

General James Mitchell Varnum House Museum

Statement of Architectural Significance¹

The General James Mitchell Varnum house was begun in 1773 and finished in 1778. Its national historic and architectural significance is confined to the period of 1773-1788, under its first owner: General James Mitchell Varnum. The house is situated looking east, set at the top of a steep slope rising above the main street of East Greenwich, and looks across East Greenwich Cove and Narragansett Bay. It is a corner lot, the east front is on Peirce Street and the north side is on Revolution Street, a continuation of King Street which is broken by the slope between Peirce Street and Main Street. The original house is a two-story (plus basement and attic), five-bay wide, post-and-beam structure with a gable-on-hip roof. It is Georgian in style and is set on a two-chimney central hall plan. The architect was John Reynolds, a locally prominent builder who had introduced the Georgian style in East Greenwich in the mid 1760's with the construction of a still extant brick house on Main Street.² The architectural significance of the Varnum house is derived from its largely intact structure and setting. The house lot is the same size as it was in the 1770's; and only one outbuilding, a carriage barn in the northeast corner, has been added. This outbuilding is listed as the noncontributing structure, as it was built in a later period. There is a covered well to the back of the house, and a raised garden bed to the south. A low retaining wall delineates the back half of the lot where the carriage house is.

The surrounding neighborhood demonstrates a high level of historical continuity. Directly across from the Varnum house is the East Greenwich town hall, formerly the Kent County courthouse. This structure was built in 1804, but is on the site of the courthouse where Varnum would have worked.³ Immediately across the intersection of Peirce and Revolution streets is the Dr. Peter Turner house, built in 1774, which was occupied by Varnum's sister-in-law. There are a number of other houses dating from the

¹ This statement is an updated, revised and edited version of that previously prepared by Bruce C. MacGunnigle.

² Street, p.14

³ An expansion to the back of the courthouse, linking it to Peirce Street by means of an elevated walkway is a noticeable change. However, the modern material and style clearly delineates the extent of the change. Crucially, the view down King Street and from the second story of the Varnum house looking down across Greenwich Cove is unimpeded.

1700's in the immediate vicinity. Most pertinent is the Dr. Eldredge house, built in 1773 by John Reynolds. The Eldredge house has a layout which is virtually identical to that of the Varnum house on its two main floors, although due to the site elevation the Eldredge house's basement is also accessible at ground-level. It almost certainly served as a model for the Varnum house; although the interior decoration of the Varnum house is more ornate. Much of the Peirce street area contains structures that, either in their use (the Kentish Guards Armory, several churches, and the courthouse) or in their actual physical appearance (the Eldredge, Miller-Congdon, Salisbury, Turner, and Whitmarsh houses to cite a few close neighbors)⁴ would have been familiar to Varnum.

The exterior shape of the house is clearly evident, as the additions of a front porch and two window bays do not mask the house's structure. The addition to the back of the house, done during the 1800's, is almost entirely separate; it is attached to approximately one-third of the back wall of the kitchen and obscures neither the original exterior nor the original interior footprint. Access to this addition is through a door in the kitchen, a door in the north-west bedroom, and a small crawl-space in the attic. At the basement level it is connected through, however the connection is clearly delineated and the two basements are structurally separate. All of these additions are sympathetic to the original in regards to exterior trim, clapboards, and windows.

The interior of the house was redecorated in the 1970's, leaving only the painted wall-paper in the main hall and stairs from the 1800's. Efforts were made to restore the kitchen fireplace to its original lines and the rest of the rooms were done in a style sympathetic to late 1700's fashion. Aside from the restoration of the kitchen fireplace and the repair of the attic stairs there has been no modification to the interior floor-plan of the 1773-1778 structure. Renovation has been confined to cosmetic features. The original structure does not have any plumbing in it. The steam heat system is minimal and is not obtrusive; wiring is hidden in the ceilings. In a few rooms the ceiling plaster has been replaced with sheet-rock; the plaster elsewhere is in relatively good condition, and therefore is unlikely to be original, simply due to the expected life-span of plaster in this climate. Additionally, the fact that the wiring is not evident implies that it must have been hidden behind the plaster, as wall switches are present. It is important to note,

⁴ The dates of these houses are: 1773, 1711 (debated), 1785, 1774, and 1767.

however, that the bulk of the trim, including the fireplace mantels in several rooms, and shutters is original to the 1700s, while the fireplace tiling and the hardware throughout is probably no later than the mid-1800's. The original structural components of the house, therefore, are intact and are visible.

The house is in generally good condition. Water damage is evident in the interior, however, this has ceased due to the replacement of the roof with period-appropriate cedar shingles. The windows all have aluminum, triple-track storms on the exterior; these storm-windows are noticeable, but are relatively low profile and in general do not detract from the original double-hung sashes. Much of the glass in the double-hung windows is pre-twentieth century, and at least some of the windows are operable. As a public-use building, the fire-alarm system has been updated to match the new Rhode Island codes. Structural weaknesses in the basement have been addressed with the placement of lolly-columns for extra-support and the replacement of two failed beams with laminate beams.

When the Varnum Continentals acquired the property in the 1930's the house had changed hands a number of times and did not come with any furnishings. Since then they have made a concerted effort to acquire furnishings generally appropriate to the late 1700's and early 1800's, with a few later pieces. They have some pieces that are directly connected to Varnum himself, in particular a desk, a chair, a bowl, and several portraits. They have a number of documents connected to Varnum, including a copy of the pamphlet in which he detailed his most famous law case, *Trevett v. Weeden*. Additionally, they have acquired several pieces that directly relate to later owners of the house, whose prominence in Rhode Island history should not be ignored. This permits a relatively coherent story to be told through the house and its furnishings, with a clear emphasis on 1773-1788; and the house is periodically opened as a museum.

The original house is 40' by 36' and approximately 20' to the cornice, which is level on all sides due to the gable-on-hip roof. The two large bay windows on the rear rooms of the first story are added in 1903 and 1910, south and north respectively. These bays extend into the basement and rest on their own foundations built beyond the sills of the original structure. The two-story rear ell was added in two sections: the first, with an east-west roofline and dimensions of 17.5' x 21', between 1855 and 1870; the second, with a north-south roofline and dimensions of 15.5' x 23', between 1903 and 1907. The

ell is currently combined storage and an apartment; it is the only section of the house that contains plumbing. The ell and the original structure have independent steam-heat systems.

