dominated the jurisprudence of the era, was the premise that the law should safeguard private property in the name of liberty. Owen Fiss, Professor Emeritus of Law at Yale University, published a book, *History of the Supreme Court of the United States*, in which he analyzed how the Fuller Court operated. Professor Fiss acknowledges that, “[l]iberty was the guiding idea of the Fuller Court, the notion that gave unity and coherence to its many endeavors.”⁵⁸ According to Fuller and his colleagues, protection of property and maintaining liberty were inseparable. These ideas were closely resembled to the freedom to contract which becomes evident in the cases of the

⁵⁶ Ely, *The Chief Justiceship of Melville W. Fuller*, 2.

⁵⁷ *Ibid.*, 41.

⁵⁸ Owen M. Fiss, *History of the Supreme Court of the United States: Troubled Beginnings of the Modern State, 1888- 1910*, vol. 8 (New York, NY: Macmillan, 1993): 389.

day. Some experts in the field, such as James Ely, in his book, *The Fuller Court: Justices, Rulings, and Legacy*, believe that “[t]he Fuller Court was therefore dedicated to economic liberty as the preeminent constitutional value. The jurisprudence of the Fuller era was characterized by the principles of limited government, state autonomy, and respect for the rights of property owners.”⁵⁹

Due to the Fuller Court’s dedication to the preservation of property, the era experienced tension as state legislatures, acting under their police power to protect public health and safety, took actions to control the economic forces affecting American society.⁶⁰ As a result, the Fuller Court attempted to balance support for the rights of private property and individual liberties while acknowledging the power of the states. This dichotomy is exhibited in two famous cases decided under the Fuller Court, *Lochner* (1905) and *Muller* (1908), both which will be discussed in detail below.

Chief Justice Melville Fuller died in 1910, at the age of seventy-seven and left a gaping hole in the Supreme Court, in both a physical and metaphorical sense. He had served almost twenty-two years as Chief Justice, the third longest tenure in that important position.⁶¹ Many expressed the loss of such a great man and profound presence on the bench. Lawyer and author, Moorfield Storey, wrote an article on Melville Fuller in 1916, describing the impact Fuller had on the Supreme Court and those close to him, saying that, “[h]is rare personal charm and the unvarying courtesy with which he met all who came before him made him the most popular Chief Justice who ever held that position on the bench until the moment of his death. His death left a

⁵⁹ James E. Ely, *The Fuller Court: Justices, Rulings, and Legacy* (Santa Barbara, CA: ABC-CLIO, Inc., 2003): 3.

⁶⁰ Ely, *The Fuller Court*, 191.

⁶¹ Morris “The Era of Melville Weston Fuller,” 43

genuine feeling of sorrow among all who had known him.”⁶² His death caused people to reflect on the time of the Fuller Era and the landmark decisions which were decided. In addition, Melville Fuller’s death changed the nature and dynamic of the Supreme Court. But a face and personality well-known to the Supreme Court would take over the responsibilities of Chief Justice--Edward White.

⁶² Storey, “Melville Weston Fuller (1833-1910),” 879.

LOCHNER V. NEW YORK ANALYSIS AND IMPACT

The court case *Lochner v. New York* (1905), was a landmark United States labor case decided by the Fuller Court which examined a worker's right to contract under the Fourteenth Amendment. The story of the *Lochner* decision began ten years prior, in 1895, when New York State passed the Bakeshop Act in an effort to regulate working conditions in New York bakeries. A section of the Act stated that "No employee shall be required or permitted to work in a biscuit, bread, or cake bakery, or confectionary establishment more than sixty (60) hours in one week, or more than ten (10) hours in any one day."⁶³

The plaintiff of the case, Joseph Lochner, was a Bavarian immigrant who owned Lochner's Home Bakery in Utica, New York. In 1899, Lochner was charged with a violation of the 1895 New York Bakeshop Act, as he had allowed an employee to work more than sixty (60) hours in one week. Two years later, in 1901, Lochner was charged with violating the Act a second time and he received a subsequent fine of fifty dollars.

Upon the second violation, Lochner decided to appeal his fine to the Oneida County Court. The Appellate Division of the New York Supreme Court ruled against Lochner in a 3-2 decision and upheld his conviction. Lochner appealed to the New York Court of Appeals—the highest Court in New York State. The Court of Appeals also affirmed Lochner's conviction. Lochner then appealed to the Supreme Court. Lochner's counsel argued that the Bakeshop Act of New York violated the Fourteenth Amendment's Due Process Clause and the Constitution's protection of the "liberty to contract." The Fourteenth Amendment of the United States Constitution states that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or

⁶³ N.Y. Laws 1897, chap. 415, art. 8, 110.

immunities of citizens in the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.⁶⁴

Lochner's creative argument was grounded in "economic freedom of contract"—a concept that arguably was not what the drafters of the Fourteenth Amendment envisioned, but the premise of the argument was very much a reflection of the *laissez-faire* philosophy of the Gilded Age.

In a 5-4 majority decision, the Supreme Court reversed Lochner's conviction. The Fuller Court found the 1895 Bakeshop Act to be unconstitutional and concluded that the Act did not constitute a legitimate use of police powers. The Court held that the statute interfered with the right to contract between employer and employees concerning the number of hours the employee may work in the bakery.⁶⁵ In the majority of the narrow decision were Associate Justices Brewer, Brown, Peckham, McKenna, along with Chief Justice Fuller. The dissenters included Justices Harlan, Holmes, Day and significantly, Edward White—later Chief Justice Edward White.

