of the United States, contravening the fifth article of the Amendments to the Constitution, which declares that 'private property shall not be taken for public use without just compensation,' the plaintiff contending that this article declares principles which regulate the legislation of the States, for the protection of the people in each and all of the states regarded as citizens of the United States or as inhabitants subject to the laws of the Union."[34] In plain language, Mayer was trying to convince the Court that the Fifth Amendment required Baltimore to compensate Barron for having destroyed the value of his wharf.

It was then Taney and Scott's turn to address the Court, but the armed-for-battle Taney was barely able to open his mouth. The chief justice stopped him short. He said he needed no pleadings by the state of Maryland; apparently the Court had already made up its mind.

WHY A WRITTEN BILL OF RIGHTS?

To understand Barron's case and the issue before the Court, one has to go back to the birth of the Bill of Rights, to what it was intended to achieve and what was said in the debates in Congress. Marshall was well aware of the debates over the passage of the Bill of Rights. Indeed, as mentioned earlier, he had been part of the Virginia Ratifying Convention which, like the conventions in many other states, had urged the passage of written constitutional guarantees of liberty.

The Bill of Rights was not part of the original U.S. Constitution written in 1787 and ratified in 1789, but had been drafted in 1789 and ratified in 1791. It was motivated by the conviction of men such as Thomas Jefferson, James Madison, and George Mason that a written constitution would be a hollow document without specific measures to protect minorities from the tyranny of the majority. Jefferson, earlier the chief architect of the Declaration of Independence, had not been a member of the Constitutional Convention.[35] Although enthusiastic about the Constitution as drafted, Jefferson nonetheless felt, as he wrote to Madison from Paris, that "there is also for me a bitter pill or two." He continued, "The Bill of Rights is what the people are entitled to against every government on earth, general or particular [i.e., federal or state] and what no just government should refuse or rest on interferences."[36]

Others, such as Alexander Hamilton, scoffed at the idea of a written bill of rights. In *The Federalist* papers, he described the existing bills of rights in the states as "aphorisms . . . which would sound much better in a treatise of ethics than in a constitution of government."[37] Such protections, Hamilton wrote, are redundancies. To him, the Constitution enumerated the powers of the federal government. As the Constitution did not give the new government the power to abridge fundamental freedoms, there was no danger. In fact, to Hamilton, the danger lay in trying