

## BIOGRAPHY

### Remembering Thurgood Marshall: A courageous lawyer and a great judge

Imran Siddiq<sup>1</sup>

---

It would not be an overstatement to say that no person has achieved more for race equality through legal processes than did Thurgood Marshall for the greater part of the last century. He pursued his passion for the rule of law and constitutionalism to dismantle, case by case, an entrenched and all pervasive system of segregation in the United States. And he secured not only for his own generation, but for the unborn millions in the generations to come, the greatest of all rights in a civilized democracy - the right to equal protection under the law.

Thurgood Marshall, the great grandson of a slave who was brought to America in the mid-1800s, was born in West Baltimore, Maryland in 1908.<sup>2</sup> His father served as a waiter at a local club while his mother was an elementary school teacher.<sup>3</sup> After completing high school in 1925, Marshall attended Lincoln University from where he obtained a Bachelor of Arts degree in humanities and subsequently enrolled in the Howard University Law School, graduating first in his class in 1933.<sup>4</sup> In 1934, he joined the Baltimore branch of the National Association for the Advancement of Coloured People (NAACP) and embarked on a career dedicated to protect civil rights and liberties.<sup>5</sup>

In 1940, at the age of 32, Marshall won his first Supreme Court victory in the case of *Chambers v. Florida*,<sup>6</sup> where the Court ruled that the use of coerced confessions violated the due process clause in the Fourteenth Amendment. In the years that followed, Marshall would lead the NAACP in a plethora of cases involving the rights of the African American community. In the 1944 case of *Smith v. Allwright*,<sup>7</sup> Marshall won a Supreme Court decision which overturned a

---

<sup>1</sup> The author is an Advocate of the Supreme Court of Bangladesh. He was called to the Bar of England and Wales from the Hon'ble Society of Gray's Inn. He obtained his LL.B (Hons.) from the London School of Economics and Political Science, UK. The author can be reached at [siddiq\\_imran@hotmail.com](mailto:siddiq_imran@hotmail.com).

<sup>2</sup> Lisa Aldred, *Thurgood Marshall: Supreme Court Justice* (Chelsea House Publishers, 2005), 11.

<sup>3</sup> Ibid, pp. 16-17.

<sup>4</sup> For an account of Marshall's time in Lincoln College and Howard University Law School, see pp. 24-36, Ibid.

<sup>5</sup> Aldred, above n. 2, at 16-17.

<sup>6</sup> 309 US 227.

<sup>7</sup> 321 US 649.

state law allowing the Democratic Party to set its internal rules and organise a 'whites only' primary election for the purpose of selecting general election candidates. Two years later, Marshall obtained a Supreme Court ruling in the case of *Morgan v. Virginia*<sup>8</sup> declaring segregation in interstate bus transportation as unconstitutional. By the end of his career as a lawyer, Marshall had won an unprecedented 29 out of the 32 cases he had argued in the Supreme Court. However, Marshall's most celebrated and widely acclaimed achievement remains the 1954 Supreme Court ruling in the case of *Brown v. Board of Education of Topeka*<sup>9</sup> (hereafter "*Brown*") which challenged the legality of segregation in public schools. In 1953, when the case was heard, as many as seventeen states had, by the enactment of laws, institutionalized racial segregation in public schools, while the rest practised de facto segregation in one form or other.<sup>10</sup> Marshall challenged the racial segregation of children in public schools, a practice which had been validated by the Supreme Court in the case of *Plessey v. Ferguson*<sup>11</sup> (hereafter "*Plessey*") more than 50 years earlier. In *Plessey*, the Supreme Court, by a majority opinion, held that 'laws permitting, and even requiring, their segregation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other'.<sup>12</sup> Thus evolved the 'separate but equal' doctrine, the idea that if equal facilities are made available to members of the African American community, segregation would not violate the Fourteenth Amendment (the 'equality clause' in the US Constitution). Marshall attacked the very core of the 'separate but equal doctrine'. In his brief for the Supreme Court in *Brown*, he wrote, 'there can be no doubt that the framers (of the Fourteenth Amendment) were seeking to secure to protect the Negro as a full and equal citizen'.<sup>13</sup>

Marshall was not only a sharp lawyer but also a shrewd strategist. He knew that the *Brown* case would have grave social, political and economic consequences and fully appreciated the importance of an inter-disciplinary perspective. In preparing for the case, he thus drew on the collected wisdom of a group of 85 prominent historians, political scientists, lawyers, teachers and sociologists which he convened for such purpose.<sup>14</sup> During the course of the hearing, Marshall relied

---

<sup>8</sup> 328 US 373.

