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Introduction to Exporting American Dreams: Thurgood Marshall's African Journey

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INTRODUCTION

> Africa is the birthplace of the blackman, but his home is in the world.
>
> —Tom Mboya, 1969

IT WAS JANUARY 1960, BUT IT WAS SUMMER. An American lawyer arrived in a new land, but he called it his home.

Thurgood Marshall had grown up with family legends about his strong Congo forbears, about a grandfather so ornery as to lead a frustrated slave master to release him. But the Africa his family had been stolen from was something of a mystery, until that January when Thurgood Marshall went home.[1]

Marshall was a civil rights legend in America when he began his African journey. It became one of the great adventures of his life. He followed a path well worn by others, but his journey would be different. He would not travel by riverboat into the Congo, as had American missionaries, or sail along the West African coast as did the poet Langston Hughes. Marshall flew first to Monrovia, then on to Nairobi. He was in search not of souls to save or stories to tell. Instead, Africa was

on the cusp of revolution. Many hands were needed. He had come to help.[2]

"Fifty years ago it was a dark continent. Unknown," wrote Tom Mboya, a young African in 1959. "Many people from far-off lands have thought of her in terms of the jungles, the wild beasts, the 'unspoiled native people.'" But Africa was "awakening" in the 1960s. Soon, resistance leaders would become presidents, citizens would vote, and Africans would govern themselves. This awakening attracted Thurgood Marshall. But he was not just any American lawyer, with legal wares to peddle to a new nation in need of new laws.[3]

Marshall's role as an American legend complicated his African journey. In tales of other transnational crossings, Americans encounter a foreign land and along the way learn something about themselves. Another nation becomes the occasion to know one's own nation, what it is, and what it means to be a part of it. Historian James Campbell wrote that "Africa has served historically as one of the chief terrains on which African Americans have negotiated their relationship to American society. . . . When an African American asks, 'What is Africa to me?' he or she is also asking, 'What is America to me?'" Encountering America in a journey overseas is part of this story. But Marshall's travel intersected with others. There was Tom Mboya, a young Kenyan nationalist, whose rise to prominence in his own country was aided by his American ties. And there were other sorts of crossings. Kenya, an emerging nation, and the United States, a wary global power, engaged each other, plotting their futures. Through these intersecting stories, these multiple transnational crossings, we can unravel what Marshall did, what impact he had, what it meant for him. It is a story of a man at work in the world at a time when that work held global meaning.[4]

Marshall surely preferred not to be a symbol, but this was not his choice. He had been the lead lawyer for the plaintiffs in

a case that had captivated the world. *Brown v. Board of Education* involved local struggles in American communities; it involved students and parents and teachers. But local struggles had international ramifications in the 1950s cold war world, for racial segregation in American schools troubled U.S. allies. How could American democracy be a model for other nations, many wondered, when in America itself children were sent to different schools because of their race, and when so many African Americans were disenfranchised? The U.S. government tried its best to respond to foreign critics, but by 1954 it was clear that the best way to demonstrate to the world that American democracy was a just form of government was to achieve meaningful civil rights reform. The Justice Department made this argument to the Supreme Court in *Brown*, and when the Court overturned school segregation, American diplomats used *Brown* as their prime example that democracy (not communism) would bring meaningful progress to peoples of the world.[5]

Brown became a symbol of American democracy at work, and *Brown*'s key players became more visible, at home and abroad. Chief Justice Earl Warren, author of the *Brown* decision, was derided by American segregationists, but overseas he became a household name. His role in *Brown* made him the right stand-in for President Dwight Eisenhower during a trip to India at a time when the United States hoped to counter the impact of a visit by Soviet leader Nikita Khrushchev. Warren was introduced at Delhi University as a man who needed no introduction, for he "rose to fame in 28 minutes of that Monday afternoon as he read out his momentous decision outlawing racial segregation in American public schools."[6]

And then there was Marshall, the nation's leading civil rights lawyer in the 1950s. He had worked with Charles Hamilton Houston, the legendary civil rights pioneer, in earlier years. His team in *Brown* included a brain trust of civil rights



