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

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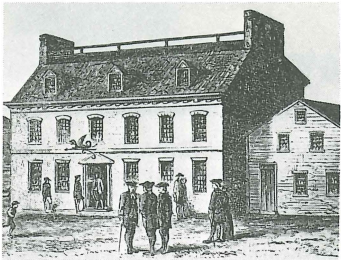
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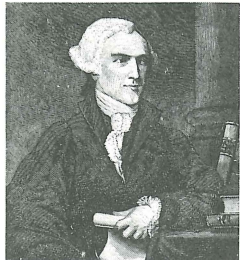
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Green Dragon Tavern



Josiah Quincy, Jr.

(Liberty and the Rule of Law continued)

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**.

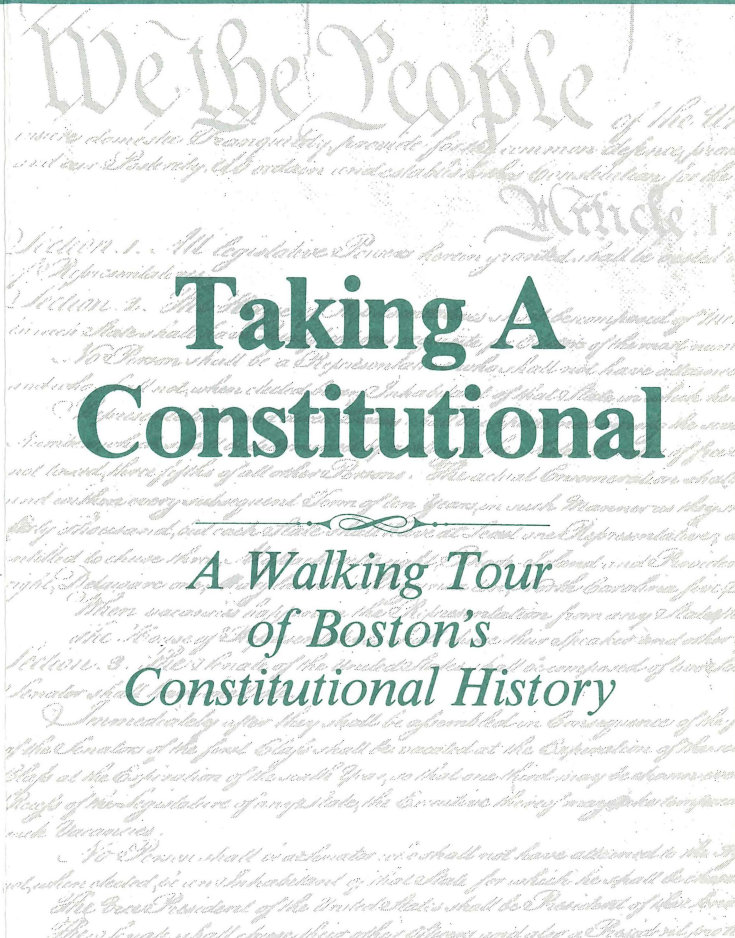
31 Within it, halfway down Union St. stands the **Union Oyster House** — Boston's oldest restaurant. Daniel Webster often dined at its bar where, it is said, he could down three dozen oysters and six tumblers of brandy-and-water at a single sitting!

32 At the end of Union St. stood the **Green Dragon Tavern** where, on January 7, 1788, 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.

Now retrace your steps back up Congress St. for one block to State St. to complete our "constitutional" within a few feet of where it began. In the middle of State St., just in front of the Old State House, is a circle of cobblestones commemorating

33 the **Boston Massacre**. 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 "lynch 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 assistance of counsel. 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.

Photographs courtesy of the Massachusetts Historical Society, the Bostonian Society, the National Park Service, and the author.



Taking A 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 U.S. 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

A tour supplementing **The Freedom Trail and The Black Heritage Trail** with sites 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. Bander, *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 charters, they turned for guidance to Adams who had a reputation then not only as a great patriot but also as a brilliant constitutional theorist. It was he who developed for the fledgling states the now-familiar framework of a written constitution providing, 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 all the earmarks 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



John Adams

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.

