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# H-Diplo

## H-Diplo Roundtable Review

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**Mary L. Dudziak.** *Exporting American Dreams: Thurgood Marshall's African Journey.* New York: Oxford University Press, 2008. ISBN: 9780195329018 (hardback, \$29.95).

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### Contents

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Introduction by Christopher Endy, California State University, Los Angeles .....	2
Review by Daniel Branch, University of Warwick.....	6
Review by Cary Fraser, Pennsylvania State University .....	10
Review by George White, Jr., York College-CUNY .....	12
Response by Mary L. Dudziak, University of Southern California .....	17

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Introduction by Christopher Endy, California State University, Los Angeles

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In March and April of 2009, H-Diplo hosted a lively discussion under the heading “Terminology.”<sup>1</sup> The big question was whether scholars could clearly delineate terms such as diplomatic, international, and transnational history. While some participants used the occasion to lament a perceived disappearance of political history in the academy, others offered compelling evidence that we are in a vibrant moment when historians are making use of a wide array of methods to study politics and power. Forget strict definitions and fields, and forge ahead, this group argued.

Among the first to chime in on behalf of an ecumenical approach to the transnational turn was Mary L. Dudziak. She argued against any attempt to define transnational history in opposition to state-centered history. Such efforts, she suggested, would quickly falter given the unexpected ways in which nation-states and national governments intrude on seemingly transnational stories. “I think it would be better,” she wrote, “to explore the ways the state figures in transnational history, rather than defining that work in a way that excludes the state.”<sup>2</sup>

Dudziak’s position, echoed in 2009 by others such as Anne L. Foster and Naoko Shibusawa, finds still more support in this roundtable on Dudziak’s latest book. *Exporting American Dreams* sets out to explore why Thurgood Marshall, the civil rights lawyer and U.S. Supreme Court justice, spent so much time and energy engaged in Kenyan politics. For a historian focused on the United States, Marshall’s African journeys might seem a quintessentially transnational topic. To tell this story, however, Dudziak needed to lean heavily on more traditional national histories of Kenya, and her transnational research in turn contributes to Kenyan historiography, as our H-Diplo roundtable reviewers attest. Further frustrating attempts at clear delineation, her book even offers a healthy serving of old-fashioned diplomacy conducted at long tables in a stately mansion in London. If scholars ever want a book to illustrate the difficulty of making clear distinctions between diplomatic, international, and transnational history, they can turn to Dudziak’s crisp and rewarding narrative of Marshall’s transatlantic activism.

Dudziak’s approach weaves Kenya’s break from British colonialism together with the history of the U.S. civil rights movement. Her unifying figure, Thurgood Marshall moved back and forth between three continents to support Kenyan independence and more broadly, to advance a political vision in which peace and equality rested on courts and constitutions. Dudziak’s title, “Exporting American Dreams,” might suggest a familiar story

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<sup>1</sup> H-Diplo Thread “terminology: diplomatic history, international history, and transnationalism”, 19 March to 9 April 2009. The March 2009 H-Diplo discussion logs are available in chronological order at <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=lx&list=H-Diplo&user=&pw=&month=0903> ; the April 2009 discussion logs are located at <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=lx&list=H-Diplo&user=&pw=&month=0904>

<sup>2</sup> For Dudziak’s comments, see <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=H-Diplo&month=0903&week=c&msg=D8gjbDtkwVsgUCPF6c6njg&user=&pw=>

of Americanization. However, she makes clear that Marshall never limited his “American” dream to purely U.S. legal sources. Marshall’s vision for Kenya—and by extension, for the United States—also took inspiration from the United Nations Declaration of Human Rights and from the postcolonial constitutions of Nigeria and Malaya. Marshall’s work in this way represents a transnational episode linking the U.S. civil rights movement to the wider history of decolonization.

For all Marshall’s dreaming, Dudziak also emphasizes the lawyer’s pragmatism. One of his most important positions was to argue for the defense of white property rights in Kenya. These guarantees to wealthy white farmers essentially enshrined the economic injustices created under European colonialism. Marshall knew that the protection of “minority rights” in Kenya would have this effect, but he was even more concerned with the threat of racial violence. On this point, Dudziak again frames Marshall’s constitutional thinking in transnational terms. According to Dudziak, Marshall’s willingness to compromise reflected a global political moment in the 1960s when racial violence loomed as a very real danger to public order, whether in Kenya or in the United States. To prevent violence, Marshall urged compromise instead of strident idealism or property redistribution. Dudziak’s portrait of Marshall echoes a key claim in Thomas Borstelmann’s argument on U.S. presidents and their handling of the “Cold War color line.”<sup>3</sup> Much like John F. Kennedy and Lyndon B. Johnson, Marshall believed that the path to freedom and equality could be found only by searching for compromise. Marshall’s moderation almost guaranteed imperfect results, but, Dudziak reminds us, the prospect of racial violence always loomed as an even more ominous danger.

In this roundtable, Dudziak earns particular praise for her deft and accessible handling of both U.S. and Kenyan history. As the reviewers report, many of her most original contributions come on the Kenyan side. Daniel Branch, a specialist in African history, praises Dudziak for showing Marshall’s role at the London diplomatic conferences, where British authorities sat down with Kenyan nationalists to settle the terms of decolonization. Marshall joined the table in London as part of the nationalist delegation. He was just a private U.S. citizen, but his work in the 1954 *Brown* school desegregation case had given him a wide-reaching reputation for moderation. In London, Marshall’s presence helped legitimize the Kenyans’ claims to national sovereignty. It could be easy to overlook the importance of Marshall’s support, but Branch reminds us that we should not take for granted the end of white supremacy in Kenya in the 1960s. Decolonization, which might seem inevitable in retrospect, was by no means a foregone conclusion at those London meetings.

