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RAYMOND M. SUMMERVILLE

"EVERY MAN HAS HIS DAY IN COURT": PROVERBS, SAYINGS, AND PROVERBIAL EXPRESSIONS OF THURGOOD MARSHALL

***Abstract*:** This essay explores some of the proverbs, sayings, and proverbial expressions used by Thurgood Marshall, the first African-American Supreme Court Justice (1967). It argues that Marshall's proverbial language use conveys several aspects of his worldview including his philosophy concerning race, class, and social justice in American society. The essay also aims to illustrate ways that Marshall's multifaceted proverbial language use demonstrates the sound knowledge he possessed in the area of legal studies and the exceptional talent he possessed in the areas of rhetoric and deliberation. Furthermore, the essay reveals some of the ways Marshall used proverbial language to connect with other people as he incorporated various proverbs and phrases into his speech which would help make legal language more accessible to common folk (especially the people he would represent as an NAACP and LDF attorney) while also allowing him to capitalize on opportune rhetorical moments in the courtroom. The essay utilizes several Marshall biographies, interviews, and legal documents as source material. It also incorporates the scholarship of other paremiologists such as Wolfgang Mieder, Anna T. Litovkina, Sanda Eretescu Golopentia, Harvey Sack, and others to address issues concerning: categorization, definition, origin, meaning, interpretation, and context.

Keywords: Black studies, Civil Rights Movement [CRM], folklore, human rights, proverbs, paremiology

1. Introduction

Thurgood Marshall (1908-1993) is one of the most important figures in American history and is most remembered as being the Nation's first Black Solicitor General (1965), and the country's first African-American Supreme Court Justice (1967). In commenting on his decision to appoint Marshall to the Nation's highest court, President Lyndon B. Johnson (1908-1973) once stated to reporters: "I believe it is the right thing to do, the right time to do it, the right man, and the right place" (Cambron 2022: 177). On a side-note, repetition in proverbs will be addressed more fully in the third part of the essay which deals with tautological proverbs. Johnson's tautological statement reflects the fact that many believed Marshall was the right man for the job because of the exceptional skill he displayed as lead attorney in the landmark case *Brown v. Board of Education of Topeka, Kansas*, which he argued before the United States Supreme Court in 1954. *Brown* is one of the most important cases in American history. This monumental ruling made segregation illegal in the American public school system and paved the way for segregation to be banned in all other spheres of American society. It brought the Nation much closer to achieving social equality for all people. Segregation in American public schools delineated in part from strict policies called Slave Codes (Cambron 2022: 257-66) which denied personhood and prohibited teaching enslaved African-Americans to read or write. For instance, violating this law was punishable by up to thirty-nine lashes in North Carolina. After the Civil War (1861-1865) the Freedman's Bureau led by General Oliver Otis Howard (1830-1909) established thousands of schools throughout the South for African-Americans and taught hundreds of thousands to read and write. However, the overwhelming majority of these schools would be destroyed during Reconstruction as backlash from white supremacists intensified. Despite the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, the Reconstruction era (1863-1877) in American history has largely been characterized as a failure due to thousands of lynchings and attempts to regain control over the labor and movement of African-Americans. With the exception of the Amendments, neo-slavery is what many of the policies enacted during Reconstruction amounted to. Such policies in-

cluded: Black Codes, vagrancy laws, convict leasing, and unfair farming practices such as sharecropping (which included debt peonage, and other exploitative crop lien systems). In the courtroom, Marshall often commented on the failures of Reconstruction as a lawyer and later as a Judge to highlight some of the ways such historical issues impacted individual cases and American society as a whole. On one such occasion, Marshall asserted:

> The problem then was of assuring equal rights and protection to the new freedmen who were the victims of racial antagonism; against that background, it seems obvious, that when Congress spoke of constitutional rights had meant to include those derived from the Due Process and Equal Protection Clause of the Fourteenth Amendment, and the right to freedom from racial discrimination, exercise of the right to vote guaranteed in the Fifteenth Amendment. (Cambron 2022: 184)

Reconstruction was not a complete failure, despite the aforementioned issues. Throughout the late nineteenth and mid to late twentieth century, dozens of Public Land-Grant Universities were established across the U.S. They were established in part through the Morrill Act of 1862. Many of the newly formed colleges focused on teaching agriculture and mechanical trades as a way of revitalizing agronomic industries in the southern parts of the United States which had been decimated by the Civil War. Nevertheless, for decades these institutions adamantly refused to admit any African-Americans. This situation triggered a second round of land grants in 1890. The Morrill Act of 1890 established institutions of higher learning for African-American's which would relieve white institutions of having to admit any Black students. These schools would become known as Historically Black Colleges and Universities (HBCU's). In spite of such changes, the number of public schools for whites still outnumbered the number of public institutions for African-Americans. Many towns in the Deep South did not have a Black high school. To make matters worse, African-American grade schools, secondary schools, and colleges were poorly funded, and as a result, they were plagued by unqualified faculty and staff, run-down

facilities, and overcrowding which caused many of the Black schools to be regarded as nothing more than "Negro attendance centers," where in some of the worst cases, students could hope to do little more than wait hours for a restroom break and then be sent back home. (Charron 2009) After the *Plessy vs. Ferguson* Supreme Court ruling of 1896, segregated schools began to operate under the false pretense that they were "separate but equal"—in reality, segregation would prove to be yet another legalized form of lynching. From a social standpoint, the *Plessy* decision made African-Americans second class across all realms of society. Such legislation would be categorized by the monicker, "Jim Crow." Under Jim Crow laws, nearly every African-American school of every level would continue to be inadequate and inferior. The NAACP sought to challenge this long-standing tradition of maintaining separate and unequal facilities which they argued was a violation of the Constitution. As an NAACP attorney, Marshall won many important civil rights cases leading up to the *Brown* decision including: *Murray v. Pearson* (1935), *Missouri ex rel. Gaines v. Canada* (1938), *Briggs et al. v. Elliot et al*. (1949), *Sweat v. Painter* (1950), and *McLaurin v. Oklahoma* (1950). These are some of the important cases that helped to eliminate discrimination in institutions of higher education and they also paved the way to the monumental *Brown* decision. At Howard University, Marshall's mentor Charles Hamilton Houston (1895-1950) took what was considered a grossly underperforming law program and as the program's Dean, transformed it into one of the most successful law programs in the Nation. Before Houston's arrival in 1929, the school was unaccredited, the entire faculty and dean were part-time, and according to Marshall, it had gained the nickname "dummies retreat" (Tushnet 2001: 272). Under Houston, Howard gained accreditation from every accrediting agency in the country (Tushnet 2001: 272). Houston instilled in Marshall and all of his law students at Howard that they were not training to be lawyers, but "social engineers"—who would ultimately help to shape American society into the land promised by the United States Constitution. Marshall would reflect years later: "I don't know anything I did in the practice of law that wasn't the result of what Charlie Houston banged into my head" (Tushnet 2001: 417). In Marshall's own

language, the program had become a success because "Charlie saw the big picture" (Cambron 2022: 11). Houston played such an immense role in Marshall's growth and development that it can never be understated. According to Marshall, Houston would say quite often: "There's no law on our side? Let's make some" (Tushnet 2001; 74). Houston also conveyed to his students at Howard that the task would not be easy. Two sayings in particular helped Houston to emphasize the importance of patience and work ethic: "Lose your head and lose your case," (Tushnet 2001: 273) and "No tea for the feeble, no crepe for the dead" (Williams 1998: 57). "Lose your head and lose your case," illustrates the importance of having mental fortitude, and "No tea for the feeble, no crepe for the dead" is the "standing, icy comment for Marshall and any other student who complained that he was working them too hard" (Williams 1998: 57). Perhaps Marshall explained Houston's teaching philosophy best at a public tribute to Houston at Houston's alma mater, Amherst College in 1978:

> Charlie told us at the beginning, "Get your law and get it straight. Get your research and dig deeper. When you plan, plan twice. When you map out your case, take not the two possibilities, but assume two others. You've got to do better than the other man. Nothing can we get from the executive side of the government, nothing can we get from the legislative side. If we're going to get our rights, we're going to get it when the court moves. The court can't do it all, but the court can move it on. Without court action in the meantime, we're dead pigeons" (Tushnet 2011: 274)

Marshall describes Houston's social engineering process as a gradualist approach—they would try as many civil rights cases as possible at every judiciary level until the cases finally reached the United States Supreme Court.