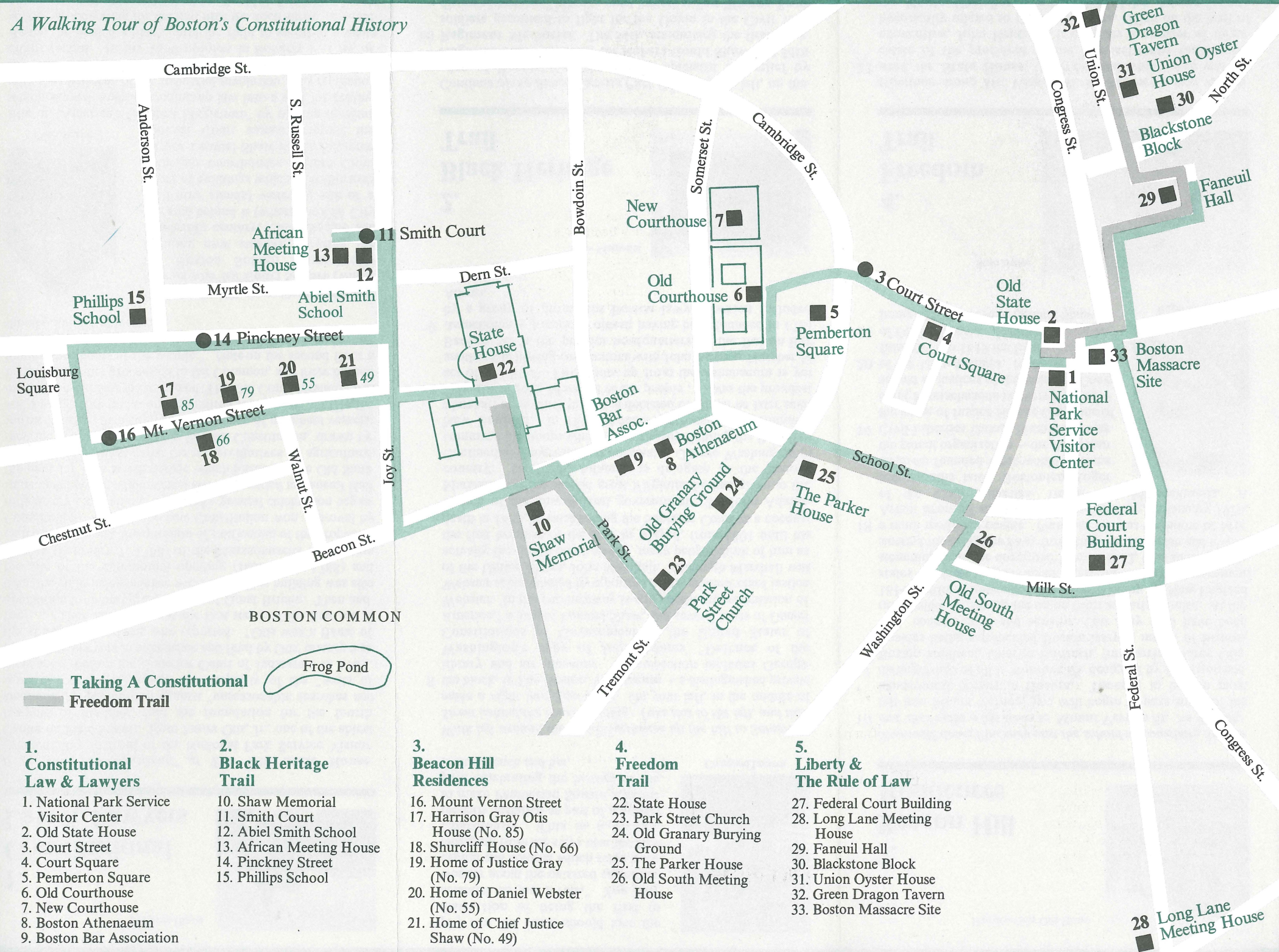
Beyond such struggles over particular substantive issues, Boston has been perhaps the nation's best-known battleground in the never-ending struggle for freedom of expression in general. Boston's great meeting houses and churches such as Faneuil Hall and Old South Meeting House are famous as sites which have given life to the guarantees of the first amendment. But even these great halls have needed protection from 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 which continues to the present.

