Taking a Constitutional: A Walking Tour of Boston's Constitutional History

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1950's the hall was made available to "superpatriot" and "subversive" alike. And that tradition carries on to this day.

Off to your left as you face Faneuil Hall from Congress St. is Boston's oldest commercial district, the Blackstone Block.

31 Within it, halfway down Union St. stands the Old State House - Boston's oldest restaurant. Daniel Webster often dined at its bar where, it is said, he could down three dozen oysters and six tumblers of brandy-and-water at a single sitting!

32 At the end of Union St. stood the Green Dragon Tavern where, on January 7, 1789, Paul Revere helped organize a meeting of Boston's "artisans and mechanics" on ratification. Their resolution in favor is credited with having persuaded Sam Adams to soften his opposition.

33 On the night of March 5, 1770, five Boston citizens lay near here dead or dying, shot at close-range by the hated British "redcoats." In the incident's wake, a general "tyrach mob" mentality prevailed. Thus, when two patriot Boston lawyers - John Adams and Josiah Quincy, Jr. - agreed to defend the British soldiers, "it is of record that many patriots, unable to appreciate their motives, were greatly offended by them." In replying to a stern letter of reproof from his father, Quincy wrote: "Let such be told, sir, that those criminals, charged with murder, are not yet legally proved guilty, and therefore, however criminal, are entitled by the laws of God and man to all legal counsel and aid ... .I dare affirm that you and the whole people will one day rejoice that I became an advocate for the aforesaid criminals, charged with the murder of our fellow-citizens." In the end, the jury in the case acquitted all but two of the soldiers, and those two were given light penalties. But Quincy, who died in 1775, never witnessed the full extent of his vindication. For, in 1789, the first Congress adopted a Bill of Rights providing a panoply of rights to those accused of crime, including a guarantee of the right to legal counsel and aid. And in 1796, the people of the United States elected as their second president, John Adams - the other young patriot who had so bravely exemplified the commitment to "the rule of law" which became the essence of the U.S. Constitution.

Taking A Constitutional Constitutional

A Walking Tour of Boston's Constitutional History

Written by Charles H. Baron, with the support of the Massachusetts Bar Association Committee on the Bicentennial of the United States Constitution, Alice E. Richmond, President 1986-87, John M. Callahan, President 1987-88; and Boston National Historical Park.

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Taking A Constitutional Constitutional

A tour supplementing The Freedom Trail and The Black Heritage Trail with insight and information of special relevance to the Bicentennial of the United States Constitution.

By Charles H. Baron, Professor of Law, Boston College Law School, with Edward J. Bender, Law Librarian, Suffolk University, and Timothy J. Bennett, Student, Boston College Law School.

As with so much of U.S. revolutionary history, much of America's constitutional history is associated with the streets, halls, and people of Boston.

A Boston lawyer, John Adams, laid down the principal outlines of the U.S. Constitution eleven years before the convening of the Constitutional Convention in Philadelphia. In 1776, when the colonies were trying to determine what form of government would replace their royal chal ters, they turned for guidance to Adams who had a reputation then not only as a great patriot but also as a brilliant constitutional theorist. He was he who developed for the fledgling states the now-familiar framework of a written constitution. Among other things, for government by two-chambered legislatures, governors, and independent judiciaries - earning himself the sobriquet: "The Architect of American Constitutions." And it was to Adams' work that the delegates to the 1787 convention turned when they sought a model for the document which was to replace the Articles of Confederation. Not only the broad outlines of the body of the Constitution, but also the first ten amendments - the Bill of Rights - have a Boston heritage. When the new Constitution was sent to the states for ratification in the fall of 1787, five states voted quickly and overwhelmingly for ratification. But the Massachusetts convention, which was to meet in Boston in January of 1788, had "over thirty of a defeat. A "no" vote was averted only after John Hancock and Sam Adams linked ratification with a proposal that the new government adopt a bill of rights which would protect the states and the people from the new federal government. That proposal was then employed to win ratification in six of the seven states voting after Massachusetts and ultimately led the first Congress to pass the first ten amendments.

Since ratification, Boston has continued to serve as a crucible for refining the Constitution. In the tradition of John Adams, Greater Boston's distinguished legal community has been a principal contributor to the evolution of American constitutional law. Boston lawyers, such as Daniel Webster, have shaped the Constitution as advocates. Boston judges, such as Oliver Wendell Holmes, Jr., and Louis Brandeis, have shaped it as interpreters. And Boston area law schools, including Harvard's (North America's oldest, founded in 1817), have profoundly affected it through the teaching and the scholarship of their faculties.

In the tradition of Sam Adams and John Hancock, Boston's general citizenry have also contributed significantly to the evolution of the Constitution. The great abolitionists, William Lloyd Garrison and Wendell Phillips made Boston a center for the anti-slavery movement which led ultimately to the great post-Civil War amendments (13th, 14th, and 15th) abolishing slavery, enfranchising the former slaves, and granting to all citizens new protections against over-reaching by the governments of the individual states. And feminist activists, such as Margaret Fuller and Lydia Child, helped make Boston an important site of the woman suffrage movement which produced the 19th amendment.