Justice Peckham delivered the opinion on behalf of the Court. Justice Peckman addressed the dilemma concerning the Bakeshop Act of New York insofar that it infringed on the right of employers and employees to enter into a contractual agreement.

The right to make a contact in connection or relation to one's business and the right to purchase and/or sell labor is afforded under the liberty protected by the Fourteenth Amendment. *Allgeyer v. Louisiana*, 165 U.S. 578. Under that provision no State can deprive any person of life, liberty, or property without due process of law.⁶⁶

However, Justice Peckman also acknowledged that each State does maintain certain police powers and these powers, broadly stated, relate to the safety, health, morals, and general welfare

⁶⁴ U.S. Const. amend. XIV. Sec. 1.

⁶⁵ *Lochner v. New York*, 198 U.S. 45 (1905), 4.

⁶⁶ *Ibid.*, 9.

of the public. Consequently, the state has the power to prevent the individual from making certain kinds of contracts like those that are hazardous to the health of the employees. In the majority's view, however, the trade of a baker is not, in and of itself, not an unhealthy one such that it would authorize or require legislation to interfere with the right to contract and the right to work on the part of the employer or employee. Justice Peckman reasoned that "[t]here must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty."⁶⁷ By contrast, in other professions like mining or smelting, there is inherent risk to the health and safety of the workers which warrants legislation protecting workers in regard to labor.

In cases that come before the Supreme Court which deal with legislation concerning the police powers of the states a crucial question always emerges: Is the regulation at issue a fair, reasonable and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contacts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?⁶⁸ In *Lochner*, the Fuller Court found that there is "no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker."⁶⁹ The Fuller Court did not believe the occupation of a baker was a dangerous occupation and thus did not believe in interfering with the right to contract protected by the Fourteenth Amendment.

⁶⁷ *Lochner v. New York*, 198 U.S. 45 (1905), 13.

⁶⁸ *Ibid.*, 3.

⁶⁹ *Ibid.*, 4.

Associate Justice John Marshall Harlan wrote the concurring dissenting opinion joined by Justices Edward White, William R. Day, and Oliver Wendell Holmes. President Rutherford B. Hayes nominated Justice John Marshall Harlan as an Associate Justice of the United States Supreme Court on October 17, 1877. He served until October 14, 1911, and served as one of the longest serving Justices in the history of the Court. By virtue of his tenure and his independence, evidenced by his over one hundred and thirty-seven dissents, Justice Harlan played an instrumental role in the Court's jurisprudence during the Gilded Age and Progressive Era. He is known as the "Great Dissenter" by virtue of his strong worded and often forward-thinking dissenting opinions.⁷⁰ Justice Harlan believed that the federal government possessed broad plenary powers including in the area of the commerce clause to the Constitution. Harlan argued that if a state interferes with the right to contract, it may only do so if the regulation involves a state's police power to protect the health and safety of its citizens.⁷¹

Accordingly, Justice Harlan argued that the Court should not be concerned with the underlying policy of legislation. The only question is whether the means devised by the state are germane to a valid end."⁷² In reviewing the record before the Court, with respect to the dangers in bakeries, Justice Harlan argued that the majority failed to attribute appropriate deference to the New York Legislature's intent to "protect the physical well-being of those who work in bakery and confectionery establishments."⁷³ Justice Harlan's opinion in *Lochner* foreshadowed his

⁷⁰ Loren P. Beth, "Justice Harlan and The Uses of Dissent," *The American Political Science Review* 49, no. 4 (December 1955): 1085, 1086.

⁷¹ *Lochner v. New York*, 198 U.S. 45 (1905), 19.

⁷² *Ibid.*, 19.

⁷³ *Ibid.*, 19.

support of the well-developed record in *Muller*, and his decision with the majority in that case to uphold the State statute at issue protecting female workers in a laundry.

Justice Holmes took a different point of view and argued that the Constitution is not meant to embody a specific economic theory, such as paternalism or *laissez-faire*. In his view, the word “liberty” in the Fourteenth Amendment is improperly construed “when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law.”⁷⁴ Justice Holmes concluded his dissent by arguing that because a reasonable person would find the provision of hours to be directly related to the health of workers, the law should be upheld.

The Supreme Court’s decision in *Lochner* received much push back from the Progressive members of the Bar and public when decided and the ruling and majority’s reasoning is continually discussed and heavily criticized even by present-day historians. It is arguably one of the most widely condemned cases decided by the Court. After the Supreme Court issued its ruling in 1905, the so-called “Lochner Era” took shape. In the subsequent thirty years, the Court struck down legislation regulating labor conditions as unconstitutional using the precedent of *Lochner* as a basis. The *Lochner* Era arguably represented a time of government neutrality and a preference for inaction and maintaining the status quo.

The decision in *Lochner* was eventually overturned in the case of *West Coast Hotel Co. v. Parrish* (1937), in which the Supreme Court ruled, 5-4, to uphold the constitutionality of state minimum wage regulations.⁷⁵ This ruling rejected the liberty to contract reasoning articulated in

⁷⁴ *Lochner v. New York*, 198 U.S. 45 (1905), 24.

