

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

National Register of Historic Places Registration Form

1. NAME OF PROPERTY

Historic Name: Varnum, General James Mitchell, House

Other Name/Site Number: Varnum House Museum

2. LOCATION

Street & Number: 57 Peirce Street

Not for publication:

City/Town: East Greenwich

Vicinity:

State: Rhode Island County: Kent Code: 003

Zip Code: 02818

3. CLASSIFICATION

Ownership of Property

Private: X

Public-Local:

Public-State:

Public-Federal:

Object:

Category of Property

Building(s): X

District:

Site:

Structure:

Number of Resources within Property

Contributing

 1

 1

Noncontributing

 1 buildings

 1 sites

 2 structures

 objects

 4 Total

Number of Contributing Resources Previously Listed in the National Register: 1

Name of Related Multiple Property Listing: N/A

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4. STATE/FEDERAL AGENCY CERTIFICATION

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby certify that this ____ nomination ____ request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property ____ meets ____ does not meet the National Register Criteria.

Signature of Certifying Official

Date

State or Federal Agency and Bureau

In my opinion, the property ____ meets ____ does not meet the National Register criteria.

Signature of Commenting or Other Official

Date

State or Federal Agency and Bureau

5. NATIONAL PARK SERVICE CERTIFICATION

I hereby certify that this property is:

- Entered in the National Register
- Determined eligible for the National Register
- Determined not eligible for the National Register
- Removed from the National Register
- Other (explain): _____

Signature of Keeper

Date of Action

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6. FUNCTION OR USE

Historic: Domestic Sub: single dwelling

Current: Recreation and Culture Sub: museum

7. DESCRIPTION

ARCHITECTURAL CLASSIFICATION: Colonial: Georgian

MATERIALS:

Foundation:	Stone (granite)
Walls:	Wood (clapboard)
Roof:	Wood (cedar shingle)
Other:	Brick (chimneys)

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Summary Statement of Significance

The General James Mitchell Varnum house is nationally significant under National Historic Landmark (NHL) Criterion 1 for its association with *Trevett v. Weeden* (1786), one of the most important cases that established the precedent for the doctrine of judicial review as laid down in *Marbury v. Madison* (1803). *Trevett v. Weeden* ultimately tested a law passed by the Rhode Island General Assembly that limited the right to a jury trial when prosecuting anyone accused of refusing to accept paper currency. Varnum argued on behalf of the defendant that a law could not restrict the constitutional guarantee to a jury trial and that the court had a right to determine any law passed by legislation to be in conflict with the constitution. The court agreed that the law was unconstitutional. Although the General Assembly reprimanded the justices for overstepping their bounds, the case was cited as an important precedent for independent judicial review. As the primary defense attorney in *Trevett v. Weeden*, James Mitchell Varnum substantially developed and advanced the concept of judicial review; it was here at Varnum's residence that this idea found its early genesis. In the eighteenth century, information about *Trevett v. Weeden* was published, available and presumably read in Rhode Island, Philadelphia, and Boston. Varnum himself wrote a complete history of the case, which was published in Philadelphia just before the 1787 Constitutional Convention. The amount of contemporaneous reporting and material written by the defense, which is significantly greater than that of other similar contemporaneous cases dealing with this same subject, has led scholars of constitutional law to recognize *Trevett v. Weeden* as a landmark case in the establishment of judicial review.

Describe Present and Historic Physical Appearance ¹

The General James Mitchell Varnum house was begun in 1773 and finished in 1778. Its national significance is confined to the period of 1773-1788, under its first owner, General James Mitchell Varnum. The house faces 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, with the east front on Peirce Street and the north side 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 surrounding neighborhood demonstrates a high level of historical continuity. Directly east from the Varnum House across Peirce Street is the East Greenwich town hall, formerly the Kent County courthouse. The current building was built in 1804, but was constructed 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 1700s 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 accessible at ground-level. It seems probable that the Eldredge house 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

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

² Street, Ann. *The General James Mitchell Varnum House, East Greenwich, Rhode Island: A Case Study in the Colonial Renaissance*. (Providence, Rhode Island: Brown University, Unpublished Thesis, 1979), 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. More importantly, the view down King Street and from the second story of the Varnum house looking down across Greenwich Cove is unimpeded.

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Eldredge, Miller-Congdon, Salisbury, Turner, and Whitmarsh houses to cite a few close neighbors)⁴ would have been familiar to Varnum.

The original house is 40 feet by 36 feet and approximately 20 feet high to the cornice, which is level on all sides due to the gable-on-hip roof. The two large bay windows in the rear rooms of the first story were 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, 17.5 feet by 21 feet with an east-west roofline between 1855 and 1870; the second, 15.5 feet by 23 feet with a north-south roofline 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 a central east-west running hall on each floor, with two rooms on each side. The stairs are located at the back of the central hall, with a small rear door beneath them. There are 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 visible in the attic, which is accessed by means of 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 nineteenth century modification. The original entrance had little, if any porch. 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 at 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 original pedimented door design was the same style as that of the Eldredge house and that design has simply been repeated on the current entrance portico.

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. 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 in the 1980s. The rear door was previously a double-hung "Dutch" door with lead glass set in four rows of five lights and four-panels on the bottom half. 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 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.

