

# VERMONT HISTORY

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# ABOUT THE CONTRIBUTORS

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**Randolph Roth** is associate professor of history at Ohio State University in Columbus, Ohio. His first book, *The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley, 1791-1850*, appeared in 1987. An article, "Why Are We Still Vermonters? Vermont's Identity Crisis and the Founding of the Vermont Historical Society," appeared in *Vermont History* in 1991. He is currently working on a history of violent crime and violent death in northern New England.

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**Paul S. Gillies** is a trustee of the Vermont Historical Society. He was formerly Deputy Secretary of State and now practices law in Montpelier, Vermont. He was co-editor with D. Gregory Sanford of the *Records of the Council of Censors of the State of Vermont* (1991), and author of *Confronting Statehood: A Bicentennial Series of Short Essays* (1992).

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**P. Jeffrey Potash** is professor of history at Trinity College in Burlington, Vermont. He is the author of *Vermont's Burned-over District: Patterns of Community Development and Religious Activity, 1761-1850*, published in 1991, and "Deficiencies in Our Past," which appeared in *Vermont History* in 1991. He is currently at work as co-author of a history of Vermont.

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**D. Gregory Sanford** (Introduction, abstracts of articles) is Vermont State Archivist. He has edited several volumes of Vermont State Papers including, most recently with Paul Gillies, the *Records of the Vermont Council of Censors of the State of Vermont* (1991). He organized and commissioned the essays that appear in this volume as a project for the 1991 Vermont statehood bicentennial celebration.



# Foreword

By JIM MILNE, SECRETARY OF STATE

IT HAS BEEN MY PRIVILEGE to serve as a municipal clerk and as secretary of state. Both positions require preserving and making accessible government records of continuing value. These records are primarily used as evidence of specific transactions, whether someone is documenting a chain of title to a piece of property, tracing family history through vital records, reviewing the decisions of a public body, or confirming the language and intent of a law.

In their aggregate, government records provide invaluable insights into our evolution as a society and government. These records capture each generation's responses to public health, crime and punishment, education, economic development, the environment, and, of course, taxation.

Unfortunately government records are underutilized, particularly in developing an understanding of the continuing issues of self-government. That failing leaves us adrift in the present, attempting to develop public policy without historical context.

I am, of course, not the first secretary of state to be concerned with linking government records to understanding issues. William Slade, secretary of state from 1815 to 1823, began the practice of publishing government archives in 1823. In his introduction to the 1823 volume of Vermont State Papers Slade articulated the role of public records in preserving our form of government. Slade argued that Vermonters had an obligation to understand their system of government, an understanding that could be achieved through study of the "practical operation of principles" over time. In Slade's words:

[Government] institutions, therefore, — their origin, their nature, their practical operation, and their whole history, should be studied and understood. . . . Every government . . . should possess, and should place within the reach of the people, a complete history of its own legislation. Without possession of such a history, and a practical regard to the lessons it inculcates, legislation will be, at best, but a succession of *experiments*, and, as a necessary consequence, every operation of government will be characterised with instability and want of wisdom.

Slade's comments ring as true today as they did 124 years ago. How

can we intelligently debate and address issues such as educational funding, the property tax, campaign finance, or any other “current” issue without some understanding of its origin and evolution? How many Vermonters are aware that property tax was the chief source of state government revenue from 1781 to 1882 or that the state continued to tax local grand lists for special purposes, such as education, until 1931? Indeed, how many of us have any understanding of why the property tax was used so extensively or how and why other taxes from the “faculty” tax to the income tax to the sales tax emerged, or what the results were? Is it enough to grumble that government always attempts to tax everything? Shouldn’t we begin to understand not only the rationale for various taxes but also the relationships among forms of taxation and Vermont’s changing social and economic realities: the effects of shifts in demographics, for example, or expanding expectations of state and municipal services? How many of us understand the relationships between taxation for revenue and taxation as an instrument for social control? Beyond the pain of the pocketbook, how much thought do we give to why government is involved in services such as education or what our underlying expectations are about the goals and products of those services?

The secretary of state’s office has traditionally had a role both in capturing records that document government’s response to continuing issues and in putting that documentation within the reach of the public. As early as 1779 the General Assembly instructed the secretary concerning what records to preserve and to “grant copies thereof . . . when requested.” We continue to grapple with what records best achieve government accountability and how to make copies available.

Secretaries of state also have traditionally played a role in making government actions and records accessible, from preparing session laws for publication to producing the *Legislative Directory and State Manual* to providing publications on the election laws and results and other functions related to the office. Slade’s initial effort to publish historic government records became formalized in the early 1900s, resulting in the on-going *State Papers of Vermont* series. More recently, the secretary of state’s office has begun placing collection descriptions and other material on our home page, <http://www.sec.state.vt.us>.

The following essays, based on the State Archives’ statehood bicentennial project in 1991, offer Vermonters an opportunity to trace the evolution of selected issues and to understand the types of information that can be gleaned from the Archives. We hope you enjoy the essays and that they encourage you to visit the secretary of state’s office for your own explorations of the continuing issues of government.





# Introduction

By D. GREGORY SANFORD, STATE ARCHIVIST

IN 1794 CURTIS KELSEY, a farmer in Fair Haven, petitioned the General Assembly complaining that he was "obliged to Swet & toil all Summer" to pay his property tax. What was particularly galling was that his taxes educated the children of propertyless millworkers who did not have to pay a property tax.<sup>1</sup>

That same year, in neighboring Castleton, citizens petitioned the General Assembly complaining that when local millowners drew down water to run their mills in the summer it left "a noisome putrid stench which pregnates, the AIR to such a degree, as to convey sickness and death to the Inhabitants at several miles distance." The millowners filed their own petition claiming their mills were "Extensively advantageous useful & necessary to the public" and that opposition came primarily from "a Litigious Neighbor against the patriotic [*sic*] proprietors of Said works, with a view to force them to cut down their dam, or to teize Tantalize and wear them out."<sup>2</sup>

In his 1947 inaugural address, Governor Ernest Gibson, Jr. laid out an extensive program to the General Assembly that became known as Vermont's "little New Deal." Governor Gibson, noting that nearly half of Vermont's males failed their draft physicals during World War II, called for health care reform, including mobile health units to provide annual check-ups for school children. He linked environmental clean-up, most notably of Vermont's rivers, with health, tourism, and industrial development. He called for welfare reform and the consolidation of social services. To enhance the educational system he pushed for a teacher retirement fund, higher teacher salaries, and equalization of school spending. To combat crime he promoted the creation of a state police force. To fund all these initiatives he supported making Vermont's sixteen year old income tax progressive and linking it to the federal income tax.