Thurgood Marshall conferring with NAACP attorney W. J. Durham (right) in federal court in Dallas, Texas, during arguments in a Dallas school desegregation case, July 30, 1959. (© Bettmann/CORBIS)

lawyers: Robert Carter, Constance Baker Motley, Jack Greenberg, and others. The lawyers themselves exemplified a story that the United States had long told the world: that opportunity abounded for African Americans, that they worked in important fields alongside whites, and that the best and the brightest were committed to achieving a progressive vision of democracy. Marshall did not set out to fulfill an image his nation had crafted for the world, but in 1960, when he went to Africa, he did just that.[7]

The world often needed reassurance about race and American democracy. Other nations had their ethnic problems, of course. But there was a reason that race figured so prominently in cold war politics. In 1947, President Harry S Truman warned the nation that Americans faced a cold war battle against an adversary that was evil because it denied rights to its own people. There

were two ways of life, two systems of government opposing each other. The Soviet Union relied on "terror and oppression . . . fixed elections, and the suppression of personal freedoms." American democracy embraced "free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression." A central cold war battleground, American diplomats believed, was a war of ideas. To win, the United States needed to convince others that American democracy was superior. When a black soldier in police custody was beaten in a Southern jail, when there was a lynching, the news was soon carried in newspapers worldwide. Even America's friends decried race discrimination as the nation's Achilles heel. If there was a global consensus about anything during the cold war, it was that if the United States hoped to spread democracy, it had to begin by practicing it at home. *Brown* in 1954 seemed solid evidence that racial barriers were coming down. What better representative was there of this racial progress than *Brown*'s lead attorney: an African American who was raised in segregation but would play a pivotal role in putting it to rest?[8]

Symbols can serve various purposes, as Marshall's story reveals. By simply being himself, he could help recast the image of American democracy in Africa. But what role could he play for Africans themselves? At the time Marshall entered Kenyan politics, the nationalists needed more than the legal ideas he brought with him to their struggle for independence. They needed legitimacy before a world that thought of Kenyan Africans as murderous savages. White settlers in Kenya were their adversaries, and yet they needed to show that an African government would be fair to whites if Africans gained power. What better evidence that they were committed to a rule of law than to see them, the Africans, advised by Thurgood Marshall, who was committed to using law, not violent revolution, as a means of changing society? What could show more powerfully that an African government

would protect rights of a white minority than to have the world's leading minority rights lawyer at their side during constitutional negotiations?[9]

Marshall's African journey was during a time when Kenyans hoped to create a democratic government for the first time. Their experiment with democracy would not last long. By the late 1960s, Kenya's government was becoming authoritarian and corrupt, and "big man" politics would dominate the country for the next two decades. In recent years, Kenyans have worked to create a more democratic government, using constitutional reform. As this book goes to press, these efforts have stalled, as Kenya plunged into a new crisis following a disputed presidential election in December 2007. The incumbent Mwai Kibaki claimed victory with a slim electoral margin amid troublesome signs of election fraud. Kenyans reacted with violence, often targeted at Kibaki's tribe, the Kikuyu. The controversy was often cast in simple terms of tribal or ethnic conflict, reinforcing a conception that "tribalism" drives politics in Kenya and other African countries. This misses the broader story of Kenya's continuing struggle for democracy and the more complex political background against which the election crisis played out. Kibaki was originally elected on a platform of constitutional reform that would have circumscribed the powers of the presidency. He not only broke that promise, but now also appeared to be rigging an election to stay in power. Much of the violence in Kenya took place in the poorest communities. While rioters often targeted Kikuyu, at stake was not simply which tribe might dominate Kenyan politics but whether Kenya's economic success should benefit all Kenyans, not just a small political and economic elite, and the failure of Kenya's leaders to realize the democratic reforms so many had hoped for.[10]