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

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First Floor

The first-floor hall runs the depth of the house, and is 8 feet by 36 feet. There is a classical cornice, similar to that in the northeast room, but lacking the entablature. The hall walls have paneled wainscoting below the chair rail and painted wallpaper above. The wallpaper is c.1850, hand-painted Chinese landscape paper. Similar styles are found in early Federal houses; however, this paper 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 tread 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 (c. 1735-1740) and the East Greenwich court house of 1804.⁵

The eight rooms all have distinct individual styles evident in the trim and fireplace mantel treatments, which is predominately original to the period of significance. Structural posts are visible in the corners of all of the rooms. The north-east, first-floor room is the most elaborate in the house and probably was intended to be the most public of the rooms. It is 16 feet by 16 feet with four windows. It has plastered walls above the chair rail. The wall is fully paneled up to the chair rail. 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 dentils, breaks over the mantel, and extends around the corner posts. The fireplace is a massive Georgian design, including a mantel shelf with a panel framed by an architrave molding with crossets. Above the panel are a cornice and an open pediment mantle. The floor in this room and the other front, first-floor room is four and six inch oak.

The south-east, first-floor room is also 16 feet by 16 feet. 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 eighteenth century. The room has two six-panel doors, one leading to the hall and the other to 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.

The south-west room was originally a 16 foot by 14.5 foot 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 south-east room and the kitchen. The paneling and trim detail extend 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. The door to the hall has six-panels. A built-in bookcase is a later 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 and is not original as it continues without patching into the bay.

⁵ The use in the court house of a nearly identical stair pattern may reflect either a 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.

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The north-west room is the kitchen. It has a 6 foot wide fireplace and plain pine paneling, currently unpainted. Historic photos c.1900 indicate that it was painted white. The room is 16 feet by 14 feet and like the south-west room is now extended by a five-sided bay. However, because this side of the house faces Revolution Street in close 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 of the room are flared and encased in paneling; the rest of the molding is of a simple, ogee type. The bay has interior shutters which 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. The large space on both sides of the chimney is utilized by closets. A door on the west wall leads into the ell addition. The floor is four and six inch oak.

Second Floor

The layout of the second floor is structurally identical to that of the first floor. The hallway, 8 feet by 36 feet, has plastered walls, with paneling below a chair rail. The chair rail is continuous with the north side 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 on either side of the window. All four doors to the bedrooms have the same architrave surrounds. The floor is four and six inch pine.

The north-east bedroom is 16 feet by 16 feet and, as with the downstairs rooms, 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 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. The 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, this one has six-panels with a brass, fluted knob, the same style as the doors downstairs. The closet is a simple four-panel door. The floor is 5 ¾ inch pine.

The south-east bedroom is 16 feet by 16 feet 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 the doors are six-panel. The closet door has an H hinge and visible wrought nails. The fireplace has an architrave surround with a single panel above it and a mantle shelf. The floor is two-inch oak laid with a border and central in-fill.

The south-west bedroom is 16 feet by 14.5 feet 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 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 1930s. The floor of this room is 3 ½ inch pine.

The north-west bedroom is 16 feet by 14 feet. 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 also

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may have been modified when the ell was added. It is the most elaborate of those on the second floor with a deeply detailed cornice, two mantel shelves, and two panels. The hall door has six-panels and matches the other hall doors. Access to the attic and the second floor of the service ell is from this room. 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.

Service Ell

The service ell has been extensively modified on the inside. The walls are plaster over sawn lathe and have early twentieth century tongue and groove paneling to shoulder height. Other trim is minimal. The windows are twelve-over-twelve double-hung sashes, with interior shutters. The doors are simply articulated with four-panels. The floor is two inch pine on the first floor and two inch oak on the second. 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 and space for storage and other activities. This permits the original section of the house to be maintained exclusively as a museum structure.

Integrity

The Varnum house itself and its setting are largely intact. 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. The carriage barn is noncontributing because it was constructed after the period of significance.

There is a covered well at the back of the house which is a modest structure with a pyramidal roof topped by a decorative finial. The sides of the roof are lightly kicked at the bottom and covered in wood shingles. The bottom half of the wellhead's side walls are sheathed in wood panels chamfered to look like rusticated ashlar masonry; the upper portions are enclosed by a lattice screen. The wellhead is a noncontributing structure.

The raised garden bed to the south of the house is a noncontributing site. A low retaining wall surrounds the house and lot on the east facing Peirce Street and around the corner onto Revolution Street. The wall also delineates the back half of the lot where the carriage house is located. This wall is a noncontributing structure because it appears to post date the period of significance.

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 during the nineteenth century attaches 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 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 1970s, leaving only the nineteenth-century painted wall-paper in the main hall and stairs. 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 eighteenth-century 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 plumbing. 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

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condition, making it unlikely to be original, due to the expected life-span of plaster in this climate. The bulk of the trim, including the fireplace mantels in several rooms and shutters, is original to the eighteenth century, while the fireplace tiling and the hardware throughout is probably no later than the mid-nineteenth century.

The house is in generally good condition. 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. The roof has been replaced with period-appropriate cedar shingles. Prior to this roof replacement there was some water damage which is evident in the interior. 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 windows is pre-twentieth century, and some of the windows are operable. Because the building is in public use, the fire-alarm system has been updated to match the new Rhode Island codes.

When the Varnum Continentals acquired the property in the 1930s the house had changed hands a number of times and was not furnished. Since their acquisition, the Continentals have made a concerted effort to acquire furnishings generally appropriate to the late eighteenth and early nineteenth centuries with a few later pieces added. The Continentals have acquired some pieces that are directly connected to Varnum himself, in particular a desk, a chair, a bowl, and several portraits. They also 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*. Several pieces that directly relate to later owners of the house, who were also prominent in Rhode Island history, are included in the house. The house is periodically opened as a museum and a relatively continuous story is interpreted through the house and its furnishings, with a clear emphasis on the period of 1773-1788.