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 in the history of our country's Constitution and reminding us of much that bears relearning.

Let's take a "constitutional!"

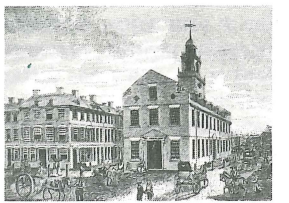
Taking A Constitutional

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

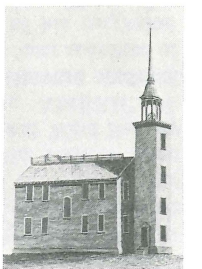
A portion of the Freedom Trail from the new State House to Old South Meeting House including Park St. Church, Old Granary Burying Ground, and the Parker House. (30 minutes)



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**
1. National Park Service Visitor Center
 2. Old State House
 3. Court Street
 4. Court Square
 5. Pemberton Square
 6. Old Courthouse
 7. New Courthouse
 8. Boston Athenaeum
 9. Boston Bar Association

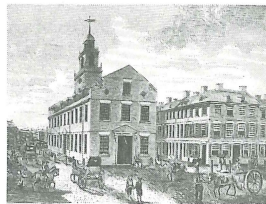
- 2. Black Heritage Trail**
10. Shaw Memorial
 11. Smith Court
 12. Abiel Smith School
 13. African Meeting House
 15. Phillips School

- 3. Beacon Hill Residences**
16. Mount Vernon Street
 17. Harrison Gray Otis House (No. 85)
 18. Shurcliff House (No. 66)
 19. Home of Justice Gray (No. 79)
 20. Home of Daniel Webster (No. 55)
 21. Home of Chief Justice Shaw (No. 49)

- 4. Freedom Trail**
22. State House
 23. Park Street Church
 24. Old Granary Burying Ground
 25. The Parker House
 26. Old South Meeting House

- 5. Liberty & The Rule of Law**
27. Federal Court Building
 28. Long Lane Meeting House
 29. Faneuil Hall
 30. Blackstone Block
 31. Union Oyster House
 32. Green Dragon Tavern
 33. Boston Massacre Site

Old State House

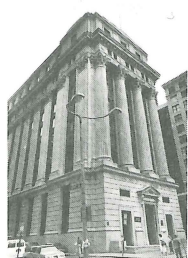


1. Constitutional Law & Lawyers

2 Begin your "constitutional" at The Old State House

1 (Immediately in front of the National Park Service Visitor Center on State Street). Here James Otis, Jr., one of the ablest lawyers of his day, laid the foundation for the fourth amendment's prohibition against "unreasonable searches and seizures" when he argued the illegality of the "writs of assistance" before the Superior Court of Judicature in 1761. Among the lawyers in attendance and fired by Otis' oratory was the young John Adams who reported: "Otis was a flame of fire! . . . Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child independence was born." This building was also the site of the ceremonial opening (January 9, 1788) and closing (February 7, 1788) of the Massachusetts convention called to determine the question of ratification of the proposed Constitution. Though the new Constitution won approval by only a very close vote (187 to 168), general celebration began immediately upon adjournment and was carried to Faneuil Hall the next day by a lavish parade which formed at the Old State House steps. "First came the representatives of agriculture; then the trades; then the 'Ship Federal Constitution,' drawn by thirteen horses; then captains and seamen of merchant vessels; and finally more trades and the militia companies. . . . [I]n the evening an old long-boat, named 'The Old Confederation,' was borne by another procession to the Common, and there burned among the shouts of the people." Note on the second floor a collection of materials relating to William Lloyd Garrison and the abolitionist movement.