Several of the reviewers latch on to one of the book’s most gripping and puzzling episodes. Once Kenya won independence, why did Marshall seem to condone the political repression undertaken by Kenya’s post-colonial leader, Jomo Kenyatta? Dudziak rejects the notion that Marshall was simply a loyal Cold Warrior who admired Kenyatta’s reliable anti-communist positions. That might have been true for other U.S. leaders, but not Marshall,

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<sup>3</sup> Thomas Borstelmann, *The Cold War and the Color Line: American Race Relations in the Global Arena* (Cambridge, MA: Harvard University Press, 2001).

who had more complex reasons for supporting Kenyatta's imperfect rule. Reviewer Cary Fraser picks up on Dudziak's line of inquiry and suggests that we adopt a wider African context to explain Marshall's defense of Kenyatta. According to Fraser, Marshall most likely worried about the U.S. government's support for military dictator Mobutu Sese Seko in Congo-Zaire and for white apartheid rule in South Africa. In this perilous context, when Washington allied with governments far worse than Kenya's, Marshall might not have wanted to risk criticizing Kenyatta. George White's review emphasizes another theory rooted in Marshall's pragmatism. Just as Marshall learned to live with the United States' piecemeal and inadequate enforcement of the *Brown* decision, so too was he willing to forgive Kenyans their own political shortcomings. Dudziak's reply in this roundtable reiterates her book's epilogue and frames Marshall's position in terms of "a more personal dynamic." By the 1970s, Marshall had grown isolated and angry on the Supreme Court bench, and his ongoing ties to Kenyatta helped keep alive memories of a more powerful time in his life.

The roundtable also raises a few small critiques, mainly asking for more depth in the coverage of Kenyan politics. Branch, for instance, notes that Dudziak gives heavy emphasis to the Kenyan nationalist leader Tom Mboya. Mboya makes a fascinating pairing with Marshall, but according to Branch, this focus leads Dudziak to downplay rival political ideologies. Branch would like to see more attention given to Oginga Odinga, who differed from both Mboya and Marshall in his calls for more redistributive land reform policies. Branch also sees a greater role for Charles Njonjo, another Mboya rival who, as Kenya's attorney general, undermined the constitutional system Marshall helped create.

The overall tenor of the roundtable, however, is that such smaller points pale next to the book's ability to raise profound issues of political philosophy. It is hard to reach Dudziak's epilogue without reflecting on the underlying dilemmas that made Marshall's work in Kenya so challenging. Here is one telling statement by Marshall, which Dudziak offers near the end of her book: "When you try to give to the white man of Africa what you couldn't give the black man in Mississippi, that, to my mind is really working toward democracy" (169). Was this a principled statement in defense of minority rights, or was it a fateful capitulation to white landowners' ill-earned privilege? Dudziak finds at least some virtue in Marshall's moderate spirit, writing that "the lesson of his work in Kenya might be that nation-building required trade-offs, that righting all wrongs is inconsistent with creating a shared sense of national unity" (169). Of the three reviewers, George White offers the most extended meditation on this and other ambiguities in Marshall's legacy. To White, a key lesson of Marshall's career comes in the jurist's late-life disillusionment with the United States, which White holds as a useful corrective to those who would celebrate the age of Obama as a post-racial moment.

Dudziak's transnational narrative has one other meaning for today. If Marshall's wrestling with tricky issues of democracy and diversity remains relevant, so too does the simple reminder of how an American jurist in the 1960s and 1970s gained such wide respect and influence in international circles. According to recent studies, foreign constitutional courts no longer cite U.S. court rulings with the same frequency that they did in earlier eras. In part, this decline reflects the widespread unpopularity of George W. Bush's human rights

policies. In part, it reflects the growing maturation of constitutional law in foreign countries, a trend that Marshall encouraged by his own transatlantic activism. Regardless of the reasons, Dudziak's portrait of Marshall's global stature casts into sharper relief today's world of constitutional law, in which the American Century seems on the wane.<sup>4</sup>

### Participants:

**Mary L. Dudziak** is the Judge Edward J. and Ruey L. Guirado Professor of Law, History, and Political Science at the University of Southern California. Her Ph.D. and J.D. are from Yale. She is the author of *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton University Press, 2000), and she is editor of *September 11 in History: A Watershed Moment?* (Duke University Press, 2003), and co-editor of *Legal Borderlands: Law and the Construction of American Borders*, American Quarterly (Special Issue, September 2005) (reissued by Johns Hopkins University Press, 2006). She is currently at work on two books: *War Time: A Critical History*, and *How War Made America: A 20th Century History*, both with Oxford University Press.

**Daniel Branch** is Assistant Professor of African History at the University of Warwick. His DPhil is from the University of Oxford. His first book, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization*, was published by Cambridge University Press in 2009. He is currently working on a political history of post-colonial Kenya, which will be published by Yale University Press, and has published numerous articles on the colonial and post-colonial history of the country.

**Cary Fraser** received his Ph.D. from the Graduate Institute of International Studies at the University of Geneva. He teaches American Foreign Policy, American Political History in the 20th Century, and the politics of race in the Americas at the Pennsylvania State University. He is the author of *Ambivalent Anti-Colonialism: The United States and the Genesis of West Indian Independence*, and his essays/articles have been published in Britain, Canada, the Caribbean, and the United States. He is currently writing a study of race in American domestic and foreign policy in the mid-20th century.

**George White, Jr.** is an Assistant Professor of History at York College, CUNY. He is the author of *Holding the Line: Race, Racism, and American Foreign Policy Toward Africa, 1953-1961* (2005). His forthcoming project, "On the Battlefield For My Lord: the Papers of Rev. Robert Boston Dokes," will be an authoritative collection of the writings of an African American who served as an Army Chaplain during World War II. Dr. White teaches courses on African American history, American diplomatic history, Black masculinity, and the history and culture of Hip Hop. He also is a member of the inaugural SHAFR blogging team.

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<sup>4</sup> Adam Liptak, "American Exception: U.S. Court Is Now Guiding Fewer Nations," *New York Times*, 18 September 2008.