Tribalism is not the most important feature of the struggle for democracy told in these pages. Ethnic rivalries are a part of

the story, of course, but it is important to avoid the reification of tribe into a natural, essential identity and instead to see ethnic politics as one feature among others in Africa. During 1960 constitutional negotiations, Kenyans came together across tribal lines out of a common interest in independence from colonial rule. The ethnic differences that principally figured in the 1960 debate over a bill of rights were among whites, Asians, and the African majority. The interests of tribes were debated more intently during 1962 constitutional negotiations, in which Thurgood Marshall did not participate. That year, minority tribes, along with some whites and Asians, supported a federal constitution that would have devolved power to regional areas. This proposal was successfully opposed by the party of Jomo Kenyatta, Kenya's first president, in favor of a more powerful central government. In the end, some smaller and less powerful tribes felt that their concerns were ignored in the political calculus. And Kenya's democratic moment in the early 1960s would collapse by the end of the decade, unleashing ethnic conflict that would affect the nation's subsequent political history. Ultimately, human rights scholar Makau Mutua has argued, transcending tribal politics is an important task in Kenya's unfinished project of nation building and democratization.[11]

Just as identity affects politics in Kenya, the question of identity is central to the history of African American engagement with Africa. Different perspectives emerge from recent works. During the heady days after Ghana's independence in 1957, historian Saidiya Hartman has written, "Not only did black Americans identify with the anticolonial struggle, they believed their futures too depended on its victory." For historian Kevin Gaines, African Americans were "strangers in their own land." African Americans working to build an independent Ghana sought a black consciousness that transcended national boundaries. Others saw Africa as a homeland, but this home illuminated not their

connectedness with Africans, but their inescapable Americanness. Langston Hughes, for example, was called a "white man" and treated as a foreigner.[12]

If Thurgood Marshall was ever held at arms length by the Africans he met, he did not say so. Instead, he expressed delight in getting to know his "homeland." His bond with his African friends was not based on a common identity but on shared political commitments. It did not involve rejection of his own national identity but a determination to root out his nation's racism. Seeing his struggle as the same as that of the Africans drew upon a truth—the pervasiveness of racism—but also occluded the different character of their struggles. And there was no stepping out of Marshall's American consciousness so that, as have other Americans involved in writing constitutions for other nations, he would see problems and solutions from within the terms of an American legal model. This might limit the effectiveness of his legal proposals but not his political contribution, for in their battle with Britain, Marshall's Americanness was a strategic resource for the Kenyans.[13]

This book follows Marshall from his civil rights practice in New York to Kenya under colonial rule. This story cannot be found in traditional sources for an American biography. The Bill of Rights Marshall wrote for Kenya, for example, is not in any American archive, but in British colonial records in England. It is published here for the first time as an appendix. Other details are scattered in numerous collections, including diplomatic files, in the United States, England, and Kenya, from Thurgood Marshall's own papers at the Library of Congress to the papers of Kenyan nationalist Tom Mboya at the Hoover Institute to the records at the Kenya National Archive.

Marshall's African journey is not a triumphalist story of American law solving all problems. The legal ideas Marshall offered often were not American ones. And legal solutions did not create

a legal edifice that would last for all time. Instead law could serve as a way station, giving political actors a way to talk to each other, a way to keep working together when things were hard.

It would not all be smooth sailing. Marshall loved to return to Kenya, to see how "his" bill of rights was working. But he found injustice that he thought his work should have helped to prevent, and he confronted his nationalist friends. Once his work in Africa was complete, Marshall faced the limits of his own vision for social change when he reached the apex of a legal career in 1967 with a seat on the Supreme Court, just as American cities burst into flame and American politics lost the impetus to save them. In his later years, Marshall's work in Africa informed his views about the founding of his own nation. As he became older, and as hard times came to Kenya, Marshall would remember the country only with fondness. If his friends in Kenya let him down, they had accomplished what was most important. He was there on Independence Day, when the British flag came down, and Kenya, the colony, became a nation.