⁷⁵ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

Lochner and marked the end of “laissez faire” constitutionalism. After thirty-two years, the Court changed course and allowed some governmental regulation of the labor market.

MULLER V. OREGON ANALYSIS AND IMPACT

The case of *Muller v. Oregon* 208 U.S. 412 (1908), is a yet another landmark case decided under the leadership of Chief Justice Melville Fuller. The case involved the question of the constitutionality of a statute of Oregon limiting the hours of employment of women working in a laundry. The case began in 1903, when an Oregon law was passed which set limits on working hours for women. The statute stated that women were prohibited from working more than ten hours a day in laundries or factories. In 1905, a laundry owner, Curt Muller, was charged and fined ten dollars for allowing a female employee to work longer than the maximum permitted hours. He was charged with violating the Oregon statute. He appealed the conviction to the Oregon Supreme Court and the case later made its way to the Supreme Court.

Muller argued that restricting the employment hours of female employees violated the Fourteenth Amendment of the Constitution, and specifically the right to due process and to freely contract between employer and employee. Muller argued that because women are “persons” and citizens, they are as competent as men to contract with reference to their labor-- an interestingly modern argument all things considered. Other business owners attacked the statute on the grounds that, like the New York law in *Lochner*, it had no relation to women’s health or safety.

As previously discussed, the Supreme Court decided in *Lochner*, that the general liberty to contract in regard to one’s business and the sale of one’s labor is protected under the Fourteenth Amendment.⁷⁶ Muller relied on *Lochner* to challenge the validity of the Oregon law. However, as discussed in the *Lochner* case, the “liberty” to contract is not unlimited and is subject to the police

⁷⁶ *Lochner v. New York*, 198 U.S. 45 (1905), 2.

powers of the state. In some cases, the state may interfere with the right to contract if they believed it affected the workers' health, safety, or overall well-being.⁷⁷

In *Muller*, the Supreme Court had to decide if the Oregon law limiting the hours women are allowed to work in a laundry violated the Fourteenth Amendment. After deliberation, the Fuller Court voted unanimously in favor of upholding the 1903 Oregon Statue restricting the number of hours women may work in a laundry. The *Fuller* Court reasoned that the state of Oregon had a legitimate right to protect laborers.

The Fuller Court at the time consisted of Chief Justice Fuller and Associate Justices Harlan, Brewer, White, Peckham, McKenna, Holmes, Day, and Moody-- the same Justices who voted in the *Lochner v. New York* (1905) case. Arguably, the key piece of evidence on the record before the Court was supplied by Louis Brandeis, the attorney for the State. He produced a "sociological brief," famously referred to now as the "Brandeis Brief." Brandeis argued that women needed special protection under the law due to the differences between the sexes. His case was built on the testimony of sociologists, doctors, and economists. Brandeis compiled a one hundred and thirteen page document in which he outlined quasi-scientific data which showed the negative effects of women working long working hours. Interestingly enough, he devoted only two pages worth of legal precedence in his brief. This documentation of the effect long working hours had on women and the future generations convinced the Justices of the differences between the sexes and the need for labor regulation. Mr. Justice Brewer delivered the opinion on behalf of the Court, acknowledging the "abundant testimony of the medical fraternity" and added:

⁷⁷ *Lochner v. New York*, 198 U.S. 45 (1905), 10; Justice Peckman's opinion cited *Holden v. Hardy*, 169 U.S. 366 as a valid exercise of the powers of the state. The Court held that a limitation on working hours for miners and smelters was constitutional.

[d]ifferentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained...her physical structure and a proper discharge of her maternal functions—having in view not merely of her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man.⁷⁸

Associate Justice Brewer, along with the rest of the Fuller Court, recognized the need for proper legislation to protect the health and safety of women. In this opinion, Justice Brewer also made a point to reference and distinguish the case from *Lochner*, as the facts and legal issues in *Lochner* and *Muller* were similar, and both dealt with the Fourteenth Amendment and due process. Specifically, the Supreme Court in *Muller* distinguished *Lochner* on the basis of “difference of sexes.”⁷⁹ Still, in the wake of the Supreme Court’s decision in *Muller*, there were disparate reactions.

As there is with most things, the ruling in the case of *Muller v. Oregon* received both praise and pushback. Progressive activists were pleased by the decision, even though it arguably endorsed very sexist ideals, as it was a victory in the battle for improving working conditions for women. However, many feminists believed the case served to reinforce gender stereotypes about women, thus restricting the economic opportunities available to women in the future. Ultimately, the case served as a double-edged sword, protection for women in dangerous workplace environments was necessary, but it came at a great cost with respect to the women’s rights movement.

The evolution of the Supreme Court’s jurisprudence from *Lochner* in 1905, to *Muller* in 1908, is significant. Despite the decisions being decided only within three years of each other, the Court recognized the need for protective legislation for women in jobs that risked their health, such as working in a laundry. Both Court cases were decided during the Progressive Era, a period of

⁷⁸ Munts, Raymond, and David C. Rice. “Women Workers: Protection of Equality?” *ILR Review* 24, no. 1 (October 1970): 4.