2. Family influence

Marshall once commented that he believed in simply "doing what he thought was right and letting the law catch up" (Cambron 2022: 254), but where did Marshall's sense of right come from? To say that Marshall's moral and ethical values derived entire-

ly from Houston would be a mistake. Before Marshall officially became a "social engineer" he was learning the fundamentals of social justice from his family. Marshall was born in Baltimore, Maryland to two educated and socially conscious parents, Norma Arica Williams and William Canfield Marshall. The Marshall family history is filled with military veterans, entrepreneurs, and activists. Norma's mother was a teacher at a private African-American academy in Baltimore and Norma's sister, Avonia was among the first African-American teachers hired to teach in the colored school system. Norma's father, Isiah Williams served in the Civil War with the U.S. Colored Troops and the Merchant Marines before retiring and opening two small grocery stores in West Baltimore. Isiah Williams is largely remembered for some of the ways in which he advocated for social justice. Williams pressured the Baltimore public school system to allow African-American children to attend white public schools. Williams also organized public demonstrations protesting the Baltimore police department for the beatings of African-Americans. Marshall's paternal grandfather and namesake, Thurgood "Thorney" Marshall was a Buffalo soldier stationed in Texas before he was issued a medical discharge. The elder Marshall then decided to open his own grocery business in West Baltimore in the basement of his home. Marshall's mother followed in her mother's footsteps, becoming a teacher in the Baltimore public school system. Marshall's father William was a porter for the Baltimore & Ohio railroad company. Willliam was largely self-taught, and he provided Marshall and Marshall's older brother Aubrey with ample instruction on the fundamentals of argument, American democracy, and social justice. When William Marshall was not busy he would take Thurgood and Aubrey to the local courthouse to observe trials. William also took the two on mini fieldtrips to the local police station, so they could witness the criminal justice system in action and begin to understand early on how it operates. Perhaps, the most important form of instruction imparted to young Marshall by his father was in the area of rhetoric. The elder Marshall insisted that both of his sons know how to argue effectively, encouraging them to be persuasive and not be afraid to engage in debate. According to historian Spencer R. Crew, "Williams…challenged his sons to present their ideas in

a logical, articulate fashion. This had to be the case no matter if the topic was politics or the weather. Their point of view needed soundproof and logical undergirding when presented" (10). This requirement contributed to a number of heated discussions around the dinner table; so much so that the neighbors sometimes complained about the noise. Important lessons learned in the Marshall household motivated him to pursue higher education at Lincoln University, in Chester County Pennsylvania (the oldest HBCU in America) and later, Howard University in Washington, D.C. (the oldest Black law school).

Upon entering law school, Thurgood Marshall already possessed at least some of the necessary key attributes of an effective attorney. His father had tactfully molded him into one, even if it wasn't his original intent. Even as a freshman, Marshall already knew how to be persuasive, he understood the value of social justice, and he realized that equal rights promised to Americans by the Constitution were a long way away for African-Americans. Another important attribute that Marshall acquired which is often overlooked by scholars, is his mastery of traditional language. The traditional language that Marshall used was most often in the form of proverbial expressions used consistently as he communicated with friends, family, and colleagues. Marshall was known for being garrulous, personable, and an excellent storyteller who often spoke with his hands, and the proverbial expressions he used infused his speech with life and color, making his stories and anecdotes exciting and memorable. In addition to proverbial expressions, Marshall also used proverbs, but certainly not to the same extent that he employed proverbial expressions. Nevertheless, this essay is devoted primarily to proverbs due to the multifaceted messages they convey. It also includes some of the phrases Marshall frequented the most, and many of them illustrate some aspect of Marshall's evolving worldview. Additionally, some of them are utterances Marshall grew to be known for over time. By revisiting Marshall's proverbial rhetoric, one is simultaneously encouraged to think about how Marshall's unique philosophic underpinnings might hold up in today's society, however, this study is not a chronologically organized list of every proverb, saying, or expression ever used by Marshall.

It is also important to note the profound influence that Professor Wolfgang Mieder has had on the fields of paremiology and folklore. It was Mieder who first initiated studies pertaining to proverbs and social justice as a response to discovering so many anti-feminist, antisemitic, and even anti-Native American proverbs in literature and popular culture. As Mieder explains:

> All of this directed me to my books regarding African-Americans and civil rights, notably Martin Luther King. In my teaching and my writing, I have always felt that ethical values should be part of it, trying to help to make our world a more humane and peaceful place. As I have gotten older, I have noticed that I am much more willing in my writings to take a moral stand and to voice an honest opinion about socioeconomic issues that need addressing. (qtd. in Muñoz 2024: 16)

Mieder's scholarship regarding social justice illustrates several important concepts:

> Firstly, Mieder's scholarship proves that folklore, paremiology, and American history can be used in tandem to reexamine important people, places, and events. In fact, proverbs, sayings, and proverbial expressions often mark important events in history, functioning as mnemonic devices (Bowden 1996: 442), reminding us of the past and most recent monumental accomplishments of important Americans, such as the election of the nation's first African-American president. (*"Yes We Can": Barack Obama's Proverbial Rhetoric* 2009) Secondly, Mieder's scholarship demonstrates that these disciplines may be used together to better understand the important values, beliefs, and worldviews of significant leaders, some of whose important ideals are in accord with basic principles under which the United States was founded. (*"Right Makes Might": Proverbs and American Worldview* 2019; *The Worldview of American Proverbs* 2020) Thirdly, Mieder's work is the first to demonstrate that the lens of paremiology offers scholars a unique way to study the Civil Rights Era, because several important leaders used proverbs and proverbial expressions to communicate important messages regarding themselves and the long Civil Rights Movement. (*"No Struggle, No Progress": Frederick Douglass and His Proverbial Rhetoric for Civil Rights* 2001; "Making A Way Out of No Way": Martin Luther

> King's Sermonic Proverbial Rhetoric 2010; "'Keep Your Eyes on the Prize': Congressman John Lewis's Proverbial Odyssey for Civil Rights" 2014) Fourthly, works of this nature illustrate that examining the proverbial language of different leaders from the same movement offers scholar's differing perspectives and angles of perception for evaluating important events. Fifthly, examining multiple viewpoints may ultimately lead to a greater awareness of what some of these historical events mean for us in the present. Mieder's groundbreaking paremiological scholarship establishes a strong foundation on which other folklorists, historians, and paremiologist may build. (Summerville 2023: 189-90)

3. Proverbs, proverbial expressions, and proverbial tautologies

Proverbs are defined best by Mieder as: "…concise traditional statements of apparent truths with currency among the folk. More elaborately stated, proverbs are short, generally known sentences of the folk that contain wisdom, truths, morals, and traditional views in a metaphorically, fixed and memorizable form and that are handed down from generation to generation" (Mieder 2004: 4). The selected corpus of writings examined for this study yields over two-hundred proverbial expressions and nearly two dozen proverbs. While proverbs contain moral lessons most often in the form of brief complete sentences, proverbial expressions are concise phrases used to help to convey the stark realities of a situation through imagery. Marshall used proverbial expressions profusely—it was simply the way he communicated with people. Marshall could be quite an entertaining speaker when he wanted to be, and some of the expressions he used help to make boring legal talk more accessible to the common folk. For instance, he would use the proverbial expression "to go the whole hog" (Bryan et al. 2016: 389-90) at times to show enthusiasm for people or excitement for important ideas. In an interview, Marshall explains the executive decision made by the NAACP to use sociological and medical data in the courtroom. All members agreed it was the best way to expand the *Brown vs. Board* legal briefs. Marshall says: "We had a meeting in Atlanta, where we decided to go whole hog on this" (Tushnet 2011: 461). Likewise, in describing

the decision to argue the Fourteenth Amendment in nearly every civil rights case leading up to *Brown*, Marshall says: "The new idea was to go for the 'whole hog,' by arguing that segregated schools were illegal even if they were equal" (Williams 1998: 175). In describing his close friendship with President Harry S. Truman (1884-1972), Marshall exclaims: "Well, you knew you had somebody to rely on. Who would go the whole hog…It's a warm feeling, you just can't put your hands on" (Tushnet 2011: 456; Crew 2109: 75). Perhaps Marshall frequented this particular expression which dates back to 1838 (Bryan et al. 2016: 389-90) because pork was always a staple in the Marshall household. Marshall once cooked pigs' feet for the singer, actress, and civil rights activist, Lina Horne (1917-2010) at a private party at his home, and Horne would later rave about the experience, saying she had eaten "the best pig's feet in the world" (Crew 2019: 187). Marshall historian Juan Williams provides readers with another possible explanation for Marshall's use of the expression:

> Working at Gibson Island, [a segregated country club] Thurgood became a popular figure with the powerful whites who frequented the executive watering hole. And Albert Fox, the club's secretary, who was in charge of all the staff and facilities, regarded Thurgood as a son. Fox and Willie Marshall were drinking partners, and Fox delighted in introducing Thurgood to first-rate whiskey, "a forty-year-old hogshead of old Pikesville bourbon. (Williams 1998: 44)

As a civil rights attorney, Marshall made a tradition of celebrating hard-earned victories, which often involved drinking with friends and colleagues. Based on Marshall's impressive resume, he had the pleasure of doing this on no less than thirty separate occasions. Perhaps the proverbial expression "to go the whole hog" was Marshall's way of harkening back to his early years as a waiter and the important friendships extended to him at the Gibson Island Country Club.

Another important aspect of Marshall's proverbial repertoire are the proverbs which rely entirely on repetition—the tautological type, which involve the deliberate repetition of words or ideas within the same phrase. They are rarely focal points, in and of themselves, in texts regarding Marshall, or in proverb

scholarship, but are nevertheless significant because they embody lessons and principles which largely illustrate three things. Firstly, they depict some of his ideas concerning race and class. Secondly, they depict his legal acumen and skill in logic and reasoning. Lastly, they illustrate the pride he expressed in his ability to connect with other people; especially the Black people from the South he would represent as a National Association of Colored People (NAACP) and Legal Defense Fund (LDF) attorney.

Perhaps Marshall's tautological proficiency was contagious, as the aforementioned example from President Johnson illustrates. Using proverbial tautology consistently and accurately may seem more impressive than stating things literally because it requires a certain degree of proficiency. One must have an expansive mental storehouse of such language in order to be able to use it effectively. One must also be able to match the right proverb or expression to the right situation, and it must be done in a seamless fashion to avoid disturbing the natural flow of conversation. Additionally, proverbs are expected to encompass some moral and ethical instruction. Proverbial tautologies are rhetorical tautologies that have become proverbial through frequent usage. There are differences between common rhetorical tautologies which are common phrases and proverbial tautologies which are regarded as proverbs. The common variety of tautological phrasing simply repeats a statement or idea. Some common rhetorical tautologies in the English language include: "future plans," "new innovation," "personal opinion," and "true facts." Proverbial tautologies by comparison usually contain three or more words, and they generally communicate moral lessons. They are considered proverbs because they have also "gain[ed] currency among the folk" (Mieder 2004: 4). The corpus examined for this study yields several tautological proverbs uttered by Marshall including: "People are people," (Tushnet 2001: 258); "Rules are rules," (Bryan et al. 2016: 650; Crew 2019: 156); "Lawlessness is lawlessness," (Crew 2019: 168); "Anarchy is Anarchy" (Williams 1998: 344), and "To decide not to decide" (Tushnet 2001: 177). Speaking before a legal conference, Marshall says:

> When I spoke to this conference, I suggested that the governing principle of a humane society and a good legal system could be summed up in the simple phrase "People are people." It seems to me that the

> phrase not only states a universal rule of substantive law, but that it is equally opposite as a guiding principle for the way courts and lawyers should conduct their daily business—a procedural maxim, if you will. If bench and bar are to perform successfully their role in civilized society, they must recognize the worth and importance of every person coming before them." (Crew 2019: 168)

An inherent feature of most proverbial tautology is that they contain enough identical wording to read the same both forwards and backwards. Such statements are easily interpreted as universal claims to truth—a truth which seems both "profound," and "permanent," and thus extremely difficult to refute (Norrick 1991: 126). Sociologist Harvey Sack explains it as an aspect of being category bound:

> You consider the distribution of the *tautological proverbs*: things like "women are women," "boys will be boys." The occurrence of those things tends to be involved in one way of marking that some activity took place which is category-bound to the named category…But wherever you get a specific occurrence of one of these tautological proverbs you can lock in on something of the sort we're dealing with. They're not merely logician's playthings, and by no means "platitudes." They do quite a specific task. (Sack 1992: 587-588)

Sack's description points to the self-referential aspects of proverbial tautology—one is simultaneously defining a category by identifying a person, place, or thing as an exemplar of said category. Literary scholar Sanda Eretescu Golopentia also focuses on some of the ways proverbial tautologies function, highlighting the fact that X=X, Y=Y (as semiotic systems) allow speakers to access several different levels of meaning at once:

> Uttering one of the proverbs is therefore equal to simultaneously using (communicating in) several languages among which is established what Roland Barthes calls a "dècrochage connotatif" type gradation. The addressee is free to choose among several interpretive levels: the language level, the ethos level, or the "natural semiotic" level. Asked to account for an ethos allusion, the utterer of the proverb can always find refuge in a precise linguistic or

> vague semiotic interpretation. In this manner the language "dècrochage" allows a STRATEGIC AMBIGUITY. Mobile, extensible, the proverb rambles through languages, without ever being fixed in one of them. (Golopentia 1973: 149) (emphasis in original text)

The linguistic versatility described by Golopentia held special significance for attorneys like Marshall, who needed to sound authoritative in the courtroom, the outcome of his cases depended on it. Also, as an attorney, Marshall wanted common folk to place all of their confidence in formal legal processes, and to not take the law into their own hands. This is one reason why Marshall was so fond of the proverb "Rules is rules":

> Marshall consistently looked to protect the rights of the individual from unfair application of the laws. But, he did not condone the breaking of the law. As he often said, "Rules is rules," and when one breaks them, there are penalties that ensue. (Crew 2019: 156)

Marshall also frequented the tautological proverb "Lawlessness is lawlessness" to reiterate his intolerance for rule breaking (Crew 2019: 168). As Norrick points out, the "repetition in wording seems to do more than make a proverb noticeable and memorable: it suggests conviction and it enhances persuasive power" (Norrick 1991: 121). Furthermore, the simplicity of such statements often signifies wisdom—making them equally ideal for common folk speech.

Any word in the lexicon may be used to create what Golopentia calls "frozen idioms" (1972: 122). They remain frozen in the sense that, unlike other proverbs, they generally do not evolve into multiple variations. Instead, innovation lies in the fact that the repeated noun comprises its own "abstract lexical (conceptual) inventory" (Golopentia 1972: 122) of which meaning is primarily conveyed through the very act of performance. For example, Marshall used the tautological proverb "Anarchy is anarchy" with encouraging results. In a 1969 speech given at Dillard University in New Orleans, Marshall was very critical of radical militants who advocated using violent tactics to fight racial oppression. While the topic may have been a sensitive one, it was nothing new to Marshall. In a speech the previous year at

the University of Wisconsin, Marshall was heckled at the podium and his life was threatened by a group of Black Panthers and anti-war protesters who did not agree with his anti-violence, anti-separatist philosophy. Marshall disliked all forms of separatism and once stated: "Let's stop drawing the line [between] colored and white….Let's draw the line on who wants democracy for [America]" (Dudziak 2006: 734). In the Dillard speech Marshall would reiterate his message, saying that "…rocks and firebombs would settle nothing because the nation would fall apart if the law did not punish people who used guns and rocks to take over" (Willams 1998: 344). Marshall added for emphasis: "I am a man of law, and in my book anarchy is anarchy…It makes no difference who practices anarchy. It's bad, and punishable and should be punished" (William 1998: 344). The expression caught the attention of the media and made numerous headlines. The headline for the *Washington Star*'s lead editorial read, "Anarchy is Anarchy" (Williams 1998: 344) and also included a political cartoon depicting Marshall as a judge, bashing a rifle-yielding Black Panther over the head with his gavel The caption reading: "Let's come to order," (Williams 1998: 344).

