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Who was William Marbury?

David F. Forte

Cleveland State University, d.forte@csuohio.edu

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Marbury v. Madison Bicentennial 1803-2003



In the Beginning: Marbury v. Madison

On the Bicentennial of the Landmark Case

By James A. Noe

Early American history is filled with familiar names and deeds. Yet, one important hero and his cornerstone contributions to the birth of our nation are mired in forgotten history. He is John Marshall, third Chief Justice of the Supreme Court, described by one biographer as the “definer of a nation.” He was the author of what Chief Justice William Rehnquist calls “the most famous case ever decided by the United States Supreme Court”: *Marbury v. Madison* (5 U.S. 137 2 L. Ed 60 (1803)). Famous or obscure, that seminal case is the foundation of fundamental principles of our judicial system: judicial review, independence of the judiciary, and the rule of law. It also underscores the existence of the separation of powers and the validity of the third branch of government.

The Gathering Storm

To understand the significance of the *Marbury* decision, one must be aware of the volatile nature of the political scene in the new nation during the last decade of the 18th century and especially during the time of transition of the office of president from John Adams to Thomas Jefferson in 1801. Political parties were emerging, and a struggle for power ensued. Intrigue, scheming, and character assassination were common modes of political activity. Once united, the Founding Fathers were now divided over different visions for the future of the United States.

(Please see **In the Beginning**, page 30.)

The Marbury Mystery Why Did William Marbury Sue in the Supreme Court?

By Susan Low Bloch

Marbury v. Madison was a dramatic, controversial, and very significant case. In one fell swoop, the Supreme Court established that the federal judiciary can review the legality of the actions of the executive and the legislative branches. It is certainly one of the most influential decisions in the history of the United States. Because of *Marbury v. Madison*, the Supreme Court was able to order President Truman to give back the steel mills during the Korean War and later to order President Nixon to turn over the Watergate tapes to the special prosecutor in 1974. And, of course, it is why the Court can strike down acts of Congress, something it has been doing quite often recently.

Chief Justice John Marshall wrote this landmark opinion in what appeared to be a minor matter: the issue of delivering commissions to minor officials who, this article will show, didn't particularly care about the commissions and who sued in a court that had no jurisdiction to order their delivery. This article will reveal that there was another court with jurisdiction to order the delivery, that the petitioners knew of that court, and that that court would probably have granted the writ. So the interesting question is why did the petitioners bypass that court and sue instead in the Supreme Court where there was no jurisdiction. The answer is that it was only by pursuing exactly this course that the petitioners, ardent Federalists all, could give Chief Justice John Marshall the opportunity to use *Marbury v. Madison* to enhance the power of the federal judiciary at a time when it was still very weak and was the only branch of the federal government still in the hands of the Federalists.

By suing in the Supreme Court the petitioners gave the Court the opportunity to announce that the petitioners were entitled to the commissions, that the judiciary had the authority to order the Secretary of State to deliver the commissions, and that the Supreme Court had the power to hold an Act of Congress unconstitutional. The case allowed the Court to assert all this while ingeniously insulating its decision from defiance by concluding that it did not have jurisdiction and therefore would order no one to do anything—clearly a masterpiece of indirection.

(Please see **Marbury Mystery**, page 34.)



Who Was William Marbury?

By David Forte

Of all the disappointed office seekers in American history, only William Marbury has been so honored as to have his portrait hung in the chambers of the United States Supreme Court alongside that of James Madison. The two titular protagonists to the *Marbury v. Madison* dispute had no idea that their original contretemps would ever find its way to litigation, let alone eventual mythic significance as the foundation stone of judicial review.

The Commission

On Friday, February 27, 1801, John Adams signed the bill for the governance of the District of Columbia, which authorized, among other offices, five-year appointments of justices of the peace for the District's two counties, Alexandria County and Washington County. Adams had but five days left in his administration to make the appointments.

The newly created office of Justice of the Peace of Washington and Alexandria Counties in the District of Columbia was coveted by many men. Some of the nominees possessed no viable career alternatives. For others, the appointment was granted as a commendation for past services to the country. Some others were appointed because of their previous experience as justices of the peace. A few were rewarded for their friendship to the president. And for still others, like Marbury, it was a civic office appropriate to the stage of their developing careers.

Party allegiance mattered for some of the appointments, but contrary to incoming President Jefferson's assertion, party loyalty did not figure in the choice of all

The scandal became public in late February and was fully reported in the press on the day that Marbury's name was sent to the Senate for approval as justice of the peace.