Beyond such struggles over particular substantive issues, Boston has been perhaps the nation's best-known battleground in the never-ending struggle for freedom of expression in general. Boston's great meeting houses and churches such as Faneuil Hall and Old South Meeting House are famous as sites which have given life to the guarantees of the first amendment. But all this would have been possible only for those who would limit freedom of speech. When, in the early 20th century, a combination of repressive forces threatened broad censorship, they made the term "Banned in Boston" an embarrassment to the city which prided itself as the home of the "Cradle of Liberty," but they also helped inspire a national civil liberties movement the country still needs today.

Join us now on a walk around downtown Boston, covering less than a square mile and requiring only a couple of hours but taking us back over two hundred years of the historic evolution of our Constitution and reminding us of much that bears relearning.

Let's take a "constitutional!"
Taking A Constitutional

A Walking Tour of Boston's Constitutional History

1. Constitutional Law & Lawyers

From the vicinity of the Old State House to the vicinity of the new State House passing through the center of "legal Boston." (20 minutes)
Old State House

2. Black Heritage Trail

A portion of the Black Heritage Trail running from the vicinity of the new State House to the heart of Beacon Hill past sites associated with the civil rights movement of the 19th century. (20 minutes)
Shaw Memorial

3. Beacon Hill Residences

From the heart of Beacon Hill to the new State House passing distinguished residences of persons influential in the making of constitutional history. (15 minutes)
Harrison Gray Otis House

4. Freedom Trail

A portion of the Freedom Trail from the new State House to Old South Meeting House including Park St. Church, Old Granary Burying Ground, and the Parker House. (30 minutes)
State House

5. Liberty & The Rule of Law

From Old South Meeting House to the Old State House passing sites (including Faneuil Hall) associated with the Bill of Rights and the rule of law. (20 minutes)
Long Lane Meeting House
1. Constitutional Law & Lawyers

Walk left around the Old Courthouse up the hill to Somerset Street behind the court building. Take this to the left, and then make a right into Beacon St. On your left, in the middle of the block, is The Boston Athenaeum – a distinguished private library and art museum. Its collection includes George Washington's copy of John Adams' "Defence of the Constitutions of Government of the United States of America," a bust of Lemuel Shaw, and several busts of Daniel Webster. In the entranceway is still another representation of Webster accompanied by a portrait of the greatest chief justice of the United States, John Marshall. Although Marshall was actually the fourth chief justice, many people think of him as the first because of the role he played, from 1801 until his death in 1835, in establishing the Supreme Court as a coequal branch of the new federal government. To John Adams, Marshall was the second great Virginian he had given to the country. As late as 1875, Adams (as legislator in the Second Continental Congress) had nominated George Washington to command the troops which were already fighting the British in New England. In 1801, Adams (as president) nominated Marshall to be chief justice, a decision of which he later said: "My gift of John Marshall to the people . . . was the proudest act one could do."

Continue along Mt. Vernon St. to Bulfinch's best known work, the State House. Built on land which once was the estate of the president of the Massachusetts ratification convention, John Hancock, it contains a number of items historically related to the Constitution. High on the wall of the State House, a portrait of John Adams, James Madison, and Alexander Hamilton is distinguished itself (despite great losses) at Fort Wagner, South Carolina, during the Civil War. Upon receiving the news, the Irish immigrant Patrick Connor exclaimed: "That's it, men! That's the way to show these Yankee redcoats how we Irishmen can fight! . . . Then there was the first face of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child of independence was born."

2. Black Heritage Trail

Continue along Beacon St. to Park St. Church) contains the graves of a number of famous patriots, including James Otis, John Hancock, Paul Revere, and Sam Adams. Across Tremont at the corner of School St. stands The Parker House, which styles itself: "America's oldest continually-operated hotel". Its restaurant served as the family dining room of the newlyweds Mr. & Mrs. Oliver Wendell Holmes, Jr., during the time that they lived in a nearby apartment (with no kitchen) on Beacon St.

Garrison who delivered his first anti-slavery speech here in 1829 at 23 years of age. The corner of the Common across the street has seen many forms of exercise of the right to free expression, but none more colorful than the confrontation in 1926 between Boston's puritanical Watch and Ward Society and H.L. Mencken, the editor of the AMERICAN MERCURY. With a thong of cheering Harvard students observing, Mencken was first arrested for and later acquitted of selling obscene material, to wit: copies of his magazine containing an article with drawings of nude female sex. The decline of the Watch and Ward Society was helped along by such challenges and resulting public ridicule, of which the following poem is an example:

Your Honor, this book is a bucket of swill; It portrays a naked girl in a bath; And a woman who lived in a shoe as a house With her brood, but not once does it mention her spouse.