Marshall uses the proverbial tautological phrase "to decide not to decide" in speaking before the Second Circuit Judicial Conference (1978) to explain an often misunderstood power held by the Supreme Court. Marshall says:

> I could continue with this summary of what we held last Term, but I think you may be more interested in hearing a description of two fascinating cases from the Second Circuit where we did not hold anything. What makes these cases especially intriguing to me is that it was such a struggle on our part to decide not to decide. Deciding not to decide is, of course, among the most important things done by the Supreme Court. It takes a lot of doing, but it can be done. In the overwhelming majority of cases what appears in the public record is a short, simple order denying certiorari. (Tushnet 20001: 177)

The process of "deciding not to decide" is explained more thoroughly by legal scholars Michael E. Solimine and Rafael Gely:

> A public institution that is vested with discretion to decide *whether* to decide the merits of a controversy has considerable power on that basis alone. This is true of the U.S. Supreme Court. For over

> 80 years, since the passage of the Judges' Bill in 1925, the majority of cases reach the merits docket of the Court through discretionary grants of writs of certiorari. After certiorari is granted, typically the parties will brief the case, oral argument will be held, the Justices will discuss the case at their conference, and eventually then decide the case through the release of a written opinion. On rare occasions, however, the Court interrupts that process by deciding that they do not want to decide the case, after all. In those instances, they dismiss the writ of certiorari as improvidently granted, or DIG the case. (Solimine et al. 2010: 155-56)

By discussing the dismissal process, Marshall hopes to bring attention to a power that Justices rarely discuss or mention in public. Marshall also seeks to highlight differences between what the public sees in the press regarding dismissals and what the process actually entails. Regardless of what some may think, the Supreme Court may exercise the right to "decide not to decide," and such decisions are made at the Justice's own discretion, on a case by case basis.

Another important tautological proverb was used by Marshall in his brief for respondents in *Cooper v. Aaron* (1958). *Cooper v. Aaron* is arguably Marshall's most significant victory of all of the cases directly tied to the epic *Brown* decision. According to one witness: "If *Brown v. Board of Education* provided the foundation for school integration in the 1950s and 1960s, *Cooper v. Aaron* provided the muscle" (Cambron 2022: 153). It is worth mentioning that the aforementioned If/Then statement represents a distinct form of proverbial tautology in and of itself (Golopentia 1972: 118-61; Norrick 1991: 126), but more importantly, the If/Then tautological statement communicates that the *Cooper* decision led to the Federal strong-arm enforcement of the initial *Brown* ruling. In contextualizing *Cooper v. Aaron* for readers, historian Cathy Cambron quotes a tautological proverb of British prime minister William E. Gladstone, who said in 1868: "Justice delayed is justice denied" (2022: 152) which was also utilized by several other civil rights leaders, including Martin Luther King, Jr. (1929-1968) (Mieder 2010). Cambron employs the proverb to effectively characterize the rationale behind the ruling which forced the Governor of Arkansas, Orval Faubus to discontinue

postponing the integration of Central High School. On September 4, 1957, Faubus used the state's National Guard to block the Little Rock Nine from entering the school building. The team of teenage volunteers represented by Marshall consisted of nine students with exemplary attendance records and outstanding grades. The Little Rock Nine included: Ernest Green (b. 1941), Elizabeth Eckford (b. 1941), Jefferson Thomas (1942–2010), Terrence Roberts (b. 1941), Carlotta Walls LaNier (b. 1942), Minnijean Brown (b. 1941), Gloria Ray Karlmark (b. 1942), Thelma Mothershed (1940–2024), and Melba Pattillo Beals (b. 1941). Blocking the teen's entry to the building was in bold defiance of the *Brown* ruling. President Eisenhower (1890-1969) responded by deploying Federal troops to dispel the National Guard and to protect the students from the angry violent mobs. Faubus and the local school board expected to eventually reverse the *Brown* decision by way of appeal, but with the *Cooper* ruling, the Supreme Court finally ruled that integration measures would no longer be stalled through "legislation, constitutional amendments, or gubernatorial directives" (Cambron 2022: 153). As for violence against the students, Marshall knew that it would not last. Marshall was featured in *Collier's* magazine (1952) as an up-and-coming political star and told interviewer, James Poling, that in spite of all of his newly found fame and infamy, Marshall intended "to wear life like a very loose garment, and never worry about nothin'" (Cambron 2022: 19; Williams 1998: 193; Poling 1952: 29-32). Marshall used the proverbial expression "to wear life like a loose garment" to insinuate that violence or backlash was never a limiting factor for him. Even as a high-profile attorney, he had dealt with violence all too often. Both Marshall and King had counseled the Little Rock Nine on how to best cope with the violence they experienced daily. (Beals 1994) Marshall intervened on behalf of others to prevent lynchings and barely escaped being lynched himself on several occasions. In a well-written legal brief for respondents in the *Cooper* case, Marshall includes an important tautological proverb that sheds some light on how Marshall viewed insurrection and social unrest. The proverb suggests that what was construed by many to be a "hedonistic, non-worrying philosophy" (Williams 1998: 193) was actually a unique perspective with important theoretical un-

derpinnings. The proverb used in the *Cooper* brief characterizes Marshall's primary argument—that intimidation, scare tactics, and pandemonium should not be allowed to continue to stand in the way of justice. Marshall writes:

> The imperviousness of the Rule of Law to arguments of this sort is, after all, the underlying foundation of equal justice under law. For if criminal defendants, home owners, manufacturers, and others can be routed from their lawful rights by a transient emergency, then we have returned to a state prior to civil society, when there was the Hobbesian state of "a war of all men against all men." This Court reaffirmed this premise of lawful government in *Brown v. Board*. (Cambron 2022: 170)

The proverbial tautological statement "a war of all men against all men" which appears near the end of Marshall's brief was coined by English philosopher Thomas Hobbes (1588-1679). Hobbes is considered by some to be the founder of modern political philosophical thought. It was not a proverb when Hobbes first used it in *Leviathan*, but it has since grown to become a useful stand-in for Hobbes's thesis concerning human nature. Political philosopher Gregory S. Kavka sheds more light on the significance of Hobbes's conceptualization:

> It is surprising that, in the voluminous literature on Hobbes, his most original and important argument rarely receives detailed examination. I refer to the argument, centered on 13 of *Leviathan*, that the state of [human] nature is a state of war of all against all. There seems to be two main reasons why this argument escapes careful scrutiny. Some apparently regard it as so straightforward, and so obviously correct, as to require little analysis or elucidation. (Kavka 1983: 291)

Kavka notes that Hobbes is rarely discussed or refuted because the concept of "all against all" is so straightforward. Kavka stops short of identifying the fixed tautological form as a potential source of the statement's power:

> Others, who accept the common view that the argument is dependent on Hobbes's egoistic psychology, may doubt it is of sub-

> stantial interest for those of us not sharing this gloomy view of human nature. I shall argue that these attitudes are not warranted. Hobbes's argument relies only on assumptions about human beings that are much more plausible than psychological egoism, but it is invalid. Yet, despite its invalidity, it makes a significant and lasting contribution to our understanding of certain important problems concerning human interaction. (Kavka 1983: 291)

Kavka does not agree entirely, nevertheless concedes there is much to be gained from Hobbes. In regard to the special session of the Supreme Court in August of 1958, Marshall would not have referenced Hobbes if Hobbes had not impacted his views. The proverb more than likely helped Marshall to make sense of the widespread agitation in light of the *Brown* ruling. In the legal brief Marshall is reminding the Court that unruly behavior should always be expected, but it should never become a deterrent.