The foundation is coursed granite ashlar above grade and rubble below. The house has central hall on each floor, running East-West, with two rooms on each side. The stairs are at the back of the central hall, with a small rear door beneath them. It has two interior brick chimneys with a total of eight fireplaces, one in each room. The chimneys are finished with double arches and two string courses. The chimney bases, floor structure, and foundation are all exposed and easily examined in the basement. The roof structure is also accessible in the attic, which itself is accessible by means of a stairs in a closet. The roof is cedar shingles; the lapped clapboards, and the double-sheathing beneath them, are wood.

The entrance portico is a late 1800's modification. The original entrance was flat against the house and had little, if any porch; it did however have a pedimented door design in the same style as that of the Eldredge house. This design has simply been moved forward to the front of the entrance portico. The current steps and portico are formed from five granite blocks. The portico is supported by fluted Ionic pilasters in back and free standing, un-fluted, Ionic columns with bases to the front. The trim consists of a modillioned main cornice on all four sides; this is not broken out above the plainly framed second-story windows, the framing of which extends into the cornice.

The front door is a six-panel, Federal style door with a wrought-iron latch. On the outside the lower half of the door has been modified with intricate paneling noticeably different from the interior. According to photographic evidence, this paneling predates 1910. After 1972 the front door was altered again when the two top lights were replaced with panels and a hinged panel was replaced with a fixed panel. This change probably occurred at the same time as the changes to the rear door. The rear door was previously a double-hung 'Dutch' door with lead set glass in four rows of five lights and a four-panel bottom half. In the 1980's this door was replaced with the current door, which has four panels and two lights in a single door. At the same time the exterior shutters were removed, wooden storm doors were added, and the color changed from white to gold.

Originally each room had four windows, in addition to a window in the front and rear of the second floor hall. In the rear rooms on the first floor the north and south side windows have been replaced with the two bays, which span the width of the room. Additionally, the ell added to the kitchen (northwest corner) has hidden the windows of both the kitchen and the room above it on the west elevation. All of the extant windows, except for the large window on the stairs, are twelve-over-twelve (each pane is 8.5 by 6.5 inch glass) double-hung sashes. They have projecting sills and those on the first-floor also have projecting cornices. The stair-way landing window is a twenty-over-twenty double-hung sash with a segmental arched top.

First Floor Description:

The first-floor hall runs the depth of the house, and at 8' by 36' is a structural bay in width. There is a classical cornice, similar to that in the north-east room, but lacking the entablature. Its walls have paneled wainscoting below the chair rail and painted wallpaper above. The wallpaper is circa 1850, hand-painted Chinese landscape paper. Similar styles are found in early Federal houses; however, it was not installed in the Varnum house until circa 1900. The stairs are three run, with two landings; they are open string, with turned newels and banisters, set three to a stair, supporting a ramped rail, which has a curved termination on the first floor. The treads ends project and have flat scrolls beneath them. The scrolls follow a pattern common to the area, other examples can be found in the Smith House, in Cocumcussoc (circa 1735-1740) and the East Greenwich court house of 1804. The court house's use of a nearly identical stair pattern may reflect either the distinct local style and/or the supposition that the Varnum house, one of the most prominent buildings in East Greenwich, was a locally copied structure.

The eight rooms all have distinct individual styles; this has been accentuated by the 1970's refurbishment, but is clearly evident in the trim and fireplace mantel treatments, which is predominately original to the period of significance. The north-east, first-floor room is the most elaborate room in the house and probably was intended to be the most public of the rooms. It is 16' x 16' with four windows. It has plastered walls above the chair rail; the paneling below projects forward to form the base of the windows, continuing up to meet the ceiling cornice. The windows have paneled interior shutters with H hinges, which fold into the jambs; these hinges may be replacements. H-

L hinges are also found on the six-panel door. The room's cornice is Ionic with projecting sections around the mantel and corner posts and includes dentils. The fireplace is a massive Georgian design, including a mantel shelf with a panel framed by an architrave molding with crossets, above that is a cornice and an open pediment mantle.

The south-east, first-floor room is also 16' x 16'. The ceiling of this room is sheet-rock. The design of the walls and window jambs is identical to that of the north-east room. However, the interior shutters are a simpler panel design. Also in contrast to the north-east room, this front room has a plainer and generally lighter ceiling cornice. The mantle is similar to the north-east room, but lacks the cornice and pediment. The fireplace itself is faced by five-inch square floral tiles, which may be original and certainly are in keeping with the fashion of the late 18th century. It has two six-panel doors for the hall and a closet; additionally there is a pass-through into the north-west room. This pass-through, which utilizes the space between the chimney and the south, exterior wall, is probably a later addition, perhaps made when the bay windows were added. In the other rooms the large space on both sides of the chimneys is utilized by closets, and in the north-east second floor room, stairs to the attic. The floor in both front, first-floor rooms is four and six inch oak, level with, but opposite to the direction of the hall.

The south-west room was originally a 16' x 14.5' rectangle; however the addition of the five-sided bay, while adding only a few feet gives the impression of a much larger and lighter room. The ceiling is sheetrock. The room has two original windows on the west wall. As with the front rooms, the lower walls are paneled and the windows have interior paneled shutters, which match the styling of those in the kitchen and the south-east room. The paneling and trim detail are extended into the bay, which is joined to the room by means of an arch. The arch motif is copied in the pass-through that connects to the south-east room. The fireplace has a simple lintel in a classical style with a plain panel above the mantle. The fireplace is faced with six-inch red and green tiles. Pilasters on plinth-like bases are detailed into the molding. The molding is relatively simple throughout the room. The closet door, between the chimney and the wall of the hall, is a four-panel door; that of the hall is a six-panel door. A built-in bookcase is a late addition to the north wall. As with the front rooms, the doors have fluted, oval brass knobs. The

floor is four and six inch oak, level but opposite to that of the hall; because this floor continues without patching into the bay, it is not original.

