

BOSTON MASSACRE AND THE STATE OF THE CONSTITUTION TODAY

In the 1760, Boston had become a town of divided loyalties.

The British government had begun its system of taxation and the colonists were chafing under the customs payments they were forced to pay to subsidize the British war debts.

The town of Boston was being divided into two groups - Loyalists, still loyal to the British government; and Patriots, who were itching toward independence.

in 1767, due to protests, the British government sent in a company of British troops to protect their interests and forced the people of the town of Boston to quarter them in their homes.

Boston - February 22, 1770, a boy named Christopher Seider was in a crowd of other boys and adults throwing rocks at the home of a British Customs collector (tax collector). The tax collector, Ebenezer Richardson, shot into the crowd to scare, but hit Seider in the chest and killed him.

11 days later, another crowd began to gather around a British private who was guarding a Customs house (where the tax collectors worked). They started throwing snowballs and rocks at the private. Reinforcements were sent in. Physical violence ensued and the british soldiers fired into the crowd, killing 5.

This incident would come to be known as the Boston Massacre.

The press of the day portrayed the incident as:

THE HORRID MASSACRE IN BOSTON, PERPETRATED IN THE EVENING OF THE FIFTH DAY OF MARCH, 1770, BY SOLDIERS OF THE TWENTY-NINTH REGIMENT WHICH WITH THE FOURTEENTH REGIMENT WERE THEN QUARTERED THERE"

Ebenezer Richardson was indicted for the murder of Christopher Seider.

10 soldiers and their commanding officer were indicted for murder in connection with the Boston Massacre.

A call went out for attorneys to represent the soldiers. In the entire Boston area, every defense attorney declined.

The call went out beyond Boston and specifically to John Adams.

Adams, with must hesitation, answered the call and represented everyone connected with the Boston Massacre.

At this time, Adams was already an established Patriot. John Adams' cousin, Sam Adams, was one of the Sons of Liberty.

Adams personally was concerned that the soldiers and their commanding officer get a fair trial and not just a public lynching. He thought that would not be a good reflection of the citizenry.

But when he got into the case, he discovered something else - the soldiers and their captain were almost certainly not guilty of murder.

So imagine Adams' predicament:

The citizens of Boston saw Britain and an unfair, hostile country

Five colonists lie dead at the hands of British soldiers

The press had already convicted the soldiers

The citizens of Boston wanted blood

And John Adams was faced with the realization that at least a majority of his clients were innocent

Things were only made much worse when later in the spring, Robinson (who was not represented by Adams) was found guilty of murder, but promptly pardoned by the King and then was promoted. The grounds for the pardon were that Robinson was acting in self defense.

This is the same thing that Adams believed was true in his case.

Can you imagine when, later in that year, the commanding officer and six of the soldiers were acquitted of all charges? Two were convicted of lesser charges and two were convicted of murder, but their charges were reduced.

Can you imagine the public outcry?

Those who did not watch the trial and didn't know anything about the case but what they read in the newspapers must have been absolutely beside themselves.

What those soldiers got, largely through the bravery of John Adams, was a fair trial.

Adams argued to the jury his belief that it is far better to allow 10 guilty men to go free rather than send one innocent man to prison. His reasoning for this is that it is far more important for a community to protect innocence than it is to punish guilt.

Nineteen years later, the protections that Adams insisted upon would be enshrined in our Constitution and collectively have set the parameters for what we call "a fair trial."

And as we headed into our constitutional convention and the bill of rights that followed, you can imagine the choices that had to be made about how criminal trials would be conducted in our young country.

Should we presume any criminal defendant innocent and make the government prove each of every allegation beyond a reasonable doubt?

Or should the charge itself raise a presumption of guilt and we require a defendant to prove himself innocent?

Should a defendant be allowed to have a lawyer?

Should a defendant be allowed to personally confront the witnesses against him?

Or should we allow secret evidence, or perhaps by testimony written affidavit or even testimony by a witness who doesn't have to give his name?

Should trials be in all things public?

Or should parts of them - or even the entire proceeding - to be conducted in secret, hidden from public view?

Should trials be conducted relatively fast?

Or should the government be allowed to hold a defendant without charges indefinitely?

These were the kinds of choices that the founding fathers had to make.

In the end, it was decided that a person charged with a crime in this country would:

get a speedy, public trial

be allowed to confront and cross-examine the witnesses against him

have a right to counsel for his defense

be presumed innocent

and that the government would have the burden to prove its allegations beyond any reasonable doubt

If these protections are faithfully applied, then the defendant - and the government, by the way - will get a fair trial.

The rub, of course, is in faithfully applying these protections.

For a person accused of a crime does not just "get" a fair trial. Rather, we have to "give" the person a fair trial. The people of this nation are responsible for fair trials, not "the system", not judges, not prosecutors, not defense lawyers.

"We the people" are the only ones that can ensure this basic, fundamental right. We have to make this system work.

And our system gets tested and we are given opportunities to make exceptions to these protections - always temporary, and always to address some threat that can only be met by relaxing our constitutional protections.

In the 1850's it was a looming threat of slave revolts that convinced us to relax these protections.

In the 1910's it was the threat of Bolsheviks.

In the 1940's it was the threat of Japanese treachery.

In the 1950's, it was the threat of communism.

Today, it's terrorism.

In the Holy Land trial,

our clients were not allowed to hear their own intercepted telephone calls - even with just each other - on the grounds that they were classified and declassifying them would hurt national security;

in any other case, this would have been an unthinkable violation of the accused' rights

two witnesses from another country were allowed to testify anonymously

one as an expert

because their home country's law required them to.

the law of a foreign country was allowed to trump the Constitution of the United States

in any other case, this would have been an unspeakable violation of the right to confront and cross-examine witnesses

stacks of unsigned, unauthenticated documents and videotapes were allowed into evidence

such a violation of the right to confront witnesses is unconceivable

And these things are nothing compared to what has been going on in Guantanamo and in a multitude of secret rendition sites around the world.

Benjamin Franklin famously said: "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

It was recently observed that:

"We have already allowed an incredible and unprecedented concentration of power, threatening to destroy all constitutional protections. The Department of Homeland Security and the USA Patriot Act represent an enormous restructuring and centralizing of power, and they were just the beginning. These radical innovations' full impact has not even begun to be told. Yet each day brings word of new proposals calling for the federal government to usurp more power, and for

the states and the people to surrender more of their rights, freedoms, and responsibilities. Projecting the lines of trajectory from current trends, we could soon be living in an Orwellian police state."

This is the position of the John Birch Society - not exactly a bastion of liberalism.

When we decide that a certain group of people are the enemy, then we want to start carving out exceptions for them. But when we give the government power for this narrow purpose, it always ends up getting abused. Every time.

The right to a fair trial is the canary in the coal mine. When it begins to erode, as it is today - when we start carving out exceptions for "those people" - then, in the end, it usually ends up getting used against "We The People."

Oliver Wendell Holmes once said that the law of a society mirrors the moral worth of that society. A just and good society will be reflected in laws that are themselves just and good. An unjust law is a reflection of an unjust society.

I happen to believe that the laws enshrined in our constitution are good and just. I also happen to believe that laws seeking to relax or abolish those protections, no matter how limited or supposedly temporary they may be, are by definition bad and unjust.

I am proud to represent the hated. I believe that when I do, I represent all of us.

And I've also had more than a few who turned out to be innocent after all.

Thank you.