A fine study of one of the leading lights of the civil rights movement, *Exporting American Dreams* is also a seminal contribution to the growing field of the history of decolonization. Mary Dudziak's book is an exploration of, to paraphrase Fredrick Cooper, one of those communities smaller and larger than the nation-state imagined by Kenyans and others during the era of decolonization.<sup>1</sup> Through her sketch of the role of Thurgood Marshall in Kenya's constitutional negotiations from 1960 to independence in 1963, Dudziak sets out the boundaries of a global, imagined community constructed on notions of struggle and social justice.

The comfort with which Dudziak's narrative criss-crosses the Atlantic is indicative of a skilled historian. It is a book with great relevance, not least in terms of the methodological example set; histories of individuals and movements of global significance require global research. Dudziak's research leads her to rightly put Marshall's role in the broader context of the Cold War. Marshall was though, as Dudziak makes clear, no naive handmaiden of American foreign policy. He had other reasons to be interested in events in Kenya. Through their imminent triumph over colonial rule, Kenya and the other decolonising African nations offered an empowering example to African-Americans of the potential for social justice. Marshall similarly inspired his Kenyan friends. His moderating influence over a movement that constantly debated the value of violence left the strongest impression on the Kenyans.

Throughout the book, Dudziak splendidly conveys the sense of imminent violence that lurked in the background of both the civil rights movement and Kenya's final push towards independence. In the U.S., Marshall had long argued against what he considered to be pointless bloodshed for the sake of the appearance of struggle. The futility of violent struggle was even more apparent to his Kenyan colleagues. Whatever the British may have feared, these were no radicals. The bloody Mau Mau rebellion (1952-56) was a recent memory, repression through mass detention ongoing and guerrillas still in the forests of Mount Kenya. The Kenyan delegates at the constitutional negotiations included individuals that had deliberately and repeatedly denounced violence throughout the 1950s. Others, such as Julius Kiano and Njoroge Mungai owed their places around the table to their representation of Kikuyu opponents of Mau Mau. The nationalist delegation thus included those who stood to lose the most should the real radicals- the men still in detention at the time of the first round of talks - assume influence over nationalist politics.

Viewed from such a perspective, the conciliatory nature of the agreement struck between the Kenyan representatives and the British government is unsurprising. The nationalists acquiesced to a land transfer programme from white settlers to peasant farmers that protected the rights of the European famers. Marshall was part of this push towards conciliation. Marshall well understood his role at the negotiations in London. He was to

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<sup>1</sup> Frederick Cooper, "Conflict and Connection: Rethinking Colonial African History," *American Historical Review* 99: 5 (December, 1994), 1519.

help construct a constitutional framework that would simultaneously deliver majority rule for Africans and protection of the property and other rights of Europeans and Asians. Marshall was though but one part of a sustained American effort to convince Kenyans of the superiority of American democracy.

While Britain remained the preeminent development partner and foreign donor after independence, the U.S. did provide substantial financial assistance to the new government. But the export of American dreams was most easily and extensively done by importing Kenyan recipients. From 1958, hundreds of Kenyan students, the current president's father among them, took up American-funded scholarships at more than 200 colleges across the U.S. The guiding principle behind these efforts was exactly the same as that which explained Marshall's presence at the Kenyan negotiations.

In the context of the Cold War in the developing world, advancing liberal democracy meant in practice the protection of foreign private capital investments and strategic interests through the preservation of political stability. American and British influences in Kenyan affairs, including the more indirect ones such as Marshall's advisory role, need to be understood in this broader framework. While Marshall had no dog in this fight, his stance on the protection of the land rights of minorities, the need to avoid violent struggle and need for compromise and agreement between settlers and nationalists did share many similarities with prevailing attitudes in London and Washington. It was precisely because of Marshall's potential to act as a moderating force that his presence in London was broadly welcomed by the British government.

Needless to say, Marshall's views were also shared by a good many of the nationalist delegation at Lancaster House. The agreement on the protection of private property was partly a reflection of the preferred development paths for independent Kenya held by some of the delegates. Not all though agreed. Dudziak arguably underplays the ideological debates within the nationalist movement by ascribing opposition to Marshall's role by Oginga Odinga to the latter's personal rivalry with Tom Mboya. But the dispute between Mboya and Odinga was about more than just a personal battle for power. Mboya and Odinga had very different visions for Kenya's economy after independence. Odinga consistently urged that the independent government institute a set of redistributive policies centred upon the transfer of land from departing settlers to landless peasants. Such measures required state control of land and the ability of the state to nationalise key economic activities, thus threatening British and, to a lesser extent, American private interests in Kenya. While recognising the eventual need for wealth redistribution, Mboya had a very different interpretation of the development path Kenya needed to follow. Redistribution was pointless, Mboya consistently argued, without wealth to redistribute. Sustained economic growth, which he thought could only be built on the back of private foreign investments, was the only way to attain that wealth. Odinga's hostility and British hospitality towards Marshall makes greater sense when placed in this wider context.

If Marshall was a party to the factional disputes within the nationalist group, he also embodied some its shared myopia. The book concludes with mention of Marshall's wistful returns to independent Kenya. Watching South Asians effectively being forced to leave the

country of their birth and the failure of the new government to extend rights and equality to all its citizens, Marshall could not help but wonder what had become of his Bill of Rights. He found comfort, however, in the mere fact of Kenyan independence and his role in that effort. In finding this succour he had much in common with those he had sat around the conference table with in London in the early 1960s. Therein lay the tragedy of Kenyan nationalism. Governing Kenya proved even harder for the nationalist leaders than dislodging the British. Their subsequent vandalism of the constitution drafted in part by Marshall is as good evidence of the political battles fought after the lowering of the British flag as any other.

