

Justice Thurgood Marshall - Breaking Barriers

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Justice Thurgood Marshall, “Mr. Civil Rights,” (pictured on the right) was an extremely influential mid-20th century lawyer who broke many racial barriers on a personal level and for others during his nearly 60 year career. Personally, he became the first African American Supreme Court justice in 1967. Marshall broke barriers for others through legal victories that eliminated “separate but equal” schools, all-white political primaries, and government-enforced racially restrictive housing covenants. These triumphs inspired several laws to be passed, including the Civil Rights Act of 1964, and laid the groundwork for the major successes of the barrier-breaking civil rights movement.



Background

Thurgood Marshall (1908-1993) was born to William, a railroad porter, and Norma Marshall, a kindergarten teacher, in Baltimore, Maryland. The grandson of a slave, he was raised in a middle-class African-American community.¹ Marshall attended Lincoln University, a predominantly African-American college in Pennsylvania, and graduated with honors in 1930. In 1929, Marshall married Vivian “Buster” Burey. After her death of lung cancer, in 1955, Marshall married Cecilia “Cissy” Suyat.

After graduation from college, Marshall was rejected from the University of Maryland Law School, solely for being black.² As a result, Marshall attended Howard University, a historically black school, in Washington DC, where he earned his law degree in 1933, placing

¹ “Thurgood Marshall: Supreme Court Justice.” *Center for History and New Media*, <http://chnm.gmu.edu/courses/122/hill/marshall.htm>; Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. Oxford University Press, 1994. Pg. 8

² Smentkowski, Brian P. “Thurgood Marshall.” *Britannica School*, Encyclopædia Britannica, 9 July 2019, school.eb.com/levels/high/article/Thurgood-Marshall/51119.

first in his class. One of Marshall's most influential teachers was Dr. Charles Hamilton Houston. It was Houston who taught Marshall that the law is a "vehicle for social change."³ Marshall's desire to use the law as a tool to make progress shaped his legal philosophy, "You do what you think is right and let the law catch up," and his entire career.⁴

Marshall worked for the NAACP (National Association for the Advancement of Colored People), becoming one of its most influential leaders. The NAACP, founded in 1909 by W.E.B. Du Bois, became the most lasting pro-civil rights organization.⁵ Its ultimate goal is "to ensure a society in which all individuals have equal rights, without discrimination based on race."⁶ The NAACP worked (and still works) to implement equal treatment for blacks in housing, work, education, and public accommodations by bringing attention to injustices and filing and funding lawsuits. Marshall was instrumental in many of the NAACP's successes. His strategy was to fight for one case at a time.

Marshall believed that the biggest obstacle to equal rights for blacks was *Plessy v. Ferguson*, an 1896 Supreme Court case, which established the principle of "separate but equal" facilities for white and black citizens. Convinced of a 14th Amendment equal protection clause violation (since the separate facilities were not even remotely equal), Marshall dedicated his work as a lawyer to defeating *Plessy v. Ferguson*.⁷

Breaking Racial Barriers for Others

³ Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. Oxford University Press, 1994. Pgs. 6-7

⁴ Glass, Andrew. "Senate Confirms Thurgood Marshall Aug. 30, 1967." *Politico*, 30 Aug. 2018, <https://www.politico.com/story/2018/08/30/this-day-in-politics-aug-30-1967-797371>.

⁵ Carson, Clayborne. "American civil rights movement." *Britannica School*, Encyclopædia Britannica, 21 June 2017, <https://school.eb.com/levels/high/article/American-civil-rights-movement/82763>.

⁶ "What is the Mission of the NAACP?" *NAACP*, <https://naacp.org/about-us/>.

⁷ Carson, Clayborne. "American civil rights movement." *Britannica School*, Encyclopædia Britannica, 21 June 2017, <https://school.eb.com/levels/high/article/American-civil-rights-movement/82763>.