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State Significance of Property, and Justify Criteria, Criteria Considerations, and Areas and Periods of Significance Noted Above.**Summary Statement of Significance**

The General James Mitchell Varnum house is nationally significant under National Historic Landmark (NHL) Criterion 1 for its association with *Trevett v. Weeden* (1786), one of the most important cases that established the precedent for the doctrine of judicial review as laid down in *Marbury v. Madison* (1803). John Mitchell Varnum, the owner of this house, served as the primary defense attorney in *Trevett v. Weeden* and it was here at Varnum's residence that the idea of judicial review found an early genesis. In the eighteenth century, information about *Trevett v. Weeden* was published, available, and presumably read in Rhode Island, Philadelphia, and Boston. Varnum himself also wrote a complete history of the case, which was published and circulated in Philadelphia just before the 1787 Constitutional Convention. Because the extent of contemporaneous reporting about this case, which includes material written by the defense, is significantly greater than that written about other similar contemporaneous cases, scholars of constitutional law recognize *Trevett v. Weeden* as a landmark case in the establishment of judicial review.

General Varnum's career as an officer during the Revolutionary War was important but his major contributions as a military leader have been recognized at another National Historic Landmark: the site of the Battle of Rhode Island (NHL, 1974). Varnum played a significant role at this battle and in several major Revolutionary War campaigns. His military career is of interest to scholars examining the personal relationships, disputes, and hierarchy of the Continental Army and its relationship to the state militias and governments. However, it is Varnum's association with the case of *Trevett v. Weeden* and his contribution to the development of the idea of judicial review that make his residence a nationally significant site.

General Varnum's Early Life and Career

James Mitchell Varnum was born in Dracut, Massachusetts in 1748, the eldest son of Major Samuel Varnum. In 1765, Varnum attended Harvard, but following a period of student unrest, he left the college. In 1767, he transferred to Rhode Island College (later Brown University) where he was a member of the college's first graduating class in 1769. At his graduation, Varnum demonstrated an early interest in the political issues of his day by 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. After passing the bar in 1771, he opened a law practice in East Greenwich. In 1773, he bought land on Peirce Street in East Greenwich and commissioned John Reynolds, one of the premier builders working in the area, to build his house. Because Varnum personally oversaw all the work, work on the house ceased when he was away; consequently, the house was not completed until 1778.⁶ Ten years later, in 1788, as Varnum prepared to move to Marietta, Ohio, he sold the house to John Reynolds.

During the early 1770s, Varnum began a life-long friendship with Nathanael Greene.⁷ The friendship began when Varnum served as the Greenes' attorney in the 1772 case *Greene v. Dudingston*, a case which developed from the *Gaspee* affair. The *Gaspee* was a British Revenue Schooner, stationed in Newport and commanded by Lt. William Dudingston. As the King's representative, Dudingston was especially aggressive in stopping and searching ships suspected of carrying illicit cargo. In February of 1772, Dudingston seized *Fortune*, a sloop which was owned by Nathanael Greene and commanded by Rufus Greene, Nathanael's cousin; the ship's

⁶ Personal interview with Bruce C. MacGunnigle, President of the Varnum Continentals.

⁷ The vacant lot now part of the Varnum property was originally bought by Greene, but was never developed. Interview with Bruce C. MacGunnigle.

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seizure and Dudingston's rough treatment of Rufus Green sparked intense anger among local residents. In June 1772, angry locals set the *Gaspee* on fire in retaliation for Dudingston's actions. Dudingston, who was on board, barely escaped with his life. The *Gaspee* affair became a symbol of colonial rights and Varnum's successful defense of the Greenes clearly placed him among the growing opposition to British rule.

In 1774, Varnum was appointed a commander for the regiment from Kent and King Counties, Rhode Island. Originally the First Rhode Island Regiment, this regiment was renamed the 12th Continentals when it entered Continental service. As part of General Nathanael Greene's brigade, the regiment took part in the siege of Boston, between July and December 1775.⁸ The regiment's enlistment term ended at the end of 1775, but Varnum and many of the men from the 12th were re-organized as the 9th Continentals, with Varnum as Colonel.⁹ During this period the regiment was involved in the New York battles of Long Island, Harlem Heights (at which Varnum was not present), and White Plains.

Conflicts over his failure to be promoted led Varnum to resign from the Continental Army in late 1776. He then returned to Rhode Island where he was promoted to brigadier general in the Rhode Island militia after the British invasion of Aquidneck in December 1776. In February 1777, the Continental Congress offered Varnum the rank of brigadier general, which he accepted. Varnum's troops were active in New Jersey, at Germantown, Pennsylvania, and in the attempted defense of Forts Mifflin and Mercer on the Delaware River. He and his men passed the winter at Valley Forge with the Continental Army. During this period Varnum also helped organize hospitals to provide smallpox inoculations and recruited new troops. In May 1778, Varnum returned, again, to Rhode Island where he helped establish the Rhode Island Black Regiment, a regiment which he had convinced Washington to raise during the previous winter.¹⁰ 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 from the Continental Army in March 1779.¹¹ Varnum was also present at Tiverton with Jean Baptiste Donatien de Vimeur, Comte de Rochambeau, in 1780. However, after 1780, Varnum did not play a major or direct role in the war.¹² During this later period, Varnum was, instead, primarily engaged with troop recruitment and efforts to promote support for the Continental Army. He did, however, remain a major general in the Rhode Island militia until 1788.