The north-west room is the kitchen, correspondingly it has a 6 foot wide fireplace and plain pine paneling, currently unpainted but c.1900 painted white. The room is 16' x 14' and like the south-west room is now extended by a five-sided bay. However, because the house is against Revolution Street on this face, the bay is only two feet deep. As in all the other rooms, there is plaster above and paneling below the chair rail. This paneling is carried into the bay, which is connected by means of a square arch to the original structure. The corners are flared and encased in paneling; the rest of the molding is of a simple, ogee type. The bay has interior shutters; these match those of the southern rooms. Because new shutters would have been built for the bays, it is possible that all the shutters in these rooms date from that period and that only the hardware, window jambs and the distinctly different shutters of the north-east room are original. The kitchen fireplace and its mantel have been repeatedly altered, including bricking in the oven and, for a period of time, sharply reducing the size of the fireplace itself. A door on the west wall leads into the ell addition. The floor is four and six inch oak, level and parallel to that of the hall. As in the opposite room, there is no break in the floor's continuation into the bay.

Second Floor Description:

The layout of the second floor is structurally identical to that of the first floor. The hallway, 8' x 36', has plastered walls, with paneling below chair rail. The chair rail is continuous with the north side of the top of the stair well. At the east end of the hall, the paneling is full length and there is built-in window seat, along with cupboards. The ceiling molding is continuous; however, the paneling pattern is broken, setting the hall off from the stairwell paneling. All four bedroom doors have the same architrave surrounds. The floor is four and six inch pine, set slightly lower than that of the rooms.

The north-east bedroom is 16' x 16' and, as with the downstairs, has plastered walls above a chair rail. The chair rail is set at the level of the window sill. The moldings, cornice, fireplace and shutter styles echo the room directly below, but in a much simpler fashion. The interior window shutters of all the upstairs rooms are paneled wood, with the same hardware and style of those on the first floor. The ceiling cornice of

this room projects at the windows, door and mantel. Its baseboard is relatively elaborate and is 7.5 inches in height. The tapered corner posts are encased. As with the other second floor hall doors, the door is a six-panel with a brass, fluted knob, the same style as those downstairs. The closet is a simple four-panel door. The floor is 5 ¾ inch pine laid perpendicular to the hall and a half inch higher.

The south-east bedroom is 16' x 16' with plastered walls between a baseboard and low-relief ceiling cornice. The baseboard and window sills have bead molding. The window surrounds are architrave moldings, which abut the ceiling cornice. The door frames are set into the walls with bolection moldings, and are six-panel doors. The closet door has an H hinge and evident wrought nails. The fireplace has an architrave surround with a single panel above it and mantle shelf. The floor is in a completely different style from the rest of the house; it is two-inch oak laid with a border and central in-fill.

The south-west bedroom is 16' x 14.5' with plastered walls between a simple ceiling cornice and the bead-molded baseboard. The window surrounds are architrave moldings, with simple half-inch rounded sills. The hall and closet doors are six-panel doors, and the closet door still has H hinges with wrought iron nails. As elsewhere, the doorknobs are fluted, oval brass. The mantel piece is a simplified version of the one in the room immediately below it. It has a surround of blue and white glazed tiles depicting Biblical themes. There is some debate about the age of these tiles; identical tiles are found in the Dr. Eldredge house. This suggests that they are original; however, there is an oral tradition that they were put in place during the 1930's. The floor of this room is 3 ½ inch pine, laid a half inch above the level of the hall.

The north-west bedroom is 16' x 14'. Both the mantel and the trim in this room were probably modified when the ell was added. It has a finely detailed ceiling cornice. This cornice may have been modified when the west windows were filled in and the door to the ell was created. The door's simple surround protrudes into the cornice; and the cornice does not match the style of the mantel. The mantel is the most elaborate of those on the second floor with a deeply detailed cornice, two mantel shelves and two panels. The hall door is a six-panel door and matches the other hall doors. The door leading to the attic stairs and the door to the ell are both four-panel. The attic stair door has an H

hinge and wrought iron nails. The floor is 2 ¾ inch pine and is a half inch higher than that of the hall.

Service Ell

The service ell has been extensively modified on the inside. The first floor walls have early 20th century tongue and groove paneling to shoulder height, and other trim is minimal. The windows are twelve-over-twelve double-hung sashes, with interior shutters. The walls are plaster over sawn lathe. The doors are all four-panel Greek Revival in style. The floor is two inch pine downstairs and two inch oak upstairs. Hardware is all early twentieth century with brass door knobs. There is a modern kitchen and bathroom. The bathroom has direct exterior access from the west end of the ell, which allows the grounds to be used for public functions without opening the rest of the house. Currently, the ell has a caretaker's apartment upstairs, space for storage and other activities. This permits the original section of the house to be maintained exclusively as a museum structure.

General Impression

The coherency of the site and its surroundings is remarkable. The house is representative of the time period in which it was built, but it maintains a connection to its current setting as well. Although the interior furnishings have been acquired during its present ownership, there has been a concerted effort to emphasize the original ownership and style of General James Mitchell Varnum.

Statement of Narrative Significance:

The national significance of the General Varnum house is confined to the years between its construction in 1773 and its sale by its first owner, General James Mitchell Varnum, in 1788. Although prominent members of Rhode Island society owned the house during the 1800's, these later owners were not outstanding in national history. However, since Varnum was closely involved in the house's construction and his residence there spanned all but the last few months of his life and career, there can be no question that house is intimately connected with Varnum's activities as a general, lawyer, Congressional delegate and judge. Varnum's national significance is derived directly from his work as a Congressional delegate in 1780-82 and 1786-87 and from his position as the primary defense lawyer in the Rhode Island trial, *Trevett v. Weeden*, and its subsequent aftermath in 1786. Thematically, his significance is associated with the areas of the American Revolution, Political and Military Affairs of 1783-1830, and the US Constitution: Judicial Review of the Constitutionality of the Statutes. Varnum's arguments were noteworthy advancements of legal and governmental philosophy in the Federalist tradition and in the field of judicial review. His political opinions foreshadow the Federalist position of Hamilton in later years. His arguments for judicial review substantially advanced the subject during the early, formative years of the 1780's. Additionally, because of the existence of the complete legal arguments combined with the trial's unique aftermath as a test case on judicial independence, the case is a landmark for scholars of constitutional law today. The trial of *Trevett v. Weeden* was followed and published in Rhode Island, Philadelphia and Boston, unlike other contemporaneous trials on similar subjects. Varnum, himself, wrote a complete history of the case, which was published in Philadelphia just before the 1787 Convention. The amount of contemporaneous reporting and material written by the defense is significantly greater than that of other contemporaneous cases dealing with this same subject.