All in all, proverbial tautological phrases did a lot for Marshall's public image. Each of the aforementioned are used in support of the notion that civil rights would not be won by breaking laws or by supporting racism or separatism. The three-word expressions emphasize Marshall's stance that due process, in the strictest sense possible, was the only viable option for achieving civil rights. Marshall doesn't seem to use tautological constructions in many other contexts, perhaps because of the possibility that even the most authoritative proverbial tautology may lose force with overuse. Likewise, employing too many expressions with the very same construction would also likely lessen their significance over time.

4. Presidents and other important leaders

Some products of deliberate modification may be categorized as *anti-proverbs*; especially if the modifications are made with humor or satire as an underlying intention (Litovkina, Anna T and Wolfgang Mieder: 2006). There are at least a couple of instances in which Marshall modifies proverbs to make his own very important statements, but he does so without any comical intentions. As opposed to the satire which may be implied in an anti-prov-

erb, Marshall is bringing the relevance of the original proverb to his audience's attention by way of allusion. In his speech entitled: "The Future of Civil Rights" (1989) Marshall says:

> Paraphrasing President Kennedy, those who wish to assure the continued protection of important civil rights should "ask not what the Supreme Court alone can do for civil rights; ask what you can do to help the cause of civil rights." (Tushnet 2001: 219)

Marshall's variation of the Kennedy proverb effectively sets up the closing of the speech where Marshall answers his rhetorical question by emphasizing the importance of following due process. Marshall says:

> Today, the answer to that question lies in bringing pressure to bear on all branches of federal and state governmental units, including the Court, and to urge each of them to undertake the battle for civil liberties that remain to be won. With that goal as our guide, let us go forward together to advance civil rights and liberty rights with the fervor we have shown in the past. (Tushnet 2001: 219)

The famous proverb first spoken during Kennedy's inaugural address on January 20, 1961, reads:

> And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country. My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man. Finally, whether you are citizens of America or citizens of the world, ask of us here the same high standards of strength and sacrifice which we ask of you. (Mieder 2023: 14,15)

According to Mieder, one of the reasons why this particular Kennedy utterance is so significant is because it marks a philosophical moment that Kennedy had been building up to for quite some time. Kennedy touches on some of the very same ideas in several previous speeches, but this time is different because Kennedy had finally achieved the emotional impact he had been hoping for, coining a new proverb in the process.

> [Kennedy] starts with a call to his American fellow citizens to follow his trumpet to new action in the name of his New Frontier, but then ingeniously goes beyond the national view by repeating his sententious statement with a call for the citizens of the world. That is indeed a moment of oratory grandeur expressing hope for all people on earth. (Mieder 2023: 14)

Mieder highlights the fact that the Kennedy proverb is an antithetical statement with a parallel structure containing "a figure of repetition known as antimetabole (repetition of words in converse order) (Mieder 2023: 15). In a sense, Marshall piggybacks off of the Kennedy statement, and then takes it a step further in proposing a plan of action for his audience to follow.

Marshall implements a similar rhetorical strategy as he writes a letter to civil rights leader Roy Wilkins (1901-1981) concerning the anniversary of the *Brown* decision and the Nation's continuing struggles to integrate. In the letter, Marshall borrows the memorable proverb: "The only thing we have to fear is fear itself" from the famous 1933 inaugural address of Franklin Delano Roosevelt (1882-1945). It was not a proverb at the time that it was first uttered by Roosevelt, but it quickly became one due to the attention it gained in the press and by way of frequent usage. (Mieder 2025: 138) Roosevelt coined the proverb in his speech as he discussed the Nation's failing economic condition as the U.S. was reaching the nadir of the Great Depression (1929-1939). In the speech, Roosevelt says:

> This great Nation will endure as it has endured, will revive and will prosper. So, first of all, let me assert my firm belief that the only thing we have to fear is fear itself—nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance. (Roseman 1938: 11-16)

In the letter to Wilkins, Marshall recognizes that the Nation is at a similar point in regard to civil rights. While many Americans already accepted the Nation's inevitable turn towards integration, many more were still afraid. Marshall writes:

> In some areas of the South effective resistance exists solely because the people in those areas do not yet realize the Constitution is supreme and have fears that desegregation will not work. It is just a matter of time until many of these people clarify their thinking on both points and start toward desegregation. "We have nothing to fear but fear itself ." (Long 2011: 341)

Marshall's use of the Kennedy and Roosevelt proverbs illustrates that he knew the importance of quoting the right leaders, at the right time, for the right purposes. Marshall also quoted another important leader who was not a president, Asa Philip Randolph (1889-1979). Randolph is remembered for conferring with nearly a dozen American presidents—more than any other leader alive, all on behalf of the important cause of gaining civil rights for African-Americans.

In a speech entitled: "Group Action in Pursuit of Justice" published in the New York University Law Review (1969) Marshall employs a variation of a well-known proverb that was popularized by Randolph. Marshall is speaking in support of group action as a way of making legal representation more accessible to ordinary citizens and he uses the proverb to establish an extended metaphor which further emphasizes his purpose and sets up the conclusion, very similar to the way he used the Kennedy proverb. Marshall says:

> On one side, we have the clear need for that kind of group practice which brings legal representations to those persons who have previously been left entirely outside the system. On the other, we have the traditional values of professional responsibility which must not be impaired. We have assumed in the past that the fidelity of the lawyer to his client's interest can be strengthened by the financial bond between them. The client pays the bill, and he ultimately will call the tune. The lawyer, while maintaining proper ethical standards, represents only the interests of the person supplying the retainer. In group practice, the old financial tie is broken. The client no longer pays the bill. And yet, the lawyer's ultimate responsibility must still be to his client. The financial link with an intermediary must not be allowed to warp his responsibility. (Tushnet 2001: 234)

"The client pays the bill, and he ultimately will call the tune" (Tushnet 2001: 234) is a variation of the proverb "He who pays the piper, calls the tune," (Mieder et al. 2016: 591) and it is one of the proverbs used by Randolph as he argued before the U.S. Senate Committee on Interstate Commerce in 1934. Randolph was arguing in support of revising the 1934 Railway Labor Act because it would greatly increase the chance that the Brotherhood of Sleeping Car Porters (BSCP) would eventually gain union recognition and collective bargaining rights; thus, making it a much more powerful organization. Due in part to this important moment, Randolph's organization became the Nation's first legitimate Black labor union. Randolph said:

> "If you eliminate that phase of the bill, permitting the companies to pay the representatives of the company unions, then you really destroy the power of the bill, because if the companies are able to pay the representatives of the company union, then they will be able to intimidate the employees and practically prevent them from joining legitimate and bona-fide unions. So, that I think is basic, because the power over a man's subsistence is the power over his will, and usually the man who pays the fiddler calls the tunes, so the Pullman Company by paying these representatives of the company union, they make them do just what they want done" (Kersten and Lucander 2014: 62-63; Summerville 2020: 293-94).

If Marshall was to borrow from anyone's rhetorical playbook, he couldn't have chosen a more appropriate person, due to the fact that Randolph had been the first advocate for African-American people on the labor front. The proverb was an ode to Randolph in part because Marshall's father had been a porter and Marshall in his youth had also been a porter for a brief time, and they benefited directly from Randolph's heroic efforts.

Marshall would use another Randolph quote as he spoke before the Second Circuit Judicial Conference in 1983. In the speech, Marshall talks about *The Guardians Association versus the Civil Service Commission*, a case involving employment discrimination in the New York City police department. Marshall says:

> The *Guardians* case was brought by Negro and Hispanic police officers who, although appointed to the force, found themselves the first to be laid off when the times got hard in New York City. They were in the "last hired-first fired" category because their appointments were made in order of test scores. They challenged the tests as not job-related yet having a discriminatory impact. (Tushnet 2001: 194)

The proverbial expression "last hired-first fired" was used by Randolph in the 1930s and later became a widely used slogan by members of Randolph's March On Washington Movement (MOWM) which protested vehemently to bring attention to unfair employment practices across America.

