

Thurgood Marshall: A Justice For All

While Carl Rowan colorfully traces Justice Thurgood Marshall's fascinating life from beginning to end, he has much to learn from the judge about the complexities of race in late twentieth-century America.

Dream Makers, Dream Breakers: the World of Justice Thurgood Marshall
by Carl T. Rowan. Little, Brown & Co, 1993. \$24.95.

by Susan M. Schulten

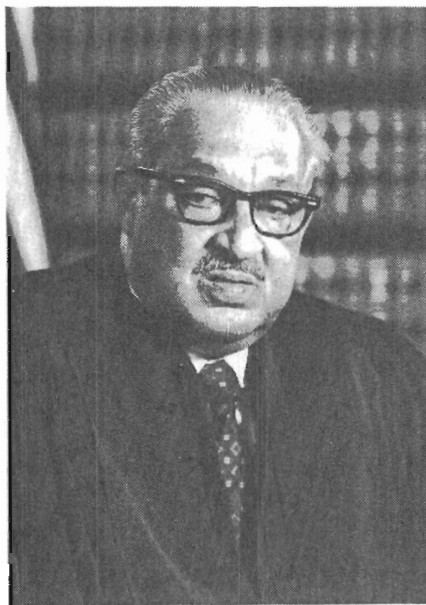
It has been ten months since Thurgood Marshall's death, but the former Supreme Court Justice continues to demonstrate a remarkable talent for controversy. In keeping with his wishes, Marshall's papers—including all his personal notes and draft opinions—were released to the public in June, an unprecedented step for any justice to make. Their release raised much curiosity outside the Court and anxiety within, making Marshall's move almost as controversial as Bob Woodward's 1979 exposé of the supreme judicial body, *The Brethren*.

Marshall's decision to make his papers public reflected his unwillingness to shy away from controversy, a quality that was evident throughout his long career. In fact, there are few problems facing American life and politics today that he did not confront at one time or another. Such seminal issues as racial discrimination, affirmative action, the debate over racial separatism and integration, the death penalty, and abortion were crucial to Marshall. They formed the backbone of a legal legacy that was built over a long career both as a lawyer and a justice. Indeed, it is no exaggeration to say that to understand twentieth-century law, particularly civil rights, one must first grapple with Thurgood Marshall.

To students of American history he is the hero who won legal desegregation of American public schools in the landmark 1954 *Brown v. Topeka Board of Educa-*

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tion case. (Although, for all intents and purposes many schools have remained segregated.) After the *Brown* victory, Marshall would continue to side with those whose rights were most easily violated—the poor, racial minorities, and women—while pressing for controversial rights such as those of alleged and convicted criminals. His appointment to the



Justice Marshall: a talent for controversy, a passion for change. [U.S. Supreme Court]

Supreme Court by President Lyndon Johnson in 1967 made him the Court's first African-American justice and enabled Marshall to activate his legal philosophy for the next twenty-four years as a member of the nation's most influential judicial body.

The First Dream Maker

Marshall's life and legal legacy are explored in Carl T. Rowan's 1993 biography *Dream Makers, Dream Breakers*. Rowan was privileged enough to personally know Marshall for forty years, giving him an insight into the man that many other biographers have not had. Rowan enjoys Marshall's confidence and trust, and their conversations have a candid quality.

Through oral interviews, we learn that Marshall was frequently ill as a child, a condition that would haunt him throughout his life. In high school however, he was spry enough to spend most of his time as a "ne'er do well", getting by with as little effort as possible, only to move on to a college life of booze and women.

But having experienced the racism of the South firsthand, Marshall was also motivated to enter Howard Law School, and there was fortuitously discovered by Charles Hamilton Houston, the renowned NAACP (National Association for the Advancement of Colored People) lawyer who taught Marshall the strategy of the adolescent civil rights movement. Though his frenetic pace as a civil rights advocate took its toll on Marshall's health, it also instilled in him a passion for the cause that would stay with him throughout his years as an attorney and then as a justice.