The above anecdotes underscore the persistence of certain core issues associated with self-government. Vermonters have always debated public health, environmental and economic issues, crime and punishment, education, and taxation. The State Archives, as the repository of government records with continuing value, provides unique insights into how

each generation has addressed these issues within the context of its particular social and economic realities and expectations.

Government officials, reporters, and lawyers routinely use the Archives in tracing specific actions or commitments of the government. The broader research community, however, does not always think of the Archives as a resource. In an effort to redress this underutilization, the Archives used the statehood bicentennial of 1991 as a vehicle for exploring the continuing issues of government. The goal was to encourage research in the Archives by highlighting the evolution of selected issues and suggesting the insights that could be gleaned from government records.

To reach as broad an audience as possible we decided to hold events in the fourteen municipalities, besides Montpelier, that had hosted Vermont state government. (Prior to 1808 the government met alternately on the east and west sides of the Green Mountains to balance the regional interests.) At each program a speaker was invited to give a twenty-five minute conceptual overview of how a particular issue evolved. The audience was then reconstituted as a "citizen legislature" and charged with debating some manifestation of the issue that was currently before the General Assembly. The audience attending the session on education, for example, debated a proposal before the 1991 legislature to amend the Vermont Constitution to require that education be equitable.

To select which continuing issues to debate, the Archives received a \$500 planning grant from the Vermont Council on the Humanities. The funds were used to bring together individuals who had examined aspects of the Vermont experience. The planning group included Eric Davis of Middlebury College, Paul Gillies of the Secretary of State's Office, Samuel Hand and Constance McGovern of the University of Vermont, Kristin Petersen-Ishaq of the Center for Research on Vermont, Jeffrey Potash of Trinity College in Burlington, Randy Roth of Ohio State University, Michael Sherman of the Vermont Historical Society, and Carolyn Meub of the Statehood Bicentennial Commission (affiliations are those at the time of the planning meeting).

The planning group narrowed the list of issues to crime and punishment, education, the electoral process, local control versus centralization, private property and public uses, public health, representation, the right to know, and taxation. Speakers were selected and topics matched to the different sites (in some cases a topic was presented at more than one site). Local arrangement liaisons were made through municipal clerks, local bicentennial committees and historical societies, and other community organizations.

The speakers were Eric Davis (representation), James Douglas (elections), Paul Gillies (taxation), Samuel Hand (local control), Jeffrey

Potash (education), Barbara Ripley (private property; joined in her second presentation by Paul Gillies), Randy Roth (crime and punishment), Peter Teachout (the right to know), and Dr. Lester Wallman (public health). James Douglas and Paul Gillies served as moderators.

The Statehood Bicentennial Commission provided funding to the Vermont Historical Society for publication of the essays. The press of business pushed the publication back, though over the years the essays provided by each speaker were continually used by legislators, reporters, and other researchers. Finally, in 1995 the State Archives and the Vermont Historical Society began work on the essays with the goal of publishing a special issue of *Vermont History* devoted to the issues explored during the bicentennial.

Space constraints prohibited the publication of each essay in its entirety, so difficult decisions had to be made about which topics to include. The decision was to publish the essays on taxation, crime and punishment, and education, and to include abstracts of the remaining presentations. Complete texts of the abstracted essays are available at the State Archives.

As this issue goes to press, the 1997 General Assembly is being convened. Once again issues such as education and the property tax figure prominently on the legislative agenda. We, the Archives and the Vermont Historical Society, are excited by this joint publication and hope the following essays will provide greater understanding of the evolution and historical context of the issues of government.

#### NOTES

<sup>1</sup> Petition of Curtis Kelsey, in Allen Soule, ed., *General Petitions, 1793-1796*, State Papers of Vermont, 10 (Montpelier; Secretary of State, 1958), 142.

<sup>2</sup> *Ibid.*, 172-176.



# “Blood Calls for Vengeance!” The History of Capital Punishment in Vermont

*Vermonters had greater misgivings  
about capital punishment than their  
laws and public pronouncements  
implied.*

By RANDOLPH ROTH

**B**efore 1987, Vermont reserved the right to punish certain crimes with death, but Vermonters seldom exercised that right. From 1777 to 1987, only fifty-five people were sentenced to death in Vermont, and only twenty-seven of those were executed. Although there were brief periods when Vermonters invoked the death penalty with something approaching enthusiasm, during most of their history they refused to sentence capital felons to death, and state officials commuted or overturned nearly half of the death sentences handed down.<sup>1</sup> Clearly, Vermonters had greater misgivings about capital punishment than their laws and public pronouncements implied.

At first, Vermonters did not seem to have such misgivings. In Vermont's early years, when the fledgling republic's government was weak and disorganized and when violence was a fact of life, Vermonters twice used arbitrary, *ad hoc* procedures to condemn capital suspects. In 1778 Vermont rebels captured David Redding, a Tory from New York, who had fought with the British at Saratoga and had stolen horses for Burgoyne's army. A court created by the authority of the Republic of Vermont sentenced Redding to hang for "enemical conduct" against the United States. Redding won a new trial when Governor Thomas Chittenden and the Vermont Council learned that the English common law required a jury of twelve in capital cases (Redding's jury had had only six members) and that Redding had not been properly extradited from New York, where he had committed his capital offenses. Governor Chittenden remedied

these problems by gathering a full jury and by appointing the prosecutor, Ethan Allen, a United States attorney with broad jurisdiction. After a brief trial, the new jury found Redding guilty. He was sentenced to death, and two days later he was hanged before a large crowd, which included the governor and the members of the General Assembly, who viewed the proceeding as confirmation of their newly-won authority. As historian Michael Bellesiles observes, no one attending the hanging seemed to mind "that Redding had committed no crime in Vermont other than escaping from its officers, that Vermont was not then part of the United States, and that Vermont had no authority to appoint attorneys to act in the interests of the United States."<sup>2</sup>

Vermont's second execution, which probably occurred in 1779 or 1780, was also the product of an improvised judicial proceeding. Surviving accounts of the execution pose problems, because they were handed down by oral tradition and conflict on particulars, and because they recount events in the Abenaki community from the perspective of Yankee observers who viewed the Abenaki as savages.<sup>3</sup> According to these Yankee accounts, Toomalek was a member of a small band that lived in and around the intervals of the Connecticut River near Newbury. A short, powerfully built man, he was in love with a young woman, Lewâ, who had married his rival, Mitchell. Toomalek decided to murder Mitchell, and one evening he surprised the couple as they sat by a fire at the foot of a hill near the upper end of the Ox Bow in Newbury. He fired at Mitchell, wounding him seriously but not fatally. A second charge struck Lewâ in the breast. She died of her wounds that night.

