

REMEMBRANCES OF JUSTICE THURGOOD MARSHALL

This Gentle Giant

By RAMSEY CLARK*

What American life offers greater evidence of the possibility of constitutional government than that of Thurgood Marshall? What life better demonstrates the necessity and capacity for growth in a Constitution intended to endure for ages to come? And what life has done more to nourish constitutional principles and through them enrich American lives with justice?

There was no rational basis to believe in the early decades of his life that he might possibly become a lawyer, let alone the foremost civil rights litigator of his time, who could help lead the country to live by its Constitution through its courts. In those years a dreamer who might have suggested Marshall's ascendancy—becoming a federal court of appeals judge, Solicitor General, and finally Supreme Court Justice—would have been deemed mad by the most optimistic.

Between his birth and his maturity, thousands of black men were lynched by white mobs. Every Negro mother knew, without reading DuBois's *Defender*, the dread that her Man Child would demand his own dignity, and most cautioned against it in their ways. Chief Justice Taney's words on the "unfortunate race" in *Dred Scott*, barely half a century old, confirmed the African American's status as

. . . beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect

Whatever rights might have been pronounced for black people after the Civil War, at the time when Thurgood Marshall began the practice of law the exercise of those rights was at grave personal risk.

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Americans, loving adventure stories, are captivated by Marshall's courage in travelling the lonely red clay roads and iron rails to hostile southern courthouses surrounded by threats and humiliation. He refused to be outfaced by irrationality. But while essential, this steel was a lesser aspect of his greatness. He was that rare human, as Sandberg said of Lincoln, being "both steel and velvet, who is as hard as rock and soft as drifting fog, who holds in his heart and mind the paradox of terrible storm, yet peace unspeakable and perfect."

While for most, law is considered, taught, and applied as reason, intellect, mind and will, for Thurgood Marshall law was equally life, humanity, passion, and soul. With Marshall, as with Hawthorne's hero in the Great Stone Face, "[h]is words had power, because they accorded with his thoughts and his thoughts had reality and depth, because they harmonized with the life which he had always lived." He lived where inequality, unfairness, injustice and violence flourished and brought his passion to purge these felt realities from the law. His search for the constitutional application of principle to conduct rose from the rich experience out of which that conduct came, rather than descending from an abstract commitment to the principle, however profoundly understood. His determination to fulfill the great truths of the Constitution in the lives of the poor and despised was never lost among the intricacies of our complex society and law. Thus did he bring life to the law.

In addition to lifelong struggle to liberate America from ignorance and the ensuing prejudice which flowed from segregated education so that we might learn to live together and understand the richness of diversity and the nature of life, Thurgood Marshall's last years were involved in the relationship of constitutional principles to capital punishment. Fed by a lifetime of experience that taught him who is executed and why, Marshall, resisting racism, fear, hatred, and greed with all his being, strained mightily to persuade the Supreme Court, which was facing its greatest constitutional crisis since *Dred Scott*, that state-inflicted death cannot be reconciled with the commitment to equality, fairness, justice, and peace. His concurrence in *Furman v. Georgia*, the longest of the nine separate opinions in that defining case, most comprehensively reveals his faith in the law and his pain in life.

At a time in our history when the streets of the Nation's cities inspire fear and despair, rather than pride and hope, it is difficult to maintain objectivity and concern for our fellow citizens. But, the measure of a country's greatness is its ability to retain compassion in time of crisis. No nation in the recorded history of man has a greater tradition of revering justice and fair treatment for all its citizens in times of turmoil, confusion, and tension than ours. This

is a country which stands tallest in troubled times, a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values that lie at the roots of our democratic system.

In striking down capital punishment, this Court does not malign our system of government. On the contrary, it pays homage to it. Only in a free society could right triumph in difficult times, and could civilization record its magnificent advancement. In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute. We achieve a major milestone in the long road up from barbarism . . .

My most enduring image of Thurgood Marshall is from the night Martin Luther King was murdered. He had been on the Supreme Court and away from the turbulence of the Department of Justice for less than a year. The Office of the Attorney General that night was full of noise, with some people rushing and shouting, and others stunned and weeping. I was preparing to fly to Memphis, seeking the last shred of information before leaving, and went to the outer office for some papers. There sat Thurgood. He had walked over, alone, across the Mall from the little apartment where his family lived in Southwest D.C. He said only "I wanted to be here." How long he remained I have never known. The vision I hold is like that of the Great Stone Face; "all the features were noble, and the expression was grand and sweet, as if it were the glow of a vast, warm heart, that embraced all mankind in its affections, and had room for more." Washington was already aflame at 14th and U Street, down 7th Street blocks from Justice, in Anacostia. Across the nation riots would erupt in a hundred towns and cities. And as I see this gentle giant sitting there I do believe that if we have faith and persevere, our children will live in justice.

