

Thurgood Marshall: The Twentieth Century's Overlooked Revolutionary

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When looking back on the struggle for civil rights in Twentieth Century America, the figures of Dr Martin Luther King and Malcom X dominate the narrative. Celebrated and immortalised through films, merchandise and even national holidays, the legacy of these individuals burns brightly in international memory. However, arguably more important yet often overlooked is the legacy of Thurgood Marshall. It is difficult to understate the significance of Marshall's victory before the Supreme Court in *Brown vs Board of Education*. Not only did the case catalyse the Civil Rights Movement, but it changed the role of the legal structures of the United States.

Gustave Le Bon defines a revolution as “all [apparently] sudden transformations, whether of beliefs, ideas or doctrines”, and by this definition it is clear Marshall was one of the most important revolutionaries of American history.¹ His perspective that the law could be used as a tool of social reform was jurisprudential innovation, and through his career as lawyer and Supreme Court Justice he irreversibly redefined the relationship between politics, society and the law. Even now, over half a century later, Marshall's legacy remains all too relevant, as issues of racial bias and the legal system have recently come into conflict in societies around the world.

Marshall joined the National Association for the Advancement of Coloured Peoples (NAACP) as a volunteer cooperating attorney in 1934 and went on to create the NAACP Legal Defence and Educational Fund (LDF) in 1939. As head of the LDF, Marshall was responsible for coordinating the entire legal programme of the LDF and NAACP.² The *Brown vs Board of Education* case, in which Marshall led the argument before the Supreme Court, is arguably the most consequential event of Marshall's career. The ruling in 1954 is rightfully recognised as a milestone in American race relations and jurisprudential history.³ One of the most significant consequences of *Brown* was the sparking of the Civil Rights Movement of the 1950s and 1960s, and this was largely due to the seismic change to the structuring of race relations in the USA.

In the final judgement, Chief Justice Earl Warren concluded, “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal”, effectively rejecting *Plessy vs Ferguson* and declaring segregation in primary education unconstitutional.⁴ There are debates surrounding the practical impact of *Brown* - both contemporary and retrospective critics highlight the problems with implementation and the limited field of

¹ Le Bon, Gustav. *The Psychology of Revolution*, trans. Bernard Miall (Kitchner: Batoche Books, 2001), 11.

² Chambers, Julius L. *Thurgood Marshall's Legacy*. *Stanford Law Review* 44 (1992): 1253.

³ *Ibid.*, 1254

⁴ Supreme Court of the United States, *Brown v. Board of Education*, 347 U.S. 483 (1954).

primary education to which the ruling applied⁵. However, arguably more important than *Brown's* practical impact were the theoretical and political implications. With the rejection of “separate but equal” and the declaration of educational segregation as unconstitutional, the court eliminated one of the two pillars of the caste system (the other being disenfranchisement).⁶ It also gave the civil rights ideology of racial equality an unprecedented legitimacy and restructured the fundamental framework of race relations that was inherently established in the constitution. In addition, the monumental significance of the ruling ignited a spark of political consciousness for African Americans across the country, leading to the formation of grassroots movements and the broader civil rights movement.

Thurgood Marshall's role in the case was so significant it is almost impossible to separate the two. The decision of *Brown* caused a revolutionary change in the ideas surrounding the structure of race relations within society and the law. Thurgood Marshall was undoubtedly the revolutionary figure who ignited this change.

As a suit-and-tie lawyer, Marshall was an unlikely figure for leading revolutionary change, compared to his more radical contemporaries, such as Malcolm X.⁷ However, his deep commitment to achieving egalitarian principles through litigation and his pragmatic approach to the political nature of legislative institutions were the key constituents of his role as a revolutionary. As *Brown* is often perceived as the catalyst of the Civil Rights Movement, it is easy for Marshall's earlier cases with the NAACP and LDF to be overlooked. However, they demonstrate how the attack on Jim Crow laws was a result of dedication and careful planning.