Between 1780 and 1782, Varnum was one of the Rhode Island delegates sent to the Continental Congress. A strong nationalist, he called for the United States to act as one collective sovereign body, rather than a loose coalition of states. The Federal Government, he believed, should have both a mandate and the ability to act above and apart from the states.¹³ Varnum's primary focus during this period was on Congress' inability to fund itself through effective taxation, a concern that was no doubt shaped by his experiences with military funding during his service in the Continental Army. Fearing that increasing credit problems could fatally damage the new nation's standing with its European trading partners,¹⁴ Varnum informed the Governor of Rhode Island in 1780 that the lack of money and credit was a serious issue of concern as it frustrated any and all actions.¹⁵ In 1781 he became a member of two committees formed to devise means to immediately supply the public treasury and to enable Congress to coin and borrow money.¹⁶ In March 1781, he proposed, and was a

⁸ *Records of the State of Rhode Island*, vol. vii, p.257; previous nomination documents prepared by Bruce C. MacGunnigle.

⁹ They were later renamed the First Rhode Island Regiment, Continental line.

¹⁰ 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 designated in 1974.

¹¹ This paragraph was drawn from the previous draft nomination prepared by Bruce C. MacGunnigle and from D'Amato, p. 8-36.

¹² *Records of the State of Rhode Island*, vol. ix, p.212-215.

¹³ Polishook, Irwin H., *Rhode Island and the Union*. (Evanston: Northwestern University Press, 1969), p.67.

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

¹⁵ *Records of the State of Rhode Island*, ix, p.42.

¹⁶ *Journals of the Continental Congress*, xix, p. viii, 368, 340.

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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.” Two months later, in May 1781, the committee recommended the use of federal troops, if necessary, to compel states to fulfill their federal obligations.¹⁷

Varnum strongly supported the 1781 Impost, which proposed a 5% tax to be paid to the United States Federal government. The imposition of this tax, which was the first real attempt to amend the Articles and to create a strong Federal Government, highlighted the differences between those who advocated for states’ rights and those who advocated for federalism. Varnum’s support for federalism was not shared by many of his fellow Rhode Islanders. In fact, Rhode Island was, throughout the 1780’s, one of the most vigorous defenders of states’ rights, with its citizens generally opposing the development of a strong federal Constitution. Although Varnum’s support for the Impost lost him his seat as a delegate to the Congress, he continued to fight for the Impost upon his return to Rhode Island.

In 1782, Varnum wrote a series of essays published in the *Providence Gazette* under the pseudonym “A Citizen.” These essays led to a sustained debate in the *Gazette*, generating so many replies that the publisher claimed he could not print them all for lack of space.¹⁸ Varnum’s essays laid out both his rationale for the Impost and his political philosophy. He argued for a strong centralized government that was not a periodically employed set of regulations, but rather a constant, active presence. David Howell, a former professor of Varnum’s at Brown University countered Varnum’s broad interpretation of federal power as being designed to foster the nation’s welfare. Writing as “The Farmer,” Howell argued for states’ rights and limited powers for the federal government. The Impost, Howell insisted, was a subversion of American liberty.¹⁹

Varnum’s argument for this tax received attention outside of the state. Thomas Paine greatly admired Varnum’s oratory skills,²⁰ and it is possible that Varnum, as the head of those supporting the Impost in Rhode Island, was the one who extended an invitation to Thomas Paine to come to the state to argue for the tax.²¹ However, even the presence of Paine could not persuade Rhode Islanders to accept the Impost. Ultimately, the state’s refusal to accept the Impost would defeat the first attempt to modify the Articles, preventing Congress from collecting badly needed cash. Had it passed, the Impost would have set a valuable precedent for changing the Articles and for the expansion of Congressional power.

Although unsuccessful in swaying Rhode Island opinion, the essays of “The Citizen” were an early development of what would become Federalist philosophy. Moreover, Varnum’s debate with Howell, who elucidated a fear of a federal power, foreshadowed a continuing debate in American politics that continues to this day. Arguing that Varnum’s political philosophy reflected a: “concept of Congress as a central government capable of acting upon both individuals and the states, the very antithesis of the Confederation,” Irwin Polishook has maintained that “[t]he philosophy of ‘The Citizen’ was symptomatic of the nationalism that propounded the Impost of 1781 and secured an entirely new federal system in 1787.”²² Polishook goes on to argue that, “[i]n 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.”²³

¹⁷ *Journals of the Continental Congress*, xix, p. viii, 236.

¹⁸ Polishook, p.69.

¹⁹ Polishook, p.69-71.

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.

²¹ *The General Varnum House*, Rhode Island Historical Society Collections. (Providence, Rhode Island, 1926) p.119-120.

²² Polishook, p.67.

²³ Polishook, p.71.