⁷⁹ *Muller v. Oregon*, 208 U.S. 412 (1908), 5.

history when Americans sought to improve the ugly and hazardous aspects of industrialization. The Fuller Court was suspicious of government involvement in the economy and reform that interfered with the free-market and laissez-faire economy. However, the *Muller* ruling established precedent of expanding the reach of police power in the realm of protective labor legislation.

As discussed previously, the Court and the Justices that make up the bench are a product of the time they live in, and the Court's decision in *Muller* reflected an evolution of the Court's thinking and the increased influence of the Progressive reform agenda in society, and by extension, the Fuller Court. These developments not only affected the Justices who make up the bench, but the Supreme Court as a whole. In these short years, the Fuller Court moved from a narrow 5-4 decision in *Lochner* to a unanimous decision in *Muller*. This transition foreshadowed an even more compelling decision in *Standard Oil*.

THE WHITE COURT

PROFILE OF EDWARD WHITE

Edward Douglass White, the ninth Chief Justice of the United States Supreme Court, took his elevated place on the bench after the death of his predecessor, Chief Justice Melville Fuller, in 1910. White was born November 3, 1845, in Lafourche Parish, Louisiana and died May 21, 1921, in Washington, D.C.⁸⁰ Throughout his life, Edward White maintained many roles including fighting as a soldier, in the Confederate Army, working as an attorney and a Louisiana State Senator, serving as a Judge, working as an Associate Justice of the Supreme Court, and later serving as the Chief Justice of the United States Supreme Court.⁸¹ As a member of the Democratic Party, White had strong conservative values, as well as Catholic values. Shortly after Edward White's appointment to the Supreme Court as Associate Justice, White married Mrs. Leita Montgomery Kent, in 1894.⁸² Edward White held an important role in the Supreme Court and his decisions influenced future generations.

Edward White was a relatively unknown man when he was nominated as Associate Justice to the Supreme Court in 1894 by President Cleveland. In this way, he was similar to his predecessor Melville Fuller. Edward White's nomination for Associate Justice received no pushback, resulting in his confirmation by the Senate on the same day of his nomination.⁸³ However, his elevation to Chief Justice in 1910 received significant scrutiny as it had broken precedent.

⁸⁰ William H. Rehnquist, "Remarks of the Chief Justice: My Life in the Law Series," *Duke Law Journal* 52, no. 787 (2003): 796.

⁸¹ William H. Forman, "Chief Justice Edward Douglass White," *American Bar Association Journal* 56, no. 3 (March 1970): 260.

⁸² Peter Fitzpatrick, "Edward Douglass White," *University of Chicago Law School* 7, no. 2 (1958): 36.

⁸³ Forman, "Chief Justice Edward Douglass White," 261.

Newspapers on the East Coast, specifically *The New York Times*, wrote about Edward White's character while on the Court. *The New York Times* article, "The New Chief Justice of the United States: Big, Genial, and a True Type of Southern Gentleman," published on December 18, 1910, praised Edward White for his welcoming southern demeanor, stating that, "Mr. Justice White has all that indefinable attraction that seems to be the special birthright of people from Louisiana, the kindliness and warm-heartedness which is back of all these things is the monopoly of no section."⁸⁴

White's southern charm caught the attention of others on the Court. Combined with this, Edward White's modesty also did not go unrecognized. When he learned of his appointment as Chief Justice of the Court, he responded with the utmost respect for his colleagues and accepted his new position with grace. An article in *The Wall Street Journal* published on December 13, 1910, includes White's response to his nomination for the Chief Justiceship from the Associate Justice position, "Fear as to possible consequences to result from my deficiencies is at once dispelled by the knowledge that I shall after all continue to be only a member of the court, simply sharing its burdens with my brethren, whose sustaining influence and guiding support will be ever mine in the future as it has always been in the past."⁸⁵ White's modesty extended to all aspects of his personal life and outside endeavors.

Chief Justice Edward White's journey to the Supreme Court was rather unique compared to his counterparts. White had been appointed in 1894, by President Cleveland, to serve as an Associate Justice on the Fuller Court. After sixteen years on the Court, White was nominated to

⁸⁴ Charles W. Thompson, "The New Chief Justice of the United States: Big, Genial, and a True Type of Southern Gentleman." *The New York Times*, December 18, 1910., pg. SM2.

⁸⁵ "Edward D. White, Of Louisiana, Confirmed for Chief Justice," *The Wall Street Journal*, December 13, 1910), 1.

the Chief Justice position in 1910, by President Taft, after the death of former Chief Justice Melville Fuller.⁸⁶ He served in this position for ten subsequent years, giving the Supreme Court twenty-years of service until his death on May 9, 1921, at the age of seventy-five. Daniel McHargue wrote an article, “President Taft’s Appointments to the Supreme Court,” in which he discussed President Taft and how he came to his decisions on who would be on the Supreme Court. While Taft signed White’s commission, Taft lamented, “[t]here is nothing I would have loved more than being Chief Justice of the United States... I cannot help seeing the irony in the fact that I, who desired that office so much, should now be signing the commission of another man.”⁸⁷

President Taft was very keyed into the process of appointing members to the Supreme Court and was aware of the overall effect his nominations would have. McHargue discusses this in his article and explores the uniqueness in Taft’s strategy, stating that, “In selecting White, Taft ignored the precedent of not promoting an Associate Justice and the precedent of choosing as Chief Justice only men of the same political party of the President. He did so because he knew and approved of White’s views and felt he would lead the Court in the manner Taft desired.” Edward White’s economic and political views aligned with that of President Taft’s, and he was accepted by the Progressive wing of the Republican Party. In addition to these reasons, White remained friendly with President Taft.

