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JOURNAL

Volume XLIX • Number 6

November/December 2016



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Published bimonthly by the
Maryland State Bar Association, Inc.
 The Maryland Bar Center
 520 W. Fayette St.
 Baltimore, Maryland 21201
Telephone: (410) 685-7878
 (800) 492-1964

Website: www.msba.org
Executive Director: Paul V. Carlin
Editor: W. Patrick Tandy
Assistant to the Editor: Lisa Muscara
Design: Jason Quick
Advertising Sales: Network Media Partners
Subscriptions: MSBA members receive
 THE MARYLAND BAR JOURNAL as
 \$20 of their dues payment goes to
 publication. Others, \$42 per year.
POSTMASTER: Send address change to
 THE MARYLAND BAR JOURNAL
 520 W. Fayette St.
 Baltimore, MD 21201

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 articles on topics of interest to Maryland
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EUGENICS, JIM CROW & BALTIMORE'S BEST

By Garrett Power

INTRODUCTION

DURING THE FIRST HALF OF THE TWENTIETH CENTURY, JIM CROW LAWS DENIED SUFFRAGE, HOUSING, EDUCATION, AND JUSTICE TO BLACK BALTIMOREANS. THESE LAWS WERE CONCEIVED AND IMPLEMENTED BY BALTIMORE'S LEADING ATTORNEYS. WHY DID THE "BEST OF THE BAR" CHOOSE TO BE THE ACTIVE AGENTS OF WHITE SUPREMACY AND RACIAL SEGREGATION? PERHAPS HISTORY HAS AN ANSWER.



Biological Science

During the second half of the nineteenth century biological science found itself at the start of a “paradigm shift.” Charles Darwin’s 1859 theory of evolution was challenging the old belief of “creationism.” Darwin’s notion of “natural selection” hypothesized that the best adapted members of any biological species had the greatest chance to survive and to reproduce themselves.

In 1869, Francis Galton had applied Darwin’s “survival of the fittest” to human society. Galton’s “eugenics” opined that interbreeding among the leading specimens of the Anglo Saxon white race had produced a people with superior and health, energy, ability, and manliness.

After the War Between the States

U.S. constitutional law was also in the midst of change. After the “War between the States” (1861-1865), the victorious North modified the Nation’s organic law. The Thirteenth Amendment abolished slavery; the Fourteenth Amendment bestowed citizenship on all persons born in the United States and guaranteed to them the “equal protection of the law, and; the Fifteenth Amendment granted “Negro suffrage.”

A mixed lot of newcomers inundated Baltimore. Black freemen from the South and immigrants from Ireland, Italy, Poland, and Russia overwhelmed the city’s capacity to provide shelter, jobs, schools, and health care.

Displaced men from the southern gentry also came to town seeking education and professional opportunity.

William L. Marbury (1858-1935), W. Cabell Bruce (1860-1946), and T. Woodrow Wilson (1856-1924) stand

as examples. Marbury was just one generation removed from his impoverished family’s slaveholding plantation in southern Maryland when he arrived in Baltimore in the 1870s. He was admitted to the newly created Johns Hopkins University, but a shortage of funds forced him to drop out and go to work while taking evening classes at the University of Maryland School of Law. W. Cabell Bruce (1860-1946), a patrician graduate of the University of Virginia, was his classmate; Marbury and Bruce shared class honors at the 1881 graduation. T. Woodrow Wilson (1856-1924) arrived from Virginia in 1886 (where he had previously earned his law degree) intent upon pursuing a J.H.U. doctorate.

Progressivism

The Johns Hopkins University had been founded in Baltimore in 1876 as the nation’s first research institution. It stood at the center of the Progressive movement. Richard Ely (1854-1943) joined the faculty in 1881 as a professor of Political Economy. Schooled in the German tradition, Ely championed government control over all aspects of human life (business, employment, immigration, and families). A dedicated Episcopal churchman, Ely preached a “Social Gospel” that would create a “heaven on earth.”

Ely founded the Baltimore-based American Economics Association (AEA). Both Ely and the AEA embraced Progressivism and Galton’s new science of eugenics. Eugenics explained all differences in human intelligence, character, and temperament as matters of heredity. Eugenic measures were touted the way to “advance the progress

of humankind.” Simply put, the Progressives advocated:

1. White supremacy;
2. Racial segregation; and
3. Selective breeding.

In Richard T. Ely’s words, governance by white men was imperative because “...negroes [were] grownup children and should be treated as such.” A racial quarantine was thought necessary to protect white people from the contagion and the violence endemic in black communities. Controls on breeding were required to prevent race-mixing, and to eliminate defective genes from the gene pool.