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The Case of *Trevett v. Weeden*

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*. Although this case involved the acceptance of paper money in Rhode Island, Varnum used it to expound upon the concept of constitutionality and judicial review.²⁵

In 1786, the Rhode Island General Assembly passed legislation allowing paper currency to be accepted as legal tender, with penalties imposed on those who refused to accept this currency. Three months later, the Assembly passed additional legislation stating that offenders under this law would be tried by judges without a jury. In defending a client who had refused to accept paper currency, Varnum attacked the statute under which his client was being tried as unconstitutional because it did not require trial by jury. Legislative authority, he argued, was derived from the constitution and any law created by said legislative authority which was in violation of this fundamental law was unconstitutional. He further argued that it was the business of the court both to determine whether acts of the legislature agreed with the constitution and to forbid the enforcement of those which were unconstitutional. In making this argument, Varnum insisted that the courts had the authority to examine the actions of the legislature and to assess those actions against fundamental principles regarding the law. This argument rested upon the belief 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

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

Sylvia 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 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 era, he was also an eloquent orator capable of crystallizing and explaining a complex, abstract philosophy as it emerged. Reflecting the sophistication of American law at this period, Varnum’s argument reached back to Magna Carta. His references to prominent English legal scholars such as Sir Edward Coke, William Blackstone, Sir Francis Bacon and Edmund Plowden also demonstrated that, despite the American Revolution, Americans still saw English law as informing and shaping American law.²⁸ However, Varnum’s argument

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.

²⁶ Varnum, James M., “*The Case, Trevett against Weeden: On Information and Complaint for Refusing Paper Bills in Payment for Butcher’s Meat, in Market, at Par with Specie.*” (Providence, Rhode Island: John Carter, 1787), p.25.

²⁷ Snowiss, Sylvia, *Judicial Review and the Law of the Constitution*. (New Haven, Connecticut: Yale University Press, 1990), p.30.

²⁸ Conley, Dr. Patrick T., ‘*The Constitutional Significance of Trevett v. Weeden*’(1786). Bicentennial Law Address, May 3, 1976; Colony House, Newport, RI.” (Providence, Rhode Island: Rhode Island Bicentennial Commission, 1976), p.8; Haines, Charles Grove, *The American Doctrine of Judicial Supremacy*. (New York: The MacMillan Company, 1914), p.51-53.

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carried English arguments to a new level. This was especially true in regard to Coke's theory that the final interpretation of the law lies with the judiciary. Charles Haines argues that Varnum's argument demonstrated that Coke's doctrine had evolved and crystallized *before* the Philadelphia convention of 1787, with Varnum carrying it to its farthest yet logical conclusion.²⁹

The argument for the fundamental rights of man made by Varnum was precisely the same argument that the colonists had used against the British Empire. Its use against the state government was a reflection of the growing strength of the new American system. It also indicated an increased confidence in the stability of the new American legal system as Varnum argued that judicial review was a superior and possible alternative to revolution.³⁰

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

Varnum recognized that 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 that an effective mechanism to avoid revolution was needed, reflected both the public's view and his own personal beliefs. This statement reflected the growing maturity of American political discourse as it justified the validity of revolution while creating and maintaining a political structure that would not succumb to revolution. Judicial review became an integral part of this delicate balance, functioning as a check on both the legislative power to override the constitution and, by affirming the concept of supreme, fixed ideals, on the general will of the populace.

Because judicial review was not yet an axiom of American law in the 1780s, *Trevett v. Weeden* was part of the ongoing debate regarding whether the people had the power to make or change law or whether the 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. The Federalist position would come to support Varnum's view of the law as a fixed set of principles, whereas the Republicans would give greater emphasis to the current will of the people.³³

Because the popular will and power of government were generally aligned in colonial America and the early Federal period, declaring a law unconstitutional often entailed going against popular sentiment.³⁴ Adding to

²⁹ Haines, p.51-53.

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, Daniel J., "A Discrete and Cosmopolitan Minority: The Loyalists, the Atlantic World, and the Origins of Judicial Review." *Chicago-Kent Law Review*, Vol. 81, No. 3. (Chicago, Illinois: Illinois Institute of Technology, Chicago-Kent College of Law, 2006), p.855-856; Snowiss, p.50.

³¹ Varnum, p.26.

³² Nelson, William E., *Marbury v. Madison: The Origins and Legacy of Judicial Review*. (Lawrence, Kansas: University Press of Kansas, 2000), p.37.

³³ Nelson, p. 38.

³⁴ Hamburger, Philip, *Law and Judicial Duty*. (Cambridge, Massachusetts: Harvard University Press, 2008), p. 520.

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this problem was the fact that the Rhode Island judiciary was traditionally a creature of the General Assembly. Polishook has pointed out that in this early period: “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 even went so far as to declare that they were answerable to the fundamental principles of the implicit social contract, not to the legislature or even the people.³⁶ The judges did not actually *rule* the statute as unconstitutional, merely dismissing the case as not coming under the cognizance of their court. 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 devotion to the ideal of independent judgement, independent from the executive and beholden only to God and the conscience of man.³⁸ Varnum was thus 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; certainly, they are among the first cases where the judges so clearly stated their independence from the legislature and people.³⁹

The Rhode Island legislature did not endorse Varnum’s viewpoint. Instead, the General Assembly almost immediately demanded that the four judges appear to explain their actions. Varnum served as the defence council for the three judges that did appear. Polishook succinctly sums up the defense: “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 backed 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 occurred in the aftermath of *Trevett v. Weeden*.

The limited impact *Trevett v. Weeden* had 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. Despite its limited immediate impact, 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 also because of the widespread, immediate publication of the trial. This contemporaneous reporting meant that the trial was significant for legal scholars and that it was well known in the political

³⁵ Polishook, p. 135-136.

³⁶ Varnum, p. 43.

³⁷ Hulseboch, p. 856.

³⁸ Hamburger, p. 519.