Rowan is best in this book when he is a biographer, allowing Marshall to speak for himself in uninterrupted, unedited passages. Good biography can give one insight not only into an individual's life, but also into oneself, and here Rowan's talents are evident. He shows us Marshall's immense public achievements

and influence, but also gives us an endearingly human, fallible man. Little came easy to Marshall, least of all his victories as a lawyer: the mention of cases lost decades ago continue to upset him, due less to personal pride than to the consequences suffered by his clients.

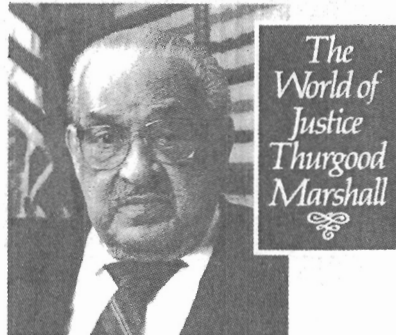
Like many public figures, Marshall's status has given him a mythical, inaccessible quality, but Rowan raises the curtain to reveal a man that is a lot more like us than we might have imagined. He drinks, he swears, he is often sick; yet he also fights tirelessly for civil rights. In fact, as Rowan suggests, it might be his drinking and swearing that *enables* him to fight so tirelessly. To see this more private side of Marshall is inspiring because it proves the cliché that greatness derives from many molds.

Never a Devil's Advocate of this Justice

Yet while Rowan is a skillful biographer, he is a less satisfactory critic of the larger issues found at the heart of Marshall's work. Rowan is unabashedly sympathetic to Marshall and his views, calling him "one of the great human beings of our time." Though this may be true, it is perhaps more important that Rowan show us *why*, and this involves a rigorous analysis of Marshall himself. He rarely takes the opportunity to challenge Marshall on his views (though to his credit Rowan does repeatedly point out Marshall's sexist remarks), so anyone inclined to oppose abortion, support the death penalty, or who remains undecided about affirmative action is alienated rather than invited into the debate. A more provocative and challenging treatment of Marshall's ideas would have given us a rare chance to go head to head with a master of legal philosophy and policy. Instead, Rowan reflexively lionizes Marshall's legal opinions on some of the most controversial issues of this century. Surely it is not this simple.

But as the title suggests, Rowan *does* see it in such terms; there is a clear divide between those on the right and wrong sides of history. For him, "dream makers" include those who fought for civil rights, such as head of the NAACP Walter White, First Lady Eleanor Roosevelt, Harry S. Truman, Chief Justice Earl Warren, Lyndon Johnson, and the countless individuals who brought personal and professional injustices into the courts. The "dream breakers" are those who have

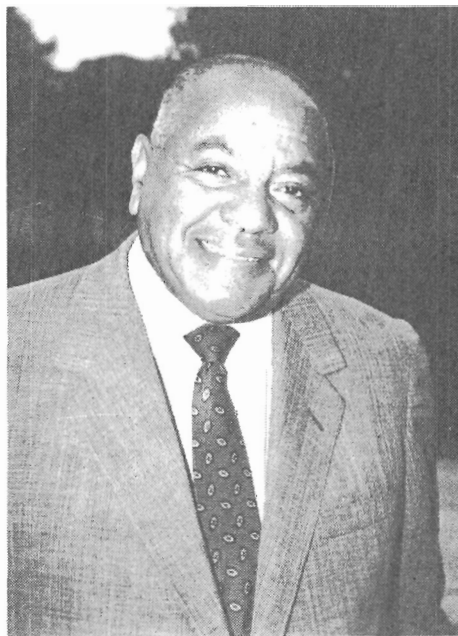
DREAM MAKERS, DREAM BREAKERS



CARL T. ROWAN

hindered what Rowan sees as a clear progression towards racial and gender equality, including southern racists, J. Edgar Hoover, Clarence Thomas, the Republican Party, and most egregiously Ronald Reagan and George Bush.

