

Note on Justice Nathan Cushing (1742-1812) and Justice William Cushing (1732-1810)

In 1927 the Daughters of the American Revolution in cooperation with the Town of Norwell placed a monument at the location of the Cushing homestead at the corner of Main and Lincoln Streets in Norwell. The monument honors the contributions of Justice Nathan Cushing as a patriot before, during and after independence. Few of the thousands of motorists who drive by the monument every day are aware of the roles that Justice Nathan Cushing, Justice William Cushing and other members of the Cushing family played in the history of their town, the Commonwealth of Massachusetts and the nation. This note presents a brief summary of the history of the Cushing family in Scituate and the achievements of Justice Nathan Cushing and Justice William Cushing.

John Cushing (1627-1708) was the first Cushing to live in Scituate. In 1662 he and his wife Sarah moved from Hingham to take up residence on a homestead of 120 acres at 'Belle House Neck' (now the area at Neal Gate Street on the town line between Norwell and Scituate). John Cushing became a community leader in Scituate and Plymouth County and was elected to be a Selectman in Scituate from 1674 to 1686, a Plymouth County Magistrate from 1685 to 1692 and a representative to the General Court at Boston in 1692.

John and Sarah Cushing had 12 children and several generations of the Cushing family lived at Belle House Neck, including their son, John Jr., who became a judge of the Superior Court of Massachusetts; their grandson, John 3rd, who was a judge of the Superior Court of Massachusetts for 24 years; and their great-grandson, William, who became the Chief Justice of the Supreme Court of Massachusetts and in 1789 a Justice of the Supreme Court of the United States, a role he continued until his death in 1810.

In 1707 another of John Cushing's sons, Joseph Cushing (1677-1760), purchased land in Scituate in the area known then as Henschman's Corner (now the corner of Main and Lincoln Streets in Norwell). The land is located about three miles south from Belle House Neck. There Joseph Cushing and his wife Mary established a second Cushing homestead which became the home of Deacon Joseph Cushing Jr. (1711-1767) who followed the family tradition by studying law at Harvard College (1731) and who became a justice of the peace in Scituate. Deacon Joseph Cushing married Lydia King and they had 15 children, among them Nathan Cushing who was to inherit the family homestead at Henschman's Corner.

Nathan Cushing (1742-1812), like his father and two of his brothers, studied law at Harvard, graduating in 1763. He practiced law in Scituate, was involved in the ministry at the Second Parish Church and, like his cousin William, became active in the independence movement during the 1770's when public sentiments against British rule increased due to increases in taxes mandated by the British Parliament.



When the Sons of Liberty celebrated the Boston Tea Party in December of 1773, the British Parliament responded with a series of measures which were labeled the “Intolerable Acts” to punish the people of the colony for their protests. In May of 1774 the British Parliament passed the Massachusetts Government Act in order to better control dissent in the colony. This act prescribed that the members of the Massachusetts Governor’s Council would no longer be elected by the provincial assembly and that the Governor’s Council would instead be appointed by the King.

These measures resulted in an increase in anti-British sentiments across Massachusetts, including in the Town of Scituate. There the Selectmen appointed a committee to be chaired by Nathan Cushing to draft a resolution on the conditions in the town to be presented at the next town meeting. The resolution submitted by Nathan Cushing provided that:

“That we cordially join in sentiment with most of our brethren in this and other Colonies, that those acts of the British Parliament which have a tendency to control our internal commerce and manufactures, and more especially to extort our monies, are not only dis-consonant with good and lawful Government, but subversive of those rights and liberties which our fathers have handed down to us – Therefor we advise and move that a committee be appointed to make all suitable enquiry into our public disturbances and difficulties, and lay their counsels, determinations and results before the Town, when and so often as they shall think necessary, applying to the select men to warn a meeting for the purpose.”

On October 3, 1774 the measure was adopted at the Scituate town meeting and Nathan Cushing was appointed to be a member the Inspection Committee and charged with reporting on those conditions in the community which might pose a threat to the welfare of the majority.

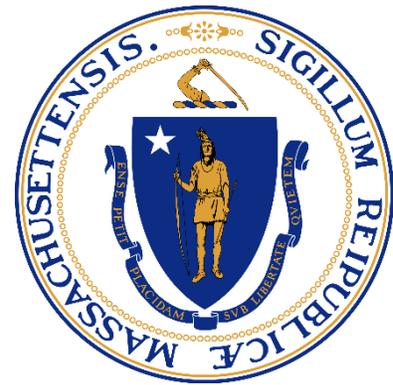
In September 1774 Nathan Cushing was chosen to be a delegate to the Plymouth County Congress to consider the response of the county to the ‘Intolerable Acts’. He was one of the signatories of the manifesto issued at that event which stated that the Parliament of Britain had violated the civil and religious liberties of the people of Massachusetts and advised that it was the duty of the people of Massachusetts to oppose British colonial rule. The manifesto further called for the people of Plymouth County to arm themselves and to become accustomed with military discipline.