³⁹ Horwitz, Morton J., “A Historiography of the People Themselves and Popular Constitutionalism.” *Chicago-Kent Law Review*, Vol. 18, No. 3. (Chicago, Illinois: Illinois Institute of Technology, Chicago-Kent College of Law, 2006), p.819.

⁴⁰ Polishook, p. 140-141.

⁴¹ Gerber, Scott Douglas, “The Political Theory of an Independent Judiciary” (New Haven, Connecticut: *Yale Law Journal Pocket Part*, 116, no. 223 (2007): p. 226.

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discussion surrounding the creation of the Constitution. It was closely followed in six newspapers. In addition to three Rhode Island papers, two papers from Boston and one from Philadelphia covered the trial and the later trial of the judges.⁴² The trial and its outcome were also later discussed in a pamphlet written by Varnum and issued for public sale in Philadelphia during the 1787 Convention. The pamphlet contains a detailed description of the trial, Varnum's arguments, and his defence of the judges during their trial by the General Assembly. Varnum gave a copy of the pamphlet to Benjamin Franklin. This pamphlet may have been known among participants at the Convention because it was for sale at the time.⁴³ As Varnum was also in contact with Aaron Burr during this time, it is possible that he discussed the case with him as well. Hamilton had previously been involved in a New York case that also pertained to the issue of judicial review and he may have been familiar with Varnum's argument.⁴⁴ The level of documentation associated with *Trevett v. Weeden* is unusual for early American law cases of any type. In fact, *Trevett v. Weeden* is the only case relating to judicial review from this period that had both this amount of contemporaneous reporting and a complete case history written by a principal in the trial. Consequently, not only were the case and Varnum's arguments well known in the 1780s, the case remains an invaluable study guide to the development of judicial review.

Trevett v. Weeden played an important role in establishing the idea that the judiciary was separate and distinct from the legislature.⁴⁵ Certainly, the development of this idea during the early Federal period permitted the landmark case of *Marbury v. Madison* (1803) to pass with remarkably little public concern or comment two decades later

In 1986, the National Park Service looked at William Marbury's house at 3350 M Street Washington DC, as part of a National Historic Landmark theme study on the U.S. Constitution believing it might be the best place to tell the story of *Marbury v. Madison* case.⁴⁶ Although the house still exists, it has been substantially modified since 1803. Moreover, it was determined that the house lacks a strong association with the case *Marbury v. Madison*.

Aside from *Trevett v. Weeden*, other cases dealing with the concept of judicial review 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. *Paxton* was well known in the Revolutionary period as the argument was republished in Boston in 1763. However, the concept of judicial review was not as fully developed in this case as it was in *Trevett v. Weeden*. It is possible that Varnum and others may have known and studied this case.⁴⁷ *Holmes* dealt with an actual, written constitution and provided more of a direct precedent. However, the case was not published and the facts surrounding it are obscure and uncertain, rendering it of little value to modern study.⁴⁸ *Caton* 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 this case was also not published and therefore may not have been well-known outside of the state. Alexander Hamilton served as the attorney for the defense

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. 134, fn. 9; p. 137, fn. 16; p. 138, fn. 19; 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. See generally, Scott Douglas Gerber, *A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606-1787* (New York: Oxford University Press, 2011).

⁴⁵ Nelson, p.13.

⁴⁶ *The U.S. Constitution: A National Historic Landmark Theme Study* (Washington DC: National Park Service, 1986), p. 12.

⁴⁷ Hartman, p. 8.

⁴⁸ Gerber, Scott Douglas, "The Myth of *Marbury v. Madison* and the Origins of Judicial Review," *Marbury versus Madison*, eds. Mark A. Graber and Michael Perhac. (Washington, DC: CQ Press, 2002), p.15n1; Haines, p.92.

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in *Rutgers*. In this case Hamilton argued for the doctrine of judicial review but Hamilton's argument in this case was not published and, as a result, it probably did not have a national impact.⁴⁹ Furthermore, there is debate over whether *Rutgers* actually did set a precedent for judicial review.⁵⁰ *The Ten Pound Cases* were and remain essentially unknown, with little discussion and no contemporaneous publication. Finally, because *Bayard* came after *Trevett v. Weeden*, the similarities between these two cases may actually provide clear evidence for the immediate impact of *Trevett v. Weeden* and its influence on emerging cases.⁵¹

Although not well known to scholars outside the field of legal history, *Trevett v. Weeden* has generally been regarded as a landmark case by scholars studying judicial review and constitutional law for more than a century.⁵² *Trevett v. Weeden* should be, and indeed has been, seen as a landmark case in the development of an independent judiciary for several reasons. The legal historian Charles Haines stated in 1914 that *Trevett v. Weeden* was the first case in which a judge actually stated that a statute was unconstitutional.⁵³ And scholars since then have pointed to *Trevett v. Weeden* as a crucial landmark case.⁵⁴ Second, the case was well known to contemporaries, during the trial, and the trial of the judges which followed, and these newspapers were in larger population areas such as Boston, Philadelphia, Newport (RI), and Providence (RI). Third, a complete history of the proceedings was published and sold to the public in pamphlet form during the crucial period of the 1787 Constitutional Convention in Philadelphia. This amount of contemporary popular publication is not apparent for the other cases relating to judicial review.⁵⁵ Fourth, 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; this possibility of failure is an important component in American history, just as valuable as the celebration of success. Finally, Varnum's argument was both an important precursor to several critical strands of legal and political thought which would develop in later years as well as an impressive summation of American legal philosophy at that point in time.