Cabell Bruce, Woodrow Wilson, and William Marbury became dedicated Progressives who were destined to have long and distinguished public careers. Woodrow Wilson would become President of Princeton University and, eventually, President of the United States. Cabell Bruce would represent the State of Maryland in the United States Senate and receive a Pulitzer Prize for a biography of Benjamin Franklin. William Marbury became one of the nation’s leading lawyers and, in the words of H.L. Mencken, “one of the best citizens Maryland ever had.”

Each of these men in their own way advanced the Progressive segregationist’s agenda. Bruce published a vitriolic monograph entitled *The Negro Problem* (1890) wherein he warned of the prospect of an “ignorant” black vote, and of the dangers of acceptance of “savage” Negroes into the white midst. Wilson, when President of Princeton, rejected all black applicants, and when President of the United States, re-segregated the federal civil service. Marbury spent the remainder of his profes-

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sional life in active opposition to the integration of African-Americans into full citizenship and participation in Baltimore life.

Turn of the Century

Opposition to “race mixture” and support for racial segregation gained immediate and widespread acceptance. In 1884, the Maryland General Assembly made it a crime for “white persons and persons of negro descent” to marry. In 1890, the University of Maryland School of Law summarily expelled the two black students in attendance and good standing because it was thought it “unwise to ... allow colored students to attend ... in the face of manifest opposition.” And in 1896, the United States Supreme Court approved segregation laws so long as the blacks and whites were treated equally.

White political hegemony, however, had been cast in doubt by the Fifteenth Amendment to the U.S. Constitution. Enacted in 1870, it had enfranchised black males of voting age, virtually all of whom joined the newly created Republican Party. If the black vote tipped the balance in favor of the election of Republicans, Negroes would have a “seat at the table.”

Initially, there was no problem. In the aftermath of the Civil War, Maryland had remained a Democratic state and Baltimore a Democratic city. U.S. Senator Arthur Pue Gorman (1839-1906), the boss of the dominant Democratic machine, proudly boasted, “This government was made by white men and shall be ruled by white men so long as the republic lasts.”

But then in 1896 it happened. The Republican Party, its ranks swelled by black voters, carried the day and

elected a Republican Governor and a Republican Mayor. Democratic Party Boss Gorman bewailed the electoral power of this minority which was “altogether unfit for the management of the affairs of any community.”

Jim Crow

At the start of the twentieth century, Jim Crow laws became the centerpiece of Progressive Era reforms. Eugenic science provided white leaders a righteous justification to use the rule of law to impose a caste system upon Maryland and Baltimore. The Grand Poo-Bahs of the superior white race undertook to disempower and to segregate the inferior colored races.

Black Voting Rights

William L. Marbury and other devoted eugenicists thought the progeny of slaves unfit for citizenship, and objected to any “participation of the colored man in government.” A first order of business became circumvention of the Fifteenth Amendment’s guarantee of black suffrage.

Democratic Party Boss Arthur Gorman looked to John Prentiss Poe (1836-1909), the Party’s “consigliere,” for assistance. Poe had served as a Dean of the University of Maryland School of Law since 1871, and his segregationist predilections were well established. In 1890, he had expelled Negro student Ashbie Hawkins from the law school when white classmates objected to his presence.

Poe drafted a Maryland Constitution amendment that was designed to curtail the Negro vote. It contained a “grandfather clause,” which would be impossible for blacks to meet, and an “understanding test” which would be impossible for blacks

to pass. The Poe Amendment was then defeated by the voters at referendum. Although registered as Democrats, foreign-born citizens joined long-time Republicans and blacks in voting against the amendment. They feared that the “understanding test” might be administered so as to deny them the vote as well.

In 1907, Isaac Lobe Straus (1871-1946), as Maryland’s newly elected Democratic Attorney General, created a “brain-trust” of prominent Maryland lawyers, including William L. Marbury, to draft an improved disenfranchising plan.