3
4



Court Square

3 *Walk up the hill along Court Street and note on your left Court Square (where the Boston School Committee's building now stands). During the nineteenth century, Court Square and the area behind it (where the Old City Hall now stands) were the site of a series of buildings which were Boston's principal courthouses. Here Chief Justice Lemuel Shaw of the Supreme*

Judicial Court earned himself the title of "America's Greatest Magistrate" by writing opinions which 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 enroll in a white school, propounding for the first time the doctrine of "separate-but-equal" and paving the way for the U.S. Supreme Court's

pity that the court should lose the distinction of being the first to establish so just a rule." You may wonder about the outsized corinthian capital and column which seem to be emerging from the steps near the New Courthouse. This is a lectern, recently installed as part of a project to make Pemberton Square a public park celebrating the history of the Boston bench and bar.



Courtyard Lectern

8 *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. In 1775, Adams (as delegate to 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 of my life." Two doors up from the Athenaeum is yet another site having connections with John Adams. Number 16 Beacon St. is the present headquarters of the Boston Bar Association — America's oldest, having been founded in 1761 by a group of prominent Boston lawyers which included Adams.*

2. Black Heritage Trail

10 *Continue along Beacon across Park St. On your left, on the edge of Boston Common, is the splendid bas relief by Augustus Saint-Gaudens, the Robert Gould Shaw and 54th Regiment Memorial. The 54th, comprising the first black soldiers permitted to fight for the Union in the Civil War, distinguished itself (despite great losses) at Fort Wagner, South*

Shaw Memorial



Harrison Gray Otis House



3. Beacon Hill Residences

16 *Now walk down Pinckney past the school to Louisburg Square and 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 1814 Hartford 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 Shurcliff and the site of the founding, in January 1920, of the Civil Liberties Union of Massachusetts. A few months later, Bostonian Roger Baldwin founded what would become the parent organization — the American*



Roger Baldwin

19 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.

State House



4. Freedom Trail

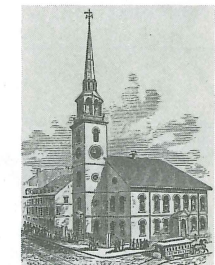
22 *Continue along Mt. Vernon St. to Bulfinch's best known work, the State House. Built on land which once was the estate of the president of the Massachusetts ratification convention, John Hancock, it contains a number of items historically related to the Constitution. High on the wall of the House Chamber is a mural of John Adams, James*

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 throng 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 which made reference to 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 young couple alone on a hill,
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 loose.
And demand its suppression. Its name? Mother Goose.

24 *The Old Granary Burying Ground (on Tremont St. just beyond 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 newlywed Mr. & Mrs. Oliver Wendell Holmes, Jr., during the time that they lived in a nearby apartment (with no kitchen) on Beacon St.*

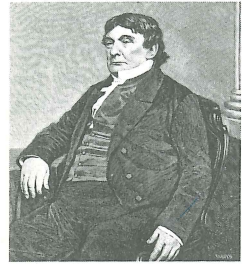
26 *Turn down School St. and turn right at Washington. Across Washington at the corner of Milk St. is Old South Meeting House, which is famous as a haven for free speech. Revolutionary speeches, including those which launched the Boston Tea Party, were made here in the late 18th century. But in the early 20th century, the "red-scare" and "return-to-normalcy" feeling of the post World War I era brought the meeting house under threat of censorship. Two mayors of Boston during the 1920's, James Michael Curley and Malcolm Nichols, were of the opinion that certain sorts of unpopular political views were "un-American" and tried to keep them from being aired — even at Old South! A policy struggle ensued within Old South's board, ultimately involving Roger Baldwin of the ACLU, Dean Roscoe Pound of Harvard Law School, and many other free speech advocates both on and off the board. At the end, the censorship effort lost, and the board voted in 1930 to keep the building open to free public discussion "without regard to unpopularity of any cause or to prejudices which may at any time be present in the public mind."*



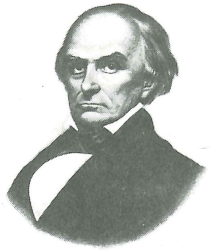
Old South Meeting House

Long Lane Meeting House

1896 approval of racial segregation in *Plessy v. Ferguson*. Although Massachusetts abolished legally-mandated school segregation in 1855, vestiges of it remained in Boston until after *Brown v. Board of Education* -- the Supreme Court's 1954 decision overruling *Plessy*. As a result, the very site where the doctrine of "separate-but-equal" was born became the site where the Boston School Committee presided over its demise when, in 1974, the committee was ordered to eliminate all remaining effects of the doctrine from the Boston school system.