In 1933, Thurgood Marshall began private practice as a lawyer. Partially motivated by revenge, Marshall successfully sued the Maryland University law school for rejecting Donald Murray, solely for being black.⁸ This case, *Murray v. Pearson*, was Marshall's first great accomplishment and it broke barriers for future black lawyers in Maryland.

In 1936, Marshall joined the NAACP, becoming a staff lawyer under Houston, his former mentor. In 1938, Marshall replaced Houston as chief counsel of the NAACP's legal section and, in 1940, he became head of the NAACP Legal Defense and Education Fund.

Throughout his career, Marshall argued 32 cases in front of the Supreme Court and won a stunning 29 of them, proving himself to be one of the best lawyers in the country.⁹ He was an extremely talented lawyer but also a very talented "people person." Marshall had to convince people to file lawsuits, risking their jobs, property, and potentially their lives. Marshall is known for a few legal victories in particular. One is *Smith v. Allwright* (1944), which broke racial barriers in party politics. A black man named Dr. Lonnie Smith was prevented from voting in the 1940 Democratic primary because blacks were prohibited membership in the party. In November 1943 and again in April 1944, Marshall argued (if a case is very important, it is sometimes reargued) in front of the Supreme Court that the Democratic Party could not restrict membership based on race, hence restricting primary voting. He argued that this violated the Fifteenth Amendment, which states, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition

⁸ Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. Oxford University Press, 1994. Pg. 11

⁹ Smentkowski, Brian P. "Thurgood Marshall." *Britannica School*, Encyclopædia Britannica, 9 July 2019, school.eb.com/levels/high/article/Thurgood-Marshall/51119.

of servitude.”¹⁰ On April 3, 1944, the Supreme Court ruled, 8-1, in favor of Smith and forced the Democratic Party to allow African Americans. This case began the breaking of the barrier known as the “white primary,” which allowed whites to select most political candidates.

Another important case was *Shelley v. Kraemer*. The Shelleys, a black family, tried to buy a house in St. Louis, Missouri. However, the house was under a racially restrictive covenant, which prevented people of African American or Mongolian races from purchasing or occupying the property. Louis Kraemer, who lived ten blocks away from the house, sued the Shelleys to stop them from buying the property. After a loss in the State Supreme Court, Marshall appealed the case and argued it in front of the US Supreme Court in January 1948. Marshall argued that racially restrictive housing covenants violated the 14th Amendment’s equal protection clause. On May 3, 1948, the Supreme Court ruled 6-0 (three justices abstained because they owned properties with restrictive covenants themselves) in favor of progress. Since restrictive covenants are private agreements, they themselves are legal, however it is illegal for the government (in this case the Missouri State Supreme Court) to cooperate with or enforce such covenants. A major victory, this case broke a powerful racial barrier in housing.

Thurgood Marshall and the NAACP argued cases to break barriers in voting, housing, and transportation (*Morgan v. Virginia* (1946), *Henderson v. United States* (1950)), but Marshall is best known for fighting inequality in education. After more minor cases such as *Sipuel v. Board of Regents of Oklahoma* (1948), Marshall argued *Oliver Brown et al. v. Board of Education of Topeka et al*, which challenged segregated schools. Previously, Marshall had argued two companion cases, *Mclaurin v. Oklahoma State Regents for Higher Education* and

¹⁰ Parrott-Sheffer, Chelsey. “Fifteenth Amendment.” *Britannica School*, Encyclopædia Britannica, 16 Jul. 2010, <https://school.eb.com/levels/high/article/Fifteenth-Amendment/474683>.