An Abenaki council tried Toomalek for murder. It acquitted him, however, because he had killed Lewâ accidentally and had only wounded Mitchell. Mitchell soon remarried, but matters did not end there. One day Toomalek, in company with a white man named Ebenezer Olmsted, took a bottle of rum and went to visit Mitchell. Mitchell drank with them and then had words with Toomalek, who taunted Mitchell into striking the first blow. Mitchell drew his knife and made a feeble pass at Toomalek. Toomalek then stabbed Mitchell through the heart.

An Abenaki council again acquitted Toomalek, this time because Mitchell had struck the first blow. But Toomalek soon killed again. He cut the throat of a young man called Pi'al who in Toomalek's opinion had insulted a young woman. The next morning, an Abenaki court heard the evidence and sentenced Toomalek to death.

The Abenaki court proceedings may not have been strictly traditional, but they were sanctioned by local authorities of the Republic of Vermont. The trial was conducted under the supervision of an Abenaki acquainted with the English legal system. The verdict was then referred

to the Reverend Clark Powers, the Congregationalist minister of Newbury, to ensure that it was "agreeable to God." Toomalek was executed later that day on the ground floor of the county court house in Newbury, then a county seat. Toomalek arrived "without guard or attendance" and seated himself before the father of Pi'al, who as the nearest blood relative of the victim was required by Abenaki law to carry out the sentence. Toomalek said his Catholic prayers, covered his eyes, and shouted "Mack bence!" ("Kill me quick!"), which Pi'al's father did by firing a musket ball into Toomalek's head. Toomalek's parents, who were in attendance, claimed the body for burial.

The Republic of Vermont soon put an end to *ad hoc* capital proceedings. It refused henceforth to recognize Abenaki sovereignty, and it passed laws to regulate capital punishment. In 1779 the assembly voted to punish a wide range of crimes with death: murder, treason, rape, blasphemy, sodomy, bestiality, counterfeiting, burglary and robbery (on the third offense), perjury (if its purpose was "to take away a man's life"), arson (if it "be to the prejudice or hazard of any person's life"), the maiming of a person's eyes, tongue, or "privy members," and the concealment of the birth and death of an illegitimate newborn.<sup>4</sup> The condemned could appeal capital verdicts to the state supreme court or could ask the assembly to commute their sentences by majority vote. Otherwise they would be hanged in public in the counties where they had committed their crimes.

These drastic punishments stood atop a system of punishments that had been inherited from colonial times and were designed to force conformity to the laws of God. Few early Vermonters believed that felons could be rehabilitated. Criminals could be forced to obey the law only by surveillance, humiliation, pain, and the threat of more severe punishment. Most Vermont felons, if not sentenced to die, were stripped to the waist in public and brutally flogged. Others might be branded on the hand or forehead with a hot iron shaped in the form of a letter denoting their crime ("C" for counterfeiting, "HT" for horse thief), or mutilated, usually by having the lower part of an ear severed with a knife.<sup>5</sup> The state thus marked convicted felons for life. They could not escape the shame of their scars or the fear those scars aroused.<sup>6</sup>

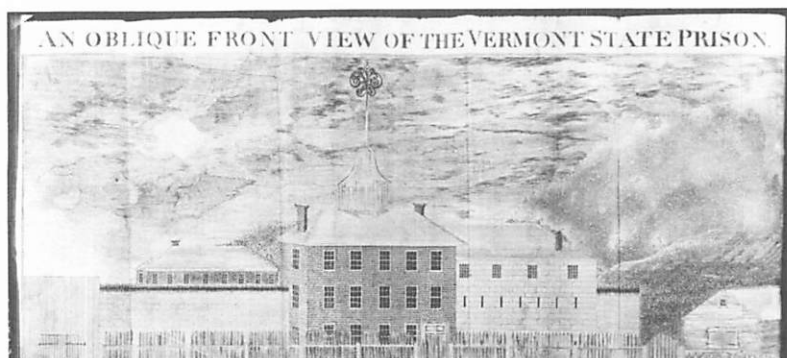
Only when these punishments were deemed inadequate did Vermonters turn to capital punishment. Capital felons were "sores" on the body politic that could not be healed; they had to be cut out. They were removed in public executions that displayed the wrath of the state and the importance of obedience and contrition. The condemned were usually escorted at noon from the county jail to the gallows, which were erected on high ground so that spectators could get a good look at the proceed-

ings. Crowds of six to ten thousand people, including men, women, and children, were not uncommon. From the gallows a minister would preach the dangers of impiety and admonish listeners to reform before it was too late. The condemned were then asked to confess their crimes and to beg God's forgiveness. If they did so (and most did), they showed the crowd that their executions were justified, but that they might yet be saved—spiritually, at least. Vermonters considered such deaths “good.”<sup>7</sup>

Capital punishment, however, served practical purposes as well. Vermont's government was weak. The republic had few law enforcement officers, and their investigative techniques were poor. The assembly concluded that it could deter serious crime only by threatening potential felons with the death penalty. Furthermore, the Republic of Vermont, like the original thirteen states, had no prison. It had only county jails, which were small and not very secure. They held mostly debtors who had the “freedom of the prison yard”—they could take jobs around town during the day to provide for their families and work off debts but had to return to the jail at night. County jails occasionally held capital convicts for terms of a year or more, and they regularly held capital suspects who could not post bond or were denied bail.<sup>8</sup> But Vermont had only a limited capacity to protect society from dangerous criminals. Capital punishment seemed the only solution.