I submit that this volume's obscene, lewd and base. And demand its suppression. Its name? Mother Goose.

3. Beacon Hill Residences

Now walk down Pinckney past the school to Louisburg Square. Then make a left down to Mount Vernon St. As you turn left into Mount Vernon, you will begin to pass some of the handsomest homes in Boston. Thought to be the most distinguished of all is Number 85, designed by the renowned Boston architect, Charles Bulfinch, for Harrison Gray Otis. Besides being a respected Boston lawyer, mayor of Boston, U.S. congressman and senator, Otis may well have been responsible for saving the union from an early demise. At the 1861 Constitutional Convention, secretly called by the New England states to discuss grievances with the federal government stemming from the unpopular War of 1812, Otis succeeded in steering the delegates away from plans for secession and toward a more moderate course. Number 66 was the home of Mrs. Arthur Shurtleff and the site of the founding, in January 1920, of the Civil Liberties Union. Number 79 was the home of Justice Horace Gray, one of eight Massachusetts lawyers who have served as justices of the Supreme Court of the United States. Number 55 was from 1817 to 1819 the Boston residence of Daniel Webster, number 49 was the home of Chief Justice Lemuel Shaw.

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Continue along Beacon across Park St. On your left, on the edge of the Boston Common is the site of the world's first public assembly by a group of Bostonians who shaped American common law into a tool for dealing with the challenge of the industrial revolution. His reputation in the field of constitutional law is, however, more controversial. In his 1850 opinion in Roberts v. City of Boston, he denied a black child the right to enrollment in a white school, propounding for the first time the doctrine of "separate but equal" and parting ways with his colleague, Justice David Grey Otis.

[Image 0x0 to 1080x610]
Because of its proximity to the courts, Court Street has always been the hub of Boston's distinguished community of lawyers. Supreme Court bar unparalleled during his day and unmatched and James Otis to the present, have been the offices of some of he earned the epithet "Defender of the Constitution" when he made for the people, made by the people, and answerable to the people."

At the top of the stairs you will find the African Meeting House (which stood at the corner of Summer St.) was the spot where the Bill of Rights was born. The oldest African American church in the United States, it was built in 1806 by blacks seeking to escape discrimination in Boston's white churches. Here in 1831, William Lloyd Garrison founded the abolitionist movement by publishing the LIBERATOR. From here as well, he launched the New England Anti-Slavery Society in 1832.

Continue to walk Court Street, across Cambridge St., and up the stairs through the archway at One Center Plaza. At the top of the stairs you'll emerge into Pemberton Square, the current site of the major courts in Boston. The imposing edifice immediately in front of you (built on the site of one of Webster's Boston residences) was the Old Suffolk County Courthouse which was completed in 1909. The towering Art Deco annex to the right is the New Suffolk Courthouse.

In the grand hall of the Old Courthouse is a statue of Rufus Choate, a friend and professional rival of Webster whom some consider Webster's superior. Choate but such views to the Constitution's guarantee of the right to counsel in criminal cases that it was said that criminals inquired after his health before engaging in illegal activity. It has also been said of Choate that "he was never at a loss for the word." When asked by a judge to cite a precedent for his argument before the court, Choate replied: "I will look, your honor, and endeavor to find a precedent if you require it; though it would seem a case of first impression." Choate was the first victim to fall at the Boston Massacre, the Lincoln administration had not allowed them to fight in the Civil War until 1863 decision overrode the result, the Civil War was over, and blacks in Massachusetts extended beyond military service. Blacks had been enfranchised since the adoption of the Massachusetts constitution of 1780, and Massachusetts was the only state to have abolished slavery at the time of the ratification of the U.S. Constitution. But racial violence erupted in Boston in the late 1820s. And by 1830, Boston had segregated schools, theaters, and public transportation, and blacks were denied entrance into many trades. It was not until the advent of abolitionism, and even more so, the post-Civil War amendments to the Constitution, that the more obvious forms of race discrimination were made illegal.

Continue along Beacon St. to Joy St. (first street on the right). Walk up the hill on Joy, passing Mt. Vernon St., Pinckney St., and Myrtle St., and turning left into Smith Court. Immediately on the left is the Abiel Smith School, the site of the segregated primary and grammar school which served Boston's black community from 1835 until 1855. In 1848, when Benjamin Roberts failed in his attempt to enroll his daughter Sarah in any of the five white schools which stood between here and his home in Boston's South End, abolitionist lawyer and U.S. Senator Charles Sumner brought the suit against the City of Boston in which Chief Justice Shaw developed the doctrine of "separate but equal." At the far left end of the court is the African Meeting House. The oldest standing black church in the United States, it was built in 1806 by blacks seeking to escape discrimination in Boston's white churches. Here in 1831, William Lloyd Garrison launched the New England Anti-Slavery Society in 1832.

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