In 1787, although Varnum was once more a delegate to the Continental Congress, growing conflicts between the states led Varnum and others to be uncertain about the possibility of success for a constitution.⁵⁶ Varnum was also increasingly disillusioned with the Rhode Island General Assembly. Writing to Washington, he complained 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 both exploration of the Mississippi and the

⁴⁹ 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'.

⁵⁰ Horwitz, p. 819.

⁵¹ Hartman, p.8; Horwitz, p.819.

⁵² 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, Leonard W., "Trevett v. Weeden: Rhode Island, 1786," *Encyclopedia of the American Constitution*, eds. Leonard W. Levy, et al. (New York: MacMillan Publishing Company,), 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.

⁵³ 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.

⁵⁴ See for example, Harris G. Mirkin, "Judicial Review" Jury Review and the Right of Revolution Against Despotism," *Polity*, Vol. 6, No. 1, (Autumn 1973), pp. 44-45; Gordon S. Wood, *The Creation of the American Republic 1776-1787*, (Chapel Hill: University of North Carolina, 1969), p. 10.

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.

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development of the territories, specifically the relationship of the territories to the states.⁵⁸ He was a director of the Ohio Company, and in 1788, he 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 became interested in the concept of territorial law and its relationship to Federal law as well as the question of how the needs of the military should be balanced. He was also concerned with the question of which, if any or all, state laws should serve as an influence on territorial law.⁶⁰ He practiced the same realistic, pragmatic approach in this new arena, demonstrating an intense awareness of the ideals and principles of legal theory as balanced by the demands of the current situation. However, Varnum's career as a judge was abruptly cut short, when he fell ill a few months after his arrival in the Northwest Territories. 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 repeatedly acknowledged by scholars working in the field. He cannot be considered a preeminent figure, on a par with Alexander Hamilton or John Marshall, but his contribution to the development of American law is nevertheless significant. Because Varnum's articulation of judicial review was both more public and more complete than that of Hamilton's at the time, Varnum's argument may have influenced both the better known figures of the period and public opinion. Finally, Varnum's determination to keep Rhode Island actively engaged in the constitutional process meant that he engaged in numerous public debates in the leading newspapers, ensuring that he was a well-known figure across the country.

Varnum's career and the landmark case of *Trevett v. Weeden* serve as solid reminders that American law and the American Constitution 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, demonstrate the all too easily forgotten fact that the creation of the United States and its Constitution was by no means inevitable. Furthermore, Varnum is a reminder that the leading political figures of this period were influenced by events occurring across the country, even as these men met in the city of Philadelphia.

Varnum's argument in the *Trevett v. Weeden* case underscores the immense cultural and historical debt that the early United States had to British culture and law. The case for the defence rested on the assumption that not only were the arguments of British legal theoreticians such as Coke known, they were also widely accepted, with most American lawyers seeing American law as a direct descendant of English common law dating back to the Magna Carta. But Varnum's argument, which was presented as a logical extension of British legal culture, was uniquely American, establishing a new doctrine for a new nation. This important law case written down and published by its primary player, and the prominent discussion of this case in the newspapers of the day also provide insight into the sophistication of the legal profession in Colonial and early Federal America.

Varnum's two major concerns, the 1781 Impost and *Trevett v. Weeden*, were not complete or obvious victories. However, his argument demonstrates that the delicate balance between morality, the law, and the opinion of the people has been at the basis of the evolution of American government and society.

As a general, Varnum was involved in some of the most critical campaigns of the Revolutionary War and as a judge he helped to lay the foundations for the westward expansion of the United States. However, Varnum was

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.

⁶⁰ *The St. Clair Papers: The Life and Public Services of Arthur St. Clair: Soldier of the Revolutionary War; President of the Continental Congress; and Governor of the North-Western Territory with his Correspondence and other papers arranged and annotated by William Henry Smith*, vol. ii. (Cincinnati: Robert Clark & Co., 1882), p.61-65, 70.

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actively involved in shaping the legal philosophy which made the development of the Constitution and its ongoing amendments possible. Judicial review, the doctrine Varnum helped establish, would become, and remains, a core concept that underpins the American constitutional system of checks and balances.⁶¹

⁶¹ Gerber, *The Political Theory of an Independent Judiciary* p.225-226.

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Previous documentation on file (NPS):

- Preliminary Determination of Individual Listing (36 CFR 67) has been requested.
 Previously Listed in the National Register.
 Previously Determined Eligible by the National Register.
 Designated a National Historic Landmark.
 Recorded by Historic American Buildings Survey: #
 Recorded by Historic American Engineering Record: #

Primary Location of Additional Data:

- State Historic Preservation Office
 Other State Agency
 Federal Agency
 Local Government
 University
 Other (Specify Repository):

10. GEOGRAPHICAL DATA

Acreage of Property: 1.1 Acres

UTM References:	Zone	Easting	Northing
	19	295920	4615160

Verbal Boundary Description:

The property is approximately 180 x 220 feet; bounded on the north by Revolution Street, on the east by Peirce Street, on the south by Church Street; the north property line is defined by a fence and the parking lot for the adjacent property.

Boundary Justification:

The boundaries selected are those of the property acquired in the 1930's by the Varnum Continentals, the current owners.

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11. FORM PREPARED BY

Name/Title: Anne C. Hall, Ph.D.