Vermont, however, had few executions in the years following the deaths of Redding and Toomalek. Unlike New Hampshire, which in 1796 executed Thomas Powers, a mulatto laborer, for the rape of a white woman, and unlike Massachusetts, which executed robbers well into the nineteenth century, Vermont declined to execute felons who did not kill. Juries instead called for brandings, whippings, and maimings. The legislature gradually decreased the number of capital crimes and in 1808 founded the Vermont State Prison, which finally gave courts the option of sentencing serious felons to lengthy terms. The prison removed feared criminals from the body politic without killing them and fostered the hope that they could be reformed by hard work, strict discipline, and instruction.<sup>9</sup>

Another reason there were so few executions in Vermont is that there were not many murders in this period. It is not clear why. Perhaps it was only that life regained a semblance of normalcy after the Revolution ended. Perhaps it had to do with the egalitarianism and vigilance of Vermont communities. A number of illegitimate infants were suffocated and there were a few impulsive killings by deranged citizens like Frederick Burnham of Woodstock, who slashed the throat of his three-year old grandson at the dinner table and vowed to kill “all his posterity.”<sup>10</sup> Only one Vermont murderer was condemned to death between 1781 and the War of 1812—Cyrus Dean. Dean was a crewman on the *Black Snake*, a vessel



*"An Oblique Front View of the Vermont State Prison." Frontispiece from John Russell Jr., An Authentic History of the Vermont State Prison (Windsor, 1812). Attributed to Isaac Eddy.*

that smuggled goods to and from Canada during the Jeffersonian embargo. In 1808, Dean and his compatriots opened fire on a revenue cutter that had hailed them on Lake Champlain and followed them up the Onion River. The smugglers killed three of the cutter's crew, all Vermont militiamen. Most Vermonters may have opposed the embargo, but few sympathized with smugglers who attacked Vermont's soldiers. The leaders of Vermont's Republican Party were particularly incensed, because they believed the smugglers were part of a Federalist Party plot to destroy democratic government and betray the nation into the hands of the British. According to the *World*, a Republican newspaper in Bennington, "*Treason stalks in open day light . . . Blood calls for vengeance!*" Eyewitness accounts of the *Black Snake* affair conflicted, so Dean's fellow smugglers could be convicted only of manslaughter or lesser charges. Dean, however, was found guilty of murder and executed as a warning to those who would harm government officials.<sup>11</sup>

From 1812 to 1861 the number of capital convictions rose, but executions remained rare. Vermont sentenced thirteen convicted murderers to die, but hanged only three. Samuel Godfrey and Luther Virginia, like Dean and Redding, were executed because they had defied the government of Vermont. Godfrey, a convicted thief, fatally stabbed the warden of the Vermont State Prison in 1814 in a dispute over the warden's decision to discipline Godfrey for his alleged involvement in a labor slowdown by the inmates. Luther Virginia, also a convicted thief, served three years in the Vermont State Prison after his employer, a tavern keeper in Highgate, successfully prosecuted him for taking money from the cash



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drawer. Soon after Virginia's release from prison in 1819, he returned to his former employer's tavern, spoiling for a fight. He argued with his employer and then robbed and murdered a customer. Godfrey and Virginia admitted responsibility for their crimes and remained stoic to the end.<sup>12</sup>

Condemned felons who refused to make good deaths threw the system of capital punishment into a state of confusion. James Anthony, a hard working tailor who in 1814 murdered a friend from a prominent Rutland family in a dispute over a bet, committed suicide in his jail cell shortly after he was sentenced to die. Rebecca Peake, who in 1835 poisoned her husband and two of her stepchildren to protest her husband's decision to convey his property primarily to his children by his first wife, also killed herself while awaiting execution.<sup>13</sup> Some Vermonters considered their deaths just punishment for their crimes. But others viewed their despair as a sign of remorse that might have led to their rehabilitation had their lives not been cut short by the threat of capital punishment.

An apparent miscarriage of justice in the murder trial of Stephen and Jesse Boorn also fostered opposition to capital punishment. The Boorns, ne'er-do-well brothers, were condemned in 1819 for the murder in Manchester of their mentally deranged brother-in-law, Russell Colvin. Colvin's body had not been found, but the prosecution claimed that the Boorns killed Colvin out of jealousy. Colvin, along with his wife and children, had been supported by the Boorns' parents and had stood to inherit the bulk of the parents' property. Public sentiment ran against the brothers in part because their sister, Colvin's wife Sally, became pregnant by another man soon after her husband's disappearance. That led the jury to suspect that she had colluded with her brothers to get rid of her husband. The Boorns, fearing conviction and perhaps hoping for leniency, confessed. They soon recanted their testimony and professed their innocence. But the Boorns were convicted at the next term of the county court and sentenced to hang. They were spared at the last moment when Colvin (or a convincing impersonator of Colvin) miraculously reappeared. The defense claimed he had simply wandered off in a fit of amnesia some seven years before. Some Vermonters concluded from this case that the legal system was too flawed to hand down death sentences.<sup>14</sup>

The case that did the most, however, to turn Vermonters (especially Vermont elites) against capital punishment was that of Norman Cleveland, a prominent physician and civil magistrate from Irasburg. In 1829, Cleveland accidentally killed Hannah Rose, a poor young mother of several children, during a botched abortion. At the trial the victim's mother, Lucy Frazier, testified that Cleveland, whose wife was infertile, had asked Rose, whose husband had abandoned her and her children, to serve as

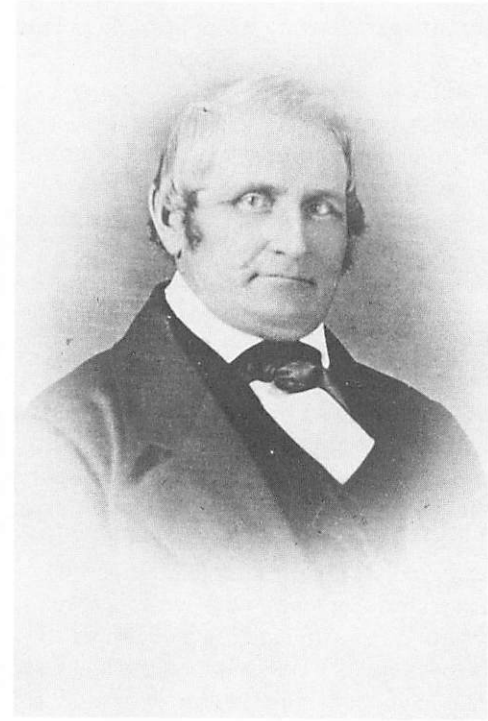
a surrogate mother for his child. Rose refused. But Cleveland persisted, offering to support not only his child but Rose's entire family. Rose threw him out of her house and threatened to leave town if he did not leave her alone. But she could not support her children and her mother on her own, and in the end, she agreed to bear his child.<sup>15</sup>

Rose was soon pregnant. But Cleveland had second thoughts. According to Lucy Frazier's testimony, he declared himself "ruined" and swore that he and Rose would be sent to prison for adultery "unless an abortion was procured." Rose "did not object to his using medicine to accomplish his purpose," but Cleveland insisted on surgery. The first attempt failed. Cleveland returned to Rose's house a week later to try again. Rose "began to cry" and "groaned and begged him to leave her alone," but Cleveland was adamant. They went upstairs, where Cleveland performed the fatal procedure. Cleveland asked Rose's mother to give out that Hannah had died of "puking," but she refused.