Forte is a professor of law at Cleveland State University. He served as chief counsel to the United States delegation to the United Nations during the Reagan administration.

the justices. Indeed, some were prominent Republicans. A few, however, had become notorious partisans of the Federalist cause.

Secretary of State John Marshall had primary responsibility for gathering the names. Marshall turned to Secretary of the Navy Benjamin Stoddert, also a close friend of his and fellow Cabinet member and Adams supporter, for nominees for Washington County. Marbury's name was included in this group.

As students of history know, President Jefferson withheld Marbury's commission. Madison did not even arrive in Washington until long after the event took place. Marbury, meanwhile, had been busy for much of his life building an extraordinarily successful and lucrative career in finance in Maryland. In Maryland tradition, an appointment as justice of the peace was an essential emblem of a man's membership in the political and financial elite. Its denial by Jefferson was a direct blow to 20 years of work and ambition.

Humble Origins

William Marbury had not reached the peak of his career in 1801 when he obtained his appointment as a justice of the peace from President Adams, but he was a long way toward it. He was 38 years old at the time, having been born on November 7, 1762, most likely on a rude tobacco plantation near the town of Piscataway in Prince George's County, Maryland, though he spent much of his younger years in Fairfax County, Virginia; in Charles County, Maryland; and in the Maryland state capital of Annapolis. He passed most of his childhood following his father (also named William) in his fruitless quest for financial security in tobacco farming.

In 1781, at age 19, William Marbury began his career as a lowly clerk in Annapolis to the state's auditor general, and for the remainder of the decade as a deputy tax collector. During this period, the young Marbury saw a rising cabal led by Samuel Chase, later Supreme Court Justice, who sought to gain lucrative land deals at the expense of the state. They were opposed by revolutionary general

and hero Uriah Forrest, who became a mentor and champion of Marbury's.

William Marbury had tried his hand farming, the merchant trade, and (late in his career) land speculation, but finally found success in the world of finance. Ultimately, his mastery of finance in Annapolis propelled him into prominence in the nation's new capital on the Potomac, while his alliance with the Georgetown and Annapolis merchants against the rising power of Baltimore cast his lot with men who happened to be John Adams's greatest support.

Federalist Ally

The first half of the decade of the 1790s was a period of growing political foment in Maryland. In 1788 and 1789, the outnumbered Anti-Federalists constituted a coalition mostly along the Chesapeake. The core of the Chesapeake coalition lay in the original cabal led by Samuel Chase in Baltimore. Meanwhile, the Federalist leaders of the Potomac—later the supporters of John Adams against Hamilton and his Baltimore friends—found an effective ally in William Marbury and ultimately brought him into their circle.

By the end of 1792, Marbury's financial skills were recognized in the highest places, and he had become especially adept at handling state and federal securities enriching the state treasury. In 1796, Marbury became Agent of the State of Maryland and rapidly rose to be the most powerful unelected official in the state. As Agent, Marbury engaged in complex financial dealings, collecting back taxes, selling estates, exchanging debt certificates for federal stock, and brokering on his own. His expertise and reputation grew apace.

Maryland had never seen any agent pursue his duties with such vigor. As far away as Philadelphia, Marbury gained the reputation as the state's most authoritative financial representative. Marbury pursued his duties with unrelenting thoroughness. During 1796, out of a total amount of £40,785.10.11 in cash and bonds turned into the Maryland's treasury, Marbury personally accounted for £35,310.0.3.

Marbury turned his considerable influ-

ence toward championing the financial interests of the Annapolis and Potomac Federalists against the growing influence of Baltimore. There was a short and direct route into the inner circle of the Georgetown Federalists. He was elevated to the board of directors of the Bank of Columbia in early 1798, and the following year was appointed agent to the Washington Navy Yard, whereupon he moved his family and his future from Annapolis to Georgetown.

The man who appointed him as naval agent, brought him to Georgetown, and almost certainly championed his name as a justice of the peace was Benjamin Stoddert, secretary of the navy and close intimate to President John Adams. Stoddert had primary responsibility for the successful defense of American shipping interests in the naval war with France. Central to Stoddert's strategy had been the establishment of a naval yard in Washington at Anacostia, and in 1799 he called upon William Marbury to become naval agent for the yet unbuilt facility.

