

principally for its productive capacities. Unproductive or less productive property was considered detrimental to the evolution of society and correspondingly to civilization itself. Ironically, Barron's wharf had acted as a productive property prior to the lowering of the water level. But within a utilitarian paradigm any conflict between two instrumental properties was determined on the basis of relative efficiency, in other words, favorable toward the property or activity that provided society with the greatest benefit.

The contradictory verdicts delivered respectively by the county and appellate courts testify to the mutual co-existence and ongoing struggle for hegemonic ascendancy between these two ideas of property. The Baltimore County Court upheld the traditional conception of absolute property and ordered the city to pay Barron four thousand five hundred dollars in compensatory damages. On appeal, the Court of Appeals for the Western Shore reversed the judgement of the lower court and ruled in favor of the City of Baltimore. The Appellate Court's ruling was premised upon the fact that the Maryland Constitution did not include a takings clause requiring compensation for damaged or assumed properties. The Court emphasized that nowhere in the original agreement were property rights imbued with a sanctified status. Accordingly, any prior practice of compensation was simply a custom and was subject to change and variance in the law.¹¹ John Barron, in turn, responded by appeal to the U. S. Supreme Court on a writ of error. The writ claimed that the exercise of the state's authority, as sanctioned by the Appellate Court ruling, "was repugnant to the Constitution of the United States" because it

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¹¹ *Judgements and 7 Peters 243. See as well the Constitution of the State of Maryland, 1776 (www.mdarchives.state.md.us/ms).*