That much of Marshall's preamble to the constitution failed to make the final draft says much about the political philosophy of the country's new rulers. Greater examination of those who would ultimately sabotage Marshall's efforts towards the introduction of an effective Bill of Rights maybe would have been helpful for readers interested in the next chapter in Kenya's constitutional history. Throughout the book, Dudziak's Kenyan counterpart to Marshall is Tom Mboya, the young trade union leader and nationalist politician. This is understandable and entirely appropriate for Dudziak's purposes. Mboya was the architect of the student airlift, broadly sympathetic to the U.S., likely funded by the Central Intelligence Agency and well-known to American audiences. Yet other individuals proved to be of far greater importance to the fate of Kenya's constitution, such as Mboya's great rival and the post-colonial attorney general, Charles Njonjo.

Njonjo's views of the constitution were formed in a very different setting to Marshall's. Called to the bar in London, Njonjo's views of the constitution owed much more to that British influence than to Marshall. In Njonjo's hands, the constitution became a plaything of the powerful rather than the guarantor of the rights of the powerless. With Njonjo's skilful guidance and interpretation, the constitution was used to extend the unchecked power of the presidency and to shape the outcome of a bitter struggle for succession prior to Kenyatta's death in 1978. With Njonjo entrusted with such powers, Kenyans quickly became disillusioned with their constitution.

The seeds of this Machiavellian mischief with the constitution were sown in London. As Dudziak notes, it was accepted by all parties to the talks that an emphasis on constitutional reform provided a mechanism for progress towards independence without further violence. From 1954 up to the end of 1964, constitutional debates certainly acted in this function. Through constitutional negotiation, the first generation of leaders slowly persuaded recalcitrant white settlers of the futility of stubborn resistance to African majority rule. Then, the same process was used to convince Africans themselves of the worth of highly centralised, one-party state. But a decade of constant constitutional negotiations established the constitution as a constant work in progress rather than a definitive statement of rights.

Besides providing an excellent first chapter to this history of permanent post-colonial constitutional crisis, *Exporting American Dreams* provides an important insight into the fragile origins of ideas of citizenship in Kenya. For obvious reasons, Marshall's understanding of citizenship and ideas on how best to achieve equality were derived from

the U.S. and the civil rights movement. Dudziak makes Marshall's guiding principles clear; rights were constructed upon equality and not liberty; and the judiciary was the only way in which rights could be extended and enforced in any meaningful sense. Yet neither of those principles applied in the Kenyan context. The power of the courts to enforce constitutional guarantees of rights had no precedent in the colonial period and, after the handover of power, was strangled along with the independence of the judiciary. More importantly, Marshall's notions of equality were not engrained within Kenyan political debate. Indeed, the moral economies of many communities that still held a hold over political practice were rather more concerned with explaining and rationalising inequality rather than aspiring towards the broad achievement of equality.

As Dudziak rightly points out, discussions of rights commonly were about the status of minority communities. In the early stages of the constitutional negotiations the relevant communities were racial ones; the need to reach compromise between the African nationalists with the European settler farmers was the very reason why Marshall was drafted into the process. Once those settlers were calmed by promises of the protection of private property, the minorities in question steadily became the smaller ethnic communities from the Rift Valley and the Coast concerned with the Kikuyu and Luo alliance within KANU.

Dudziak's subtle dissection of the differences between Marshall and the nationalists sits comfortably alongside a nuanced understanding of the areas of coalescence in their worldviews. All the delegates in London were keenly aware of the necessity for compromise in order to successfully achieve independence. It now seems inevitable in this post-colonial and post-apartheid world that white privilege in Africa would be swept aside by the tides of history. Realisation on the part of Kenyan settlers that they were on the wrong side of history came belatedly and slowly. This book reminds us that this sense of inevitability was never present among those at the constitutional negotiations. The alternative scenario of continuing European rule in Southern Africa would have weighed heavily on the minds of the nationalist delegation. It was precisely because of this context that nationalists had to accept compromise in return for independence. Their acceptance of the necessity for compromise and then the rapid attainment of independence is the best testament to Marshall's role in the process. Dudziak is absolutely correct to suggest that the extent of compromise necessary to bring about the nationalist utopia imagined by the more radical of Kenya's political leaders was impossible to deliver in the context of the times.

For Africanists, reading *Exporting American Dreams* is fascinating. The book flits between offering glimpses of counterfactual histories and providing robust explanations of why post-colonial Kenya's constitution came to look the way it did. Most importantly, it reminds us that nothing in the age of decolonization was inevitable. The era was one of various competing imagined communities, each with very different notions of citizenship. Insightful, thought-provoking and highly readable, *Exporting American Dreams* is worthy of the very highest praise.

Mary Dudziak has written a fascinating account of Thurgood Marshall's engagement in 1960 with the negotiations over a Constitution which would lay the groundwork for Kenya's Independence and his role in drafting a constitutional vision of minority rights that would help to protect minority communities and their property rights in that country after its passage to political independence in 1963. In Marshall's view, the protection of individual rights lay in the guarantee of equality before the law as a cornerstone of Kenyan constitutionalism and that such protection would prevent the institutionalization of discrimination against entire communities. Dudziak argues that Marshall's legal reasoning was informed by American jurisprudence, the Universal Declaration of Human Rights, and the constitutional framework for decolonization within other British colonies, particularly the multi-ethnic societies of Malaysia and Nigeria. As Dudziak shows, Marshall was deeply committed to the belief that law could be fashioned into an instrument of social change in the service of disadvantaged people and that constitutional law could be used to widen the range of possibilities and protections for those populations.

Dudziak also emphasizes Marshall's role as the lead attorney in the legal challenges to the American racial regime, his status as one of the most prominent American lawyers, his ability to serve as an interlocutor for Kenyan nationalists in dealing with the British, and the importance of Tom Mboya's cultivation of his American connections, as key factors in Marshall's credibility and unique role in Kenya's independence struggle. This critical connection to the Kenyan national struggle would remain a fixture in Marshall's memory and he would keep that connection alive through his visits to Kenya for its independence celebrations in 1963 and to attend the funeral of Jomo Kenyatta who had led the country to independence. In Dudziak's portrayal of Marshall, Kenya allowed Marshall to lay claim to his roots in the African continent and it had provided him with an opportunity to use his legal skills to help shape the future of an African country and its escape from the colonial era. For an African American who still labored in the 1960s under the strictures of American apartheid, Kenyan independence in 1963 was undoubtedly a validation of his own struggle against the absurdities of the politics and illusions of a white supremacist society.