To his credit, Rowan indicates that many of these "dream makers" were historical surprises, or late converts to the cause, such as Earl Warren, who gave little indication that he would be one of the



Carl T. Rowan, author of *Dream Makers, Dream Breakers*. [Scott Maclay, Gannett Co.]

most active advocates for civil rights when President Eisenhower named him to the Court.

The Return of Uncle Tom

But while Rowan accepts that whites sympathetic to civil rights will adhere to a range of political stances, his standard for African-Americans is much more rigid. At times he suggests that to be black and conservative indicates a weakness of character or a neglect of racial pride, because the Republican Party has for so long ignored the plight of African-Americans. But, as many activists and journalists have pointed out, the Democratic Party has also failed to consistently address the concerns of all black constituencies.

Titillation aside, one thing the Thomas-Hill hearings demonstrated so vividly was that African-Americans in the public sphere hold a wide range of political ideas and agendas, not simply those tied to the liberal wing of the Democratic Party. While Rowan has every right to criticize conservatives of all races, he is less credible when questioning the integrity of African-American conservatives *because of their race*, rather than the persuasive power of their thought. Referring to the conservatism of African-American Republicans during the Reagan and Bush years, Rowan writes: "selling out by blacks was selling in white bookstores."

He *is* right in the sense that many white conservatives have absurdly held up African-Americans such as San Jose State English Professor Shelby Steele and former Civil Rights Commissioner Clarence Pendleton as models of their political program and philosophy. Pendleton and Steele are exalted by both economic and social conservatives because they have criticized the philosophical underpinnings of such programs as welfare and affirmative action, calling them degrading to blacks and counterproductive.

These two certainly do not speak for their race, nor even for their class, and their representativeness has been severely overstated for political purposes. But as Cornell West has pointed out recently in his book *Race Matters*, they have invigorated the debate, and forced the Democratic Party to address the limits of welfare and affirmative action, and this can only be a good thing. By contrast, Rowan's references to African-American conservatives as "stooges" and "sycophants" does nothing to elevate the debate.

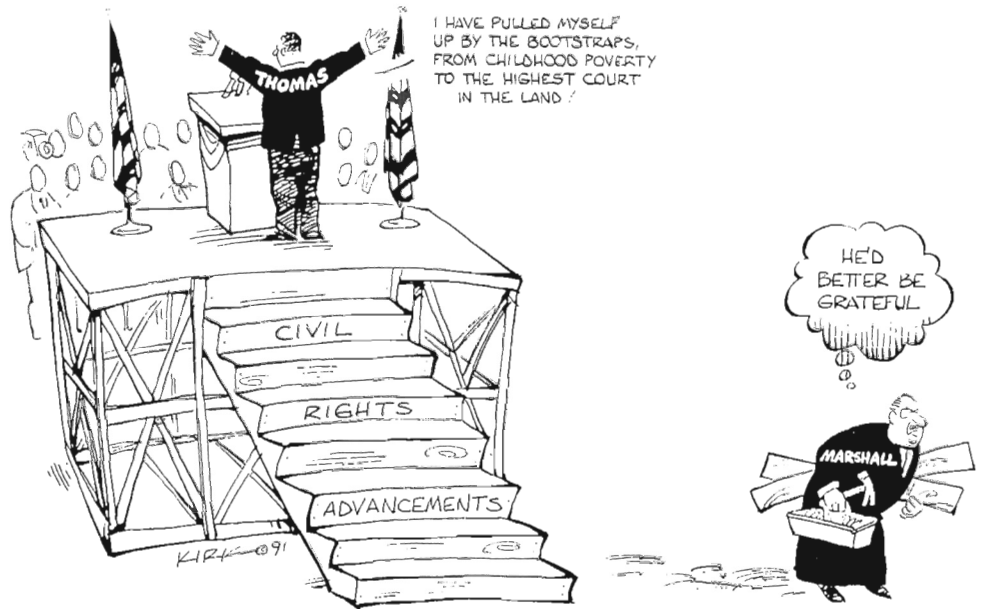
Moreover, Rowan has harsh words for African-Americans such as Pendleton, Steele, and Clarence Thomas who claim to have “made it on their own,” calling them “superblacks.” While Rowan is right to point out the debt that blacks owe to civil rights leaders who helped open the doors, one wonders at what point this “debt” will be paid off: at what point African-Americans can make legitimate claims to their own success, or to their own political agendas. Certainly, we are all a product of external support as much as internal ambition, but at times Rowan’s reminders of past debt sound more like a punishment for those blacks who have come to different conclusions about politics and racial issues.

