who just come to Washington, and say they're going to stay until something happens." Wright indicated that shortly afterward she visited King, and "when I told him what Robert Kennedy said his eyes lit up" (356–57).

Character, personality, and the times shape great and effective leadership. The tumultuous 1960s and his stature as one of the nation's preeminent political leaders merged with Robert Kennedy's personality and character to make him an important leader in the African American freedom struggle, which he, unlike his brother, viewed as the central moral issue confronting the nation.

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Peter S. Canellos. *The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero*. New York: Simon & Schuster, 2021. Pp. 624. $32.50 (cloth); $17.00 (paper).

If hagiography is one of the judicial biographer's chief occupational hazards, Peter Canellos seems unconcerned. In case anyone missed the point of the subtitle, the introduction is titled "A Moral Hero" (quoting Frederick Douglass). Indeed, Justice John Marshall Harlan, in Canellos's view, was not just a hero but the only one: "one person's voice rang out" among powerful white officials; "he alone" recognized that denying rights to some endangers all; "the first, and only, father of equal protection under the law." Best known for dissenting in *Plessy v. Ferguson* (1896), Harlan has been the subject of previous judicial biographies, but Canellos finds that he remains obscure. One of his aims is to secure Harlan's place in the "pantheon" of "greatest" Supreme Court justices (1, 3, 486).

The book is divided into three sections, each with a corresponding argument. The first covers the years before Harlan's appointment to the bench, as Canellos looks for clues to explain how this Kentucky slaveowner could end up defending Blacks so vigorously after Reconstruction. The second section reviews Harlan's judicial career (1877–1911). The theme that emerges is that he stood up for the rights of not just Blacks but all those downtrodden in an unforgiving age: laborers, immigrants, and peoples around the world subject to American imperialism. The last section sums up the case for Harlan's influence.

The first section takes up almost half the book. Canellos maintains that Harlan's judicial decisions were, more than those of most justices, shaped by his experience. Yet anyone interested in learning about his early life has to wait 70 pages before encountering much detail about him. Instead, the reader to that point—indeed throughout the book—will be left with a more distinct impression

of Robert Harlan, born into slavery (his mother evidently raped by John Marshall's father). That would make him Justice Harlan's half-brother, though descendants' DNA tests cast doubt on a blood relationship.

Robert Harlan was a fascinating figure in his own right—so much so that it seems that Canellos would have relished the opportunity to write a book about Robert with an aside to his supposed half-brother. Once emancipated, Robert travels from Panama's jungles to the California gold rush, then on to England to race his own horses, and eventually to Cincinnati, where he established himself as one of the nation's leading "Black aristocrats" (199). Until Robert's death is noted, the book flips back and forth between the two Harlans. For Canellos, the point of this family history is to show that Robert's success left an "obvious impression" on Justice Harlan—an ever-present reminder of the fallacy of white supremacy (4). However appealing that conclusion, direct evidence of the justice's views of Robert—let alone that they shaped his constitutional positions—is lacking. They certainly knew each other, and the politically well-connected Robert helped clear John Marshall Harlan's path to the Supreme Court, but Canellos has little to show that the justice paid attention to developments in Robert's life. Justice Harlan's letters to Robert have not been preserved, as Canellos notes. Without primary sources on point, he repeatedly speculates, asserting, for example, that "whenever John's judicial colleagues spoke knowingly about the inferiority of people of color, images of Robert would have lingered in his mind" (355).

In comparison with Robert's adventures, the justice's rise to prominence comes off as conventional. His schooling was strictly Kentucky (Centre College and Transylvania Law School), and likewise his politics (a Henry Clay Whig). Not much suggested that he would make his mark in history other than as a figure in home state politics. Loyal to the Union in the Civil War, Harlan organized and commanded a regiment, but he resigned in 1863, citing family obligations following his father's death.

What is striking about Harlan's background is that, on the great issues of the day, he was for years on the wrong side of history. Shortly before the firing on Fort Sumter, he told the secretary of war to let those who wanted to secede "go in peace," though Canellos assures readers (without citation) that "he didn't really mean it." Harlan opposed the Emancipation Proclamation. He supported George B. McClellan in the 1864 presidential election, used a racial slur while stumping for him, and criticized Lincoln for "warring chiefly for the African race." He opposed the Thirteenth Amendment, a position that was by then at least "outmoded," as Canellos says (118, 159, 162).

What changed? Klan violence against freed slaves was apparently too much for Harlan in Canellos's retelling, and in 1868 he backed Ulysses Grant and the Republicans. But if the KKK's brutality spurred Harlan to have an epiphany,

how could he have agreed to defend Klansmen in the dock? For "good fees," Harlan explained ("ruefully," according to Canellos) (181).