Sweatt v. Painter (1950), in which the Supreme Court admitted that separate but equal schools did not give black students the same opportunities as white students. Using this precedent, Marshall challenged segregated schools again, in Topeka Kansas, where several black parents had just enrolled their children into white schools and were rejected. Though the teacher salaries and facilities were similar, what the high court admitted was true: African American children were not offered the same programs and opportunities at their separate schools.¹¹ The schools were just separate, not equal. After a loss in the District Court, the case was appealed and, in the brief for appellants, Marshall and the other plaintiffs made their case clear: “The Fourteenth Amendment precludes a state from imposing distinctions or classifications based upon race and color alone. The State of Kansas has no power thereunder to use race as a factor in affording educational opportunities to its citizens.”¹² *Brown v. Board* combined with segregated school cases from around the country such as *Belton v. Gebhart* and *Bulah v. Gebhart* from Delaware, *Bolling v. Sharpe* from Washington DC, *Briggs v. Elliot* from South Carolina, and *Davis v. County School Board of Edward County* from Virginia, to become one segregated school case. However, *Brown v. Board*, which was argued on December 9, 1952 and again on December 8, 1953, led the pack. All eyes were on Thurgood Marshall and the Supreme Court. On May 17, 1954, the US Supreme Court ruled unanimously in favor of Brown and overruled *Plessy v. Ferguson*. The justices ruled, “We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.”¹³ Even

¹¹ “Brown Case: Brown v. Board.” *Brown Foundation*, <https://brownvboard.org/content/brown-case-brown-v-board>.

¹² “Brief for Appellants.” *NAACP Legal Defense and Education Fund*, <https://www.naacpldf.org/wp-content/uploads/Oliver-BROWN-Mrs-Richard-Lawton-Mrs-Sadie-Emmanuel-et-al-Appellants-v-BOARD-OF-E-1.pdf>.

¹³ “Transcript of Brown v. Board of Education (1954).” *Our Documents*, 13 Jan. 2020, https://www.ourdocuments.gov/print_friendly.php?flash=false&page=transcript&doc=87&title=Transcript+of+Brown+v.+Board+of+Education+%281954%29.

though school desegregation took a long time and Marshall and the NAACP had to argue more education cases (i.e. *Cooper v. Aaron* (1958)), Marshall's broad goal was accomplished, defeating *Plessy* and replacing it with *Brown* as the foundation for the approach to civil rights arguments. The strongest barrier was broken.

Effects of Marshall's Work as a Lawyer

Now, the law was on the side of progress. In addition, the decision in *Brown* inspired peaceful protests across the country, which became known as the civil rights movement.¹⁴ In the mid-1950s, Rosa Parks, a black Alabama seamstress, inspired the Montgomery Bus Boycott by not giving up her bus seat. The Greensboro Sit-In, a North Carolina lunch counter protest, was in 1960. In 1961, the Freedom Riders, mostly white northerners, brought nationwide attention to racial segregation. While those people were acting peacefully, in the early 1960s, Malcolm X, a more radical leader, was calling for a violent revolt against discrimination. However, the most well known example was in 1965, when Martin Luther King Jr. led the Selma to Montgomery March in which thousands of people protested peacefully, drawing attention to the oppression African Americans suffered.

The culmination of the civil rights movement occurred in the 1960s, when President Lyndon B. Johnson signed a trio of acts that helped African Americans into law. First, he signed the Civil Rights Act of 1964. Title II states, "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."¹⁵ The next was the Voting

¹⁴ "NAACP Legal History." *NAACP*, <https://www.naacp.org/naacp-legal-team/naacp-legal-history/>.

¹⁵ "An Act." *U.S. Equal Employment Opportunity Commission*, https://www.eeoc.gov/eeoc/history/35th/thelaw/civil_rights_act.html.

Rights Act of 1965, which helped African Americans get around obstacles that prevented them from exercising their 15th Amendment rights. The final act was the Fair Housing Act of 1968, which banned refusal to sell, rent, or negotiate with someone based on race, sex, nationality, religion, familial status, abilities, or color.