At his trial, Cleveland denied every charge, including adultery. But the testimony was damning, particularly his admission to a friend that "if he had not been the means of her situation he could have operated safely." Judge Hutchinson instructed the jury that the law was clear: if Cleveland had operated "with a deliberate intent to destroy the child" and "with such an instrument and in such a manner as was attended with danger to the woman," he was guilty of premeditated murder. The jury found Cleveland guilty and the court sentenced him to die.

Cleveland's powerful friends in Orleans County and around the state fought back. They vilified Hannah Rose and portrayed Norman Cleveland as a victim of prejudice. Their petition campaign, which won wide support, especially in Orange and Windsor counties, persuaded the Vermont General Assembly to commute Cleveland's sentence to five years in prison.<sup>16</sup> The vote was 120 to 72. Several newspapers complained that Cleveland had gotten away with murder. But many judges, lawyers, politicians, and citizens concluded, in light of this and the Boorn case, that death sentences indicated little more than that the condemned were unpopular with their neighbors.

Persuaded by that argument and encouraged by recent campaigns against the death penalty in Maine, Massachusetts, New Jersey, Ohio, New York, Pennsylvania, and Great Britain, Governor Silas Jenison asked the Vermont legislature in October, 1838 to abolish capital punishment. Alluding to the recent cases in which public opinion had come forward "to arrest the arm of the law, and . . . to demand a commutation or mitigation of punishment," Jenison argued that a majority of the state's citizens favored abolition. But he rested his case primarily on his convic-



*Silas M. Jenison, Governor of Vermont 1835-1841. Jenison's address to the legislature in 1838 called for abolition of the death penalty and opened an era of reform of the Vermont penal system.*

tion that imprisonment and rehabilitation could better deter crime than capital punishment.

All experience shows that crime has not increased, but diminished, as the criminal laws of a country have become less barbarous and vindictive. Retaliatory punishments have in a measure ceased, and the only sound and substantial reasons for the infliction of punishment are based upon the reformation of the criminal and the security of the public. That is evidently the policy of our laws in all cases except in the infliction of the punishment of death.

Jenison was the first governor to have come of age politically since the War of 1812, an era of idealism, optimism, and reform. His generation had no memory of the dark days of the Revolution or of the uncertainty that followed. Vermont had established its sovereignty and its institutions were secure. The state no longer needed to make an example of the Reddings, Toomaleks, Deanes, Godfreys, and Virginias, now that social peace and moral progress were assured.<sup>17</sup>

If abolition proved impossible given the "strong feelings and prejudices" that existed on the subject, Governor Jenison asked that the leg-

islature at least end public executions, which in his opinion had a “demoralizing” effect on the public. He preferred private executions “within the walls” of the state prison.<sup>18</sup>

Jenison’s address marked a turning point in the history of capital punishment in Vermont. The House passed an abolition bill by a vote of 126 to 68 only nine days after his address. The Senate defeated the bill, 17 to 11, and would defeat every abolition bill down to the Civil War, because a majority of state senators insisted that capital sanctions deterred would-be murderers and traitors. But Vermont came within three votes of being the first state to abolish capital punishment.<sup>19</sup> More important, the House and Senate found a compromise by the next legislative session that ended capital punishment in fact, if not in law.

That compromise came too late to help Archibald Bates of Shaftsbury, who committed a murder the week that Governor Jenison delivered his address. Bates, jealous of the attention his parents paid his sister-in-law and angry at their decision to leave their farm to her and his brother, shot her in the back through a window as she nursed her newborn child. Bates was convicted just after the legislature adjourned and therefore never had an opportunity to petition for commutation. He was executed promptly.<sup>20</sup> But for the next twenty-five years, as long as Governor Jenison’s reform-minded generation held power, majorities in the House and Senate passed every commutation bill that came before them on the grounds that each condemned murderer was either insane or guilty of at most manslaughter. The legislature thus found a practical, politically expedient alternative to both abolition and capital punishment by handing down life sentences in the five cases of homicide in which local jurors, grand jurors, and states’ attorneys sought the death penalty. Vermont did not join Michigan (1846), Rhode Island (1852), or Wisconsin (1853) in abolishing capital punishment altogether, but it did follow the example they set until the last year of the Civil War.<sup>21</sup>

Vermont resurrected capital punishment on January 20, 1864, when it hanged Samuel Kavanaugh and William Barnet in front of a select group of witnesses at the Vermont State Prison. Kavanaugh, an Irish laborer who lived in a basement apartment on the waterfront in Burlington, had stabbed his wife during a drunken quarrel. Barnet, an immigrant from England who lived in a small cottage in Burlington and emptied privies for a living, had also killed his wife. According to neighbors, each man had a history of alcoholism and spouse abuse. Both men denied responsibility for their crimes. Kavanaugh claimed that his wife had not been stabbed—that she had fallen accidentally and gashed her head on a stove. Barnet protested that his wife had cut her throat with a butcher knife.<sup>22</sup>

Kavanaugh’s and Barnet’s crimes angered Vermonters. But wife mur-

derers were not the only targets of the public's wrath. Sympathy for murderers of all types declined between 1864 and 1882. In those years Vermont sentenced eighteen murderers to death. One committed suicide in prison and five won new trials or commutations. The remaining twelve were executed. They comprise nearly half of all people ever executed in Vermont.