Edward White was a physical presence on the Supreme Court. He came in at just under six feet tall and weighed roughly two hundred and fifty pounds. *The New York Times* reflected on White’s physical presence when the paper discussed his nomination to the Court in an article

⁸⁶ Rehnquist, “Remarks of the Chief Justice,” 797.

⁸⁷ Daniel S. McHargue, “President Taft’s Appointments to the Supreme Court.” *The Journal of Politics* 12, no. 3 (August 1950): 479, 496.

published on December 18, 1910, emphasizing that, “[b]ig as they both [Edward White and President Taft] are, there is nothing ponderous about them...He is quick and agile, and his walk is almost a trot. He talks nimbly and with a rapidity not at all suggestive of the solemnity associated with Justices of the Supreme Court.”⁸⁸ Apart from his physical appearance, White was a force to be reckoned with on an intellectual level during his time on the bench. In the same December 18, 1910 article by *The New York Times*, a frequent visitor to the Court expressed his contentment in witnessing Chief Justice Edward White lead the Court. He noted that, “It is always a pleasure to hear him deliver his decisions. They are always oral. He will analyze cases, compare, deduce, cite and discuss precedents, all apparently extemporaneously.”⁸⁹ Chief Justice Edward White was a knowledgeable man with expansive legal experience equipped with a professional and modest attitude that served the Supreme Court well during his tenure.

⁸⁸ Thompson, “The New Chief Justice of the United States,” SM2.

⁸⁹ Ibid., SM2.

LEGACY OF THE WHITE COURT

The Supreme Court witnessed a drastic change in membership in the early years of the twentieth century. Most of the Justices that had sat on the Supreme Court during the time of the Fuller Court had passed away, including Rufus Peckman in October 1909; David Brewer in 1910; and Melville Fuller in 1910. President Taft would later appoint five new associate Justices to the Supreme Court along with nominating Edward White to the Chief Justice position in a short span of only twelve months. Daniel McHargue, in his article, “President Taft’s Appointments to the Supreme Court,” explores this trend. “Though he served only one term, Taft appointed more men to the Supreme Court than any other President save George Washington and Franklin D. Roosevelt.”⁹⁰ To fill the vacancies on the Court, President Taft nominated Horace Lurton from Tennessee on December 13, 1909; Charles Hughes from New York on April 25, 1910; Willis Van Devanter from Wyoming on December 12, 1910; Joseph Lamar from Georgia on December 12, 1910; and later Mahlon Pitney from New Jersey on February 19, 1912.⁹¹ These men comprised the White Court and would work together to tackle cases and questions that filled the Court’s docket in the late stages of the Progressive era.

McHargue spoke of the cumulative impact of Taft’s appointments. “All six of Taft’s appointees in large measure shared his ‘real politics,’ though only half of them shared his ‘nominal politics’ in the sense of partisan affiliation.”⁹² While his background differed greatly from his predecessor and his political affiliation differed from President Taft, Chief Justice White

⁹⁰ McHargue, “President Taft’s Appointments to the Supreme Court,” 480.

⁹¹ *Ibid.*, 481.

⁹² *Ibid.*, 509.

contributed greatly to the Supreme Court and many of his decisions and opinions remain relevant today.

The Progressive Era extended well into the term of Chief Justice Edward White. This time in history signaled a shift in American life. Walter F. Pratt, legal historian and professor at the University of South Carolina Law School, published a book, *The Supreme Court Under Edward Douglass White, 1910-1921*. Pratt quotes historian George Mowry who noted that the Progressive era separated the country into an “old versus new America.”⁹³ Author Walter Weyl expressed a similar sentiment in 1912, in his book, *The New Democracy*, noting that, “We are in a period of clamour, of bewilderment, of an almost tremulous unrest. We are hastily revising all of our social conceptions. We are hastily testing all of our political ideals. We are profoundly disenchanted with the fruits of a century of independence.”⁹⁴ As a result of societal changes, the White Court experienced a wide variety of cases. Due to the sheer number of cases in the Supreme Court’s docket there was a tremendous backlog and delays. Pratt notes how the volume of cases set the White Court apart from other times in Supreme Court history and emphasizes that, “[w]hat is remarkable about the White Court is how it stood almost completely apart from the turmoil and international arenas during the period. Part of the explanation lies in the fact that the Court, as an institution, did not have command of its agenda.”⁹⁵

The decade also produced unprecedented legislative reform and additional constitutional amendments. By the time of White’s death in 1921, the country had seen marked change in the addition of four Constitutional amendments. In 1913, both the Sixteenth (federal income tax) and

⁹³ Walter F. Pratt, *The Supreme Court Under Edward Douglass White, 1910- 1921*. Columbia, SC: University of South Carolina Press, 1999., 1.

⁹⁴ Walter Weyl, *The New Democracy*. New York, NY: Macmillan, 1912, 1.

⁹⁵ Pratt, *The Supreme Court Under Edward Douglass White*, 6.