When the Straus Amendment was submitted to the voters in a statewide referendum it encountered a formidable adversary in the person of Charles Joseph Bonaparte (1851-1921), Maryland’s leading Republican. Bonaparte had served as President Theodore Roosevelt’s Attorney General. Motivated both by a regard for Negro rights, as well as party politics, he led a campaign that defeated the Amendment with a coalition of Republicans, white and black, and still-suspicious foreign-born citizens.

Politics having failed, “super-lawyer” Marbury looked to the judicial process. In 1915, he argued before the U.S. Supreme Court that the Fifteenth Amendment itself had unconstitutionally invaded state sovereignty and therefore had no force and effect, and that the states were therefore free to discriminate in their electorate as they saw fit. The Supreme Court rejected his argument.

Maryland’s Democratic regulars would have to rely on white “pug-uglies” at the polling places, not the rule of law, when it came to suppressing the black vote and retaining exclusive white power.

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Racial Segregation

Progressives viewed segregation as a vital aspect of social reform. By separating themselves from communities of color, white communities could avoid contagion, prevent violent confrontation, discourage fraternization (which might degenerate into “race-mixing”) and protect property values.

Writing in the journal *Medicine* in 1903, Baltimore physician William Lee Howard advocated that the white race “in every aspect of the term [be] quarantined from the African.” A first step was the elimination of black neighborhoods located too close to the vital city center.

James Harry Preston (1860–1938) served as Baltimore Mayor from 1911–1919. His administration is remem-

bered for the major civic works that created a downtown governmental center embracing a City Hall plaza and the new Courthouse. When the Baltimore City health commissioner warned that there was a “plague spot” immediately to the north of the vital city center, Mayor Preston acted.

A civil works project cleared the site and converted the area into a series of sunken gardens and parked spaces with elaborate stairways. Preston Gardens was dedicated in 1919.

Truth be told, the cleared site had been a substantial African-American neighborhood which included a colored school, several black churches, and “shabby” 1820s townhouses. There was no real threat of contagion, and the community was by no measure a slum. Slum clearance served

to distance black neighborhoods from prime real estate. The project set the twentieth century precedent for the use of “urban renewal” as an excuse for “Negro removal.”

An informal “color-line” racially divided Baltimore’s black neighborhoods from its white neighborhoods. Negro dwellings were in fixed supply and colored families were left in search of shelter. To preserve the existing separation it was necessary to prevent the “Negro invasion” of white neighborhoods.

After his expulsion from the University of Maryland School of Law in 1890, Ashbie Hawkins had completed his legal education at Howard University. He had been admitted to the Maryland Bar and returned to town to head the Baltimore Branch of the NAACP.

Hawkins was intent upon opening Baltimore white neighborhoods to black homeowners. In 1910, he led the “Negro Invasion” when he purchased a house in William L. Marbury’s posh Mount Royal neighborhood.

Marbury joined with his neighbors to fight back. They enacted legislation that divided all of Baltimore into white blocks and black blocks. Whites could not live on black blocks, blacks could not live on white blocks. This *de jure* segregation seemed to satisfy the constitutional requirement in that it was “separate but equal.”

Cities throughout the south copied Baltimore’s novel legislation. In 1917, a Louisville Kentucky version of the Baltimore Plan was surprisingly struck down by the United States Supreme Court – not because it failed to “equally protect” black buyers, but because it deprived white sellers of their “property rights.” Baltimore’s leaders reluctantly accepted the high

court's ruling and Ashbie Hawkins seemed to have begun the process of opening the housing market.

Baltimore's legal leaders, however, found other ways to maintain the city's *de facto* color line. In 1923, Philip B. Perlman (1890-1960), the Baltimore City Solicitor, conspired with representatives from the Real Estate Board, the City Building Office, the City Health Department, and white neighborhood associations to employ restrictive covenants, redlining, jaw-boning, and peer pressure to discourage sales or rentals to Negroes in white neighborhoods. *De facto* residential segregation continued unabated.

Selective Breeding

Francis Galton's original scientific theory had been that of a "positive eugenics." He sought to avoid the

prospect of "race suicide" by encouraging those of the superior northern European stock to inter-marry and to maintain a higher birth rate than Negroes, Hispanics, Hebrews, Asiatic, Slavs, and Italians.