His career as an officer during the Revolutionary War was significant, but has been acknowledged at another National Historic Landmark: the site of the Battle of Rhode Island. Varnum's importance at the battle of Rhode Island and his involvement in several major campaigns should not be overlooked. They were valued by his compatriots and gave him the standing that made his later legal career possible. His military career is

of interest to scholars examining the personal relations, disputes and hierarchy of the Continental Army and its relationship to the state militias and governments. But, his contributions as a general are not exceptional.

Varnum was born in Dracut, Massachusetts in 1748, the eldest son of Major Samuel Varnum. In 1765 Varnum attended Harvard, but left following a period of student unrest at the institution. In 1767 he transferred to Rhode Island College, later to become Brown University; and was member of the college's first graduating class in 1769. At his graduation, he demonstrated an early interest in the problems facing the colonies, participating in a debate about the position of the Loyalists in the colonies. Varnum briefly returned to Dracut, Massachusetts before moving permanently to Rhode Island to study law under the colony's Attorney General, Oliver Arnold. Upon passing his bar in 1771, he opened a practice in East Greenwich, where he built the house in question. In 1773, Varnum bought the land on Peirce Street and commissioned John Reynolds, one of the premiere builders working in the area. The house was not completed until 1778, as Varnum personally oversaw all the work; consequently, when he was away work ceased.⁵ In 1788, Varnum would sell the house to John Reynolds in preparation for his move to Marietta.

During the early 1770's he became friends with Nathanael Greene, a relationship which would last throughout Greene's life. The two men's friendship began when Varnum served as the Greenes' attorney in the 1772 case *Greene v. Dudingston*, which was the legal outcome of the *Gaspee* affair. The *Gaspee*, a British Revenue Schooner under the command of Lt. William Dudingston, had been burned in June, 1772 in revenge for Dudingston's treatment of Rufus Greene, commander of the sloop *Fortune*, owned by Nathanael Greene, Rufus' cousin. The *Gaspee* affair would become a symbol of colonial rights; Varnum's successful defense of the Greenes clearly placed him amongst the growing opposition to British rule. The vacant lot now part of the Varnum property was originally bought by Greene, but was never developed.⁶

In 1774 Varnum was appointed a regimental commander for the regiment from Kent and King Counties; this regiment, known originally as the First Rhode Island Regiment, was renamed as the 12th Continentals when it entered Continental service. As

⁵ Personal interview with Bruce C. MacGunnigle, President of the Varnum Continentals.

⁶ Interview with Bruce C. MacGunnigle

part of General Greene's brigade, the regiment took part in the siege of Boston, July to December 1775.⁷ At the end of 1775 this ended its enlistment term, but Varnum and many of the men from the 12th were re-organized as the 9th Continentals, with Varnum as Colonel.⁸ During this period the regiment was involved in the battles of Long Island, Harlem Heights (at which Varnum was not present) and White Plains.

Varnum resigned from the Continental Army in late 1776 due to personal conflicts over his failure to be promoted. He returned to Rhode Island and was promoted to brigadier general, leading the Rhode Island militia following the British invasion of Aquidneck in December 1776. In February 1777, the Continental Congress offered him the rank of brigadier general, which he accepted. Varnum's troops were active in New Jersey, at Germantown, and in the attempted defense of Forts Mifflin and Mercer on the Delaware River. During this period he helped organize hospitals and recruit new troops. Varnum and his men passed the winter at Valley Forge with the Continental Army. Varnum returned to Rhode Island in May, 1778 to help establish the Rhode Island Black Regiment, which he had convinced Washington to raise during the previous winter.⁹ In the summer of 1778 he served under General John Sullivan in the failed Franco-American attempt to remove the British from Rhode Island. Varnum and General Sullivan apparently had a conflict over troop pay, which led to Varnum's resignation in March 1779.¹⁰

He would remain a major general in the Rhode Island militia until 1788 and had contact with Rochambeau and Lafayette during the final years of the Revolution. However, he did not play a major role in the war itself after this time, although he was at Tiverton with Rochambeau in 1780.¹¹ Varnum's role in the war seems to have emphasized logistics and recruiting, both troops and wider support, over tactical concerns.

⁷ *Records of the State of Rhode Island*, vol. vii, p.257; previous nomination documents prepared by Bruce C. MacGunnigle

⁸ They were later renamed the First Rhode Island Regiment, Continental line.

⁹ This regiment and Varnum's role in raising it, and the battle of Rhode Island at which they fought, is recognized in the National Historic Landmark site of the battle.

¹⁰ This paragraph was drawn from the previous draft nomination prepared by Bruce C. MacGunnigle and from D'Amato, p. 8-36

¹¹ *Records of the State of Rhode Island*, vol. ix, p.212-215

Varnum was one of the Rhode Island delegates sent to the Continental Congress in 1780-1782. He was a strong nationalist, believing that the federal government should have both the mandate and the ability to act above and apart from the states. In his view the United States should not be a loose coalition of sovereign states, but one collective sovereign body.¹² His main concern in this period was that the Congress lacked the ability to fund itself through effective taxation, an issue that no doubt carried over from his arguments about military funding during his time in the Continental Army. Writing in 1780 to the Governor of Rhode Island, he stated that the lack of money and credit frustrated all action.¹³ He was acutely aware that the increasing credit problems could fatally damage the new nation's standing with the European powers with whom the US traded.¹⁴ In 1781 he was a member of two committees formed to devise means to immediately supply the public treasury and to enable Congress to coin and borrow money.¹⁵ Additionally, in March 1781 he proposed, and was a member of, a committee to "invest the U.S. Congress...with full and explicit powers to execute all acts and resolutions passed to the Articles." The recommendation of this committee in May, 1781, was, if necessary, to permit the use of federal troops to compel states to fulfill their federal obligations.¹⁶

It is not, therefore, surprising that he strongly supported the 1781 Impost, which proposed a 5% tax that would be paid to the US federal government. It was the first real attempt to amend the Articles and to create a strong federal government and a major contest between the competing views of states' rights versus a strong nationalism or federalism. Varnum's nationalist views were not shared in Rhode Island, as the state was strongly opposed to any increase in federal power. Indeed, Rhode Island was, throughout the 1780's, one of the most vigorous defenders of states' rights and was generally in opposition to the development of a strong federal Constitution. Varnum's support for the Impost lost him his seat as a delegate; however he continued to fight for the Impost upon his return to Rhode Island.