The book's second section chronicles several Supreme Court cases. The justices during this period had a historic opportunity to define the meaning of the Reconstruction amendments. Cases raised consequential questions concerning racial equality (voting rights, jury service, public accommodations) and the economy (monopoly power, taxing authority, government regulation). Given the contrarian positions Harlan had taken with what was at stake, there is no question that he was a critical figure in a critical time.

But does he qualify as "America's judicial hero"? Regarding racial equality—so crucial to the book's argument—Harlan presents a more complicated picture than Canellos suggests, especially if he means to portray the justice with modern-day sensibilities. In *Pace v. Alabama* (1882), Harlan voted with his colleagues to uphold a law that punished interracial adultery more severely than an adulterous couple of the same race. Canellos guesses that he "may have been disinclined" to contest the ruling owing to his religious beliefs, but, given the court's reasoning (both members of the interracial couple were punished equally), it is not clear whether Harlan would have distinguished interracial marriage (260). Harlan joined a unanimous opinion in *Williams v. Mississippi* (1898) rejecting an equal protection challenge to all-white juries on the view that every registered voter was eligible for jury service. The justices conveniently overlooked the impact of Mississippi's poll tax and literacy tests on Black voter registration. And while Canellos considers the *Plessy* dissent the progenitor of *Brown v. Board of Education* (1954), Harlan's views of public school segregation remain unclear. In *Berea College v. Kentucky* (1908), Harlan dissented from a decision upholding a law requiring private schools to segregate, but he declined to offer his opinion on whether states could mandate public school segregation, as, he said, that question was not presented. In *Cumming v. Richmond County Board of Education* (1899), Harlan wrote the court's opinion sustaining a school board's decision to close a high school for Blacks (supposedly to keep Black primary schools open) while the high school for whites remained open. Commentators have noted peculiarities surrounding the case that might explain his decision, but what leaps out today is Harlan's acquiescence, three years after *Plessy*, in the separate but equal doctrine even when separate was not on its face equal. Questions have also been raised about Justice Harlan's attitude toward Chinese people, beginning with discomfiting language he used in *Plessy* ("a race so different from our own that we do not permit those belonging to it" to become citizens). Canellos notes explanations, but it gets harder to excuse when viewed in conjunction with statements Harlan made elsewhere, for example, in lectures on constitutional law that he gave at Columbian University, Washington, DC, two years after *Plessy* was decided (they "all look alike"; Linda Przybyszewski, *The Republic according to*

John Marshall Harlan [Chapel Hill: University of North Carolina Press, 1999], 122).

Of the various issues Harlan addressed on the bench, another that merits attention concerns the labor movement. Characterizing Harlan as the "court's troubadour" for "oppressed workers" (30), Canellos singles out his dissent in *Lochner v. New York* (1908). There the court invalidated maximum hours regulation for bakeries based on the fallacious liberty of contract doctrine that employers and employees operated on a level playing field. Canellos intimates that Harlan rejected that doctrine (454), but when writing the majority opinion in *Adair v. United States* (1908), the justice declared that "employer and employee have equality of right" ("legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land"), and then he proceeded to invalidate federal legislation that prohibited railroads from firing workers who joined unions.

Canellos began the book with claims about Harlan's influence (the "modern Constitution grew" out of his "philosophy, vision, and writings"); the last section reiterates those claims (those fighting segregation "discovered a set of instructions" in his *Plessy* opinion; his views "molded the laws of the United States" (8, 462, 485). These assertions bring up interesting questions about how to assess a justice's legacy and what makes a judicial hero. It is one thing to say that Harlan, by virtue of an intuitive sense of fairness, anticipated where the Supreme Court would land years later; it is another to trace constitutional developments to Harlan's influence in a world in which logical reasoning is the coin of the realm. Most constitutional experts would not rank Harlan highly as a legal craftsman.

In the final analysis, an in-depth biographical study of a justice presents unique opportunities for a close-up view of the Supreme Court in a particular historical period. In his effort to depict Harlan as America's judicial hero, Canellos tends to overlook how human frailty can work its way into the corridors of power, even for those individuals who might appear among the most dedicated to equal justice under law.

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Kevin J. Burns. *William Howard Taft's Constitutional Progressivism.* Lawrence: University Press of Kansas, 2021. Pp. 248. $37.50 (cloth).

Kevin Burns's project is to explain and promote the core elements of William Howard Taft's political and legal thought. To do this, he defends Taft from