Why the surge in executions? The simplest explanation may be the best: murders were suddenly more common and heinous. The homicide rate in Vermont and New Hampshire was still the lowest in the nation: 1.6 per 100,000 persons per year from 1848 to 1865. But it had more than doubled since the 1820s. The marital homicide rate had increased four-fold in the 1830s and 1840s, and the nondomestic homicide rate for teens and adults had increased three-fold in the 1850s and early 1860s.<sup>23</sup>

Worse perhaps than the increase in murders was the character of these murders. The marital homicides that had occurred before the 1830s had not been willful. Each stemmed from mental illness or from an unlucky blow in a domestic fight, and husbands and wives killed each other in equal numbers. By mid-century, however, most marital homicides were willful. Possessive, alcoholic, and chronically abusive husbands like Kavanaugh and Barnet used clubs, guns, knives, hatchets, or poison to kill their wives. Vermont jurors and legislators had little sympathy for such wife murderers and handed down death sentences freely in the 1860s and 1870s.

In contrast with spousal murders, most nondomestic homicides that had occurred before the 1830s took place under unusual circumstances. Many stemmed from spying, smuggling, and undeclared warfare along the Canadian border, or from the violence of prison life. By mid-century, however, nondomestic homicide had entered everyday life. Its usual causes were robbery, property disputes, sexual assaults, and drunken quarrels among friends and acquaintances. The risk of murder was still low, but every Vermonter was now at risk.

Why the incidence and character of murder had changed in northern New England is a difficult question. A rise in economic inequality, a decline in independent ownership of shops or farms, and a nationwide surge in violence (much like the one the United States has experienced over the past thirty-five years) were most likely responsible. But Vermonters did not seek such explanations. They turned to capital punishment as a deterrent and a means of retribution.

Discrimination against the foreign-born may also have been partly responsible for the rise in death sentences and executions. Only one of the eight condemned people of foreign birth won a commutation, as opposed to four of the ten of native birth. The Civil War too may have been

important. It inured the next generation of Vermonters to killing and convinced many people that death was a fit punishment for criminals, be they secessionists or murderers. The more rebels and condemned murderers who died, the more convinced Vermonters were that their deaths were justified.<sup>24</sup>

State authorities helped foster that conviction. Vermont's Civil War governors, Frederick Holbrook and J. Gregory Smith, believed in the death penalty. Having come of age politically in the late 1840s and 1850s, an era of sectional rivalry, ethnic antagonism, declining expectations, and rising homicide rates, they shared a darker view of human nature. They rejected the reform generation's assumption that homicide could only be irrational or accidental; only harsh punishment could deter the wicked.<sup>25</sup>

The legislature concurred. It affirmed Kavanaugh's and Barnet's death warrants in the fall of 1863, and it expanded the death penalty in the wake of the St. Albans raid of October, 1864, in which a band of Confederate horsemen rode down from Canada, robbed a bank, and killed a local businessman with a stray bullet. In November, 1864, the legislature passed "An Act Defining Offenses Against the Government" and "An Act to Prevent Raids," which prescribed the death penalty for anyone who conspired to levy war against the state or who participated in raids that brought harm to persons or property.<sup>26</sup> Furthermore, the state managed executions carefully to diminish sympathy for the condemned. The prison staff constructed and tested gallows scientifically to ensure that executions would be as painless as possible. It also restricted press coverage to reporters who sent the proper message about the relationship between crime and capital punishment.

These practices and public attitudes had a chilling effect on the justice system. Vermonters accepted the justice and efficacy of capital punishment to such a degree that two alleged murderers were executed despite flaws in the cases against them. Evidence suggests, for example, that Henry Gravelin, a prosperous French-Canadian farmer from Weathersfield, was not guilty beyond a reasonable doubt of murdering Herbert White, one of his parttime hands. As Edith Fisher Hunter notes in her history of the case, Gravelin had long been suspect in the eyes of his neighbors, who "wondered how a sixteen-dollar-a-month farmhand could become so prosperous." Gravelin had arrived in Windsor County in 1854 penniless. By 1876, he owned several farms and employed four or five men. He attributed his success to hard work and to his wife, who was devoted to "the promotion of my happiness and the accumulation of wealth." Gravelin's neighbors, however, suspected that he had prospered by robbing and murdering his farm hands. They noted that he had bought large

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farms for cash just after two Canadian hands disappeared and after another hand was found drowned in a well. Neighbors also accused him of burning out a farmer whose land he coveted. Thus, when Herbert White was found murdered on Gravelin's property in 1876, authorities did not look far for suspects, nor did they follow leads that suggested that Charles Shiette, who shortly after the murder divorced his wife and left for parts unknown, committed the crime. The surviving evidence does not prove Gravelin innocent, but it suggests that he was a victim of prejudice and a poorly handled investigation.<sup>27</sup>

Asa Magoon of Orange was likewise a victim of the harsher system of justice. Magoon went to the gallows for the murder in 1875 of Rufus Streeter, a disabled (and dishonorably discharged) Civil War veteran who lived with him. On the day of the murder Streeter and Magoon had attended a horse race in Barre, where they drank heavily. On their way home that night they stopped to visit Hannah Perrin, a hard-drinking widow who had known them for years. The next day Streeter's stabbed and mutilated body was discovered near Perrin's house. Magoon swore that he had left Streeter with Perrin and headed home, although he had been too drunk to remember much more about the evening. Magoon was not a credible witness. He was well known in Washington County for his drinking and quarrelling, and he had once threatened Streeter's life. Few people believed his story—at least until Hannah Perrin confessed on her death bed in 1888 that she had killed Rufus Streeter.<sup>28</sup>

Perrin's confession might have been false. But it underscores the fact that the state had only circumstantial and weak physical evidence against Magoon. Like Henry Gravelin, he was convicted largely because of his reputation. Their cases were not typical, however. Most people executed between 1864 and 1882 were guilty beyond a reasonable doubt, and most made good deaths, confessing their crimes and acknowledging the justice of their punishment. But the Magoon and Gravelin cases indicate that state officials may not have conducted homicide cases quite so carefully in this era, once they acquired a taste for capital punishment, and that they were not very sympathetic to social outcasts who refused to confess their crimes and repent.