<sup>9</sup> 347 US 483.

<sup>10</sup> Earl Warren, *The Memoirs of Earl Warren* (New York: Doubleday & Company Inc. Garden City, 1977) 2.

<sup>11</sup> 163 US 537.

<sup>12</sup> Per Justice Billings Brown, who delivered the majority opinion of the Supreme Court.

<sup>13</sup> Aldred, above n. 2, at 74.

<sup>14</sup> *Ibid.*

heavily on sociological studies, including a research work of Dr. Kenneth Clark, a University professor and his psychologist wife, Mamie P Clark.<sup>15</sup> The Clarks studied the effects of segregated school on black children by showing them four dolls which were identical except for their colour. When asked which of the dolls were the 'prettiest' or the 'nicest', the research findings showed 'an unmistakable preference for the white doll and a rejection of the brown doll.'<sup>16</sup>

On 17<sup>th</sup> May, 1954, after hearing the case on two separate occasions (once in December 1952, and again in December 1953) and after much deliberation, the Supreme Court declared segregation to be unconstitutional, ruling decisively that in the field of public education, the doctrine of 'separate but equal' has no place and that separate educational facilities are inherently unequal.<sup>17</sup> Through the historical ruling of the Supreme Court,<sup>18</sup> Marshall succeeded in demolishing the last vestiges of slavery which had plagued the nation for almost a century after President Lincoln's Emancipation Proclamation in 1863.

But Marshall's success did not come at a small price. He was assaulted by members of the legal profession and often harassed by the law enforcement authorities.

In November 1946, while in Columbia, Tennessee defending 25 African Americans, Marshall had a chilling encounter with the police. He and his fellow NAACP lawyers were stopped by armed constables in three patrol cars while they were on their way to a hotel in Nashville. Following an unsuccessful attempt to find illegal liquor in the car, the Police let the lawyers leave only to stop them a

---

<sup>15</sup> John Davis, Marshall's adversary in the *Brown Case*, upon completion of the oral arguments, remarked that "he could not remember a more effective adversary appearing against him." See, Mark V Tushnet, *Making Constitutional Law: Thurgood Marshall and the Supreme Court, 1961-1991* (Oxford: Oxford University Press, 1977) 10.

<sup>16</sup> Aldred, above n. 2, at 71.

<sup>17</sup> In his autobiography, Chief Justice Earl Warren, who delivered the opinion of the Court, recounts the decision to desegregate public schools despite the commitment of the US President to the policy of segregation. While the *Brown case* was under consideration, at a dinner party at the White House, President Eisenhower took the Chief Justice by the arm and speaking of the Southern states in the segregation cases, said, 'These are not bad people. All they are concerned about is to see their sweet little girls are not required to sit in school alongside some big overgrown Negroes.' See, Warren, above n. 9, at 291.

<sup>18</sup> Judges of the Supreme Court were keenly aware of the fact that they were making a historic ruling. In a note to the Chief Justice on the day of the *Brown* decision, Justice Frankfurter said, 'This a day that will live in glory. It's also a great day in the history of the court, and not in the least for the course of deliberation which brought about the result. I congratulate you.' See, Warren, above n. 9, at 286.

little while later, this time accusing Marshall of drunk driving and taking him to the Magistrate's office in Columbia. Marshall was asked to get out of the squad car and walk across the street to the magistrate's office alone, which he refused, being all too aware of the practice of shooting black arrestees on the back while 'escaping custody'. Later, in the Magistrate's office, Marshall, who was found to be completely sober, was set free. Marshall would return to Columbia a week later to successfully defend his clients, but not before appraising the US attorney general of the incident and demanding a full scale federal investigation.<sup>19</sup>

A few years later, while conducting a case in South Carolina challenging the state's segregated educational facilities as being inadequate for members of the African American community, he was accosted by a local attorney, who threatened him, 'If you show your black ass in Clarendon County ever again, you're a dead man'.<sup>20</sup> As a man who had grown accustomed to maintaining his cool in difficult circumstances, Marshall did not utter a single word but gathered his papers and left the court room.<sup>21</sup> Nothing, it seemed, could deter him from continuing his struggle for racial equality and justice.