¹² Polishook, p.67

¹³ *Records of the State of Rhode Island*, ix, p.42

¹⁴ *Letters of Delegates*, xxiv, p.164

¹⁵ *Journals of the Continental Congress*, xix, p.viii, 368, 340

¹⁶ *Journals of the Continental Congress*, xix, p.viii, 236

In 1782 Varnum wrote a series of essays, published in the *Providence Gazette* under the pseudonym ‘A Citizen.’ These essays developed into a sustained debate in the *Gazette*, generating so many replies that the publisher claimed that for lack of space he could not print them all.¹⁷ His essays laid out both his reasons as to why the Impost was necessary and his political philosophy. He argued for a strong centralized government that would be capable of acting on both the states and on individuals; one that was not a periodically employed set of regulations, but was a constant, active presence. Varnum’s broad interpretation of federal power designed to foster the nation’s welfare was countered by David Howell, a former professor of Varnum’s at Brown University. Howell, writing as ‘The Farmer’, emphasized states’ rights and limited power and viewed the Impost as a subversion of American liberty.¹⁸

Varnum’s argument with the majority opinion in Rhode Island did not go unnoticed elsewhere in the union. Rhode Island’s refusal to accept the Impost would defeat the first attempt to modify the Articles, as well as preventing the Congress from collecting badly needed cash. The successful passage of the Impost would have set a valuable precedent for changing the Articles and for the expansion of Congressional power. It is probable that Varnum, as the head of the minority, was the one who extended an invitation to Thomas Paine to come to Rhode Island to argue for the Impost.¹⁹ Paine and Varnum knew each other, and Paine apparently greatly admired Varnum’s oratory skills.²⁰ However, even the addition of Paine could not sway Rhode Island and the Impost failed.

Although ultimately unsuccessful in swaying Rhode Island opinion, the essays of ‘The Citizen’ should not be overlooked. They were an early explanation of what would develop into the Federalist philosophy. Furthermore, the debate with Howell, who elucidated a fear of a federal power grab acting on both the states and the individual, illustrates a continuing debate in American politics that continues to this day. The historian Polishook sums up the importance of Varnum’s political philosophy succinctly

¹⁷ Polishook, p.69

¹⁸ Polishook, p.69-71

¹⁹ *Varnum House*, p.119-120

²⁰ Paine is purported to have stated that, ‘he had listened to many of the best speakers in America and Europe and that in point of charming elocution James Mitchell Varnum was the most eloquent man he had ever heard speak, and he thought it strange that his name had not attained more celebrity.’

Varnum House, p.119

as a: “concept of Congress as a central government capable of acting upon both individuals and the states, the very antithesis of the Confederation. The philosophy of ‘The Citizen’ was symptomatic of the nationalism that propounded the Impost of 1781 and secured an entirely new federal system in 1787.”²¹ Critically for Varnum’s importance to the evolution of American history, Polishook goes on to argue that, “In 1782 Varnum adumbrated the philosophy of nationalism usually associated with Alexander Hamilton and a later period of our history. David Howell (Varnum’s opponent) anticipated the philosophy of Anti-federalism and the states’ rights republican opposition to the Federal party.”²² Varnum and Hamilton knew each other, Varnum would recommend Hamilton as a lawyer to one of his clients; it is not improbable that the two men influenced each other’s philosophy, as shall also be seen with the case of *Trevett v. Weeden*.²³

Between 1782 and 1786 Varnum was active in Rhode Island politics, acting as general of the state militia and counseling the General Assembly on the treaty between Great Britain and the United States.²⁴ However, in 1786 he reappeared on the national scene when he acted as counsel for the defense in *Trevett v. Weeden*. This case revolved the acceptance of paper money in Rhode Island; however, Varnum used it as a stage to expound upon the concept of constitutionality and judicial review.²⁵ Varnum did not attempt to defend his client’s actions; instead, he attacked the statute under which his client was being tried as unconstitutional, because it did not require trial by jury. He argued that legislative authority was derived from the constitution and that any law created by said legislative authority which was in violation of this fundamental law, in this case a statute that did not require trial by jury, was unconstitutional. Further, that it was the business of the court to determine what acts of the legislature agreed with the constitution and to forbid the enforcement of those which were unconstitutional. In doing so he clearly stated that the courts had the authority to examine the actions of the legislature and to measure those actions against fundamental principles. Varnum stated

²¹ Polishook, p.67

²² Polishook, p.71

²³ *Letters of Delegates*, xxiv, p.206

²⁴ *Records of the State of Rhode Island*, x, p.15-16, 23

²⁵ This was not the first case concerning paper money in Rhode Island; however it was the first and last to be tried under the statute which permitted trials without juries. Polishook, p.133-134

that: “the judiciary have the sole power of judging of those laws and are bound to execute them; but cannot admit any act of the legislative as law, which is against the constitution.”²⁶

Varnum’s approach was remarkable because Rhode Island had neither a constitution nor a written requirement for trial by jury. That Varnum made this argument, and that it was accepted by the judges, illustrates, therefore, a critical development in American legal philosophy. His argument was that by common consent a social contract existed between the people and their government and that certain fundamental rights of man were protected in that contract. This abstract contract was the same abstract which was implied in the Declaration, the Articles of Confederation, and in the developing Constitution.

