

republican understanding of property and of property's relationship to government. Such an understanding was not unreasonable nor was it atypical as it had been the orthodox conception of property since the founding of the Republic.<sup>7</sup>

Significantly, the city of Baltimore neither challenged Barron's claims to his property right nor denied responsibility for the damage that resulted from the civic improvements. Nor did they offer any compensation to Barron. Rather, the city's attorneys contended that the damage was a public nuisance that was not specifically or individually directed against the wharf and that a ruling in favor of Barron would be contrary to future development projects by the city.<sup>8</sup> Speaking on behalf of the city, in a private capacity, U. S. Attorney General Roger Taney argued that should Barron's cause be sanctioned "improvements in the city must be arrested because no street [could] be opened or graded without producing some injury to navigation at some point." Taney depicted the case as a conflict between private and "public rights to property" and, in so doing, inferred that the right to property was not pre-political but existed only through the consent of the society-at-large. He posited that Barron's property claim in his wharf was not an "exclusive right" but "it [was] qualified by the right which the public [had] in the same thing." Thus Barron's property existed not only as an individual right, "but [was]

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*Government* (Oxford: 1997). The intrinsic relationship between absolute property and republican government was explicated most clearly in John Locke's *Two Treatises on Government*.

<sup>7</sup> Gregory Alexander, *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776-1970* (Chicago: 1997); and Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago: 1990).

<sup>8</sup> 7 Peters 243 and *Notes*, 155-59. Baltimore was represented by John Scott and U.S. Attorney General Roger Taney, who was not acting in his public capacity.