Following upon her exploration of Marshall's role in the negotiations in 1960, Dudziak continues with an examination of the ways in which Marshall grappled with his changing role in the American civil rights movement. As the struggle moved from court challenges into the realm of non-violent protests in the streets and other public, Marshall found himself becoming increasingly focused upon devising strategies for protecting the protesters from the insidious commitment to exclusionary politics and the violence of segregation in American life. Marshall recognized the era of multicultural democracy was at hand, both in Kenya and in the United States, and legal principles had to be fashioned to accommodate that reality of political pluralism through the protection of the rights of minorities. In an era where "the American dilemma" remained a constraint upon American leadership in the international system, Marshall found himself moving away from the role

of “outside agitator” to that of architect of an alternative vision of race relations in American society that would reassure external audiences. Like Ralph Ellison, Marshall recognized that: “the true subject of democracy is not simply material well-being, but the extension of the democratic process in the direction of perfecting itself. The most obvious test and clue to that perfection is the inclusion, not assimilation, of the black man.”

This dual engagement of Marshall in Kenya and the United States is a major focus of Dudziak’s study and her exploration of the disappointments that emerged in both cases are a poignant reminder that social change can be a double-edged sword. The vulnerability of the large Asian minority in Kenya after independence was a source of concern to Marshall and he challenged Jomo Kenyatta about the problem while visiting Nairobi. However, as Dudziak shows, both Marshall and the American government were prepared to accept the turn to authoritarian politics under Kenyatta and the assassination of Tom Mboya in 1969, while disturbing to Marshall, did little to disrupt the American embrace of Kenyatta as an ally in the Cold War. Dudziak suggests that Marshall may have been too committed to Kenyan independence to challenge the authoritarian turn in that country. However, it may be useful to ask whether Marshall’s views may have been shaped by observation of the American role in countries such as Ghana and Congo-Zaire where American influence had contributed to the emergence of military rule. The American embrace of apartheid in South Africa may have also posed problems for Marshall in terms of criticizing Kenya.

As Dudziak suggests, in the United States, the 1974 Supreme Court *Milliken v. Bradley* decision was bitter pill for Marshall as it sanctioned local control over education even when such local control promised segregated education. The decision confirmed that the Nixon administration, through its appointments to the Supreme Court, had opened the way for efforts to reverse both the intellectual and practical application of the *Brown v. the Board of Education* decision. Marshall had joined the Supreme Court in 1967 and he was now confronted with the reality that segregated education was being given a new lease on life by his colleagues on that court. Thereafter, he fought a rearguard action to preserve the signal accomplishment that defined his life in the struggle against segregation before his ascent to the Supreme Court .

Marshall had given his life over to the struggle for democracy as a politics of inclusion and the protection of minorities from the “tyranny of the majority” but his disappointments with the direction of both Kenya and the United States should not obscure the significance of his legacy as an intellectual. Thurgood Marshall, during his lifetime, transcended the limits of his time and his society and his presence in 20<sup>th</sup> century American history cannot be underestimated. Mary Dudziak’s study of Marshall has offered the scholarly community a fascinating insight into the continuing relevance of “the American dilemma” as a paradigm for exploring American life and culture beyond the 20<sup>th</sup> century.

In a master stroke, Mary L. Dudziak - Guirado Professor of History, Law, and Political Science at USC - has crafted an extraordinary treatment of Thurgood Marshall's interactions with colonialism and emerging Africa. Professor Dudziak's *Exporting American Dreams: Thurgood Marshall's African Journey* focuses on an important but neglected period in Justice Marshall's life. The story is centered on the period following the litigation in the *Brown v. Board of Education* case but before his nomination for Solicitor General - a position he held prior to serving as Associate Justice on the U.S. Supreme Court. Although Justice Marshall is the protagonist, this story is about American cultural diplomacy and the collapsing British empire; it is about the physical and intellectual connections between Africans and African Americans, as both groups dreamed of a bright future; and it is about the hope of one legal practitioner and scholar who sought to use his expertise to create a legal regime appropriate for a new world. Dudziak's nuanced analysis of one of America's great jurists is a compelling and timely story. As someone who has eagerly devoured Dudziak's scholarship since she was publishing in the *Stanford Law Review*, I offer not only a review and critique but a meditation on this significant work.

Dudziak discusses Marshall's use of his professional expertise and personal charisma to aid Kenyans in their fight for independence. Dudziak connects the post-*Brown* Marshall to one of Kenya's rising stars, Tom Mboya. Mboya's travels to America cemented the young African's reputation in the West as an articulate, pragmatic leader. Mboya's diplomacy and the efforts of the American Committee on Africa drew Marshall into the orbit of Kenyan nationalists as a diplomatic weapon against White intransigence: "How better for the nationalists to demonstrate their commitment to protect minorities than to have at their side the man most identified with the legal rights of minorities in America." (35) Marshall's presence was equally symbolic and substantive, especially in the face of a vocal minority of the colony's Whites who threatened to "blow up everything in Kenya" rather than share power with Africans (37)

The centerpiece of the monograph is Marshall's trips to Nairobi, Kiambu, the White Highlands, and London in 1960, where he helped Kenya's rival political factions and their British overlords prepare a democratic constitution that could serve as the basis for East African self-determination. Quickly, he became aware of the difficult project he had undertaken and skillfully placed himself and his ideas in the political conversation, in spite of American and British skepticism. (42-54, 66-72, 91)

The final two chapters of the book address the distinction between democratic rhetoric and practice. In one, Dudziak shows Marshall alternately laughing with and berating Jomo Kenyatta, the latter with specific regard to citizenship rights for Asians and Whites. In the other, she shows Marshall grappling with the increased radicalization of the modern Civil Rights Movement and the intensifying White backlash to the quest for racial justice. In both instances, the author reveals a reflective, almost philosophical lawyer who is also a man of action, pushing himself and others to make manifest the dream of freedom.