5. Marshall joins the freedom struggle in Africa

Marshall spent some time in Africa drafting the Kenyan Constitution. Marshall would recount stories about Kenya often, to friends and colleagues alike, as a way of emphasizing Africa as a major "part of the story of his life" (Dudziak 2006: 780). After spending decades in the U.S. interpreting the U.S. Constitution before the Courts, Marshall's legal services were solicited from Kenyan nationals to resolve several intense ongoing political battles. Legal scholar Mary L. Dudziak explains:

> Kenya would not experience an easy path to liberation. Large white-owned farms had depended on African labor. This labor was induced through a brutal colonial regime. In the 1950s, a resistance movement, known as the Mau Mau rebellion, waged guerilla war on the colonial government, white farmers, and African collaborators. Sensational accounts of violence flooded the newsreels, while Britain responded by detaining and torturing thousands of Africans and by bombing their forest hideaways. The colonial government seemed to have reasserted control over the colony in early 1960, but many in Kenya remained wary. Even before Colonial Secretary Ian Macleod announced that African majority representation in politics, and eventually independence, were coming to Kenya, whites reacted against upcoming constitutional talks and the very idea of African political control. Many thought that no safeguards would be strong enough to protect the interests of white settlers in

> an African-run government. Some Kenya residents therefore developed elaborate plans for a transfer of white farms to Africans, and the departure of white settlers from Kenya. (Dudziak 2006: 739)

In anticipation of heated land disputes Marshall sought to create a document which would protect the land rights of all citizens including over twenty different Native tribes. Kenya also had a diverse minority population which included thousands of Europeans and East Asians, so the laws had to cover the minorities. Additionally, Marshall sought to "protect the rights of the white minorities which [were] outnumbered about 100 to one" (Dudziak 2006: 745). Interpretation was a very important part of the process of drafting Kenya's Constitution. In light of political conflict, Marshall made certain that one legal phrase in particular would take on a completely new meaning. As Marshall explains:

> When you hear a lot of stories about Africa and you get to a place like Kenya and other countries like that, where they think the same way we do, I was happy to find that the Schedule of Rights that I drew for the Kenyan Government was working very well. In some instances they have a little bit more due process than we have over here. The difference is that where we have one phrase, "due process of law," they have about three and a half pages of what is due process in their Schedule of Rights. For instance, if somebody takes your land and you don't like it, you go to the highest court. You don't go to all the other courts. You go straight in and say, "I don't like it," and you do it without cost. (Tushnet 2001: 174)

Reflecting on the expediency of due process in Kenya, Marshall says: "when you can give to the white man in Africa what you couldn't give the black man in Mississippi. Its good" (Tushnet 2001:446; Dudziak 2006: 778). Dudziak performs a rhetorical analysis of Marshall's phraseology: "'when you can give,' that is, when you have the power to give. 'what you couldn't give,' that is what you didn't have the power to give" (Dudziak 2006: 778). Dudziak's analysis insinuates that Marshall viewed the Constitution as a decisive form of empowerment. Through the act of adopting a Constitution, the Kenyan government had gained the

power to grant amnesty to white people, whereas previously they had no power at all. As framer, Marshall viewed the Constitution as a way of working toward democracy and establishing a new culture of nonviolence throughout the country. (Dudziak 2006: 778; Wills 2022)

Marshall uses an important single word phrase (SWP) in describing the experience of watching his Constitution shape the new government:

> The white people who remained in Kenya, for the most part, were beautiful. For example, when the panic started, Ian McCleod said, "Well, I don't see why everybody's panicking. My mother lives here, and I wouldn't leave my mother here If I were afraid of something." Now the interesting thing to me is that the white people who stayed there took part in the government—I remember when the leadership was turned over to Kenyatta. My wife and I were over there as his guests, the independence was declared at midnight. The next morning in Parliament, Jomo Kenyatta said, "We will now attend to the first order of business of the new government. Governor so and so, "whatever the whole governor's name was, "stand up," and this man stood up. He said, "The first order of business is, we're going to reappoint you as governor."And that gave everybody the meaning of the word, "harrambee," which means, "pull together," and the whole government was like that, and it's like that to this day. Well, I'm glad I had a part in it. (Tushnet 2001:446)

The single-word phrase harambee means "all pull together" in Swahili. It is the country's motto and it appears on the Kenyan coat of arms featuring two standing lions facing one another, with a red, black, and green shield between them. The lions are wielding short-handled African spears, and harambee is spelled out at the bottom of the shield. An appropriate English translation for the term harambee might include the words: teamwork, alliance, or even synergy. Harambee is a multifaceted concept centered on establishing cohesion and community alliance, which may be considered a hallmark of many African cultures. For instance, the African-American holiday Kwanzaa, created in 1966 by Black Arts Movement (1965-1975) scholar Dr. Maulana Ron

Karenga (b.1941) is centered around seven important multifaceted concepts expressed in single-word Swahili phrases: umoja (unity), kujichagulia (self-determination), ujima (collective work and responsibility), ujamaa (cooperative economics), nia (purpose), kuumba (creativity) and imani (faith). (*Smithsonian*) Likewise, Harambee remains an important concept in Kenya and other parts of Africa. For instance, the Namibian government recently enacted the Harambee Prosperity Plan (2021-2025) which is a series of legislative measures aimed at improving the country socially, economically, and politically following the COVID-19 pandemic of 2020.

Marshall discussed another political phrase that became important during his stay in Africa. Upon his arrival, he found that he and African nationalists would be working under very difficult conditions. Marshall explains: "The restrictions were almost unbelievable. Africans could not hold a meeting in a building. As a result, the only meetings they had were outside (qtd. in Dudziak 2006: 740-41). Marshall describes what it was like when he returned the next day and attempted to enter a meeting of the African Elected Members Organization in Kiambu:

> There were two thousand Africans standing out in the field, perfectly quiet, and the leaders were meeting in the building but they couldn't go in. The leaders were in one building. They were out. They were standing out in that hot sun, all day, waiting for the leaders to come out and report to them. (Dudziak 2006: 741)

Marshall and Tom Mboya desperately wanted to enter the meeting, but due to the restrictions, they were not allowed. Mboya explained to the district officer that they had recently obtained a permit, but the officer informed them that their permit had been revoked. In an epiphanic moment, Marshall realized that there was a possibility that if he continued to press the issue, he might be searched, and if that were the case, he would surely spend the rest of his life in jail because of the money, paraphernalia, and other things he had in his pockets for Mboya and others (Dudziak 2006: 742). With a sudden change of course, Marshall decided to ask the district officer if he could briefly address the large crowd. Marshall explains:

> They said, "Nope. No speeches." I said, "I'm not going to make a speech. Just let me say one word of greeting." I said, "Okay," and I jumped up on top of this station wagon that Mboya was driving, and I looked over the crowd, and they all recognized Tom Mboya, and I guess they knew who I was, I don't know. Well, as I looked at them, I just shouted out real loud one word, "Uhuru!" and pandemonium broke out. They all crowded, cheered, and everything, and the district officer was really mad as all get out. The reason was, the word "Uhuru" means "Freedom Now," Not tomorrow, but freedom right now. And he said, "I told you not to—" I said, "But I didn't say but one word." So he told me where I'd better go right quick, so I did." (Dudziak 2006:742-43)

As Marshall asserts, the officer was mad as "all get out." The crowd had responded so energetically because the single-word phrase Marshall uttered was "political dynamite" (Williams 1998: 285). This anecdote illustrates that Marshall had gained more than a basic understanding of the social and political climate in Kenya, and he used that knowledge to keep himself out of prison and transform what had been a motionless atmosphere into a boisterous mini-rally. The story also illustrates that Marshall had gained some basic understanding of the sayings of the people, which was more than likely a deliberate move on his part. Given the crowd's reaction, the single-word phrase "Uhuru" may be viewed in the same light as many of the proverbs, sayings, and expressions used during fights for Civil Rights in America. Bellowing the phrase at the top of his lungs was Marshall's show of solidarity between two struggles for freedom—the one in Kenya and the ongoing struggles for freedom in America.