The era of executions passed as quickly as it began. In the rest of the nation, and particularly in the southern and border states, legal and extra-legal executions jumped dramatically in the 1890s and early 1900s as a result of economic tensions and racial strife. But in Vermont, where the populace weathered the depression of the 1880s and 1890s well, hangings all but stopped once the Civil War generation passed from power. The murder rate did not fall substantially, but Vermonters grew accustomed to a higher level of violence and lost faith in capital punishment

as a deterrent. Between 1882 and 1905 Vermont's courts sentenced only seven people to die, and only Sylvester Bell, who murdered his wife brutally in 1889, was hanged.<sup>29</sup>

From 1905 to 1965, a different pattern emerged. Most Vermonters had qualms about the death penalty. Only fourteen people were sentenced to death during these years, and only one in the 1930s, the decade in which the number of legal executions in the United States peaked.<sup>30</sup> Vermont has executed eight people in the twentieth century, but it is not clear why. Their crimes were not unusual. Craig Meurlin and William Rugg believe that Vermonters may have executed prisoners like Mary Rogers, who murdered her husband, and Elroy Kent, who murdered a deaf woman, primarily because they were less intelligent than most Vermonters. Meurlin and Rugg's theory is that these felons may have been executed because they failed to engage the sympathies of jurors or state officials. They appeared cold-blooded, sullen, and unrepentant, perhaps because they did not understand the consequences of their crimes or the public's response to their demeanor. Clinton Krauss, who is studying Mary Rogers's case, believes that Rogers went to her death for other reasons: a confused defensive strategy, a restrictive appeals process, a sensational press. Most important, Rogers alienated the public by protesting her innocence in the face of overwhelming evidence and by conceiving a child in prison with a convicted rapist as she awaited the outcome of her appeals. Kent, a career criminal who had served several terms in the state institution in Waterbury, likewise failed to attract public support. He seemed beyond redemption and rehabilitation.<sup>31</sup>

Vermont all but abolished capital punishment in 1965. By then the economic boom that followed World War II had helped drop the state's homicide rate to its lowest level since the late-eighteenth and early-nineteenth century, less than one person per 100,000 persons per year from 1960 to 1965.<sup>32</sup> The legislature decreed that the penalty for first-degree murder would henceforth be life in prison, except in cases where the accused had been found guilty of a previous, unrelated first-degree murder or where the victim was a warden, superintendent, prison employee, or law enforcement officer "in performance of the duties of his office." In those cases, the jury could at its own discretion hand down a sentence of life in prison or death. The state also retained the death penalty for treason in time of war.<sup>33</sup>

Between 1965 and 1987, several law enforcement officers were killed in the line of duty, but none of their assailants was sentenced to die.<sup>34</sup> Vermont jurors were no longer willing to hand down death sentences. The Vermont legislature recognized that fact formally in 1987, when it abolished capital punishment altogether.<sup>35</sup> Of course, executions could



return to Vermont, if the callousness and prejudice of the 1860s and 1870s returns, or if the state comes to believe once again that the disobedience of its most disaffected citizens threatens social order, or if Vermont jurors and judges succumb to feelings of outrage and exasperation in the face of some particularly heinous crime. Vermont's murder rate, while still among the lowest in the nation, has hovered since the late 1970s between 2 and 4 per 100,000 persons per year, its highest level since the 1770s and 1780s<sup>36</sup>; and proposals to revive capital punishment appear before the State Assembly nearly every year. For the time being, however, Vermont's misgivings about the death penalty remain strong.

## NOTES

<sup>1</sup> On the incidence of capital convictions and executions in Vermont, see Craig Meurlin and William Rugg, *Capital Punishment in Vermont* (Honors Thesis, University of Vermont, 1974); Department of Corrections, Research and Planning Division, State of Vermont, "First Degree Murder Convictions in Vermont, 1800-1985" (typescript, Vermont State Library, 1986); and Grant Powers, *Historical Sketches of the Discovery, Settlement, and Progress of Events in the Coos Country and Vicinity . . . 1754-1785* (Haverhill, N. H.: J. F. C. Hayes, 1841), 177-84. The figures presented here are tentative. Many important court records have been lost or destroyed. For instance, three volumes of Vermont Supreme Court records have been missing from the courthouse in Rutland County for some time. They cover the years from 1783 to 1791, and from 1799 to 1804. The first two missing volumes record capital cases throughout the state. The third volume records capital cases in Rutland County.

<sup>2</sup> Michael A. Bellesiles, "The Establishment of Legal Structures on the Frontier: The Case of Revolutionary Vermont," *Journal of American History*, 73 (1987), 895-7; John Spargo, *The Story of David Redding, Who Was Hanged* (Bennington: Bennington Historical Museum and Art Gallery, 1945); William Slade, *Vermont State Papers* (Middlebury: J. W. Copeland, 1823), 239-40, 269; E. P. Walton, comp., *Records of the Council of Safety and Governor and Council of the State of Vermont* (8 vols., Montpelier: J. and J. M. Poland, 1873-1880), 1: 120, 261, 263-4; Walter H. Crockett, comp., *Journals and Proceedings of the General Assembly of the State of Vermont* (4 vols., Bellows Falls: Secretary of State of Vermont, 1924), 3, pt. 1: 22-23; Abby Hemenway, ed., *Vermont Historical Gazetteer* (5 vols., Burlington: A. M. Hemenway, 1865-1891), 1: 161-2; and Isaac Jennings, *Memorials of a Century: Embracing a Record of Individuals and Events, Chiefly in the Early History of Bennington, Vt., and Its First Church* (Boston: Gould and Lincoln, 1869), 222. On the difficulty of establishing the sovereignty of Vermont's government, see Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia: Univ. of Pennsylvania Press, 1983), 103-45.

<sup>3</sup> Accounts of the life and death of Toomalek appear in Powers, *Coos Country*, 175-84; Zadock Thompson, *History of Vermont, Natural, Civil, and Statistical* (Burlington: Chauncey Goodrich, 1842), 206; and Frederick Wells Palmer, *History of Newbury, Vermont* (St. Johnsbury: Caledonian Press, 1902), 61-63, 88. The accounts are typical of Yankee narratives of Abenaki homicides, which invariably depict Abenaki murderers as drunken, jealous, or vengeful. See, for example, James O. Lyford, ed., *History of Concord* (2 vols., Concord: Rumford Press, 1903), 1: 79-81, 88-89.

<sup>4</sup> Alan Soule, ed., *Laws of Vermont, 1777-1780* (Montpelier: Secretary of State of Vermont, 1964), 40-3, 125-9, 141, 154, 190-1. Members of the state militia could also be sentenced to death for mutiny, sedition, striking or drawing on a superior officer, desertion or abetting desertion, participation in a duel, abandoning a post or detachment to the enemy, giving a parole or a countersign "to anyone not entitled to receive it," spying, harboring the enemy, or giving money, arms, victuals, or ammunition to the enemy. All capital sentences handed down by military courts were to be reviewed and approved by the Captain General. *Ibid.*, 221-7.