NOTES

Manuscript and Archive Collections: Abbreviations and Locations

ACOA Papers	Papers of the American Committee on Africa, Amistad Research Center, New Orleans, Louisiana
Amistad Research Center	Amistad Research Center, New Orleans, Louisiana
Bentley Historical Library	Bentley Historical Library, Ann Arbor, Michigan
Hoover Institute	Hoover Institute Library and Archives, Stanford, California
JFK Library	John F. Kennedy Library, Boston, Massachusetts
Kenya National Archives	The National Archives of Kenya, Nairobi, Kenya
LBJ Library	Lyndon Baines Johnson Library, Austin, Texas
LOC	Library of Congress, Washington, DC
NAACP Papers	Papers of the National Association for the Advancement of Colored People, Library of Congress, Washington, DC
National Archives	National Archives and Records Service, College Park, Maryland

NYU Archives	New York University Archives, Tainament Library, New York, New York
TNA, PRO	The National Archives of the United Kingdom, Public Records Office, Kew, England
Reuther Library	Walter P. Reuther Library, Wayne State University

Introduction

1. Tom Mboya to Thurgood Marshall, March 25, 1960, Folder 25.6, General Correspondence with Foreign Countries, Correspondence with USA, vol. 1 (For/1/v. 1) 1960 March–April, Box 25, Tom Mboya Papers, Hoover Institute; Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961* (New York: Oxford University Press, 1994), 8; Juan Williams, *Thurgood Marshall: American Revolutionary* (New York: Times Books, 1998), 18; Michael D. Davis and Hunter R. Clark, *Thurgood Marshall: Warrior at the Bar, Rebel at the Bench* (New York: Birch Lane Press, 1992), 30–31.

2. Thurgood Marshall, "The Reminiscences of Thurgood Marshall," Columbia Oral History Research Office, 1977, reprinted in *Thurgood Marshall: His Speeches, Writings, Arguments, Opinions, and Remembrances,* ed. Mark V. Tushnet (Chicago: Lawrence Hill, 2001), 443; James T. Campbell, *Middle Passages: African American Journeys to Africa, 1787–2005* (New York: Penguin, 2006), xxi–xxiv; Claude A. Clegg III, *The Price of Liberty: African Americans and the Making of Liberia* (Chapel Hill: University of North Carolina Press, 2004).

3. Tom Mboya, Press Release, "Kenya Leader Wants Whites in Africa, but as Equals," April 8, 1959, Folder: 36, Correspondence [U.S.A.] April 6–7, 1959, Box 13, ACOA Papers, Amistad Center.

4. Campbell, *Middle Passages*, xxiv. Daniel Rodgers uses "Atlantic Crossings" to frame the relationship between Americans and Europeans in his magisterial book on the influence of European ideas on Americans during the Progressive and New Deal eras. Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: Harvard University Press, 1998). Much transnational work in U.S. history is conceptualized within the frame of the "Atlantic world." See, for example, Bernard Bailyn, *Atlantic History: Concept and Contours*

(Cambridge, MA: Harvard University Press, 2005). The Atlantic is a useful heuristic for some transnational work, just as the idea of borderlands informs scholarship on the United States and Mexico. Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza,* 2nd ed. (San Francisco: Aunt Lute Books, 1999). All of these framing devices have their limits, however, since global impacts on U.S. history are not confined to these geographic regions. See, for example, Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, NJ: Princeton University Press, 2003); Thomas Bender, *A Nation among Nations: America's Place in World History* (New York: Hill and Wang, 2006). It would be awkward to call the comings and goings in this book "Atlantic crossings." The principal characters in the narrative did fly across the Atlantic, but their journeys were to and from Kenya, which is on the Indian Ocean. They were bound together not by the Atlantic, but by relationships across continents based on politics, ideology, and international relations. There is no perfect term in historical studies to capture these relationships, but "transnational" seems a better term than one focusing on trans-Atlantic dimensions.

5. Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton, NJ: Princeton University Press, 2000), 77–114. On *Brown v. Board of Education*, see James Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001); Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution* (Lawrence: University Press of Kansas, 2003).

6. "Chief Justice Warren in India," *Baltimore Sun*, October 1, 1956, India 1956 Correspondence, Clippings, Photographs Folder No. 1, Foreign File, Personal Papers, Papers of Earl Warren, LOC; Dudziak, *Cold War Civil Rights*, 109.

7. Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983); Constance Baker Motley, *Equal Justice under Law: An Autobiography* (New York: Farrar, Straus, and Giroux, 1998); Jack Greenberg, *Crusaders in the Courts*: *How a Dedicated Band of Lawyers Fought for the Civil Rights Revolution* (New York: Basic Books, 1994); Kenneth Mack, "Rethinking Civil Rights Lawyering and Politics in the Era before *Brown*," *Yale Law Journal* 93 (2006): 256–354.

8. Harry S Truman, "Special Message to Congress on Greece and Turkey: The Truman Doctrine," March 12, 1947, in *Public Papers of the*

Presidents of the United States, Harry S. Truman, 1947 (Washington, DC: Government Printing Office, 1963), 176–179; Dudziak, *Cold War Civil Rights,* 18–46, 79–114; Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge, MA: Harvard University Press, 2001), 53–61, 74–84, 93–94.

9. Keith Kyle, *The Politics of the Independence of Kenya* (Hampshire: Palgrave Macmillan, 1999), 8–9, 23; *Decolonization and Independence in Kenya, 1940–93,* ed. B. A. Ogot and W. R. Ochieng' (Athens: Ohio University Press, 1995). Very little is written on Marshall's work on African constitutions. Juan Williams briefly covers Marshall's trips to Africa in *Thurgood Marshall: American Revolutionary*, 284–286, 307–309. See also Roger Goldman with David Gallen, *Thurgood Marshall: Justice for All* (New York: Carroll & Graf, 1992), 139, 153, 178–179; Tushnet, *Making Civil Rights Law,* 313.

10. *The Anatomy of Bomas: Selected Analyses of the 2004 Draft Constitution of Kenya,* ed. Kithure Kindiki and Osogo Ambani (Nairobi: Clairipress Limited, 2005); P. L. Agweli Onalo, *Constitution-Making in Kenya: An African Appraisal* (Nairobi: Transafrica Press, 2004); Joel D. Barkan and Njuguna Ng'ethe, "Kenya Tries Again," *Journal of Democracy* 9 (1998) 32–48; Joel D. Barkan, "Kenya after Moi," *Foreign Affairs* 83 (January/February 2004) 87–100; Joel D. Barkan, "Kenya's Great Rift," January 9, 2008, http://www.foreignaffairs.org/20080109faupdate87176/joel-d-barkan/kenya-s-great-rift.html; "Current Events in Kenya," interview with Makau Mutua, University of Illinois Public Radio, January 16, 2008, http://will.uiuc.edu/am/focus/archives/08/080114.htm. On democratization in Africa in the late twentieth century, see *Democratization in Africa*, ed. Larry Diamond and Marc F. Plattner (Baltimore: Johns Hopkins University Press, 1999).

11. Makau Mutua, *Kenya's Quest for Democracy: Taming Leviathan* (Boulder: Lynne Rienner, 2008); Walter O. Oyugi, Peter Wanyande, and C. Odhiambo Mbai, eds., *The Politics of Transition in Kenya: From KANU to NARC* (Nairobi: Heinrich Boll Foundation, 2003). For a critical examination of the concept of tribalism in Africa, see *The Creation of Tribalism in Southern Africa*, ed. Leroy Vail (Berkeley: University of California Press, 1989). On African culture and identity, see Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (New York: Oxford University Press, 1992). While many writers avoid using the term "tribe" and instead use "ethnicity," it would be difficult to do so in this history. Different layers of ethnic

politics (race and tribe) figure in the story. Because of that, it might confuse the reader if the term "tribe" was not used.

12. Saidiya Hartman, *Lose Your Mother: A Journey along the Atlantic Slave Route* (New York: Farrar, Straus, and Giroux, 2007), 34; Kevin K. Gaines, *American Africans in Ghana: Black Expatriates and the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2006), 1–26; Campbell, *Middle Passages,* 211–212.

13. Paul D. Carrington, *Spreading America's Word: Stories of its Lawyer-Missionaries* (New York: Twelve Tables Press, 2005).