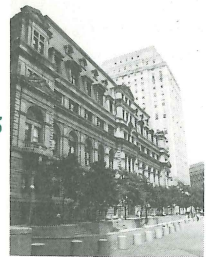


Lemuel Shaw



Daniel Webster

Because of its proximity to the courts, Court Street has always been the hub of Boston's distinguished community of lawyers. Here or on intersecting streets, from the time of John Adams and James Otis to the present, have been the offices of some of the nation's best known advocates. Probably the most famous constitutional lawyer to have practiced here was Daniel Webster. For over a quarter of a century, from 1820 until 1852, Webster "held a position of prominence among the Supreme Court bar unparalleled during his day and unmatched since." As a U.S. senator from Massachusetts (1827 to 1841), he earned the epithet "Defender of the Constitution" when he contended, against secessionist senator Thomas Hayne of South Carolina, that the union was not a dissolvable contract made among the states but rather a "people's Constitution . . . made for the people, made by the people, and answerable to the people."



Pemberton Square

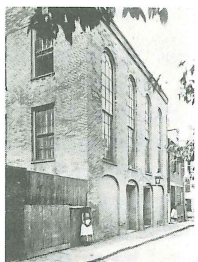
Continue to walk up Court Street, across Cambridge St., and up the stairs through the archway at One Center Plaza. At the top of the stairs you will emerge into Pemberton Square, the current site of the major courts in Boston. The imposing edifice immediately in front of you (built on the site of one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

1909. The towering Art Deco annex to the right is called the New Courthouse despite the fact that it was built in 1938. In the grand hall of the Old Courthouse is a statue of Rufus Choate, a friend and professional rival of Webster whom some considered Webster's superior. Choate lent such vigor 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

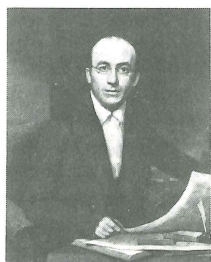
Carolina. Although blacks had fought in the Revolutionary War and Crispus Attucks, a black man, had been the first victim to fall at the Boston Massacre, the Lincoln administration had not allowed them to fight in the Civil War until 1863. This pattern of waning and waxing rights of blacks in Massachusetts 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 1820's. 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.

12 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 laid the foundation of the abolitionist movement by beginning publication of the LIBERATOR. From here as well, he launched the New England Anti-Slavery Society in 1832.



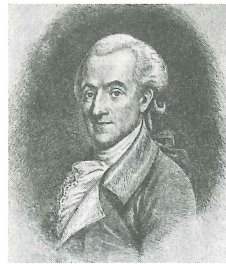
African Meeting House



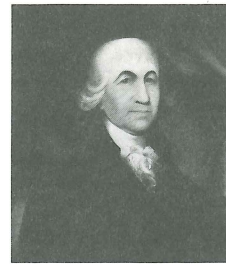
William Lloyd Garrison

Retrace your steps back up Joy St. Take your second right turn into Pinckney Street (named after Charles C. Pinckney, a South Carolina delegate to the Constitutional Convention), and walk one long block to Anderson. On your right, at the corner of Anderson and Pinckney, is the Phillips School, one of the first white schools in Boston to be integrated when school segregation was abolished by the Massachusetts legislature in 1855.