Not Simply Black and White

This complaint about the book extends to a more general contention about Rowan’s approach—in the final analysis, it is too simplistic. Issues such as racial quotas are complicated, bringing advocates and foes from all over the racial, ethnic, and political spectrum. Nor, for that matter, can these policy problems be easily divided into “conservative” or “liberal” camps. To discuss an issue such as affirmative action—as Rowan does—without at least acknowledging the complicated moral implications is disappointing, especially at a time when we need so desperately to discuss these issues honestly.

And Rowan does show an appreciation for complexity when he explores the messy internal politics of the NAACP, tracing the division between those who fought for unconditional racial integration and equality and those willing to settle on the “separate but equal” doctrine. Surprisingly, the villain of the story is W.E.B. DuBois—taught in history classes as the African-American leader who fought unflinchingly for integration. By his own historical legwork, Rowan has found evidence that casts doubt on the sincerity of DuBois commitment to desegregation.

However, this alleged “villainy” of DuBois may need to be re-thought when one realizes that the debate over integration versus separatism rages on within the black community today. African nationalism, Afrocentric curricula, and even campus politics have all reflected the different ideals of many younger African-Americans who feel—after only a degree of integration into white society—that their



A debt of enormous proportions, but when will it be paid off?
[Kirk Anderson]

identities are overshadowed.

Recently, cartoonist Garry Trudeau devoted a few weeks of *Doonesbury* to just these conflicts, depicting students who have inherited a complicated conflict between the ideal of social integration and the reality of racial identity. In one of these strips, a white college dean is accused of racism (by students of all races) for demanding that different student groups integrate into the mainstream of campus life. The dean recalls that only a generation before, he would have been called a racist for denying these groups the opportunity to integrate. Trudeau’s strip is just one example of the gulf that exists between many younger students (of all races) and their older counterparts who fondly remember the social ideal of integration—not separation—that reigned in the 1950s and early 1960s.

Though not a strictly generational problem, Trudeau’s strips reflect the changing definitions of racial equality and justice. By contrast, Rowan sees the battle lines relatively unchanged throughout the latter half of the twentieth century—what defined racial justice then, defines it today. And this is not simply a criticism of Rowan. We all need to adopt a more flexible understanding of what racial, ethnic, and gender equality mean. With this, a more productive and meaningful debate will emerge, one which looks beyond simple categorization.

This should not be seen as a dismissal of the continuing threat of racial

and gender discrimination—it still remains all too real. But little will change unless we begin to question exactly what race, ethnicity, and gender represent. To Rowan, the advancement of the politically unpalatable Clarence Thomas to the highest court in the land as Marshall’s “successor” means African-American regression, not progress. The author skirts the issues and leaves the basic questions unanswered: what defines progress in light of past injustice?

Marshall: The Last Word

The last few chapters of Rowan’s biography focus on the post-Marshall Court, where it is and where it is headed. Rowan repeatedly asks Marshall what positive decisions can come from a Court largely nominated by Reagan and Bush, especially given the recent nomination of Clarence Thomas. And here Marshall surprises us: he has confidence in the Court, he says, because the justices are nominated for life, and are bound to no one.

Marshall vindicates the power of law to withstand political pressure. Yet, Rowan is skeptical, wondering aloud how hopeful Marshall can be of a court so dominated by conservatives. And in a way, Rowan’s confusion exemplifies the overall flaw of his biography. For all his empathy, Rowan does not see what Marshall grasps intuitively. The future belongs to those who recognize the complexities of race and ideology. ●