As Marshall's stature as a lawyer grew, it was only a matter of time before he was approached for elevation to the bench. In September 1961, President John F Kennedy nominated him as a Judge of the Court of Appeals for the Second Circuit. During the hearing of the Senate Judiciary Committee for approval of the nomination, Marshall was subjected to intensive grilling by conservative members, which resulted in the confirmation hearings being dragged on for almost a year.<sup>22</sup> But Marshall maintained a calm disposition throughout and suffered the ordeal without impatience or loss of temper.<sup>23</sup> In 1962, Marshall finally took his seat on the federal bench. He had a remarkable career as a federal judge, writing 98 majority opinions for the Court in matters ranging from use of illegally obtained evidence in criminal trials to the deportation of aliens, none of which was reversed by the Supreme Court.<sup>24</sup>

In July 1965, Marshall was invited by President Lyndon B Johnson to accept nomination to the post of US Solicitor General, which was the third highest legal

---

<sup>19</sup> Aldred, above n. 2, at 54-55.

<sup>20</sup> *Ibid.*, p. 73.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, p. 87.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, p. 89.

position in the land after Attorney General and assistant Attorney General. Marshall readily agreed.<sup>25</sup> In an interview several years later, Marshall would praise President Johnson for appointing him as Solicitor General at the height of the civil rights movement.<sup>26</sup> As Solicitor General, Marshall represented the United States before the Supreme Court in a number of high profile constitutional cases. Even in this role, where he was required to defend the State interest, he remained firmly committed to the cause of civil liberties. In the case of *Black v. United States*,<sup>27</sup> where the defendant was accused of evading federal taxes, Marshall, the Solicitor General candidly informed the Supreme Court that the government's case was based on wiretapping of telephone conversations between the defendant and his lawyer.<sup>28</sup> Marshall believed that the defendant had been denied a fair trial and suggested that the judgment be vacated and the matter to be sent back to the trial court for reevaluation of the evidence. Such was the greatness of Thurgood Marshall.

Marshall's appointment as Solicitor General was not to be the last of his public appointments. In June 1967, President Lyndon B Johnson nominated him as a Judge of the US Supreme Court. 'I believe he has already earned his place in history, but I think it will be greatly enhanced by his service on the Court', he said.<sup>29</sup> However, not everyone was convinced of Marshall's abilities. Six years after being grilled by the Senate Judiciary Committee for his appointment to the Second Circuit Court, Marshall would face a much more hostile interrogation by Southern Senators on the Senate Committee. In particular, Strom Thurmond, the Senator from South Carolina asked him as many as 60 complex questions on the post-Civil War Congress, including the names of congressional research committee members who had worked on the Fourteenth Amendment in 1868!<sup>30</sup> But Marshall refused to give in to the provocation and kept a cool head throughout the hearings, admitting that he was unable to answer most of the Senator's questions. His calm and composed demeanour - a lifelong trait which had served him well - drew support from sympathetic members of the Senate Committee, with Senator Joseph D Tydings of Maryland noting that his

---

<sup>25</sup> At his confirmation hearing as Solicitor General, Marshall said he accepted the appointment because 'the President of the United States told me that he thought that I was the best person at the time to represent the United States as Solicitor General, and asked me to do it.' See, Tushnet, above n. 14.

<sup>26</sup> *Ibid.*, p. 94.

<sup>27</sup> 385 US 26.

<sup>28</sup> Aldred, above n. 2, at 99; and Tushnet, above n. 14, at 99.

<sup>29</sup> Tushnet, above n. 14, at 102.

<sup>30</sup> *Ibid.*, p. 105.

'performance in the last two days is a great testimony to his judicial restraint'.<sup>31</sup> Marshall's appointment was eventually cleared by Senate, and in October 1967, he took oath of office as an Associate Judge of the Supreme Court.

As a Supreme Court Judge, Marshall continued his life long journey to achieve equality and justice in all spheres of life. 'Mr. Civil Rights',<sup>32</sup> as he was fondly called in the late 1940s, continued his civil rights movement as a Supreme Court Judge. In particular, he built up an impressive track record of ruling in favour of citizens whose constitutional right of free speech had been curtailed. In a famous case involving the dismissal of an Illinois school teacher on account of her criticism of the Board of Education, Marshall, decided in favour of the teacher ruling that she could not be compelled to sacrifice her First Amendment right of free speech in order to retain her job.<sup>33</sup> A few years later, in a picketing case, Marshall once again had the opportunity to expound the rights of a citizen under the US Constitution. Delivering the opinion for the Court in favour of the picketing members of an employees union of a Pennsylvania based shopping mall, Marshall held that 'peaceful picketing carried on in a location open generally to the public is protected by the First Amendment'.<sup>34</sup>

Throughout his tenure as a Judge, Marshall was keen not to be pigeon-holed as either 'liberal' or 'conservative'. Court observers who followed him closely noted that he was 'his own man'.<sup>35</sup> And indeed, he was. Marshall never felt shy to dissent from the majority views of the Supreme Court where they were irreconcilable with his own. In the case of *Regents of the University of California v. Bakke*,<sup>36</sup> where a highly qualified white applicant had his application rejected as the quota for minority students had filled all the medical school's openings, the majority on the Supreme Court ruled that rigid quotas for minorities were not permissible. In a courageous dissent, Marshall ruled that the Supreme Court had firmly obligated itself to eliminate racism in public life, and that it was now making a full scale retreat from its own commitment.<sup>37</sup> Marshall had strong views about the role that the Supreme Court should play in shaping society, and he was never afraid to express them clearly and boldly.