Shipyard Scandals

If Marbury had earlier found Annapolis filled with intrigue and rough dealing, Washington was many times more hard-hearted. Immediately after his appointment as naval agent, Marbury advertised for the necessary timber and soon found a ready supplier in John Templeman, wealthy Georgetown merchant and fellow member with Marbury and Stoddert of the Bank of Columbia's board of directors.

Marbury, however, was not happy with Templeman's performance and searched for another supplier. In late summer 1800, he found a prospect in John Hughes of Alexandria and refused to entertain Templeman's bid.

In early December, the dock was ready, but on Friday, December 12, 1800, word arrived from South Carolina that Jefferson had unexpectedly taken that state's electoral votes and the presidential election. Stoddert hurriedly wrote to Marbury the next day insisting on "good personal or real security not only for the money advanced, but for the performance of the contract."

That same Saturday, before Stoddert's letter arrived from the Navy Department with the new directions for Marbury, Hughes showed up from Alexandria at Marbury's Georgetown office ready to sign a contract. Marbury later informed him of his new instructions from Stoddert containing a strict requirement of security for the contract. Hughes protested the new demand, and Marbury left the office to consult with Stoddert. Despite Marbury's protests that he had given his word to Hughes, Stoddert insisted on the surety. Later, when Marbury informed Stoddert that Hughes had agreed to the stated price, Stoddert nonetheless ordered him to accept a new bid from Templeman.

When Hughes returned to Marbury's office with surety in hand, he discovered that the contract had been let to Templeman. He blamed Marbury for misleading him. The scandal became public in late February and was fully reported in the press on March 2, the day that Marbury's name was sent to the Senate for approval as justice of the peace, and two days before Jefferson's inauguration.

In the end, Jefferson cancelled construction of all of the 74-gun ships of the line, and the timber, so expensively and laboriously acquired, rotted in the yards. Undoubtedly in Jefferson's mind, Marbury had forever become associated with the ambitious Stoddert and the costly overruns that had been incurred. A few months later, Jefferson's Secretary of War, Henry Dearborn, unceremoniously fired Marbury as naval agent.

The Templeman affair had been scandal enough, and it followed on the heels of a bitter public dispute between Marbury and Lewis Deblois, fellow Federalist and foreman of the navy yard. Marbury discovered that Deblois was skimming money for himself from labor contracts, and had obtained kickbacks from contractors. Marbury fired Deblois in the summer of 1800 and let those in Georgetown know why. Unemployable, Deblois took his case to the Republican press. Marbury's powerful responses bested Deblois in the war of letters in the press, but both protagonists had been tainted in the fracas.

Along with others, William Marbury had publicly intervened on behalf of John Adams in a move that might have cost Thomas Jefferson the election.

Jefferson reduced the number of justices of the peace, carefully culling those he regarded as enemies.

Electoral Tension

For all his problems as naval agent, Marbury had nonetheless easily moved into the highest circles of the Federalist elite in Georgetown, where he became rich and influential. He became Uriah Forrest's broker, and he and his family made their abode in Forrest's home, the very place where President Washington and the landed proprietors had made the terms that secured Washington as the nation's capital.

The Marbury family was soon active in Georgetown society. Marbury was elected a manager of the dancing assemblies for the social elite. Marbury was also a member of the board of directors of the Bank of Columbia, had lucrative investments, and was beginning to make prudent purchases of land. In addition, to be a member of Uriah Forrest's Federalist clique not only brought one into the inner circle of Adams's favorites, but it also made one an object of the Republican Party's enmity.

In a few months, the entire government moved to cramped and unfinished quarters in the still wilderness capital of Washington. With the government now in Washington, Uriah Forrest called upon Marbury to do his bit to secure Adams's re-election. The issue was how Maryland's electoral vote for president would be decided for the 1800 election. Maryland, thought to be majority Federalist, had always permitted its voters to select its electors by individual district. But the Federalist candidates for the Maryland state legislature were running on the platform of "a legislative choice." If they succeeded, the state legislature would vote Maryland's electoral votes, and all ten would be Adams's.

Four representatives would be elected from Montgomery County, and Forrest sought to make sure that they were all pledged to change Maryland's method of selecting presidential electors. The Federalists were surprised when Daniel Reintzell, prominent politician and justice of the peace, announced that he would stand for the post and was against "a legislative choice."