The Personal Barrier Breaking

In September 1961, President John F. Kennedy nominated Marshall to the US Federal Court of Appeals for the Second Circuit. His Senate confirmation was delayed many months due to strong opposition from white southern senators. However, Marshall was ultimately confirmed. Marshall's career advanced again in July 1965, when President Johnson tapped him to be the first African American US Solicitor General.

On June 13, 1967, President Johnson appointed Thurgood Marshall to be the first African American US Supreme Court Justice and, on August 30, the Senate confirmed him. 69-11. There were only 80 votes because President Johnson warned some hesitant southern senators that the newly implemented Voting Rights Act would raise black turnout and, if the senators opposed Marshall, they would be unseated.¹⁶ Marshall remained on the bench until his retirement in 1991, two years before his death (1993).

While on the high court, Justice Marshall was a reliable liberal. He often chose federal rights over state's and opposed capital punishment.¹⁷ Marshall was one of the seven majority votes in *Roe v. Wade* (1973), which declared that restricting abortion violates the right to

¹⁶ "For High Court's First Black Justice, Road to Confirmation Wasn't Simple." *National Public Radio*, 30 Aug. 2015, <https://www.npr.org/2015/08/30/436107514/for-high-courts-first-black-justice-road-to-confirmation-wasnt-simple>.

¹⁷ Smentkowski, Brian P. "Thurgood Marshall." *Britannica School*, Encyclopædia Britannica, 9 July 2019, school.eb.com/levels/high/article/Thurgood-Marshall/51119.

privacy. However, Marshall's ultimate vision was an America where no one is treated or judged based on a personal trait beyond their control. That is the legacy of Thurgood Marshall.

His legacy can be seen in the little progress since his career. When Marshall retired, the 102nd Congress was in power. There were 42 racial minority members and 30 female members out of 535 total legislators. Today, in the 116th Congress, things have improved significantly, yet not enough. There are now 120 racial minority members and 127 female legislators. In addition, in 2008, Barack Obama became the first African American elected president. Most recently, Marshall's legacy can be seen in the brave counterprotesters, who marched against the 2017 Unite the Right rally, a white nationalist, supremacist, and neo-Nazi that turned violent in Charlottesville, Virginia. However, the mere existence of that rally clarifies one thing, despite the progress, Thurgood Marshall's legacy is under attack.

A Legacy Under Attack

Marshall wanted no United States citizen to be treated or judged based on something outside their control and his work is being undone. In 2013, the Supreme Court decided *Shelby v. Holder*, which threw out Sections 4(b) and 5 of the Voting Rights Act. Even worse, Marshall's own successor, another African American, but a conservative one named Clarence Thomas, voted in favor of *Shelby*. In her dissent, Justice Ruth Bader Ginsburg wrote "Throwing out [parts of the Voting Rights Act] when it works and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."¹⁸ *Roe v. Wade*, the case that allows abortion is also under attack with Justice Thomas clearly

¹⁸ United States Supreme Court *Shelby v. Holder* Syllabus and Opinions. *Supreme Court of the United States*, 25 Jun. 2013, https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf

opposed, again contradicting what Marshall stood for.¹⁹ Another example of Thomas's disagreements with Marshall is, as Brooklyn College Professor Corey Robin notes in the *New Yorker*, Thomas believes that racism is unavoidable and the only way blacks can have equal opportunity to whites is to create their own society in which they can create opportunities.²⁰ Marshall, on the other hand, fought for the exact opposite, that "separate but equal" never works.

More prominent attacks on Marshall's legacy are the racist comments coming from powerful political forces such as the President of the United States, Donald Trump.²¹ Thurgood Marshall fought racism but now it is surging back, all the way to the presidency.

Conclusion

Thurgood Marshall's role in the civil rights movement was getting the law on the side of progress. Even though he did not convince people to halt discrimination against African Americans, he laid the groundwork for hearts to be changed by people like Martin Luther King Jr. and Rosa Parks, and laws to be passed by politicians, such as President Lyndon B. Johnson. Without Marshall, these things could not have happened and no one knows where we would be today.