6. Legal expressions and proverbs

In addition to the Randolph proverbs and expressions, Marshall had a storehouse of other legal expressions and proverbs which he employed from time to time. In a letter to Roy Wilkins dated January 26, 1940, Marshall protests the amount of NAACP funding spent on legal defense. According to Marshall, the NAACP should have been allocating more of their funds for this specific purpose. In the letter Marshall exclaims: "When we compare the

money spent for legal defense, we can see that we are getting away with murder" (Long 2011: 60). The proverbial expression "to get away with murder" (Bryan and Mieder 2016: 527) is then followed by more explanation:

> Outside of branch and youth work, which is organization work, *what do we do?* Anti-lynching and legal defense and education. What do we justify our existence upon? These items. Our members and Negroes in general want *action*. To get action we must spend money. (Long 2011: 60) (emphasis in original text)

Marshall uses the proverbial expression "to give up the robe for the sword" in his speech on the importance of judicial neutrality (1981). In the speech, Marshall argues that responsibility for lowering the crime rate does not lie solely on the court system:

> The tools for solving these problems are in the hands of other branches of government because that is where the Constitution has placed them. That is also where we should leave them. I therefore urge that you politely disregard any suggestion that you give up the robe for the sword. (Long 2011: 189)

As a young lawyer, fresh out of law school, Marshall was sometimes appointed by the NAACP to observe cases to protect judges against charges of racial bias (Williams 1998: 100). In one of such cases a bank president's eighteen-year-old daughter had been beaten severely in an attempted rape by a Black worker. Consequently, the jury reached a verdict very quickly and the man was sentenced to life in prison. Marshall would later write to his mentor Houston: "He is guilty as the devil" (Williams 1998: 101).

In *Sweatt v Painter* (1950) Marshall helped Herman Marion Sweatt (1912-1982) gain admittance to the University of Texas Law School. The victory was the result of a four-year legal battle with many complex challenges. One determining factor in the case had been Marshall's meticulous preparation of Sweatt for cross-examination:

> The climactic moment came when Sweatt testified he would never go to a segregated law school, even at a newly proposed $3 million

> Jim Crow facility. Sweatt told the judge that any segregated school was inherently unequal. Under intense cross-examination from Texas lawyers, the NAACP plaintiff was unflappable. (Williams 1998: 247)

Afterwards, the opposing counsel commented to Marshall on the mental fortitude of their brave witness and Marshall responded: "Well you know we woodshed our witnesses pretty well… Matter of fact, I expected him to do well. We went out early this morning and filled him full of gin" (Williams 1998: 248). It was a result of Marshall's training under the tutelage of Houston that Marshall would hold mock trials which included rigorous rehearsals for questioning to avoid any costly errors. The proverbial expression "to woodshed the witness" is a euphemism for intense preparation.

One legal proverb Marshall used was derived from his father. In a 1977 interview, Marshall explains why he believes members of his own family would not have put up with Jim Crow laws if they had the formal legal training that Marshall was fortunate enough to receive. Marshall supports this assertion with an illustration of his father's tenacious spirit. Marshall says:

> I mean, for example, my father had a flat rule. He believed that every man's house was his castle. He had a flat rule, no man could come in his house without his permission. And he used to say, if anybody ever did, he'd kill him. (Tushnet 2011: 425)

This flat rule even applied to the local police captain, and in turn the captain respected the elder Marshall's wishes:

> …the captain of our precinct was a very good friend of my father's, Captain Cook…I can remember, would come to the door and ring the doorbell, and I'd go to the door, and he'd say, "Hey, young man, is your father in?" I'd say, "Yes, come on in." He'd say, "Oh no. No." Then he'd holler in, "Can I come in, Willie?" Father would say, "Yes, come on in, Captain." But he …believed, that was his castle. (Tushnet 2011: 425)

The proverb, "Every man's house is his castle" was a well-known proverb, even before it was documented in legal texts. From a historical perspective, nearly every civilization dating back to

ancient Rome has some variation of what later became known as the Castle Doctrine. It was ascertained from English folk law by Sir Edward Coke who wrote in 1628: "For a man's house is his castle…and each man's home is his safest refuge" (Martin).

Marshall employs several other important legal proverbs that date as far back as ancient Rome or earlier; one of which represents the most basic fundamental principles in legal studies and what many may consider to be the foundation of American democracy. The proverb "Every man has his day in court" was used by Marshall in the closing of a speech entitled: "The Judiciary and Fundamental Human Liberties" presented before the Second Circuit Judicial Conference (1980). Before employing the proverb, Marshall builds up to it carefully:

> And once inside the courtroom, each person has an opportunity to be heard, to participate in the legal process and to speak his mind about his fundamental rights. This participation serves to recognize, every day in every court, the moral worth of each individual. Each person should have the sense that through the courts the avenues of government are open to him, that he can state his viewpoint and be fairly heard by a neutral decision maker. (Tushnet 2011: 185)

Marshall goes on to thoroughly explain why he believes it is the most unwavering of all American principles:

> There has been a growing recognition that it is vitally important that people have a sense of participation in the decision-making process. It is not enough that the decision be correct; someone must have listened to the claimant and by that listening acknowledged the importance of the individual. (Tushnet 2011: 185)

As his grand finale, Marshall leaves his audience to consider the proverb and ponder its meaning, saying: "Our country prides itself on the fact that every person gets his 'day in court,' and that ideal must never be forgotten" (Tushnet 2011: 185).

In a speech presented before the Second Circuit Judicial Conference (1987) Marshall speaks against the practice of detaining those accused of crimes as a preventative measure, utilizing two important Roman legal proverbs in the process. Mar-

shall says: "Preventative detention severely undermines our long established and much vaunted principle that a person accused of a crime is presumed innocent until proven guilty" (Tushnet 2011: 207). The proverb "innocent until proven guilty" is then supported with a brief anecdote depicting the 4th century Roman trial from which the phrase originates:

> A Roman prosecutor was publicly trying a case before the Emperor Julian. Midway through the proceedings, the prosecutor realized that the case was in trouble and that the defendant was likely to carry the day and so, unable to contain himself, the prosecutor passionately appealed to the Emperor, "Oh, Illustrious Caesar, if it is sufficient to deny, what will happen to the guilty?" To which Julian replied, "If it suffices to accuse, what will become of the innocent?" (Tushnet 2011: 207)

The statement "If it suffices to accuse, what will become of the innocent?" is widely regarded as a legal maxim. It is used in the title of an essay by legal scholar, Elizabeth E. Joh, in which Joh argues against the consideration of acquitted conduct in sentencing. The title reads, "'If it suffices to accuse': United States v. Watts and the Reassessment of Acquittals" (1999). Judge John B. Stevens opens a recent op-ed piece about the presumption of innocence with a version of the anecdote depicting Ceasar. Immediately following the Ceasar anecdote, Stevens exclaims in an authoritative fashion: "The U.S. Supreme Court has long proclaimed the standard of presumption of innocence in American jurisprudence as undoubted law, axiomatic law" (Stevens 2021).

In another speech, Marshall explains that a similar legal proverb which also dates back to ancient Rome conveys an important message he learned in his early years. Marshall says:

> This, so I was taught, was not to coddle the guilty, but to protect the innocent. I was raised in the days when the prevailing maxim was: "It is better that a thousand guilty people go free than that one innocent person suffer unjustly" (Tushnet 2011: 188).

Several variations of the proverb "It is better that a thousand guilty people go free than that one innocent person suffer unjust-

ly" are analyzed by Vidar Halvorsen (2004). The title of Halvorsen's essay derives part of its namesake from an interpretation of the Roman doctrine made by William Blackstone in 1769 in which Blackstone states: "the law holds that it is better that ten guilty persons escape, than that one innocent suffer" (Halvorsen 2004). It is unclear how or why the number ten increased to one thousand in Marshall's interpretation or why Blackstone uses the number ten. However, Halvorsen infers that there may be some level of symbolic significance attached to the number ten. Nevertheless, quantity has no bearing on the overall message emphasizing the Court's responsibility to protect the innocent.