Bowdoin, and Sam Adams drafting the Massachusetts constitution of 1780 which served as a model for the U.S. Constitution, and another mural of John Hancock proposing the addition of a bill of rights at the Massachusetts convention. On the upper wall of Civil War Nurses Hall is a painting of James Otis arguing against the royal writs of assistance in 1761. The second floor's gallery of paintings of former governors contains portraits of Hancock and two of Massachusetts' four delegates to the Constitutional Convention in Philadelphia -- Elbridge Gerry and Caleb Strong. On the



Elbridge Gerry



Caleb Strong

first floor, near the Hall of Flags, is a bust of John Adams. On the second, near the House Chamber, is a bust of Supreme Court justice Louis D. Brandeis. For fifteen of his twenty-three years on the Court, Brandeis paired himself with another brilliant Boston justice, Oliver Wendell Holmes, Jr., to shape modern constitutional law -- at first by trenchantly dissenting against the rulings of a conservative majority, and later, by writing majority opinions for a more liberal court. Even before his appointment to the Court in 1916, Brandeis developed constitutional doctrine as a "lawyer for the public interest," arguing and winning cases of great importance to the working class. Although Holmes' major influence on the Constitution was wrought during the 29 years he served on the Court, before that he had already given the lie to his father's claim that one could not "live greatly in the law" by earning a national reputation as a legal philosopher and scholar, as a professor at the Harvard Law School, and as an associate justice and then chief justice of the Supreme Judicial Court.

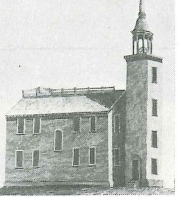


O. W. Holmes, Jr.



Louis D. Brandeis

23 Leave the State House by the front, noting the statue of Daniel Webster on your left as you descend the stairs leading down to Beacon St. Take Park St. (at the left of the Common) down the hill. At Tremont note on your left Park Street Church. Justice Holmes attended school in the basement of this building as a child. Although this spot has been dubbed "Brimstone Corner" because gunpowder was stored here during the War of 1812, it could as easily have gotten the name from the use made of it by fiery orators. Among those who have inspired audiences in the church sanctuary is William Lloyd

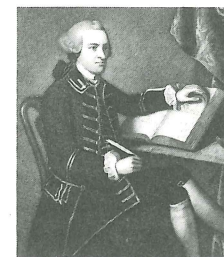


5. Liberty & The Rule of Law

Turn left down Milk St. Continue past Hawley, Arch, and Devonshire Sts. to Federal. At your left is the John W. McCormack Post Office and Federal Court Building, housing the federal courts -- the local repositories of the federal judicial power under Article III of the Constitution. At the far end of Federal St. is the spot where the Bill of Rights was born. 28 Federal St. was then called Long Lane, and the Long Lane Meeting House (which stood at the corner of Summer St.) was serving as the site of the Massachusetts ratification convention. (The Old State House was unable to hold comfortably the 364 delegates who made up the largest such convention in the nation.) For close to a month, the delegates debated whether to enlarge the powers of the national government before adopting, on February 6, 1788, John Hancock's suggestion that the Constitution be approved together with a proposal for a bill of rights.

Turn left around the Federal Court Building at Congress St., and take Congress past Water, Exchange, and State Sts. to 29 Faneuil Hall. Called the "Cradle of Liberty" for its associations with the Revolution, this historic meeting house is rich as well with connections to the Constitution. Here the Boston delegates to the ratification convention were selected on December 7, 1787, and here took place the public feast in celebration of ratification on February 8, 1788. Of even greater significance is the role that this hall, like Old South, has played in giving life to freedom of speech. Around the auditorium on the second floor are portraits and busts of John Adams, John Quincy Adams, Samuel Adams, Rufus Choate, John Hancock, Charles Sumner, and (defending the Constitution against Senator Hayne in the mural above the platform) Daniel Webster -- just a few of the speakers who have used this forum to turn the attention of their fellow citizens to the great issues of their times. During the abolitionist period, the room rang not only to the anti-slavery arguments of Sumner, William Lloyd Garrison, Frederick Douglass, and Wendell Phillips, but also to those of abolition's opponents -- including Jefferson Davis! During the long struggle for woman suffrage, it offered a podium not only to the views of Margaret Fuller, Susan B. Anthony, and Lydia Child, but also to those who opposed extension of the vote to women. Even during the "McCarthy Era" of the

(Continued on back panel)



John Hancock



Margaret Fuller