Address: 511 Town Hill Rd
New Hartford, Ct 06057

Telephone: 860-379-2158

Date: April 8, 2010

Edited by: Dr. Alexandra Lord and Patty Henry
National Park Service
National Historic Landmarks Program
1849 C St., N.W. (2280)
Washington, DC 20240

Telephone: (202) 354-6906 and (202) 354-2216

NATIONAL HISTORIC LANDMARKS PROGRAM
May 17, 2011

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

Photos

National Register of Historic Places Registration Form



GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

East (Front) Elevation

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

South Elevation

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

West Elevation

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

North Elevation

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

First Floor, Central Hall

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

First Floor, Southeast Room

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

United States Department of the Interior, National Park Service

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GENERAL JAMES MITCHELL VARNUM HOUSE
East Greenwich, Rhode Island
First Floor, Northeast Room
Photo by: Anne C. Hall
October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

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GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island

First Floor, Southwest Room showing bay addition

Photo by: Anne C. Hall

October 2009

VARNUM, GENERAL JAMES MITCHELL, HOUSE

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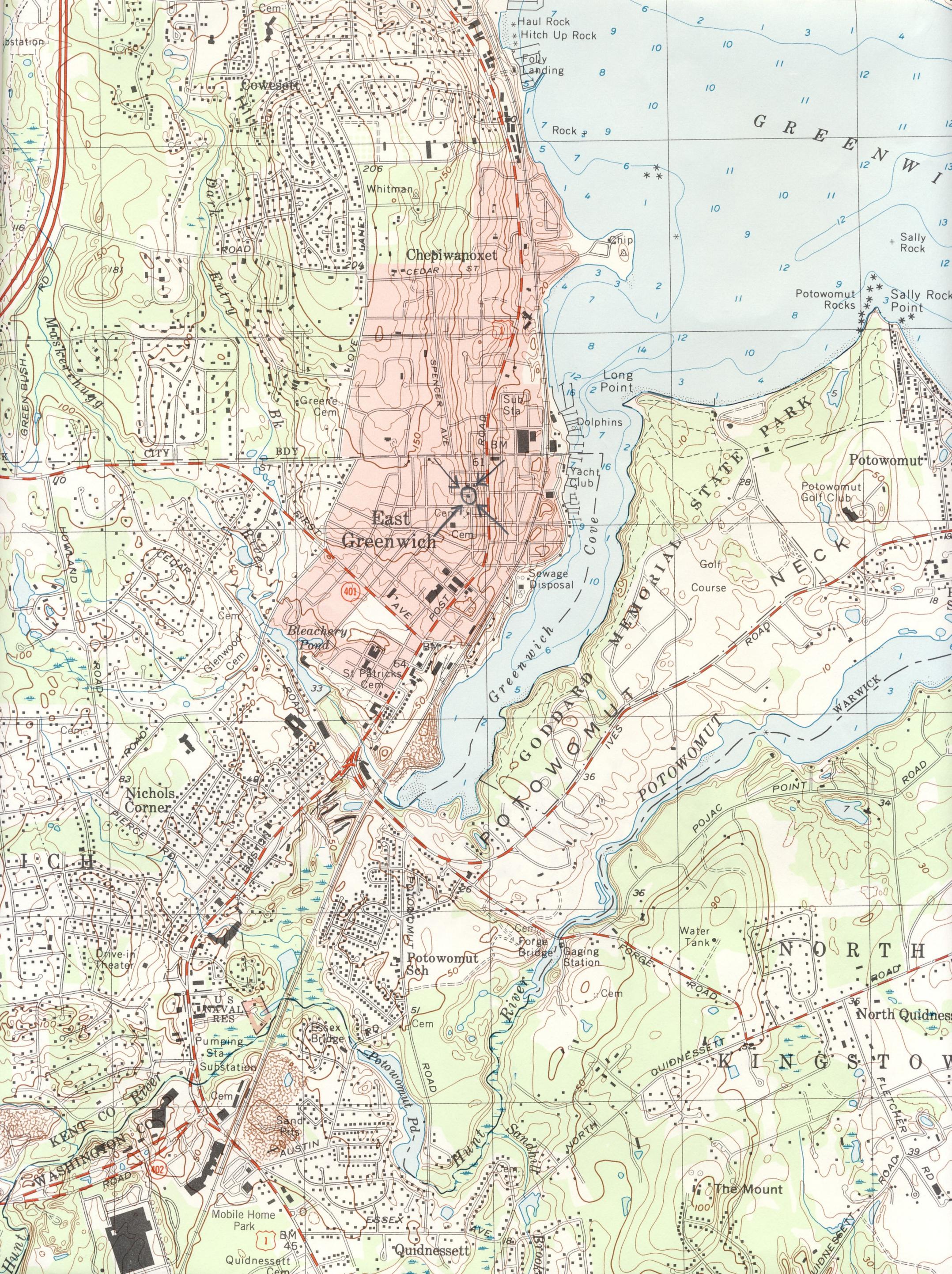


GENERAL JAMES MITCHELL VARNUM HOUSE

East Greenwich, Rhode Island
Second Floor, Northeast Room

Photo by: Anne C. Hall

October 2009



Cowesett

Chepiwanoxet

East Greenwich

Nichols Corner

Potowomut Sch

The Mount

Quidnessett

GREENWICH

POTOWOMUT NECK

NORTH

KINGSTOWN

North Quidnessett

POTOWOMUT RIVER

PARK

Potowomut

Potowomut Golf Club

Long Point

Dolphins

Sub Sta

BM

Yacht Club

Cove

Sewage Disposal

Greenwich

Greenwich