**Summary for Session I of Book Group on**

***The Great Dissenter:***

***The Story of John Marshall Harlan, America’s Judicial Hero***

**Introduction: A Moral Hero** (pp 1🡪9)

* “There are silences in American history. The suppression of the US Constitution to impose legally enforced segregation, from the 1880s to the 1910s, is one of those hushed intervals.” (p. 1)
* “Three Supreme Court rulings during his long tenure are usually accorded places among the very worst in court history … *Plessy, Lochner, The Civil Rights Cases* … Harlan turned the act of dissenting into … an appeal to the next generation of jurists.”(p. 2)
* “While most Americans saw the compromise that North and South eventually submitted to—peace in exchange for segregation and the systemic repression of Black lives—as the only hope for restoring the nation, he saw it as a recurrence of the old cancer. Inequality under the law was an existential threat…” (p 8)

**Prologue: One Man with God Is a Majority** (pp 11🡪32)

* 1865 - 13th Amendment banned slavery and all “involuntary servitude”
* 1868 - 14th Amendment barred states from violating equal protection and due process under the law, giving federal government power to pass laws to enforce
* 1875 - Civil Rights Act - Congress’s most far-reaching attempt to put teeth into 13th & 14th Amendments, sought to protect all citizens of their civil and legal rights, provided for equal treatment in public accommodations and transportation and prohibiting exclusion from jury service … passed by a Republican lame-duck congress before losing its strong majority.
* 1877 – Harlan, a southerner at least marginally acceptable to northern Republicans, nominated to SCOTUS by Rutherford Hayes as an olive branch to the South.
* 1883 – Civil Rights Cases overturn 1875 Civil Rights Act, *“an act of surrender, almost akin to Treachery,”* said Frederick Douglass. Harlan’s first major dissent.

**Book 1 – Chapters 1-9** (Early years to Supreme Court appointment)

1. **A Father’s Prophecy** (pp 35🡪52)
   * Feelings are hardening on both sides of slavery issue when JMH was born, with both slave rebellions and brutal suppression
   * James Harlan, prosecutor & family law firm, then Kentucky’s secretary of state, accepting slavery to preserve the union
   * Joined Henry Clay & Daniel Webster in founding Whig party to oppose Jacksonian policies, focus on rule of law
   * Reverence for John Marshall, so named his son JMH
   * Son Robert - slave-born ½ brother of JMH. Raised in Harlan home and educated privately, successful at raising and racing horses
2. **Journey into the Heart of Slavery** (pp 53-69)
   * Robert learned of mother’s sale to LA plantation, tracked her down, learned she wished to stay with husband
   * Travelled via river boat, more comfortable for free black men, as home of riverboat gamblers
   * Robert succeeded in business in Lexington, becoming a target of racist vigilante groups. Nat’l politics favored TX annexation & Fugitive Slave Act
   * Determined to make his fortune in CA gold rush, but fearing travel as a slave, Robert buys his freedom with help from James
   * Returns from CA at 32 with $1.4-2.8 million in today’s dollars
3. **Faith and the Founding Fathers** (pp 70-91)
   * Robert moved family to Cincinnati (largest city in the West at 100K), Ohio, a free state
   * Early lesson for JMH – behind the laws are real people, sometimes in life and death disputes and courts are the only bulwark against vigilante justice, politics
   * JMH honed his speaking skills on speaking tours of KY, becoming a well-known orator
   * JMH and father continue to be “polluted by nativism & slavery” to save union
4. **Dread and Dred Scott** (pp 92-116)
   * JMH marries Malvina, from a family of staunch abolitionists
   * Increasing escapes across KY-OH border brought growth of vigilante slave catchers
   * Worst decision ever (All Blacks forever denied “privileges and immunities” of U.S. citizenship), probably hastens the march to war and costs of slavery
   * Many hoped for SCOTUS to settle the question, but Missouri compromise held unconstitutional; JMH denies abolitionist beliefs.
5. **The Soul of Kentucky** (pp 117-144)
   * Lincoln elected with no southern support
   * Kentucky declared “armed neutrality,” recruiting and arming a militia to defend against both Confederate and Union troops, but mostly supported North
   * JMH joins Union army, recruiting a KY regiment of 900 for 10th KY Volunteers
   * Malvina moves to family in Indiana, Robert moves to England
6. **John vs. John (JMH)** (pp 145-166)
   * JMH becomes war hero under new commander of TN/KY forces, Rosecrans
   * Army career ended with death of father James, though he felt guilty leaving his men
   * Lincoln appointed JMH KY attorney general, so he built treason cases against KY men who manifestly supported the Confederacy, but career was short-lived, as Lincoln put KY under martial law.
   * JMH believed Lincoln overreached with Emancipation Proclamation, alienating Union supporters in the South, more concerned with ending slavery than conserving the Union
   * In 1864 election, JMH votes for Democratic nominee McClellan, as did 70% of KY voters
   * 1865, Congress frees wives and children of Black Union soldiers
   * As war ended, KY remained under martial, but Confederate guerrillas turned to vigilantism and state descended into lawlessness
7. **Knowledge is Power** (pp 167-191)
   * Robert returned to Cincinnati post war, committed to helping to lead a Black resurgence. “Knowledge is power; and those who know the most, and not those who have the most, will govern this country … Let us combine and associate and organization for this end.” Drew attention of Ohio Republican Party.
   * Much of KY now run by KKKs, many of KY gents regarded Klan supremacy as a justified response to 13th Amendment
   * JMH nominated by Republicans for KY governor, campaigning for Black education and equality, admitting his change of heart, lost 59/41%
   * Robert’s star rose, attended Grant’s second inaugural ball & appointed OH special agent for the USPS in Cincinnati
8. **John, Robert, and Benjamin** (pp 192-215)
   * JMH & Robert both became sought-after Republican speakers
   * Robert helped JMH survive scandal of cousin killing a well-connected black Justice of the Peace
   * JMH ran for KY governor again in 1875 at 42, but lost again, as did Republicans in Congress. JMH ultimately supported Rutherford B Hayes
   * Lame-duck Republican Congress passed Civil Rights Act of 1875, but country was tiring of conflict, as lawlessness increased throughout the South
9. **Do-Do Take Care** (pp 216-230)
   * Hayes won by one electoral vote, but Republican’s “willingness to enforce the gains of the war yielded to fatigue over the ‘southern question,’ and a businessman’s desire for stability… Reconstruction was about to come to a bruising halt.” (p 219)
   * Hayes appoints JMH & 4 others as commissioners to resolve disputed LA governor’s election, decided for a former confederate soldier who promised to respect Black rights, but didn’t in face of federal troop withdrawal by Hayes in 1877
   * As rumor of JMH’s potential nomination to SCOTUS, Robert wrote, “Do-do-take-care,” as a warning to avoid any political missteps.
   * Hayes nominated JMH as an olive branch to the South, bringing opposition from Republicans who recalled his early record of slave ownership and resistance to abolition, but KY Republicans attested to the validity of JMH’s transformation. Sworn in Dec 10, 1877.

**QUESTIONS FOR DISCUSSION:**

1. There were many influences which helped change JMH from a supporter of slavery to an abolitionist and later champion of civil rights. Which of these do you consider the most important and why?
2. JMH’s career path – lawyer, soldier, politician – was not unusual for SCOTUS at the time, but perhaps his KY origins and ties were.
   * What kept him tied to KY?
   * How did his roots affect his view of national politics?
   * How did his roots affect political leaders’ views of JMH?
3. Why did JMH want to be on SCOTUS? Prestige? Fulfillment? Specific goals?