Justice Marshall was awarded the Liberty Medal in 1992. In his acceptance speech, reaffirming his Supreme Court nickname, the "Great Dissenter," Justice Marshall said, "We

¹⁹ Thomas, Clarence. Concurring Opinion for Scott Harris et al. v. West Alabama Women's Center et al. *U.S. Supreme Court*, 28 Jun. 2019, https://www.supremecourt.gov/opinions/18pdf/18-837_hgdj.pdf; Kelly, Caroline, and Ariane de Vogue. "Clarence Thomas Urges Supreme Court to Revisit Abortion Precedents as Justices Dodge Another Case." *Cable News Network*, 28 Jun. 2019, <https://www.cnn.com/2019/06/28/politics/supreme-court-alabama-abortion-clarence-thomas/index.html>.

²⁰ Robin, Corey. "Clarence Thomas's Radical Vision of Race." *The New Yorker*, Condé Nast, 10 Sep. 2019, <https://www.newyorker.com/culture/essay/clarence-thomass-radical-vision-of-race?verso=true>.

²¹ Lopez, German. "Donald Trump's Long History of Racism, From the 1970s to 2019." *Vox Media LLC*, 15 Jul. 2019, <https://www.vox.com/2016/7/25/12270880/donald-trump-racist-racism-history>; Graham, David A., et al. "An Oral History of Trump's Bigotry." *Atlantic*, Jun. 2019, <https://www.theatlantic.com/magazine/archive/2019/06/trump-racism-comments/588067/>.

cannot play ostrich. Democracy just cannot flourish amid fear. Liberty cannot bloom amid hate. Justice cannot take root amid rage. America must get to work. In the chill climate in which we live, we must go against the prevailing wind. We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred, and the mistrust. We must dissent from a nation that has buried its head in the sand, waiting in vain for the needs of its poor, its elderly, and its sick to disappear and just blow away. We must dissent from a government that has left its young without jobs, education, or hope. We must dissent from the poverty of vision and the absence of moral leadership. We must dissent because America can do better, because America has no choice but to do better.”²² Marshall understood that the barrier breaking can never, will never, and should never end. We must continue in his footsteps.

²² Marshall, Thurgood. 1992 Liberty Medal Acceptance Speech. *National Constitution Center*, 4 Jul. 1992, https://constitutioncenter.org/libertymedal/recipient_1992_speech.html.

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Robin, Corey. "Clarence Thomas's Radical Vision of Race." *The New Yorker*, Condé Nast, 10 Sep. 2019,

<https://www.newyorker.com/culture/essay/clarence-thomass-radical-vision-of-race?verso=true>. This New Yorker articles told me about Clarence Thomas's positions on race. It talks about how Thomas believes in separate but equal communities, which is contrary to the entire focus of Thurgood Marshall's career.

"Roe v. Wade Fast Facts." *Cable News Network*, 6 May 2019,

<https://www.cnn.com/2013/11/04/us/roe-v-wade-fast-facts/index.html>. This source from the CNN Library taught me about the basics of *Roe v. Wade* (1973), the case that legalized abortion but is currently under attack.

Rowan, Carl T. *Dream Makers, Dream Breakers*. CTR Productions, 1993. *Dream Makers, Dream Breakers*, gave me a more in depth look at some of the cases that ended up combining with *Brown v. Board of Education* (1954), especially *Briggs v. Elliot*. I also learned that Marshall's nickname was "Mr. Civil Rights."

"Shelley v Kraemer (McGhee v Sipes), 334 U.S. 1 (1948)." *Columbus State Library*,

Columbus State Community College, https://library.csc.edu/ld.php?content_id=13796037.

This PDF gave me the background of the case, *Shelley v. Kraemer* (1948), which dealt with racially restrictive housing covenants. I also learned that the decision was not to strike down restrictive covenants. It was to strike down government cooperation with and

enforcement of restrictive covenants. Pretty much, restrictive covenants were legal but, if you sued, you could get passed them.