Marshall used an important proverb derived from British common law in a speech entitled: "The Dangers of Judicial Restraint" (1979). Throughout the speech, Marshall argues that limitations must be placed on the Court's ability to suppress the collective voice of the press. Likewise, according to Marshall, the Court's unlimited freedom to restrain pretrial detainees must also be placed in check with careful attention being given to the negative effects that unnecessary detention may have. Marshall states:

> As those of you with experience in complex civil rights litigation involving schools, prisons, or mental institutions appreciate, it is sometimes difficult for a federal court to know the difference between administrative convenience and institutional necessity. But we have long since abandoned the notion that the king can do no wrong. Certainly, wardens should not be treated better than royalty (Tushnet 2011: 181).

The tenet from British common law, "the king can do no wrong" (Bryan et al. 2016: 440) or *rex potest peccare* forms the basis of the Doctrine of Sovereign Immunity which states that no sovereign territory or state can be sued without its consent. Furthermore, such territories are also free from any kind of legal wrongdoing. Marshall holds that such philosophy granting complete immunity is outdated, useless, and even harmful.

The antiquated axiom "The king can do no wrong" mirrors another dogmatic phrase analyzed by Marshall in an interview. The phrase is uttered as Marshall is contemplating the nature of

the racism he experienced as a child and the psychological impact that it had on himself and others. Marshall says:

> I mean, we had a phrase around school that "white is right." Now, when I would say it, I was joking. Was the other guy joking? I'm not too sure he was joking. I'm not too sure (Tushnet 2011: 500).

The subject then turns to the importance of "The Doll Test," the famous experiment performed by the husband and wife team of psychologists, Kenneth and Mamie Clark, who proved through empirical research, that racism was detrimental to the growth and development of Black children because it often led to an inferiority complex. The results of the scientific experiment helped to secure Marshall's victory in *Brown*. The tautological phrase "white is right" is an anti-proverb derived from the proverb pair "might makes right" and "right makes might." Mieder categorizes them as a pair because they are both so commonly used. According to Litovkina and Mieder, "We laugh at some anti-proverbs because they skew our expectations about traditional values, order, and rules" (Litovkina and Mieder 2006: 44). Likewise, Mieder (2019) explains that they date back to ancient Rome and may be found in the works of Plato, Plautus, Ovid, Lucan, and Seneca. Furthermore, they have been frequented by the likes of Abraham Lincoln (1809-1865), Ralph Waldo Emerson (1803-1882), Elizabeth Cady Stanton (1815-1902), Harry S. Truman (1884-1972), and Barack Obama (b.1961). Maintaining a high frequency of usage in popular culture throughout the ages increases the likelihood that anti-proverbs such as "white is right" will eventually appear alongside a source proverb. Mieder brings to light an important statement made by George Cornewall Lewis in *The Influence of Authority in Matters of Opinion* (1849):

> In general, proverbs express only empirical laws of human nature—that is to say, being generalizations from partial experience, they are only true within certain limits, and subject to certain conditions. Before, therefore, a popular proverb can be safely used for philosophical purposes as evidence of a general truth, it must undergo a process of analysis; it must be limited according to mental tendencies which it involves, and the circumstances in which it is applicable. In this manner, proverbs which are apparently contradictory may be recon-

> ciled, and the partial truth which they contain will be extracted and rendered profitable. (Quoted in Mieder 2019: 265)

Two things may be deduced from Cornewall's statement to better understand the tautological anti-proverb, "white is right." Firstly, it was a direct reflection of the conditions Marshall grew up in. Secondly, as Cornewall contends, a proverb does not need to be entirely accurate to gain any degree of currency, nor does it have to be precise to derive any amount of truth from it. Cynical proverbial phrases regarding race were common during the civil rights era, and Marshall grew up hearing them. Marshall's father would sometimes use phrases such as "that is mighty white of you," or "that is mighty Black of you," or call either of his sons "the white man in the woodpile" to expose flaws in their reasoning as they argued politics at the dinner table. In a 1977 interview, Ed Edwin asks Marshall about the prevalence of what Edwin describes as "semantic institutionalizing" in African-American culture. Edwin says:

> A tangential question—this complex you've mentioned, to what extent, in your earlier years in this activists work, did you find that Negroes were aware of the semantic institutionalizing—such as "that's white of you," or "free, white and twenty-one" adapted from the Constitution—with which I, as a white, grew up, hearing it but not knowing what it meant. And used it not knowing what it meant (Tushnet 2001: 499).

Edwin's question raises the possibility that some people use cynical proverbial phrases regarding race without having any idea about what they mean or where they originate. The popular phrase "free white and twenty-one" emerged in the mid-nineteenth century when voting requirements no longer included property ownership as a prerequisite, citizens only needed to be free, white, and at least twenty-one years of age. In 1963 it would be the title of a low-budget film, a courtroom drama about an African-American man on trial for raping a white woman. Many understand the phrase "free, white, and twenty-one" to mean "obligated and indebted to no one." Edwin's description, "semantic institutionalizing" highlights the psychological impact of

promoting white privilege through phraseology. Marshall insists he was only joking whenever he said, "white is right," but he is not as certain about other people's motives for using the phrase. Marshall surely understood how white privilege leads to racial injustice. By grade school, he had been involved in several physical altercations with white people who felt they deserved the privilege of calling him the "N-word." Marshall could also hear officers beating confessions out of Black prisoners because his school in Baltimore was several feet away from the police precinct. Thus, Marshall could not have been entirely joking when he uttered the phrase "white is right." Regardless of whether Marshall was joking or not, the anti-proverb "white is right" represents historically unfair circumstances in the American legal system —a predicament that Marshall would spend his entire life trying to change. Marshall summarized his rationale for devoting decades of his life to attacking segregated schools in one brief saying: "unless our children begin to learn together, there is little hope that our people will ever learn to live together and understand each other" (Ball, 1998: 235; Crew 2019: 200-01). Marshall may not have been a very strong proponent of public protest, but he was a resilient advocate of unity.

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Index of Proverbs, Sayings, and Proverbial Expressions

(In the order in which they appear)

(1) To be the right man, at the right time
(2) To be a social engineer
(3) To bang into someone's head
(4) To see the big picture
(5) There's no law on our side? Let's make some.
(6) Lose your head and lose your case.
(7) No tea for the feeble, no crepe for the dead.
(8) To be a dead pigeon
(9) To let the law catch up
(10) To go the whole hog
(11) People are people
(12) Rules are rules
(13) Lawlessness is lawlessness
(14) Anarchy is anarchy
(15) Women are women
(16) Boys will be boys
(17) To decide not to decide
(18) If Brown v. Board of Education provided the foundation for school integration in the 1950s and 1960s, Cooper v. Aaron provided the muscle.
(19) Justice delayed is justice denied
(20) To wear life like a loose garment
(21) All men against all men
(22) Ask not what the Supreme Court alone can do for civil rights; ask what you can do to help the cause of civil rights.
(23) Ask not what your country can do for you, ask what you can do for your country.
(24) We have nothing to fear but fear itself.
(25) The client pays the bill and he will ultimately call the tune.
(26) Last hired-first fired.
(27) Due process of the law
(28) Harambee
(29) Uhuru
(30) All get out
(31) To get away with murder
(32) To give up the robe for the sword

(33) To be as guilty as the devil
(34) To woodshed the witness
(35) Every man's house is his castle.
(36) Every man has his day in court.
(37) Innocent until proven guilty
(38) If it suffices to accuse, what will become of the innocent?
(39) It is better that a thousand guilty people go free than one innocent person suffer unjustly.
(40) The King can do no wrong.
(41) White is right.
(42) Might makes right/ Right makes might
(43) To be mighty "white" or "black" of someone
(44) To be the white man in the wood pile
(45) To be free, white, and twenty-one
(46) Unless our children begin to learn together, there is little hope that our people will ever learn to live together and understand each other.

Dr. Raymond M. Summerville
Department of English: Literature, Teaching, Pre-Law, and
Creative & Professional Writing
Fayetteville State University
1200 Murchison Road
Fayetteville, North Carolina
USA
E-mail: raymondmjs@gmail.com