Dudziak provides *Exporting American Dreams* with an exceptional research foundation based in archival and oral history research on three continents. Of particular interest to legal scholars and historians of Africa and its diaspora is Dudziak's unearthing of Marshall's draft Bill of Rights for the Kenyan Constitution. In many ways, this document alone reflects the tensions many African Americans feel with respect to living in the America that is, while wishing for the America that could be. The author also peppers the text with wonderful photographs and an important political cartoon. Dudziak is a skillful writer and shrewd analyst who spins a wonderful story with a true sense of drama, while also raising serious questions regarding race and the relationship between the individual/citizen and the State.

Dudziak illumines a number of issues confronting Marshall. Marshall the cultural/legal diplomat has to balance his representation as an American "success story" with the realities of unfinished business at home and on the continent. Likewise, Marshall the advocate wants to represent the interests of Kenya's African majority while not appearing to follow too closely to either Mboya or his rival Oginga Odinga. In addition, Marshall does not allow his admiration for his African brethren to overwhelm his desire to help create certain legal safeguards for minority populations, both as a way of accelerating independence and as a means of helping to create an ideal state from the ashes of colonial oppression. To this end, Marshall is very open in his support for African self-determination and the protection of the interests of Kenya's White, Indian, Muslim, and ethnic African constituencies. All of this leads to a final point conundrum: the shape of a democratic constitution for Kenya. Although Dudziak quotes Marshall as saying that the U.S. Constitution was the "best I've ever seen," his draft Bill of Rights for Kenya went well beyond the American document, relying heavily on the Universal Declaration of Human Rights and the independence constitutions of Nigeria and Malaya. (73)

To her great credit, Dudziak uses a rich narrative to examine the multi-racial, multi-ethnic, multi-lingual Kenya that exists, not the flat two-dimensional Kenya that rests in the imaginations of many Westerners. (6) Dudziak also strikes a chord in a brief comparison of Marshall's embrace in Kenya with Pauli Murray's treatment in Ghana. Murray's expulsion from Ghana brushes up against the exclusion of American and Kenyan women from the early constitutional discussions in their respective countries and raises issues better addressed by true scholars of Critical Feminism. (79, 125, 169) However, there are a few disappointments.

Dudziak frames the story with constant reminders that Marshall had stepped through a diplomatic looking glass. Indeed, the first sentence of the book reflects this: "It was January 1960, but it was summer. An American lawyer arrived in a new land, but he called it home" (1). Nevertheless, the author seems to be searching for a reflection of George Washington in Jomo Kenyatta and expecting Marshall to respond to both in the same manner. Dudziak struggles to reconcile Marshall's critique of the framers of the American Constitution with his embrace of Kenyatta's shortcomings. What is the reader to make of the implicit comparison between "minorities" in Kenya and "minorities" in the U.S.? It only goes so far because "minority rights" did not mean the same thing on both sides of the Atlantic.

Significantly, Dudziak writes that “the lesson of [Marshall’s] work in Kenya might be that nation building requires trade-offs, that righting all wrongs is inconsistent with creating a shared sense of national unity.” (169). The author goes on to suggest that national leaders sometimes find it necessary to tolerate historical injustices in order to accomplish “a more fundamental purpose.” But is this the lesson that Marshall’s journey teaches us? Could it be that one lesson from Marshall’s journey is that the “shared sense of unity” rests on both the articulation of a vision and the power to shape that vision. In the Kenyan context, Marshall – among others – made certain that the rights of racial, ethnic, or religious minorities were enshrined into law at inception. The only issue was enforcement of those rights, or as Marshall chided Kenyatta “it’s not about ‘looking into’ ... it’s *doing* something about it.” (123, emphasis in original) In the American context, no one could similarly cajole Washington, Jefferson, or Madison because they had pushed Blacks outside the early Republican vision. Given the power of slavery and the permanence of racism in the American experience, White privilege was an element of America’s “fundamental purpose” and Blacks have had to repeatedly re-articulate a “shared sense of national unity.” Consequently, Blacks have endured more than two centuries of “looking into,” of which Justice Taney’s ruling in the *Dred Scott* case and the Kerner Commission report stand as contrasting examples. Perhaps another lesson from Marshall’s journey stems from the detritus of empire.

Scholars of Western Imperialism have noted that empire has multiple components: military, economic, political, ideological, social/cultural. Consequently, “independence” from the British Empire meant different things in different places. In the fledgling United States, “independence” meant the transfer of control from the metropole to the colonial agents of empire – the settlers – and the continued subjugation of empire’s targets – Native Americans and Africans. Put in another way, the new nation’s citizens swam with the current of empire, not against it like their contemporaries in Haiti. In Kenya, as in most of Africa, independence meant the transfer of political power, primarily, to the former targets of empire. Accordingly, decolonization failed to address many of the other components of empire, leaving the new Kenya to struggle with this legacy and protect – rather than disgorge – the ill-gotten gains of White privilege.

Without question, the Kenyan government’s treatment of its Indian citizens or, later, its repression of one of Africa’s great writers - Ngugi wa Thiong’o - are indicative of the limits of nascent democracy in this narrow post-colonial space. These compromises reflect an African response to the fact that they had to build their new nation, in large part, on territorial, cultural, and demographic outlines shaped by Europeans and what would become the “Free World.” In this setting, Marshall’s interaction with Kenya’s leadership over the years looks more like the piecemeal enforcement of *Brown* rather than an inexplicable outlier. Thus, one might say that Marshall’s great gift to both America and Kenya was his determination to achieve some sense of fairness within a social and political context inflected by Whiteness.