Seventeenth (direct election of Senators) Amendments were confirmed. In 1919, the Eighteenth Amendment was ratified (prohibition of alcohol). And, in 1920, the Nineteenth Amendment (women's right to vote) was ratified.

Key historical events occurred throughout White's time as Chief Justice of the Supreme Court such as World War I; the Russian Revolution; a dangerous flu epidemic; and labor unrest. The decade saw tariff reform passed in October 1913 (Underwood-Simmons Tariff); the creation of the Federal reserve system passed in December 1913 (Owens-Glass Act); the Clayton Antitrust Act passed in October 1914; a bill prohibiting child-labor passed in September 1916; and a workmen's compensation agenda for federal workers passed in September 1916 (Kern-McGillicuddy Act). Just as the United States was changing and adapting as seen in cases before the Supreme Court, the global world was rapidly adapting and evolving.

The law, and, in particular, Supreme Court jurisprudence, mirrored the transformative changes taking place in society during this period. The Justices of the Supreme Court were products of their times and the decisions of the White Court reflect the progression of society's views especially against the backdrop of the Fuller Court. American Political Scientist Walter F. Murphy published an article in 1961, "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments," in which he acknowledged a sentiment held by President Taft, "Judges are men. Courts are composed of judges and one would be foolish who would deny that courts and judges are affected by the times in which they live."⁹⁶ Indeed, Chief Justice White recognized this reality. During an address to the American Bar Association in 1914, he observed that the law must be able to adapt with the changing times:

⁹⁶ Walter F. Murphy, "In His Own Image: Mr. Chief Justice Taft and Supreme Court Appointments." *The Supreme Court Review* (1961): 161.

There is a great danger...to arise from the constant habit which prevails where anything is opposed or objected to, of resorting without rhyme or reason to the Constitution as a means of preventing its accomplishment, thus creating the impression that the Constitution is but a barrier to progress instead of being the broad highway through which alone true progress may be enjoyed.⁹⁷

The White Court ran in sharp contrast to the Fuller Court. In the realm of economic cases, the Fuller Court was often divided, as reflected by its 5-4 decisions. By contrast, the White Court was generally not as divided in its decision making. Chief Justice White and the new makeup of the Court contributed to this change in decisions that were rendered. As Laurence Tribe has noted, one Justice on the Court, specifically the Chief Justice, can have a powerful impact on the Court's decisions.⁹⁸

The Sherman Anti-Trust Act passed in 1890 by Congress, but from a practical perspective, only took effect during the tenure of the White Court as it took several years of enforcement before the *Standard Oil* case worked its way through the judicial system and ultimately Supreme Court. The case represented a stark contrast to the economic freedom to contract at issue in *Lochner*.

⁹⁷ Forman, "Chief Justice Edward Douglass White," 262.

⁹⁸ Tribe, "In the Supreme Court: What Difference Can a Justice or Two Make?," 60.

STANDARD OIL OF NEW JERSEY V. UNITED STATES ANALYSIS AND IMPACT

The Supreme Court case, *Standard Oil Co. of New Jersey v. United States* (1911), is arguably a culmination of what the reformers of the Progressive Era sought to accomplish.⁹⁹ The White Court unanimously decided the case in 1911. The question before the Court in *Standard Oil* was whether the defendants had violated the provisions of the Sherman Anti-Trust Act. Mindful of the increasing consolidation of economic power in the hands of powerful titans of industry, Congress passed the Sherman Antitrust Act in 1890. This historic legislation was designed to reign in the power of the industrial trusts. Specifically, the Sherman Act banned “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce.”¹⁰⁰ Interestingly, while Congress enacted the Sherman Act at the height of the Gilded Age, it is arguable that the Progressive tide had started to turn, as the federal government had become concerned about the concentration of economic, and arguably increasingly, monopolistic power in the hands of powerful and unrestrained industrial tycoons.

Before addressing the Supreme Court’s decision in this landmark case, it is crucial to examine the ramifications and factual circumstances behind this historic case. John D. Rockefeller is considered by many to be the quintessential “robber baron” of the Gilded Age. He entered the oil industry in the 1860’s, and formed Standard Oil with some business partners in 1870. A savvy and ruthless businessman, Rockefeller expanded Standard Oil by buying up competitors, and in turn, using the company’s bargaining strength to gain additional competitive advantages. Rockefeller used the company’s market dominance to gain favorable concessions

⁹⁹ *Standard Oil of New Jersey v. United States*, 221 U.S. 1 (1911).

¹⁰⁰ Sherman Antitrust Act, 26 Stat. 209 (1890).

from suppliers and supply chain members, including the railroads which distributed oil from refineries.¹⁰¹ Standard Oil's smaller competitors did not have similar advantages.

Rockefeller continued to expand and dominate the industry so that in 1882, he and his business colleagues formed the Standard Oil trust. This vehicle—lawful at the time— allowed Rockefeller to control all aspects of the oil industry including, refining, production, distribution, marketing and sales. At its peak, Standard Oil controlled almost ninety percent (90%) of the oil production in the United States.