Marshall contributed to many of the NAACP's successes in the Supreme Court since 1936, including *Missouri ex rel Gaines v. Canada* (1938), *Sweat v. Painter* and *McLaurin v. Oklahoma*

Board of Regents of Higher Education. All challenged the place of “separate but equal” in educational institutions. This rhetoric, which was established in the *Plessy v. Ferguson* case of 1896, was instrumental in the legal justification of the Jim Crow laws in southern states. Marshall and Charles Houston, founder of the NAACP, developed a litigation strategy to challenge “separate but equal” through the field of education, in which the doctrine had arguably the weakest grounds for legitimacy. *Brown* was not an isolated success story: it was the result of a carefully planned, pragmatic approach to racial revolution. This strategy made Marshall not only characteristically unique as a revolutionary but was also fundamental to his success.

Marshall's profound impact on the American legal system was even more revolutionary than the political and social impacts of *Brown*. Marshall's reframing of the role of the law and using litigation as a means for social activism transformed the existing legal system in the USA. Before Marshall's litigatory career, litigation was used rarely to support the disadvantaged or poor. While legal aid programmes had been established, they conformed to a model of individual representation – litigation challenged a particular decision as it affected an individual or small group of people.⁸ However, Marshall had an aspirational vision of the law as a vehicle for systemic change working in favour of disadvantaged minorities. As Supreme Court Justice, he described law as “a major force in society” due to its “capacity to initiate change and its flexibility to accept and mould change”⁹, demonstrating this innovative perspective of the law as a tool for social engineering.

This shift to a systemic perspective of the law opened the way for a legislative attack on the systemic race-caste, legitimised through the framework of the US constitution. The most significant examples are the Civil Rights Act of 1964, which

⁵ Tushnet, Mark. “Some Legacies of “Brown v. Board of Education”” *Virginia Law Review* 90, no. 6 (2004): 1693-720.

⁶ Marshall, Thurgood, “Law and the Quest for Equality”. 1967 *WASH. U. L. Q.* 1 (1967).

⁷ Williams, Juan, *American Revolutionary* (New York: Random House, 1998), 14.

⁸ Chambers, “Thurgood Marshall's Legacy”, p. 1250.

⁹ Marshall, “Law and the Quest for Equality”.

outlawed discrimination on the basis of colour, creed or sex, and the Voting Rights Act of 1965, which provided legal enforcement of the Fifteenth Amendment.¹⁰ The passing of these two acts had incredibly significant implications for the place of civil rights in federal law and the constitution in general. The guarantees to fundamental human rights were self-affirming and self-transforming for the African American population. Racial equality was now constitutionally embedded in the federal legal system, and while this did not translate immediately to social, economic and political equality, this legal dimension was a fundamental change to the existing structural race relations of US society.

The passing of these acts cannot be attributed to a sole individual, and instead are a product of multiple social and political forces. However, it was Thurgood Marshall's perspective of the law that opened the legal system up to these ground-breaking pieces of federal legislature. The Civil Rights Act and Voting Act provided rights for African Americans and challenged the notions of American democracy. The passing of these bills acknowledged the failings of the Fourteenth and Fifteenth Amendments, therefore undermining the constitution in highlighting its weaknesses in protecting the human rights of its citizens. It also highlights the inherent contradiction with the most famous line of the Declaration of Independence, "*We hold these truths to be self-evident, that all men are created equal*".¹¹ Through his revolutionary rhetoric of using the law as a tool to achieve equality, Marshall arguably even contributed to a legitimisation of the constitution and American democracy.

However, Thurgood Marshall's career not only had a profound impact on the race-caste system – his argument for systemic change through the law spoke to individual rights for all.¹² Part of Marshall's innovation was his understanding of the relationship between the competing political and legal functions of the judicial system. While the courts are not insulated from society's broader political forces, the life tenure enjoyed by judges allows for the resolving of controversial issues that might lead to stalemate in the political arena.¹³ With *Brown*, Marshall exposed the interdependency of politics and the law, and changed the way the law was used not only by civil rights groups but other activists in obtaining equality for the disadvantaged. *Roe vs Wade* (1973) or *Obergefell vs Hodges* (2015) are two such examples, obtaining significant equal rights for women and same sex couples respectively.¹⁴ It is clear why Walter Dellingher described *Brown* as, "the most important legal, political, social and moral event in Twentieth Century American domestic history".¹⁵ Marshall's contribution to the creation of public interest advocacy continues to immeasurably impact the lives of disadvantaged citizens across the US well into the Twenty First Century. As this field of law continues to grow, Marshall's legacy will continue to pave a road towards a more equal and just society.