As sentiment against British rule grew in all communities of Massachusetts, the British Governor dissolved the Governor’s Council in October 1774. The colonial leaders, including John Hancock, John Adams and John Cushing, responded by implementing a series of Provincial Congresses, first in Concord and later in Salem, Cambridge and Watertown. Participants in these Congresses were representatives from all counties in Massachusetts, and included Nathan Cushing, Gideon Vinal, Barnabas Little and William Turner as delegates from Scituate. The Provincial Congresses established the system of local government and powers to rule the province, collect taxes, buy supplies, and raise a militia during the years of the revolution. Hancock sent Paul Revere to the First Continental Congress with the news that Massachusetts had established the first autonomous government of the Thirteen Colonies.

In 1776 the Provincial Congress of Massachusetts appointed Nathan Cushing to become a Judge of Admiralty in Boston. This was a critical position during the years of the revolution when the Continental Congress and the Provincial Congress of Massachusetts and the other colonies issued more than 2,500 ‘Letters of Marque’ to the owners of fishing and cargo ships to outfit their vessels as “Privateers” to capture British-flagged ships. Many of the captured vessels were landed in the ports of Massachusetts where they were subject to condemnation and sale under the existing laws governing such prizes. The proceeds were divided among the privateer’s sponsors, shipowners, captains and crew. A percentage

share also went to the issuer of the 'Letter of Marque' and this share became a significant source of revenue for Massachusetts during the war. In reviewing the legality of the capture of British vessels by Privateers Nathan Cushing is reported by Deane to have "with great firmness condemned the captured British vessels, which brought him into notoriety as a patriot".

At the conclusion of hostilities of the revolution Nathan Cushing became a Counsellor of the Commonwealth of Massachusetts from 1779 to the end of 1789. During this time the Constitution of the Commonwealth of Massachusetts was drafted by John Adams and approved in October 1780. This document declared that: "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.



In December of 1780 Nathan Cushing was appointed to be a committee of one to prepare a seal for the Commonwealth of Massachusetts. The design he recommended was adopted by the Provincial Congress on December 13, 1780. The motto had been adopted in 1775 by the Provincial Congress and the common English translation is, "By the sword we seek peace, but peace only under liberty."

While Nathan Cushing was serving as a Counsellor, his cousin William Cushing was serving as the Chief Justice of the Supreme Court of the Commonwealth of Massachusetts. In 1783 Chief Justice Cushing presided over a series of cases which resulted in one of his most significant rulings. In this case he applied the newly minted Constitution of the Commonwealth of Massachusetts to a case involving Quock Walker, a slave who filed a freedom suit based on the language of the new state constitution. Chief Justice found that:

"...our Constitution of Government, by which the people of this Commonwealth have solemnly bound themselves, sets out with declaring that all men are born free and equal – and that every subject is entitled to liberty, and to have it guarded by the laws, as well as life and property – and in short is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract..."

This landmark freed Quock Walker and the ruling was interpreted to indicate that slavery was incompatible with the Massachusetts constitution and that slavery was therefore ended in the state.

In early 1788 Nathan Cushing served as a delegate to the Massachusetts Ratifying Convention which met in Boston to consider the adoption of the Federal Constitution. By a vote of 187 to 168 the Federal Constitution was ratified. Nathan Cushing's vote was one of the 187 votes in support of ratification.

In 1789 Nathan Cushing was appointed Justice of the Supreme Court of Massachusetts, where he served until 1801. Nathan Cushing followed his cousin William Cushing as a Justice of the State Supreme Court when William Cushing in 1789 became a Justice of the Federal Supreme Court, a position that William held for more than 20 years. Deane's account of Nathan Cushing's career and his achievements on the Supreme Court were that: "He was a gentleman of noble form, commanding countenance and courteous manners, distinguished more for solid judgment and discretion than for eloquence

From 1802 to 1807 Nathan Cushing again became a Counsellor of the Commonwealth of Massachusetts.

In 1810, Justice William Cushing died in his hometown of Scituate, Massachusetts. He is buried in a family cemetery where the family homestead had stood on Belle House Neck. The location is now a state park on Neal Gate Street.

In his final years Justice Nathan Cushing lived at Cushing homestead at Henchman's Corner. He died there on November 4, 1812 and was buried in the cemetery at Norwell Center. His wife, Abigail Tilden, had passed away in 1810. He was survived by three children, Abigail, Christopher and Frances.

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