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Symposium: The Bill of Rights Yesterday and Today: A Bicentennial Celebration

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THURGOOD MARSHALL: THE INNER-DIRECTED PERSONALITY

MARK V. TUSHNET*

In 1950, as Thurgood Marshall and his colleagues were preparing their attack on segregation in elementary and secondary education, David Reisman and his colleagues published *The Lonely Crowd: A Study of the Changing American Character*.¹ Reisman described two typical character formations prevalent in the post-war era. The “other directed” character, who Reisman said was “concentrated” in the “middle classes of the American big cities,” was “psychologically oriented to his contemporaries,” needing “open approval and guidance” from them.² Reisman’s depiction of the rise of “other direction” resonated in the culture of the 1950s. Arthur Miller’s character Willie Loman, in *Death of a Salesman*, captured the sense of men, gregarious, jocular, and apparently open in public, yet driven by their need for approval and hollow at the core.

Reisman also described the “inner directed” character. Such people were guided by “an internal psychic ‘gyroscope’;” by “self-discipline and self-development,” they “helped to ‘produce’ their own characters,” and were often “rewarded by mastery over others.”³ The language with which Reisman described the “inner directed” character left little doubt that he thought such people more attractive than “other directed” people. As Reisman’s descriptions were assimilated into the culture of the 1950s the self-confident “inner directed” character certainly seemed preferable.

An outsider might have thought Thurgood Marshall a typical “other directed” character. A recent graduate who was interviewed by Marshall for a job at the NAACP Legal Defense Fund in the early 1950s later reported that he was “shocked at the way Marshall talked.” Marshall “began regaling the group with one knee-slapping, back-slapping story after another, always in the most

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1. DAVID REISMAN ET AL., REUEL DENNEY & NATHAN GLAZER, *THE LONELY CROWD: A STUDY OF THE CHANGING AMERICAN CHARACTER* (1950). Reisman, trained as a lawyer and a law clerk to Justice Brandeis, turned to social psychology in the 1940s.

2. DAVID REISMAN, *INDIVIDUALISM RECONSIDERED* 104-05 (1954).

3. *Id.* at 101.

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loathsome language."⁴ As a lawyer for the NAACP Marshall spent much of his time travelling in the South, and his memoranda to his colleagues in the New York office reveal the way in which he worked hard and played hard. In early 1943, for example, he described a day full of meetings with African-American teachers and their friends, who were attempting to force the state to pay African-American teachers at the same rate that white teachers were paid. The day ended, Marshall wrote, with a "very important meeting at one of the bars in town for the purpose of forgetting about the other meetings -- this meeting was a great success."⁵

Even after he became a judge, Marshall seemed to some of his colleagues too "other directed." Henry Friendly, for example, was disturbed by Marshall's jocularly, the way he seemed to deal with cases by telling a story about something that Marshall thought related, and his seeming efforts to demonstrate that he was on first-name terms with all the Justices of the Supreme Court.⁶ Justice William O. Douglas, writing a memorandum to his files shortly after Marshall was appointed to the Supreme Court, called Marshall "a fine individual, but extremely opinionated and not very well trained in the law. His [statement to the Conference] was rather on the side of wasting a lot of time and in a lot of idle talk and irrelevant conversation."⁷

These evaluations of Marshall were, to be charitable, simply wrong. Marshall was indeed gregarious and fun-loving, and he certainly liked to tell a good story. He told his stories, though, for a purpose, which not all his listeners were astute enough to understand. For example, Marshall later told the lawyer who was so disturbed at his "foulness" that Marshall was testing him: Marshall knew that the lawyer was talented, but he needed to know "if you could stand working with 'niggers.'"⁸ For all the outward appearances, Marshall was the quintessential "inner directed" personality. His parents had given him the "inner gyroscope" of values that Marshall followed throughout his life. Marshall's high spirits sometimes got him into trouble in school, which his parents put up with. But, Marshall later said, the one thing his father told him about getting into fights was, "Anyone calls you nigger, you not only got my permission to fight him -- you got my orders to fight him."⁹ And fight them

4. Thomas Chambers, *Profile: Leonard Schroeter*, B. BULL. (Seattle-King County Bar) Nov., 1989.

5. Memorandum from Thurgood Marshall to office (Jan. 18, 1943) (NAACP Papers, Manuscript Division, Library of Congress).

6. Letters from Henry Friendly to Felix Frankfurter (Jan. 9, 1962 and Feb. 2, 1962) (Felix Frankfurter Papers, Manuscript Division, Library of Congress).