It has been over half a century since *Brown*, yet Thurgood Marshall's legacy has found a new relevance for societies around the world in 2020. The Black Lives Matter movement has been described as the "second civil rights movement" and this summer surged into political action in response to

¹⁰ United States. *Title VII of the Civil Rights Act of 1964*.

United States. *Voting Rights Act of 1965*.

¹¹ Jefferson, Thomas. *Declaration of Independence* (US 1776).

¹² Williams, Juan, *American Revolutionary* (New York: Random House, 1998), 435.

¹³ Barker, Lucius J. "Thurgood Marshall, The Law, and The System: Tenets of an Enduring Legacy." *Stanford Law Review* 44 (1992): 1237-247.

¹⁴ Supreme Court of the United States, *Roe v. Wade*, 410 U.S. 113 (1973);

Supreme Court of the United States, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

¹⁵ Williams, *American Revolutionary*, p. 435.

the killing of George Floyd by American police officers.¹⁶ One of the most central messages within the movement is the highlighting and criticism of institutionalised and systemic racism. Fundamental to their ideology is the belief the strongest political and legal institutions of the US and countries across the globe are perpetuating white superiority and racial inequality. Racism is not just the discrimination of one individual by another – it is perpetuated and consolidated through legal systems and structures. Evidence for discrimination within the legal system is seen through disproportionate police violence against black people, the proportion of black people in prison, the level of black people randomly stopped and searched and more.¹⁷

Marshall innovatively used the law to tackle this systemic racism and his legacy remains – advocacy groups like *20/20 Bipartisan Justice Centre* are pursuing legislative means to achieve racial equality within the American justice system.¹⁸ Through his work as a lawyer and judge and his innovative ideas and beliefs, Marshall laid the foundations for this shift from an individual to systemic perception of racism and the current methods being used to tackle it.

Thurgood Marshall was undoubtedly one of the most important revolutionaries in American history. The impact of *Brown* changed the lives of thousands of African Americans, as the rejection of “separate but equal” monumentally changed racial structures within the law and sparked a civil rights movement that would irrevocably change the social and political landscape of the USA. His belief of the legal system as a tool for social change was in itself a revolution, and the change from an individualistic to systemic perspective of the law contributed to the

birth of public interest advocacy. This led to hugely significant pieces of legislation, drastically altering the legal equality between the races and even, arguably, legitimising American democracy. His legacy ensures a continued use of the law to secure fundamental human rights not only for African Americans but for the disenfranchised around the globe.

Without him, it is difficult to imagine the legal system being simultaneously scrutinised for its systemic inequalities yet utilised to create political change in the way it is today. Moreover, with his impact on the first civil rights movement, it is hard to imagine the black population being able to currently organise in a movement proving to be the largest protest movement in US history and one with a global impact.¹⁹ Vernon Jordan stated Thurgood Marshall, “altered America irrevocably and forever”, but I would go even further.²⁰ Marshall’s legacy continues today and will continue in the future to revolutionise social, political and legal systems around the globe.

¹⁶ Ossé, Chi. “It’s Not Enough for Black Lives Matter to Protest. We Must Run for Office Too,” *The Guardian* (Guardian News and Media, October 21, 2020).

¹⁷ “Fatal Force: Police Shootings Database,” *The Washington Post* (WP Company, January 22, 2020); “Criminal Justice Fact Sheet,” NAACP, July 10, 2020.

Ben Bowling and Coretta Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search,” *Modern Law Review* 70, no. 6 (2007): pp. 936-961.

¹⁸ ‘About’, *The 20/20 Club*.

¹⁹ Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, “Black Lives Matter May Be the Largest Movement in U.S. History,” *The New York Times* (The New York Times, July 3, 2020), Accessed October 25, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

²⁰ Williams, Juan, *American Revolutionary* (New York: Random House, 1998), 433.

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