Standard Oil lost an initial Sherman Act enforcement action in Ohio in 1892. In the wake of that decision, Rockefeller reincorporated in New Jersey and continued to dominate the industry. However, Standard Oil remained under increasing scrutiny from both the public and government regulators. This pressure came to a head in 1909—in the middle of the Progressive Era— when the United States Department of Justice filed a federal antitrust enforcement action against Standard Oil.¹⁰² The Department of Justice argued that Rockefeller's Standard Oil used unfair and anti-competitive business practices, preferential pricing arrangements and monopolistic control of distribution pipelines in violation of the Sherman Act's prohibition on unlawful restraints of trade.

The plaintiff, United States, filed an action alleging that the defendants, Standard Oil corporation and thirty-seven other related corporations, “were engaged in conspiring to restrain trade and commerce in petroleum and to monopolize the petroleum industry.”¹⁰³ The case came before the Supreme Court in 1911.

¹⁰¹ “May 15, 1911: Supreme Court Orders Standard Oil to Be Broken Up,” *The New York Times*, May 15, 2012).

¹⁰² *Ibid.*

¹⁰³ *Standard Oil of New Jersey v. United States*, 221 U.S. 1 (1911), 1.

In *Standard Oil*, the United States Supreme Court ruled that the Standard Oil Company had violated the Sherman Antitrust Act by operating as a monopoly. The Court based its conclusion on the application of the Sherman Antitrust Act under the Commerce Clause; however, it limited the reach of the Sherman Act to “unreasonable” restraints of trade. Chief Justice Edward White wrote the majority opinion. The Justices voted unanimously 9-0. Justice Harlan wrote an opinion concurring in the result but dissenting from the reasoning.

The Court reasoned that the term “restraint of trade” arguably referred to a variety of contractual agreements that do not necessarily harm the public or impeded competition. In his analysis, Chief Justice Edward White analyzed English common law to derive guidance on what Congress meant by “restraint of trade.” The Court concluded that the term “restraint of trade” in the Sherman Antitrust Act referred to a contract that resulted in “monopoly or its consequences.” In its ruling, the Court identified several potential ramifications of a “monopoly” including higher prices, reduced output, and reduced quality.

Although the Court did not specifically cite *Lochner*, Chief Justice White drew on the “freedom to contract” doctrine. He reasoned that a broader interpretation of the term “restraint of trade,” could ultimately infringe upon the right to contract freely because normal and commercially reasonable contracts could be attacked if the Court were to adopt a broader meaning of restraint of trade. As a result, the Court adopted the “rule of reason” test first articulated by Judge William Howard Taft in *United States v. Addyston Pipe & Steel Co.*, 85 F. 271 (6th Cir. 1898). Then Judge, and later President Taft, wrote the

Addyston Pipe decision when he served as Chief Judge of the United States Court of Appeals for the Sixth Circuit.¹⁰⁴

In looking at the record before the Court on appeal, Chief Justice White wrote that the combination of Standard Oil's significant economic power and control over important commodities such as petroleum and its related products supported an intent and purpose to dominate the industry. When coupled with Standard Oil's ability to control the movement of oil and its related products through interstate commerce, the Court affirmed the lower Court's determination that Standard Oil had created an unreasonable restraint of trade under the circumstances. More specifically in ruling against Standard Oil, Chief Justice White reasoned that the Federal Government had

...established prima facie intent and purpose on the part of the defendants to maintain dominance over the oil industry, not as a result of normal methods of industrial development, but by new means of combination that were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed.¹⁰⁵

In the Court's view, the appropriate remedy was to prohibit the continuation of the wrongful conduct and to break up Standard Oil to eliminate the unlawful concentration of economic power. In fashioning the remedy, Standard Oil was broken up into thirty-three separate and distinct companies. The scope and breadth of Standard Oil's economic power can be viewed today by looking at the results of the Court ordered divestiture. For example. Standard Oil of New Jersey is now Exxon Mobil; Standard Oil of New York was originally renamed Mobil and is now part of Exxon Mobil; Standard Oil of California was renamed Chevron; Standard Oil of Indiana was renamed American Oil Co./ AMOCO and is now

¹⁰⁴ *U.S. v. Addyston Pipe Steel Co.*, 85 F. 271 (6th Cir. 1898).

¹⁰⁵ *Standard Oil of New Jersey v. United States*, 221 U.S. 1 (1911), 1.

part of BP; Continental Oil Company is now part of ConocoPhillips; and CP acquired Standard Oil of Ohio; the Ohio oil company was renamed Marathon Oil Company; South Penn Oil Co. was renamed Penns Oil which is now part of Shell. Over a hundred years after arguably one of the seminal decisions of the Progressive Era, Standard Oil can count ExxonMobil, Chevron and ConocoPhillips among its corporate descendants.¹⁰⁶

In the wake of the Supreme Court's decision in *Standard Oil*, reaction at the time was split. *The New York Times* published an article on May 16, 1911, titled, "Standard Oil Must Dissolve in 6 Months," and reported that the Court had "read" the word "unreasonable" into the Sherman Act and that it was not explicitly stated noting that, "For the first time since it has been construing the Sherman Anti-Trust Act the Court takes that position, and thus definitely reads the word 'unreasonable' into the law. On this ground, Justice Harlan dissented."¹⁰⁷ Many Progressive Era, anti-trust advocates concluded that the ruling favored trusts, and the New York Times conveyed the sentiment of the day that the decision favored "big business" despite its historic regulatory significance.¹⁰⁸ As he had done in *Lochner*, Justice Harlan wrote and delivered a concurring opinion in which he dissented from the majority opinion's reasoning.