7. Memorandum from William O. Douglas to file (Box 1402 file of argued cases, no. 701) (William O. Douglas Papers, Manuscript Division, Library of Congress).

8. Chambers, *supra* note 4.

9. RICHARD KLUGER, *SIMPLE JUSTICE* 177 (1976).

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Marshall did, throughout his life.

In many ways, indeed, once Marshall became the most important lawyer in this century, his outward behavior -- the appearance of "other direction" -- was precisely the result of his inner direction. Segregation and discrimination were wrong, Marshall believed, because they occurred when other people tried to stop him and other African-Americans from doing what they wanted to do. He simply would not fit into the molds that others tried to put around him. So, when he became a major figure in United States history, Marshall did not adopt the sober demeanor expected of such an important personage. That is what Douglas failed to understand. Similarly, Marshall delighted in discomfiting the pompous Chief Justice Warren Burger by greeting him with, "What's shakin', Chiefy baby?" One of Marshall's favorite stories about his presence in the Supreme Court told of some tourists who got on the Supreme Court elevator to find Marshall there. Believing that an African-American in the Supreme Court elevator *had* to be the operator, the tourists said, "First floor, please," to which Marshall said he responded, "Yowsa, yowsa."¹⁰

There is, though, another side to these stories. Marshall was demonstrating that he was his own person, no matter what others' assumptions might be about how a Supreme Court justice should behave, or what jobs an African-American could hold. But, they were of interest because they were stories about Thurgood Marshall. Another of Marshall's stories has several variants. One version deals with the Little Rock school desegregation case. According to Marshall, he and Wiley Branton, who had been the principal lawyer in Little Rock, had just returned to New York from the oral argument at the Supreme Court. They caught a taxicab at the airport. The African-American cab-driver, overhearing them talk about their work, concluded that they were lawyers and said, "Isn't it great what Dr. King did today?" Marshall asked what that was, and the driver replied, "Oh, he got the Supreme Court to let those black kids stay in Central High School." Marshall said to Branton, "Wiley, did you hear that? Did you hear what *Dr. King* did today?"¹¹

Branton said that this story showed how Marshall responded to the "typical matter of other people getting credit for something Thurgood Marshall really did."¹² Yet, there is more to it. The story has an audience precisely because Marshall did get credit for what he did in making civil rights law. And, Marshall's version has an important undertone: He is a successful lawyer for civil rights, and yet his success was qualified. Marshall was never bothered by

10. BOB WOODWARD & SCOTT ARMSTRONG, *THE BROTHERS* 59 (1979).

11. *Thurgood Marshall the Man*, (WUSA-television broadcast, Dec. 13, 1987) (transcript on file with author).

12. *Id.*

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the fact that others got credit for his work, because he had a firm enough sense of who he was that he hardly needed the approval of others. Indeed, he was often suspicious that people were simply honoring themselves in the guise of honoring him. His fabled grumpiness on receiving invitations and honors was rooted in that suspicion.

But, Marshall could be suspicious of others only because of his firm sense of who he was. Unlike the "other directed" people who some believed Marshall to be, he was directed by a vision of justice, rooted in the Constitution, that he had made his own. For Marshall, the government the framers devised may have been "defective from the start" because it tolerated African-American slavery and "trade[d] moral principles for self-interest,"¹³ but, he also said, "You'll never find a better Constitution than this one, I know."¹⁴

13. Thurgood Marshall, *Reflections on the Bicentennial of the United States Constitution*, 101 HARV. L. REV. 1 (1987).

14. *Searching for Justice: Three American Stories* (WUSA television broadcast, Sept. 13, 1987) (transcript on file with author).