Nonetheless, these concerns do not detract substantially from an excellent piece of scholarship. *Exporting American Dreams* ranks among the seminal works of contemporary historical scholarship. In a recent, long-running discussion thread on H-Diplo regarding the

definitions of terms like “diplomatic” or “transnational” history, Dudziak wrote that “sometimes the most interesting work is at the boundaries of fields. If this makes some scholarship difficult to place in one box or another, that strikes me as a good thing.” (“Terminology – diplomatic history, international history, and transnationalism [DUDZIAK],” March 20, 2009) I agree with Dudziak and hold that *Exporting American Dreams* fits this description. It stands as a worthy companion to important works in multiple arenas: (1) in diplomatic history, it fits with Andrew DeRoche’s *Andrew Young: Civil Rights Ambassador* or *Liberian Politics: the Portrait by African American Diplomat J. Milton Turner*, edited by Walton, Rosser, and Stevenson; (2) in legal history, Richard Delgado’s *The Law Unbound!*; and (3) in African American history/Africana Studies, Kevin Gaines’ *African Americans in Ghana*, Saidiya Hartman’s *Lose Your Mother: A Journey Along the Atlantic Slave Route*, or Brent Edwards’ *The Practice of Diaspora*. In addition to the aforementioned strengths of the book, part of its power rests in its implications.

One of the things that make *Exporting American Dreams* extraordinary is that it is simultaneously uplifting and sobering. This reader was struck by the intimate portrait of the multi-dimensional Marshall. Even someone familiar with Marshall’s heroics will find plenty of kindling for the flame of hope in the Justice’s interactions with Kenyans, colonial officials, or African American luminaries like Derrick Bell and the recently-deceased John Hope Franklin. Yet, inspiration often yields to resignation.

At one level, the book hints at the massive resistance among millions of Whites to the objectives of the modern Civil Rights Movement. “And so, while Marshall had worked on one problem of race in America, others were festering...What had once seemed possible was out of reach by 1968, just as the Kerner Commission issued its report.” (167) The book’s Epilogue briefly charts the legal retrenchment of the 1970s as represented in the Berger Court’s rulings in school desegregation and “reverse discrimination” cases. Dudziak rightly points out Marshall’s frustration and disillusionment with the nation’s continued embrace of White privilege and its limited capacity to confront the weight of its history. While the author most likely intended this as a tribute to Marshall’s intellect and courage, it reads as a subtle rebuke of the current, self-congratulatory proclamation of a “post-racial America.”

At another level, it reminds us that many Whites continue to judge Blacks not by our wit, grit, and resolve but by our affinity to the fullness of Black self-expression and civic engagement. It seems like more than a coincidence that Black Liberation Theology factors into a book about Marshall published at this period in our collective history. As you may recall from the 2008 American presidential campaign, President Obama faced a litmus test regarding his relationship to the supposedly controversial Rev. Jeremiah Wright; for Marshall, his litmus test for confirmation by the U.S. Senate was his relationship to Rev. Martin Luther King, Jr. (156-7)

Moreover, Dudziak’s work demonstrates the tenuous, torturous process of state formation or reformation. Despite Marshall’s best efforts, Kenya is fragile and America is not whole. The recent political crisis in Kenya echoes in the easy disenfranchisement of tens of thousands of Blacks in a number of America’s recent elections and the crimes against

humanity following Hurricane Katrina. Perhaps another lesson of Marshall's journey is that social justice often falters under the weight of fear, political cynicism, and intersecting reactionary interests. Nearly 50 years after Marshall sojourned to the "motherland," the Congo remains a killing field and we reserve our indignation for "Somali pirates"; the War on Terror shifts its grip to Afghanistan and the racial disparities that have been growing in America for decades are accelerating under the tidal wave of economic recession. In spite of Obama's election, many Black people on both sides of the Atlantic cannot help but wonder whether our bright future lies behind, not before, us.

Finally, *Exporting American Dreams* comes to us at a most opportune time. The U.S. has endured eight years of legal and judicial activism by conservative and neo-conservative lawyers. This activism is steeped in White Privilege; the presence of a few people of color among the architects of terror and torture does not change this. Indeed, this legal activism has done almost as much to harm America's image and the notion of equality under the law as the Ku Klux Klan and the other reactionaries who fought to suppress the modern Civil Rights Movement. This modern-day record of compromises, mendacity, and prevarications stands in stark contrast to Marshall's confident but humble exercise in legal, international, and diplomatic wrangling. This reader is certain that the world after 9/11 would have been a much safer place with Thurgood Marshall and his legal ambassadorship. I have no doubt that this book will find a receptive audience in multiple disciplines and I applaud Professor Dudziak for choosing this moment to re-introduce an American icon.

Response by Mary L. Dudziak, University of Southern California

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I would like to thank George White, Cary Fraser, and Daniel Branch for their generous discussion of my book *Exporting American Dreams: Thurgood Marshall's African Journey*. It is a book, as Professor White's comments suggest, that does not fit neatly into pre-existing categories. I thank H-Diplo and the community of diplomatic historians, whose work has been so important to mine, for welcoming my book in this space.

*Exporting American Dreams* is a transnational history, an approach to writing history that has provoked skepticism on this listserv, but nevertheless increasingly populates history journals. Some transnational histories seek to displace the state as a frame for history, focusing on ideas, objects and people unhinged from national narratives.<sup>1</sup> There is much to be gained from such histories, but my book instead finds a place for nations in transnational history. The central character is not the state, however, it is a person: Thurgood Marshall, during a middle period of his life in the 1960s, when he transitioned from civil rights lawyer, to judge, to Solicitor General, and finally to the Supreme Court. During these years, this domestic civil rights figure took his legal tools to Africa. The story is set in the context of the broader narrative of race and U.S. foreign affairs, taken up in my first book *Cold War Civil Rights*, and many other works.<sup>2</sup> Telling this story required me to engage a crucial moment in Kenya's political history. Ultimately, however, this book tells us more about Marshall's relationship to his own nation than about the course of constitutional politics in Kenya.