Snowiss argues that Varnum’s appeal to common consent and an abstract constitution worked because of the shared experience of all living Americans at the time, that of “having passed through a state of nature and of having emerged with a completely new set of institutions whose leading principles were undisputed. This gave a historical reality and concreteness to American social contracts that to eighteenth century Americans stood in decisive contrast to the fictional and imaginary ones of European analysis.”²⁷ Varnum was not only a product of his time he was also an eloquent orator capable of crystallizing and explaining a complex, abstract philosophy which was taking shape. Varnum’s argument, referencing Coke, Blackstone, Bacon, Hobart, Plowden and reaching back to the Magna Carta, illustrated the sophistication of the American law schools of the time and that, despite the Revolution, it was still taken for granted that English law informed American law.²⁸ Yet, Varnum’s argument was nonetheless taking those English arguments to a new level. This was especially true with Coke’s theory that the final interpretation of the law lies with the judiciary. Haines argued that Varnum’s argument demonstrated that Coke’s doctrine had evolved and crystallized before the Philadelphia convention of 1787 and that Varnum carried it to its farthest yet logical conclusion.²⁹

²⁶ Varnum, p.25

²⁷ Snowiss, p.30

²⁸ Conley, *The Constitutional Significance of Trevett v. Weeden* p.8; Haines, p.51-53

²⁹ Haines, p.51-53

The observation must be made that the argument for the fundamental rights of man was precisely the same argument that the colonists had used against the British Empire. That it was now being employed against the state government was an inadvertent compliment to the growing strength of the new American system. It also reflected an increased confidence in the stability of that system for Varnum stated that judicial review was a superior and possible alternative to revolution.³⁰ Varnum argued that:

“But as the Legislative is the supreme power in government, who is to judge whether they violated the Constitutional rights of the people? I answer...the people themselves will judge, as the only resort in the last stages of oppression...But when the legislature proceed no farther than merely to enact what they may call laws and refer these to the Judiciary Courts for determination, then (in discharge of the great trust reposed in them, and to prevent the horrors of a civil war, as in the present case) the Judges can, and we trust your Honours will, decide upon them.”³¹

In doing so Varnum recognized that in order to avoid civil unrest and possible revolt even a democratic government must have a clearly established ability to review the law's relationship to the constitution, the social contract with the people. Varnum's acceptance of revolution combined with his awareness for an effective mechanism to avoid revolution reflected both the public's own opinion and his personal beliefs. This statement reflected the growing maturity of American political discourse, which was now able to justify both the validity of revolution and create a political structure that would not succumb to revolution. Judicial review is a part of this balance, since it functions as a check on both the legislative power to override the constitution and, by affirming the concept of supreme, fixed ideals, as a check on the general will of the populace.

That judicial review was not yet an axiom of American law in the 1780's must be stressed. *Trevett v. Weeden* may be seen as part of the ongoing debate between the idea

³⁰ 'The Trevett case and its circumstances are revealing for another reason. They reflected an important shift in the uses which Americans would make of the natural rights ideology in the future years. In 1776, the natural-rights philosophy had been invoked to secure the independence of the United States against the claims of Great Britain. By 1786, in Rhode Island, the same philosophy was being called upon to uphold the rights and privileges of a decided minority against the constituent power of a democratic majority in the state.' Polishook, p.141

Hulsebosch, p.855-856; Snowiss, p.50

³¹ Varnum, p.26

that the people had the power to make or change law and the idea that law was derived from a fixed set of transcendental principles.³² Judicial review assumes that fixed principles are supreme and that the current will of the people (i.e. the legislative branch) may not be in accordance with those fixed principles. Varnum's support for the latter position was also reflected in his political stance: the Federalist position would come to support a fixed set of principles, whereas the Republicans would give greater emphasis to the current will of the people.³³

In colonial America and the early Federal period judicial independence was difficult to maintain as popular will and power of government were generally aligned, consequently to declare a law unconstitutional was also to go against popular sentiment.³⁴ Furthermore, the Rhode Island judiciary was traditionally a creature of the General Assembly; in fact, Polishook notes that: "the assertion that an act of the Assembly might be unconstitutional was an unprecedented claim in Rhode Island. The prospect for judicial review as a remedy for unconstitutional laws was slight."³⁵ However, the judges were receptive to Varnum's argument; two of them declared that they were answerable to God alone, and the fundamental principles, not to the legislature or even the people.³⁶ They then proceeded to dismiss the case; Varnum claimed that this was a victory for his argument, a sentiment that the judges publicly supported in front of the General Assembly.³⁷ The judges' response was not unique; in the North Carolina case of *Bayard v. Singleton* in 1787 they also expressed a religious devotion to the ideal of independent judgement, independent from the executive and beholden only to God and the conscience of man.³⁸ Varnum was at the forefront of an emerging strand of legal philosophy that would be critical to the development of American law. At least one legal scholar has argued that the cases of *Trevett* and *Bayard* are the first definite expressions of judicial review; they are certainly among the first cases where the judges so clearly stated their independence.³⁹

³² Nelson, p.37

³³ Nelson, p.38

³⁴ Hamburger, p.520

³⁵ Polishook, p.135-136

³⁶ Varnum, p.43

³⁷ Hulseboch, p.856

³⁸ Hamburger, p.519

³⁹ Horwitz, p.819

That Varnum's viewpoint was the minority position in the Rhode Island legislature was immediately apparent. The Rhode Island General Assembly demanded that the four judges appear before it to explain their actions. Varnum appeared as the defence council for the three judges that did appear. Polishook succinctly sums up the defence: 'Varnum condemned the plan to fire the members of the court without any charges of criminality or malfeasance; even a common criminal, he thundered, had this right to due process. No man should be forced to vacate his office, Varnum remarked, unless found guilty of a breach of law, not merely an unpopular decision.'⁴⁰ The attorney general agreed with him and the Assembly back down. However, all but one of the judges were not re-elected to another yearly term and it would be years before another challenge on the grounds of unconstitutional laws was issued in Rhode Island courts. Gerber notes that:

'judicial review is the ultimate expression of judicial independence, because without judicial independence no court could safely void an act of a coordinate political branch. Bluntly stated, the risk to a judge who exercises judicial review when he or she is not independent of the executive and the legislature is either removal from the bench or a reduction in salary.'⁴¹

This is precisely what was threatened and occurred in the aftermath of *Trevett v. Weeden*. That *Trevett v. Weeden* had little immediate impact in Rhode Island illustrates, as does the failure of the 1781 Impost, the strength of the opposition to elements now regarded as core concepts in the framework of the American government and legal system.