“*Sipuel v University of Oklahoma*, 332 U.S. 631 (1948).” *Columbus State Library*, Columbus State Community College, https://library.csc.edu/ld.php?content_id=13010951.

This source informed me about the case *Sipuel v. University of Oklahoma* (1948), Marshall’s first education case argued in front of the Supreme Court.

Smentkowski, Brian P. “Thurgood Marshall.” *Britannica School*, Encyclopædia Britannica, 9 Jul. 2019, school.eb.com/levels/high/article/Thurgood-Marshall/51119. This Britannica article gave me an overview of Thurgood Marshall's life and successes. It was my first source and provided a basis for my research.

“*Smith v Allwright*, 321 U.S. 649 (1944).” *Columbus State Library*, Columbus State Community College, https://library.csc.edu/ld.php?content_id=13795979. I learned about the argument of *Smith v. Allwright* (1944) from this source. The argument was that barring party membership to African Americans violated the 15th Amendment.

“*Sweatt v Painter*, 339 U.S. 629 (1950).” *Columbus State Library*, Columbus State Community College, https://library.csc.edu/ld.php?content_id=13011003. I learned about *Sweatt v. Painter* (1950) from this source. In this case, along with its companion one, *McLaurin v. Oklahoma State Regents*, the Supreme Court agreed that the supposed “separate but equal” facilities were not equal. This case did not solve the country’s

segregation problem but it laid the path for Marshall's most famous case, *Brown v. Board of Education* (1954).

"Thurgood Marshall: Cases Argued." *Columbus State Library*, Columbus State Community College, 16 Dec. 2019, <https://library.csc.edu/ThurgoodMarshall/Cases>. This source was very useful when I wanted a timeline of the cases Marshall argued.

"Thurgood Marshall: Supreme Court Justice." *Center for History and New Media*, <http://chnm.gmu.edu/courses/122/hill/marshall.htm>. This source provided a great and to the point timeline of Thurgood Marshall's life. It also gave me some more information about Thurgood Marshall's personal life.

Tushnet, Mark V. *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936-1961*. Oxford University Press, 1994. *Making Civil Rights Law* gave me background and details on most of Thurgood Marshall's major legal cases. I also learned about Marshall's education from this source. This was my most helpful book resource.

Wermiel, Stephen. "SCOTUS for Law Students: Rearguments." *Supreme Court of the United States Blog*, 31 Oct. 2014, <https://www.scotusblog.com/2014/10/scotus-for-law-students-rearguments/>. This source taught me that rearguments only occur for very important cases, such as *Brown v. Board of Education* (1954) and *Smith v. Allwright* (1944).

Williams, Juan. *Thurgood Marshall: American Revolutionary*. Juan Williams, 1998. This book taught me more about *Shelley v. Kraemer* (1948), the case that outlawed government

cooperation with or enforcement of racially restrictive housing covenants. The most interesting part was that three Supreme Court justices abstained because they had property covered with restrictive covenants themselves.

Thurgood Marshall (July 2, 1908 – January 24, 1993) was an American lawyer who served as Associate Justice of the Supreme Court of the United States from October 1967 until October 1991. Marshall was the Court's first African-American justice. Prior to his judicial service, he successfully argued several cases before the Supreme Court, including *Brown v. Board of Education*. Thurgood Marshall was America's leading radical. He led a civil rights revolution in the 20th century that forever changed the landscape of American society. But he is the least well known of the three leading black figures of this century. Martin Luther King Jr., with his preachings of love and non-violent resistance, and Malcolm X, the fiery street preacher who advocated a bloody overthrow of the system, are both more closely associate in the popular mind and myth with the civil rights struggle. Thurgood Marshall Pictures. Thurgood Marshall Portraits. Timeline of Thurgood Marshall. 1908