By the start of the twentieth century, the prospect of a "negative eugenics" had received scientific recognition. Since poverty, crime, and illness all arose from defective genes, zealous advocates called for a policy of compulsory sterilization, eliminating inferior genetic stock, and thereby improving all of humankind. Richard T. Ely summed it up when he said, "*Certain human beings ... are absolutely unfit and ... should be prevented from the continuation of their kind.*"

The Carnegie Institution and the Rockefeller Foundation provided grant funds to Stanford, Yale, Harvard, and Princeton and charged

them to find ways to use eugenic science to make a better world. Their scientists proposed surgical campaigns designed to purify the population of the United States and to improve the genetic pool. Sterilization laws adopted in over 30 states undertook to eliminate the genetically "unfit" through programs of sterilization.

Maryland never passed an involuntary sterilization law. Any evidence of extra-legal neutering or euthanasia is lost or destroyed. Many credit the opposition of the Archdiocese of Baltimore for discouragement of these procedures. The Catholic Church adamantly opposed all measures to limit reproduction.

Between 1907 and 1960, more than 60,000 "defectives" were sterilized. Supreme Court Justice Oliver Wendell Holmes Jr. gave his constitutional approval when he held that "*three*

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generations of imbeciles are enough." Predictably, African-American women were special targets.

William L. Marbury supported measures "to look after the health, mental and physical, of the members of the race." Marbury was "anxious that a hospital for the care of the colored insane be established." And in 1910, he convinced the Maryland General Assembly to establish "an institution for the detention and care of the negro insane."

Marbury's motivation may have been in part noblesse oblige and in part eugenic. In 1914, the Carnegie Institute had issued a report "on the Best Practical Means for Cutting Off the Defective Germ-Plasm in the American Population." One of the measures proposed called for institutionalization of "defective persons" so as to limit their child-bearing.

Marbury served as president of the Hospital for the Negro Insane of Maryland from 1910 until his death in 1935. The Board had "absolute control of ... the care and treatment of patients, as pertains to matters of both executive and medical character." Horror stories abound of indiscriminate and involuntary institutionalization of orphans, unwed mothers and imbeciles, paupers, epileptics, inebriates, and lunatics.

The records of the care and medical treatment provided during Marbury's years were destroyed in a basement flood, making it impossible to confirm or deny these anecdotal reports. William L. Marbury counted his 25 years of volunteer service to the Hospital for the Negro Insane as a proof of the adage that "the Southern White man is the Negro's truest friend."

"Separate but Equal" Reconsidered

When William L. Marbury died in 1935 his son William L. Marbury Jr. (1902-1988), a Harvard law graduate, took over the law practice. The constitution required that black folks and white folks receive "equal protection of the law." In two cases from the 1930s, young Marbury found himself charged with the task of finding constitutional loopholes that justified the practices of his father's segregationist clients.

In *Meade v. Dennistone*, Marbury Jr. successfully defended white neighbors who kept Negroes out of their neighborhood by private agreement, on the grounds that the exclusion was the result of a private (not a public) action. The case put a constitutional stamp of approval on the private restrictive covenants that had been the centerpiece of Philip Perlman's *de facto* plan for segregation since the 1920s.

In *Williams v. Zimmerman*, Marbury Jr. successfully defended the Baltimore County School Board against charges that it had denied a black girl equal education when it denied her access to the county's white-only high school. He proved that she might have attended Baltimore City's colored high school if she had not failed an entrance exam. Denial of equal opportunity was found to be based upon her academic failure, not her race.

The losing advocate in *Williams* had been Thurgood Marshall, Baltimore's rising NAACP lawyer. Just two years before, Marshall had gained black applicant Donald G. Murray admission to the University of Maryland School of Law by proving that the state failed to elsewhere provide him with a "separate" legal

education of an "equal" quality.

In 1936, Thurgood Marshall left Baltimore to become the General Counsel for the NAACP in New York. Thereafter he would lead a successful fight to dismantle the "separate but equal" doctrine. In a series of test cases, courts would be persuaded that segregated public programs failed to qualify as being "equal" because of tangible and intangible differences. Jim Crow was an endangered species.

Eugenics Discredited

In the 1930s, Germany's National Socialist party embraced the American Eugenics Movement. The Nazis' crusade to create an Aryan "Master Race" featured a sterilization program that led to the neutering of over 350,000 "defective" persons, including the feeble-minded, epileptic, schizophrenic, manic-depressive, cerebral palsy, muscular dystrophy, deaf, and blind as well as the homosexual and the insane. "Mercy" killings eventually took more than 300,000 lives under a euthanasia program. After the war, the Nazi practices were declared a crime against humanity – acts of genocide.