However, the trial was a landmark case for the development of judicial review at a national level. This was not only because of the sophistication of Varnum's argument; but because of the widespread, immediate publication of the trial. This contemporaneous reporting meant that the trial is not only historically important for legal scholars; but that it was well known in the political discussion surrounding the creation of the Constitution. It was closely followed in six newspapers and was later issued as a pamphlet for public sale in Philadelphia during the 1787 Convention. In addition to three Rhode Island papers, two papers from Boston and one from Philadelphia covered the trial and the later

⁴⁰ Polishook, p.140-141

⁴¹ Gerber, *The Political Theory of an Independent Judiciary* p.226

trial of the judges.⁴² The pamphlet was written by Varnum and contains a detailed description of the trial, his arguments and his defence of the judges during their trial by the General Assembly. It was definitely known at the convention since it was for sale at the time and, critically, Varnum gave a copy to Benjamin Franklin, with whom he had apparently discussed the issue.⁴³ As he was also in contact with Alexander Hamilton and Aaron Burr during this time, it is probable that he discussed it with them as well; especially since Hamilton had previously been involved in a New York case which also pertained to the matter of judicial review.⁴⁴ This level of documentation is unusual for early American law cases of any type; in the area of judicial review, *Trevett v. Weeden* is the only case from this period that has this high a degree of contemporaneous reporting and a complete case history written by a principal. Consequently, not only was it well known in the 1780's, but it remains an invaluable study guide to the development of judicial review.

The development of judicial review during the early Federal period established the idea that the judiciary was, at the least, separate from the legislature.⁴⁵ This tradition permitted the landmark case of *Marbury v. Madison* to pass with remarkably little public concern despite the political climate.⁴⁶ Judicial review would become, and remains, a core concept that underpins the American constitutional system of checks and balances.⁴⁷ Aside from *Trevett v. Weeden*, other cases from this period include: *Paxton v. Gray* (Massachusetts, 1761); *Holmes v. Walton* (New Jersey, 1780), *Commonwealth v. Caton* (Virginia, 1782); *Rutgers v. Waddington* (New York, 1784); *The Ten Pound Cases* (New Hampshire, 1786), and *Bayard v. Singleton* (North Carolina, 1787). It is worthwhile to briefly consider the importance of these cases in comparison with that of Varnum's.

⁴² *Providence Gazette* (Sept. 30, Oct. 7 1786)
Newport Mercury (Oct. 2 1786)
U.S. Chronicle (Providence) (Oct. 5 1786)
Independent Chronicle (Boston) (Oct. 5 1786)
Massachusetts Gazette (Boston) (Oct. 3 1786)
Pennsylvania Gazette (Philadelphia)
Polishook, p.134n9; p.137n16; p.138n19; p.140

⁴³ *Letters of Delegates to Congress*, vol. xxiv, p.115

⁴⁴ *Rutgers v. Waddington* in 1784
Letters of Delegates to Congress, vol. xxiv, p.206

⁴⁵ Nelson, p.13

⁴⁶ Hartman, p.5

⁴⁷ Gerber, 'The Political Theory of an Independent Judiciary' p.225-226

Paxton was well known in the Revolutionary period, as the argument was republished in Boston in 1763; however, it was not as fully developed in regards to the argument for judicial review, though it may have been studied by Varnum and others.⁴⁸ Holmes, although more of a direct precedent, as it dealt with an actual, written constitution, was not published and the facts of the case are obscure and uncertain, rendering it of little value to modern study.⁴⁹ Caton is important as it was well known in Virginia and John Marshall may have been, according to legend, in the courtroom when the decision on the case was announced; but again the case was not published. Rutgers is important because Hamilton was the attorney for the defense and argued for judicial review; it is clear that this reduces the level of direct influence that Varnum had on Hamilton's thought on that specific issue. Nevertheless, the argument was not published⁵⁰ Furthermore there is some debate over whether Rutgers actually is a precedent for judicial review.⁵¹ The Ten Pound Cases were and remain essentially unknown, with little discussion and no contemporaneous publication. Finally, Bayard comes after *Trevett v. Weeden*; it may actually be clear evidence for the immediate impact of *Trevett v. Weeden*, as the two cases share a number of similarities.⁵²

For more than a century *Trevett v. Weeden* has generally been regarded as a landmark case by scholars studying judicial review and constitutional law, although it is not well known outside of a this area of study.⁵³ *Trevett v. Weeden* should be, and indeed has been, seen as a landmark case in the development of an independent judiciary for several reasons beyond the basic fact of the argument. The legal historian Haines stated in 1914 that it was the first case in which a judge actually stated that a statute was unconstitutional.⁵⁴ Secondly, the case was well known to contemporaries, during the trial, and the trial of the judges which followed, at least six newspapers covered the story:

⁴⁸ Hartman, p.8

⁴⁹Gerber, 'The Myth of Marbury v. Madison and the Origins of Judicial Review' p.15n1; Haines, p.92

⁵⁰ I am grateful for an email forwarded to me by Bruce C. MacGunnigle for this summation: Treanor, William. 'William Treanor to Patty Henry, 'Re: Question about Judicial Review.' July 09, 2008'

⁵¹ Horwitz, p. 819

⁵² Hartman, p.8; Horwitz, p.819

⁵³ Conley, p.8-9; Corwin, p.33; Gerber, 'The Myth of Marbury v. Madison and the Origins of Judicial Review' p.9; Gerber, 'The Political Theory of an Independent Judiciary' p.227; Haines, p.88; Hamburger, p.441; Hartman, p.8; Horwitz, p.819; Levy, p.1912; Nelson, p.37; Polishook, p.141; Snowiss, p.20; Treanor, 'William Treanor to Patty Henry, 'Re: Question about Judicial Review.' July 09, 2008'

Scott Gerber also noted in an email to Patty Henry that: "Trevett is a very important precedent and I would encourage you to designate Mr. Varnum's house as an NHL." 'Scott Gerber to Patty Henry, 'RE: Question about Judicial Review.' May 23, 2008'

three from Rhode Island, two from Boston and one from Philadelphia. Thirdly, a complete history of the proceedings was published and sold to the public in pamphlet form during the crucial 1787 convention in Philadelphia. This amount of contemporary popular publication is not apparent for the other cases concerning judicial review.⁵⁵ Fourthly, the trial and its unique aftermath illustrate contemporary issues and thought. Fifth, the trial of the judges is a graphic illustration that this core concept of judicial review was by no means a pre-determined outcome in the United States. As with the Constitution itself, failure of this new democratic system was possible; the possibility of failure is a valuable component in American history, just as valuable as the celebration of success. Finally, Varnum's argument was a precursor to several critical strands of legal and political thought which would develop in later years, as well as being an impressive summation of American legal philosophy at that point in time.