Interestingly, Justice Harlan's substantial differences with Chief Justice White's opinion in *Standard Oil* might well have stemmed from what historians describe as a particularly long and personal disagreement between Justice Harlan and Chief Justice

¹⁰⁶ "May 15, 1911: Supreme Court Orders Standard Oil to Be Broken Up," *The New York Times*, May 15, 2012).

¹⁰⁷ "Standard Oil Must Dissolve in 6 Months; Only Unreasonable Restraint of Trade Forbidden," *New York Times*, May 16, 1911, 1.

¹⁰⁸ "May 15, 1911: Supreme Court Orders Standard Oil to Be Broken Up."

White. Some commentators have suggested their differences could be traced to as far back as 1877, when Justice Harlan served on the Louisiana Commission.¹⁰⁹ Significantly, Justice Harlan and Chief Justice White's paths crossed for many years during their dual service as Associate Justices on the Court. Others have suggested that their personal ill will was more poignant due to Justice White's elevation by President Taft to his new role as Chief Justice.¹¹⁰ Whether the differences of opinion were based on legal reasoning, personal ill will and long standing grudges or a combination of factors is difficult to say with certainty. What is clear, however, from his opinion in the *Standard Oil* case is that Justice Harlan disagreed with the reasoning adopted by the Court's majority and in particular with the articulation and application of the so called "rule of reason".

What is also evident is that Justices of the Supreme Court, while charged with a solemn obligation to interpret impartially the laws of the United States and the specific cases that reach the Court, are not immune from their personal histories and cultural trends during the time period in which they serve. This reality can be readily seen by contemporary political battles surrounding recent judicial appointments to the Supreme Court and the passion that culturally based disputes can stir in special interest groups. Then, as now, the makeup of the individual Justices and the leadership styles of the respective Chief Justices of the Supreme Court can have a significant impact on how a Court operates and adjudicates what in many instances can be transformative decisions for the country.

¹⁰⁹ Beth, "Justice Harlan and The Uses of Dissent," 1086, 1095.

¹¹⁰ Ibid., 1096.

The decision rendered in *Standard Oil* demonstrates the evolution within Supreme Court from the Gilded Age to the Progressive Era. Only a decade prior, the dissolution of the largest and most powerful monopoly of the Gilded Age would have been unheard of. It is through not only society's transformation but also the Court's transformation, that this change becomes more apparent. The dissolution of Standard Oil Co. in 1911, was a historic moment in which the reforms advanced by the Progressives –including the Sherman Antitrust Act—resulted in concrete responses to the perceived excesses of the Gilded Age. These reforms were not instantaneous, and the remedies were not implemented in a linear, chronological fashion; rather, advances took time and required judicial intervention. Public opinion and legal precedent needed time to catch up with Progressive reform minded legislative agendas. In looking at the Supreme Court decisions from *Lochner v. New York* (1905), to *Muller v. Oregon* (1908), to *Standard Oil Co. of NJ v. United States* (1911), it is nearly impossible to ignore the changes American society experienced and the personnel changes that the Court experienced in the halls of the Supreme Court.

CONCLUSION

The Supreme Court in American society can at times be cyclical -- that is, the specific facts and circumstances of controversies change over time along with the background and personalities of the specific Justices. The inherent tension regarding the appropriate role of federal and state governments in American society remains a constant theme and has done so since the founding of the republic. Individual Justices and Chief Justices, along with cultural trends, can and often do play a significant role in the evolution and process by which the Supreme Court renders decisions and completes its critically important work.

One need only look at recent headlines regarding mounting concerns about perceived consolidation of economic power in current day tech and internet “monopolies” such as Google, Amazon and Apple to be reminded of similar issues from the days of John Rockefeller and Standard Oil. Similarly, increasing commentaries about what many believe to be concentration of wealth and disparity in wealth from the richest to those less economically fortunate, serve to remind us that the issues raised by the proponents of change in the Progressive Era in response to the excesses of the Gilded Age, in many ways are as relevant today as in the late 1800’s. Then, as now, federal and state governments are struggling to strike an appropriate balance with respect to economic, freedom and governmental regulation to prevent concentrations of wealth and power. Then, as now, the background and philosophies of the Supreme Court Justices remain critically important and because of lifetime tenure and the potential to serve on the Court for decades, Justices can have a profound and transformative impact on American society. Hence, with each Presidential election, the power to appoint Supreme Court Justices and, in turn, influence

the direction of the Supreme Court and country, is often raised as a paramount concern with many voters.

The transformation of the Supreme Court's jurisprudence from *Lochner* to *Muller* to *Standard Oil* is an embodiment of these various issues, as well as a reflection of the times and the specific concerns which grew out of the excesses of the Gilded Age. Individual Justices such as, Melville Fuller, Edward White, and John Marshall Harlan cast a long and important shadow on American society. A hundred to a hundred twenty years after the fact, in many ways "what is old" is indeed "new again." It is a tribute to the wisdom and brilliance of the Founding Fathers that our constitutional republic with three co-equal branches of government has continued, however imperfectly, to strive to address recurring issues regarding the appropriate role of government in society.

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