---

<sup>31</sup> Ibid.

<sup>32</sup> Ibid, p. 58.

<sup>33</sup> Ibid, p. 106.

<sup>34</sup> Ibid, p. 107.

<sup>35</sup> Ibid.

<sup>36</sup> 438 US 265.

<sup>37</sup> Aldred, above n. 2, at 112.

In June 1991, after serving more than two decades on the bench, Marshall retired as a Supreme Court Judge. Two years later, he would die of heart failure in Maryland.

Thurgood Marshall remains a hero for lawyers and civil rights activists all over the world. His monumental success in the legal arena is perhaps attributable to his unwavering faith in the rule of law and a deep sense of commitment to constitutionalism. Inside the court room, he never resorted to appealing to the emotions of Judges but confined himself to strictly matters of law. Chief Justice Earl Warren, who heard the *Brown* case, reminisced in his autobiography that 'Thurgood Marshall made no emotional appeal, and argued the legal issues in a rational manner as cold as steel. On the other hand, the states' attorney Davis displayed a great deal of emotion, and on more than one occasion broke down and took a few moments to compose himself.'<sup>38</sup>

Marshall believed that the law could bring social changes. He had learnt at Howard University that lawyers were social engineers and that existing laws could be used to fight racial injustice.<sup>39</sup> He believed that the enforcement of the law was capable of bringing about positive changes to society. And, more importantly, he proved it. In a poignant address to the Howard University forum, Marshall, mulling on the power of law to achieve social justice, noted:

*The Negro who was once enslaved by law became emancipated by it, and is achieving equality through it. (The law) can also change social patterns. Provided it is adequately enforced, law can change things for the better; moreover it can change the hearts of men, for law has an educational function also.*<sup>40</sup>

---

<sup>38</sup> Warren, above n. 9, at 287.

<sup>39</sup> Aldred, above n. 2, at 33.

<sup>40</sup> *Ibid.*, p. 79.

## Guidelines for Authors

The editor welcomes the submission of articles which illuminate legal problems or issues currently confronted by governments, international organizations, private enterprises etc, by setting them within their general legal, economic or political context. Of particular interest will be articles which are inter-disciplinary in nature. Authors and reviewers are advised to follow the guidelines below while preparing or reviewing the manuscripts.

1. All manuscripts must be within 5000-10000 words including footnotes. No manuscripts would be considered for publication if it exceeds the suggested word limit.
2. Submissions should be sent directly to the Editor-in-Chief at [editor.uaplr@gmail.com](mailto:editor.uaplr@gmail.com) as a Microsoft Word file.
3. A 150 words abstract should appear at the beginning of the article/paper.
4. A 40 words biography of the author (s) should also be included.
5. UAPJLP engages in double-blind peer reviews; authors' names must be excluded from the text.
6. All materials should be clearly typed, double spaced on A4 paper.
7. The journal only accepts footnotes. Endnotes are not accepted. Bibliography or references are not necessary. All footnotes must be formatted according to the Chicago Manual Style. The authorized Chicago Manual Style (16th edition) can be accessed via this url: <http://www.chicagomanualofstyle.org/home.html>
8. Manuscripts submitted to UAPJLP should not have been published previously.
9. The articles published in UAPJLP do not represent the views of the editorial board. The Editor-in-Chief is responsible for the final selection of content and reserves the right not to publish work deemed inappropriate for publication.



1. The Case of Moulana Abdul Hakim and Judicial Review. A move towards the right direction ? *Justice Dr. Syed Refaat Ahmed*
2. Can the Court Invalidate an Original Provision of the Constitution ? *Ridwanul Hoque*
3. Infusion of Social Clause into Global Trade Agreements : How Necessary are They ? *Asif Salahuddin*
4. The Problem of Copyright Compliance in the Music Industry of Bangladesh : An Analysis. *Sadia Siraj and Maruf Allam*
5. The State v. Advocate Md. Qamrul Islam and another (2016) *Ehsan A. Siddiq*
6. Remembering Thurgood Marshall : A courageous lawyer and a great judge *Imran Siddiq*