A small delegation of the most prominent Federalists, including Forrest and Marbury, met with Reintzell to ask him

to withdraw. Reintzell then publicly broke with the Federalists, and took his case to the press, naming those who had importuned him, including William Marbury. In the election, the Republicans took over the legislature. There would be no "legislative choice." Along with others, William Marbury had publicly intervened on behalf of John Adams in a move that might have cost Thomas Jefferson the election.

In the end, Maryland's voters, choosing their electors by district, divided the state's ten electoral votes evenly between Adams and Jefferson. When the electoral votes were finally tallied nationwide, Jefferson had bested Adams 73 to 65. Had the Federalists been able to hold on to the Maryland legislature, all of Maryland's votes would have flowed to Adams. John Adams would have been re-elected to a second presidential term, and the name of William Marbury would never have appeared in the history books.

Cancelled Appointment

In the rush of appointments before he left office, President Adams included Marbury among the 23 names he sent to the Senate as justices of the peace for Washington County. Of that number, ten were prominent Federalist partisans including Marbury. Four other appointees were from old and respected Federalist families in the area. Adams also appointed five men, including Daniel Reintzell, three or four of whom were Republican, because they were sitting justices of the peace under Maryland law. William Thornton, celebrated architect of the Capitol, was also appointed, though he too was a Republican. Finally, Adams's friend Tristram Dalton and his son-in-law, Lewis Deblois, were appointed as personal favors to Adams. Marbury therefore had among his companions the man he fired for corruption and the man he sought to defeat for the assembly.

Jefferson had declared that all executive appointments made by Adams since December 1800, when it was clear that Jefferson had won the election, were "nullities." By the time he took the oath of office, Jefferson realized he could not

touch the Adams's judicial appointments that had life tenure, but all the others were vulnerable. He replaced all the federal attorneys and marshals, and he seized his chance to void the five-year appointments of the justices of the peace when he found that they had been undelivered.

By doing so, however, Jefferson had left the District of Columbia without a government, for the justices of the peace were to constitute the county legislatures. In addition, civil society at that time simply could not operate without justices of the peace being readily available. Consequently, Jefferson had to formulate quickly his own list of nominees and give them recess appointments.

John Adams had been transparent about his appointments. He rewarded the Federalists who had supported him, helped a couple of friends, and recognized long-standing pillars of the community. But he did not hesitate from continuing in office justices of the peace who were already sitting and serving their neighborhoods, even if they were Republicans, or had acted overtly against his re-election. Thomas Jefferson, on the other hand, was both more surreptitious and more partisan in making his selections.

The Trail to the Trial

Coming into office expressing the hope that Federalists and Republicans could work together, Jefferson could not seem to act in a partisan manner during his first week in office. His first cover was to claim that Adams had appointed too many justices of the peace. His second was that Adams had rewarded Federalists with an unnecessary and expensive number of offices. The excuses were flimsy. First, throughout the rest of Jefferson's administration, citizens desperately wrote the president and the secretary of state of their need for more justices in the outlying areas of the district, but Jefferson, caught with

his own excuse that Adams had appointed an excess number, could not appoint any more until his second term. Second, many of Adams's appointments were, in fact, Republican. In addition, those offices were funded by the fees assessed for their services, and not the federal treasury, so Jefferson could not credibly claim that his action was a cost-cutting move.

Nonetheless, he had to follow through on his purported reasons for withholding the commissions. He reduced the number of justices of the peace, carefully culling those he regarded as enemies and substituting those who supported him.

Despite the man's experience and position, Marbury must have been one of the easiest cuts for Jefferson to make. Marbury's life's work in securities trading was associated with the Hamiltonian "stock jobbers" whom Jefferson detested, for Marbury had rejected farming for the world of negotiable instruments. He had been the subject of much newspaper notoriety in the Republican press in the few months preceding inauguration. He had personally weighed in to try to swing all of Maryland's votes to Adams, which if successful, would have kept Jefferson from his desired Revolution of 1800. Marbury was also tied to the enormous cost overruns associated with a navy that Jefferson wanted cut to the bare minimum. He had no connection to a family or to figures to whom Jefferson owed any social or political favor, and was, in fact, intimately tied to the Forrest-Stoddert clique whom the Republicans in Georgetown and Washington most despised.

Kept from the status and position of being justice of the peace, William Marbury soon turned to Charles Lee, former attorney general, to seek his exoneration before the Federalist Supreme Court and John Marshall. The rest, as they say, is history. ■

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