



# Judicial Enigma: The First Justice Harlan

*Tinsley E. Yarbrough*

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In the decades that followed Reconstruction, the Supreme Court struck down civil rights legislation, validated Jim Crow laws, and stopped the government from regulating big business in almost any form. One justice, however, stood against the conservative trend: John Marshall Harlan. His advocacy of a color-blind Constitution in his powerful dissents established a rich legacy that was validated decades later by the Warren Court. But behind the legal opinions, the great dissenter was a complex, enigmatic, even contradictory man. In *Judicial Enigma*, Tinsley E. Yarbrough offers the most complete portrait we have ever had of this critical figure. He follows Harlan from antebellum Kentucky, when he was an outspoken Whig and Unionist, through his exploits as a colonel in the Civil War, to his political career before his appointment to the Court in 1877. Harlan's early life presents a fascinating contrast to his later stands on civil rights. Yarbrough shows, for example, that Harlan maintained a wary relationship with his black half-brother Robert (who rose to wealth during the California gold rush and to influence as a prominent Ohio Republican). The future justice also spouted openly racist language as he campaigned in postwar Kentucky--reflecting views he never entirely discarded. Even in later life, the man who became the Court's greatest moral force was not above using his position to escape his many creditors; he also did nothing to save his alcoholic, opium-addicted brother James from dying in a Kentucky almshouse. Yet moral force he was, and Yarbrough deftly explores his astonishing record as he dissented against a roster of decisions that are now considered a roll-call of error and injustice: *Plessy vs. Ferguson* (validating Jim Crow laws), *Lochner vs. New York* (overturning a law limiting working hours), the *Sugar Trust Case* (gutting the Sherman Antitrust Act), and many more. And yet, even here Harlan remained an enigma; as Yarbrough shows, he sometimes contradicted the same sentiments that have since sanctified his memory.

In biographies of Justice Hugo Black, Judge Frank Johnson, J. Waties Waring, and John Marshall Harlan's grandson, the second Justice Harlan, Yarbrough has shown himself to be a gifted chronicler of the great figures of American law. In this volume, he offers the most insightful account of the man still remembered as the great dissenter.

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