The following year Varnum was once more a delegate. However, it is clear that he was uncertain about the chance of a constitution actually being successful, apparently due to a fear that the states were becoming increasingly divided and that a unanimous decision would not be possible.⁵⁶ He also seems to have been disillusioned with the Rhode Island General Assembly; in a letter to Washington he states that the Assembly was "composed of a licentious body of men, destitute of education & many of them void of principle."⁵⁷ It is not surprising then that in 1788 Varnum's interests turned to the Western territories. As early as 1782 he had expressed interest in their development, including the relationship of the territories to the states and the exploration of the Mississippi.⁵⁸ He was a director of the Ohio Company and in 1788 was appointed as a federal judge in the then Northwest Territories.⁵⁹ Varnum sold his house and moved to Marietta, Ohio in that year. As a federal judge for the territory, he immediately began work on the problem of what, precisely, federal law in a territory should consist of,

⁵⁴ Haines, p.89n2 Although it must be noted that the judges did not actually *rule* the statute as unconstitutional, merely dismissing the case as not coming under the cognizance of their court. Conley, 'The Constitutional Significance of *Trevett v. Weeden*' p.9

⁵⁵ 'the contemporaneous accounting of the case by one of the principals makes *Trevett v. Weeden* more reliable (than other contemporary cases).' Gerber, 'The Myth of *Marbury v. Madison* and the origins of *Judicial Review*' p.15n1-2

⁵⁶ *Letters of Delegates to Congress*, vol. xxiv, p.199-201

⁵⁷ *Letters of Delegates to Congress*, vol. xxiv, p.334

⁵⁸ *Journals of the Continental Congress*, vol. xxii, p.184, 223

⁵⁹ *Journals of the American Congress*, vol. iv, p.799; D'Amato, p.39

balancing the needs of the military, the often new circumstances of territorial law, and the question of which, if any or all, states the law should be drawn from for this new jurisdiction.⁶⁰ He practiced the same realist, pragmatic approach in this new arena as he had as a Constitutional Delegate: an intense awareness of the ideals and principles balanced by the demands of the current situation. However, Varnum's career as a judge was abruptly cut short, when he fell ill after a few months. He died in Marietta in 1788 at the age of forty-one.

Varnum's influence on the development of judicial review and American legal philosophy has been soundly, and repeatedly, acknowledged by scholars working in the field. He cannot be considered a preeminent figure, in the sense of Hamilton or Marshall, but his contribution to the development of American law is nevertheless evident, and it could be argued that he was, in fact, an influence on men such as Hamilton. His relationship with Hamilton is unclear, but that the two men corresponded is a definite fact, furthermore Varnum's articulation of judicial review was both more public and more complete than that of Hamilton's at the time. Varnum's influence on the better known figures of the period and on public opinion is evident in Franklin's interest in the pamphlet on *Trevett v. Weeden* and on Varnum's personal correspondence with various members of the Congress, including Washington, his determination to keep Rhode Island actively engaged in the constitutional process, and his engagement with the newspapers.

Varnum's career and the landmark case of *Trevett v. Weeden* serve as solid reminders that American law, and the American constitution, did not spring fully-formed from the ether. Rather they were evolving concepts which developed in spite of and because of fierce opposition. Rhode Island's opposition to the ideas that Varnum supported, the Impost tax and the trial of the judges following the *Trevett v. Weeden* case, illustrate the all too easily forgotten fact that the creation of the United States and its Constitution was not a foregone conclusion and should not be treated as such. Furthermore, Varnum is a reminder that the 'great' men, largely known because they happened to be in Philadelphia to sign the Constitution, were neither working in a vacuum nor in a single frozen point in time.

⁶⁰ *The St. Clair Papers*, p.61-65, 70

Varnum's argument in the *Trevett v. Weeden* case underscores the immense cultural and historical relationship that the early United States maintained with Great Britain. His argument rested on the assumption that not only the arguments of the British legal theoreticians such as Coke would be known and accepted as valid, but that American law was a direct descendant of English common law dating back to the Magna Carta. His argument, unequivocally American, was presented as a logical extension of British legal culture. This same shared culture is clearly represented in the house. Even as tensions between Great Britain and the colonies rose to the breaking point, Varnum's house, like so many others, was built in the best manner possible, which unashamedly borrowed from the cultural heritage of Western Europe.

Having both Varnum's house and a complete history of an important law case written down by the primary player, along with access to newspapers discussing that case, and Varnum's 'Citizen' essays, gives greater understanding to the position and importance of the legal profession in Colonial and early Federal America. It also complements two other Rhode Island National Landmarks, the General Nathanael Greene Homestead and the John Brown house in Providence. These two landmarks commemorate military and merchant endeavors; the Varnum house illustrates the legal profession as practiced by private individuals. Many of the sites recognized as relating to the history of American law have been courthouses, governmental buildings and private offices. Varnum's house, particularly considering its expensive style, helps to illustrate the prominence and success of the late eighteenth century legal profession. This legal profession was invaluable in the development of the United States' constitutional government. That Varnum's two major issues: the 1781 Impost and *Trevett v. Weeden* were not total victories for his argument serves as an invaluable lesson in American history: namely, that a debated balance between morality, the law, and the opinion of the people has been the basis of the ongoing development of American government and society.

Varnum was actively involved in shaping the legal philosophy which made the development of the Constitution and its ongoing amendments possible. As a general he was involved in some of the most critical campaigns of the Revolutionary War. As a judge he helped to lay the foundations for the westward expansion of the United States.

Varnum's house and Varnum's legal career is a clear example in both architecture and philosophy of the society that created the Revolutionary War and the Continental Congresses. He illustrates the surprising depth of talent active during the 1770's and 1780's; the United States was not created by a small elite, but by a well educated society aware of their history and capable of pragmatic political development.

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