CONTENTS

Acknowledgments ix

1 INTRODUCTION: THE COURT-PACKING CONTROVERSY 1

2 THE SIZE OF THE SUPREME COURT: A HISTORY 17

3 FDR’S COURT-PACKING PLAN 27
   Republican Democracy 27
   Pluralist Democracy 38

4 THE HISTORY OF THE LAW-POLITICS DICHOTOMY 53

5 THE MYTH OF THE LAW-POLITICS DICHOTOMY
   (OR, UNDERSTANDING THE LAW-POLITICS DYNAMIC) 67
   The Purists 72
   A Little Bit of This, A Little Bit of That 77
   An Emulsion 79
   Understanding Legal Interpretation: The Law-Politics Dynamic 84

6 IMPLICATIONS OF THE LAW-POLITICS DYNAMIC 95
   For Supreme Court Justices 95
   For Politicians, Commentators, and Citizens 101
   For Scholars 112
## CONTENTS

### 7 THE ROBERTS COURT’S CONSERVATISM

- Judicial Denigration of Democratic Government 122
- Judicial Protection of Wealth and the Economic Marketplace 136
- Lack of Judicial Protection for Women 144
- Judicial Protection for Whites, Not People of Color 148
- Judicial Protection of Christianity 153
- Counterexamples: How Conservative Is the Roberts Court? 161

### 8 CONCLUSION: COURT PACKING AND SUPREME COURT LEGITIMACY 171

Notes 187
Index 255