This study began out of curiosity about law and diplomacy – the way American legal ideas in the world become resources in American public diplomacy – but it ultimately came to focus on just one American lawyer. As the title suggests, Marshall did not really take American law to Kenya. The law he took overseas was an idealized version, reflecting not the law of his nation but what he hoped it would be some day. And in a particularly interesting turn, the document Marshall drew upon most heavily for his bill of rights for Kenya was the Universal Declaration of Human Rights, not the United States Constitution.<sup>3</sup>

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1. Doing Transnational History at the AHA, *Legal History Blog* (noting different approaches to the role of the state in transnational history at an AHA panel), <http://legalhistoryblog.blogspot.com/2009/01/doing-transnational-history-at-aha.html>. Accessed on 30 June 2010.

2. Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton University Press, 2000). Among the many works in this literature are George White, Jr., *Holding the Line: Race, Racism, and American Foreign Policy toward Africa, 1953–1961* (Lanham: Rowman & Littlefield, 2005), and Cary Fraser, "Crossing the Color Line at Little Rock: The Eisenhower Administration and the Dilemma of Race for American Foreign Policy," *Diplomatic History* 24:2 (Spring 2000): 233-264. DOI: 10.1111/0145-2096.00211. <http://dx.doi.org/10.1111/0145-2096.00211>.

3. Marshall's Draft Bill of Rights for Kenya is included as an appendix to the book, and is annotated to show sections he borrowed from the Universal Declaration of Human Rights, and the constitutions of Nigeria and Malaya.

During Kenyan constitutional negotiations, Marshall's principal focus was on minority rights, and he emphasized equality as a central value in the preamble of his draft bill of rights. In Kenya, minority rights would protect the rights of whites and would entrench white ownership of property that indigenous Africans believed was theirs, owed after years of struggle against colonialism. Marshall knew all of this, but in 1960 whites who were thought of as political moderates in Kenya agreed to the idea of equal suffrage – which would mean African majority political control – on the condition that the Kenya constitution include minority rights enforced by courts, explicitly drawing upon the American model. As negotiations unfolded, white settlers issued terrorist threats, while American diplomats worried that compromises at the 1960 Lancaster House Conference would lead Africans to reject their political leaders. Many in Kenya and in England were concerned that Kenya would fall to pieces, as violence flared elsewhere in the continent. In this context, Marshall supported political compromise. He called it “working toward democracy.” This seemed to involve not sidestepping or ignoring injustices, but accommodating a limitation on political justice in service of something more basic: having politics, rather than conflagration.

One of the challenges of writing a book centered on an individual's biography is the need to make sense of inconsistencies. A conundrum in Thurgood Marshall's narrative is that he became furious that Jomo Kenyatta, whom he considered a dear friend, did not uphold the rights of minorities, specifically Asians, many of whom lost their businesses and faced other hardships as independence neared. Yet in spite of his anger and disappointment, Marshall remained proud to stand with Kenya's leaders on independence day in 1963. Perhaps Marshall gave Kenyans a pass because the transition to power necessitated compromise, but when the bicentennial of his own nation's constitution was celebrated in 1987, Marshall did not extend the same generosity to his own nation's founders, whom he criticized for constructing a document that protected the institution of slavery. George White reconciles this moment through a focus on Black identity, but Marshall himself did not embrace such thinking. He often argued that the rights he sought were universal human rights, not the rights of any particular group.

A stark moment in the story is Marshall's return to Kenya for Kenyatta's funeral in 1978, when political repression was obvious, and yet Marshall later told his fellow American judges that the Kenya bill of rights was “working very well.” The book sets Marshall's final trip to Kenya alongside the story of Kenyan novelist Ngugi wa Thiongo's detention for a year without charges at the time of Marshall's last visit. The conflict between Marshall's core beliefs about rights and what Kenya had become was so obvious that it is hard to explain why Marshall would choose either not to see or not to acknowledge this. Was Marshall simply trying to protect U.S. relations with a cold war ally? There is no evidence I could find of Marshall's direct complicity in the U.S. cold war alliance with Kenya. Instead, at this point, a more personal dynamic seems to have been in play. Marshall was, by 1978, an embattled Supreme Court Justice who would continue to serve out his career on a court that would never embrace his vision of justice. For Supreme Court scholars, Marshall's own narrative is one of decline, as an increasingly angry and physically frail Marshall continued to endure. At this point, Kenya existed for Marshall not as a country with ongoing politics, but as a memory of what, for him, was a powerful moment of political

engagement.

Some of the manuscript's limitations are driven, at least in part, by its narrative frame. The arc of the story follows Marshall, and so encounters his ideas about law and justice in the face of violence in two nations. The central narrative is not the path of constitutionalism in Kenya, and so I did not follow deeply aspects of this story when Marshall was not engaged in it. As a result, the book does not address Daniel Branch's important point about Charles Njonjo's role in turning the Kenya constitution into an authoritarian instrument, but only Marshall's reaction to the aftermath. Branch is surely right that more attention to the substance of Oginga Odinga's politics would have informed the story I do tell.<sup>4</sup> His essay reinforces a point I have tried to make elsewhere: that the history of law and politics in Africa is simply too compelling for American legal comparativists, traditionally focused on Europe, to ignore.<sup>5</sup>

Perhaps the limitations of this work help to illuminate a limitation of any effort at transnational history. We choose a framing device: a person, an idea, a product, and we follow it around the world, enriching the understanding of the historical subject we have chosen, but at the risk of slighting the full social, cultural and political context of particular stops along the way. This shows that transnational histories should not only exist alongside of rich histories of and in nations, but that the transnational historian's work depends on colleagues for whom the geography of place remains their central historical frame.

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4. A starting point for scholarship on Kenya politics during the independence era is Branch's own fine work, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization* (Cambridge: Cambridge University Press, 2009).

5. Mary L. Dudziak, "Who Cares about Courts? Creating a Constituency for Judicial Independence in Africa" (Review essay on Jennifer Widner, *Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa* (2001)), *Michigan Law Review* 101 (2003): 1622, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=380281](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=380281). Accessed on 30 June 2010.