The Holocaust left eugenics discredited as a pseudo-science. It is no longer discussed in reputable scientific journals and foundation-funded research grants had disappeared. The mainstream scientific study of heredity and human differences rejected any notion of "white supremacy." The twenty-first century sequencing of the human genome removed all residual doubt of racial supremacy.

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After World War II

The Supreme Court's constitutional precedents condoned racial discrimination by private parties. In 1948, it changed its mind. The Court held the enforcement of restrictive racial covenants in private deeds to be an unconstitutional denial of equal protection. The winning advocate was leader of the NAACP's Legal Defense Fund, erstwhile Baltimore lawyer Thurgood Marshall. Remarkably, he was joined by U.S. Solicitor General Philip Perlman, who 25 years before as Baltimore City Solicitor had promoted private deed restriction as a part of the Baltimore Plan for Segregation.

Perlman capped his career by serving as the "Nation's Lawyer". He joined Marshall in arguing and winning the case of *Shelley v. Kramer* (1948) which opened white communities to Negro newcomers. Perlman, the one-time segregationist was honored as a "Champion of Human Rights."

For two decades, NAACP lawyer Marshall had judicially challenged the Supreme Court's constitutional precedents which condoned the separate (but equal) public education of white students and black students. In 1937, he had lost a case to William L. Marbury Jr., who had successfully defended the constitutionality of Baltimore County's denial of a high school education to a colored child.

In the ensuing years, Marbury Jr. had achieved prominence, and had had a change of heart. He had escaped his father's racist legacy, and gone on to pursue a distinguished professional and civic life.

Marbury was awarded the Presidential Medal for Merit for distinguished national service to the War Department during World War II. He served 22 years on the Board

of Overseers of Harvard University. He was one of the organizers of Maryland's Legal Aid Bureau, which offers legal services to the poor. He advocated for equal funding for black schools in the 1940s and he was a peace-maker in civil rights disputes of the 1950s.

In *Brown v. Board of Education* (1954), Thurgood Marshall convinced the Supreme Court that the separate education of white students and colored students was "inherently unequal." Marbury applauded the decision. For this apostasy Marbury was bluntly criticized by his southern-sympathizing brethren at the bar.

Jim Crow was legally dead. *De jure* racial discrimination had been ruled unconstitutional. Talk and support for eugenics has disappeared from the public discourse. But alas, the *de facto* relegation of African-Americans to a second-class economic and social status has not gone away.

Conclusions

For one-half of a century a long line of Baltimore's best barristers – John Prentiss Poe, William L. Marbury Sr., W. Cabell Bruce, James H. Preston, Isaac Lobe Straus, Philip B. Perlman, and William L. Marbury Jr. – imposed Jim Crow laws and practices on black Baltimoreans from the "top-down."

The question arises as to why these leading townsmen self-righteously, and without apology, economically exploited, socially segregated, and publicly humiliated African-Americans. A simple answer is that Baltimore's best had been besotted by the eugenics. They found therein a "scientific" rationalization for their privileged place in a segregated society.

But the eugenics hypothesis of white supremacy proved to be a

snare and delusion. The mapping of the human genome in the twenty-first century finally put to rest any lingering scientific belief in genetic supremacy of one racial or ethnic group over another.

And there is a better explanation of the persistence of racial discrimination in today's society. Psychological studies show that people "naturally" attribute more positive traits to their own group than to other groups. "Tribalism" feeds the desire for economic and social dominance, and fuels discrimination and prejudice against other people.

A lifetime of segregation has left white Americans with a stereotyped view of African-Americans. Indeed, people of good will who consciously reject all prejudices may subliminally harbor fears of black violence and a dismissive attitude towards black competence.

Eugenics had championed separation of racial groups as a means of advancing the "condition of humankind." But eugenics had it backwards; it was a paradigm shift in the wrong direction. Integration, not segregation, seems the better route to a "just society."

De jure racial discrimination has been ruled unconstitutional. Talk and support for eugenics has disappeared from the public discourse. But alas the *de facto* relegation of African-Americans to a second-class economic and social status has not gone away. Baltimore's barriers of bigotry can only be broken down by regular and close interactions between white-folk and black-folk over the long term.

Mr. Power is Professor Emeritus at the University of Maryland Francis King Carey School of Law.