

CONTENTS

Introduction ix

1. Dissent and the Constitutional Dialogue 3
2. From Seriatim to the Opinion of the Court 37
3. From Marshall to *Dred Scott* 55
4. Field, *Slaughterhouse*, and *Munn* 82
5. John Marshall Harlan: The First Great Dissenter 105

Mise-en-Scène 1

Harlan and Holmes in *Lochner v. New York* (1905) 137

6. Holmes and Brandeis Dissenting 150

Mise-en-Scène 2

Brandeis in *Olmstead v. United States* (1928) 194

7. The Return of Seriatim 209
8. The Prima Donnas I: Personalities and Issues of Wartime 227

Mise-en-Scène 3

Wiley Rutledge and *In re Yamashita* (1946) 257

9. The Prima Donnas II: Incorporation, Criminal Procedure,
and Free Speech 275

Mise-en-Scène 4

Black in *Betts v. Brady* (1942) 306

10. Lower Federal Courts, the States, and Foreign Tribunals 318

11. Continuing Themes, from Warren to Roberts 339

Mise-en-Scène 5

Marshall, Brennan, and Capital Punishment 388

12. Coda 406

Acknowledgments 427

Notes 429

Index of Cases Cited 489

Index 500