

By the end of July, the city of Baltimore had requested an appeal. In his arguments at the state court, Mayer now charged specifically that his client's Fifth Amendment rights had been abridged. But the wheels of justice turned as slowly in Maryland's high court as they had in the trial court. It wasn't until December 6, 1830, that the court of appeals reversed the jury verdict. Six months later the decision was appealed on a writ of error to the United States Supreme Court "on the ground of it [the judgment] being repugnant to the Constitution of the United States." Barron's decision to fight the city fathers was about to present Chief Justice John Marshall with what turned out to be his first Bill of Rights case and his last monumental constitutional issue.

THE MARSHALL COURT

At the time Barron's case was finally argued before the Supreme Court, John Marshall had been molding the Court in his own image for more than 30 years. In the wake of a Federalist defeat in the election of 1800, Secretary of State Marshall had been nominated to the Court by outgoing President John Adams. In fact, in the waning moments of the Adams administration, Marshall had held both the chief justiceship and the office of secretary of state. Marshall then spent his 35 years on the Court with three driving goals in mind: strengthening the Union, which he saw as a "well regulated democracy";⁷ strengthening the United States Constitution; and strengthening the federal judiciary, especially the Supreme Court, which he felt should be on an equal plane with the Congress and the presidency.

Marshall's strong Federalist sentiments supporting the Union and the Constitution should have been no surprise. In 1788 at the Virginia Ratifying Convention, he had voiced his firm support for the new Constitution and especially for the judiciary. He had been picked to champion the Federalist position and specifically to counter the eloquent rhetoric of Patrick Henry, who, as an Antifederalist opposing the Constitution, severely attacked the judicial system.⁸ In his eloquent defense, Marshall asked, "To what quarter will you look for protection from an infringement on the Constitution if you will not give the power to the judiciary? There is no other body that can afford such protection."⁹

But in 1801 this branch of government, which lacked both "the sword [and] the purse,"¹⁰ was far from being the defender of rights that Marshall had earlier envisioned. Before nominating Marshall, John Adams had offered the chief justice's post to John Jay, who had served as the nation's first chief justice.¹¹ In rejecting the offer, Jay wrote: "I left the bench perfectly convinced that under a system so defective it would not obtain the energy, weight and dignity which was essential to its affording due support to the national government; not acquire the public

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