<sup>5</sup> See, for example, the records of the Supreme Court (Windsor County), 1: 43, 105, 128; 2: 204.

<sup>6</sup> Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens: Univ. of Georgia Press, 1983); and David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Little, Brown, 1971). Vermont imposed capital sanctions on fewer crimes than did several other states and Great Britain. Hugo A. Bedau, ed., *The Death Penalty in America: An Anthology* (Chicago: Aldine Publishing Company, rev. ed., 1968), 1-7.

<sup>7</sup> Chapin, *Criminal Justice in Colonial America*; and Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford Univ. Press, 1989).

<sup>8</sup> For example, at the March 1797 term of the Supreme Court in Windsor County, John Johnson of Norwich was sentenced to a year of hard labor at the jail in Manchester for counterfeiting. At the same term, Apollos Finney of Shrewsbury was sentenced to life imprisonment for the same crime. Sentences of more than a year, however, were rare. See the records of the Supreme Court (Windsor County) at the Windsor County Courthouse, 2: 19-20.

<sup>9</sup> See *Revision of the Laws of Vermont, 1787*, 3: 235-7; *Revision of the Laws of Vermont, 1797*, 155; and John Russell, Jr., *An Authentic History of the Vermont State Prison* (Windsor: Preston Merrifield, 1812). The legislature extended the death penalty only twice between 1781 and the Civil War. In 1801, it called for the execution of duelists who caused their opponents' deaths. *Laws of Vermont, 1801*, 21. In 1839, it extended its jurisdiction to include duelists who fought outside Vermont, if their appointments had been made in Vermont and if their opponents later died of their wounds in Vermont. *Revised Statutes of 1839*, Chapter 94, Section 4.

<sup>10</sup> Inquisition at Pomfret upon the body of Oramel S. Burnham, August 18, 1813, Norman Williams Correspondence, Vermont Historical Society.

<sup>11</sup> *The Trial of Cyrus B. Dean, for the Murder of Jonathan Ormsby and Asa Marsh* (Burlington: Samuel Mills, 1808); and *The World* (Bennington), 8 August 1808, and 23 August 1808, supplement.

<sup>12</sup> On Samuel Godfrey, see Godfrey, "A Sketch of the Life of Samuel Godfrey" (Windsor, Vt.: n.p., 1818); *New Hampshire Patriot* (Concord, New Hampshire), 24 February 1818; and John Reynolds, *Recollections of Windsor Prison* (Boston: A. Wright, 1834), 38-48. On Luther Virginia, see *Rutland* (Vermont) *Herald*, 1 February 1820; and Hemenway, *Vermont Historical Gazetteer*, 2: 298.

<sup>13</sup> *Trial of Mrs. Rebecca Peake, Indicted for the Murder of Ephraim Peake* (Montpelier: E. P. Walton and Son, 1836).

<sup>14</sup> *Trial of Stephen and Jesse Bourn, for the Murder of Russell Colvin* (Rutland: Fay and Burt, 1819); Leonard Sargeant, *The Trial, Confessions, and Conviction of Jesse and Stephen Bourn, for the Murder of Russell Colvin* (Manchester: Journal, 1873); John Spargo, *The Return of Russell Colvin* (Bennington: Bennington Historical Museum and Art Gallery, 1945); and Gerald McFarland, *The Counterfeit Man: The True Story of the Boorn-Colvin Murder Case* (New York: Pantheon Books, 1990). McFarland makes a persuasive case for the Boorns' guilt.

<sup>15</sup> See *Woodstock Observer*, 20 April and 11 May 1830; *Burlington Free Press*, 23 April and 29 October 1830; and *Rutland Daily Herald*, 24 October 1830.

<sup>16</sup> See the petitions for Cleveland's relief in the Manuscript Vermont State Papers, volumes 61 and 74. Vermont State Archives, especially "Report of the Committee on Unfinished Business on the petition of Norman Cleveland (statement of facts)," 75: 37.

<sup>17</sup> Jenison's annual message to the Vermont legislature appeared in the *Burlington Free Press*, 19 October 1838. On the national and international movement against capital punishment, see David Brion Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *American Historical Review*, 63 (1957), 23-46; Masur, *Rites of Execution*; and Bedau, *Death Penalty in America*, 7-13.

<sup>18</sup> *Burlington Free Press*, 19 October 1838. Jenison was using the word "demoralizing" in its older sense. He meant that public executions had a pernicious effect on people's morals. The memoirs of Daniel Ransom, who was a child at the time of Samuel Godfrey's hanging, testify to the truth of Jenison's assertion. Ransom recalled "the boisterous hooting and yelling and fast driving of the crowd of people who had been to witness the execution, when they were returning and passing our house" in South Woodstock, "acting more as we might expect the savages to do than civilized people. And I suspect that rum and hard drinking had something to do with it." Daniel Ransom, "Reminiscences of Daniel Ransom," typescript at the Vermont Historical Society, 23.

<sup>19</sup> *Journal of the House of Representatives of the State of Vermont . . . 1838* (Montpelier: E. P. Walton and Sons, 1839), 15, 38, 45, 48-9, 65-6, 87; and *Journal of the Senate of the State of Vermont . . . 1838* (Montpelier: E. P. Walton and Sons, 1839), 20, 29, 78-9.

An amendment to the state constitution in 1836 gave the governor for the first time the right to grant full pardons in cases of treason or murder, but no Vermont governor has ever granted a pardon to a convicted murderer sentenced to death. *The Annotated Vermont Constitution* (1991), 735-6.

<sup>20</sup> *Rutland Herald*, 9 and 16 October and 18 December 1838, and 1 January 1839; and *Burlington Free Press*, 2 February 1839.

<sup>21</sup> Bedau, *Death Penalty in America*, 9-13. New Hampshire followed a similar course. In 1842, a bill to abolish capital punishment failed in the New Hampshire legislature by a narrow margin; and in 1844, in a state referendum, the voters of New Hampshire voted to retain capital punishment by an overwhelming margin: 21,544 to 11,241. But New Hampshire executed only one murderer between 1843 and 1868. Quentin Blaine, "'Shall Surely Be Put to Death': Capital Punishment in New Hampshire, 1623-1985," *New Hampshire Bar Journal* 27 (1986), 134-6.

<sup>22</sup> *Burlington Free Press*, 9–10 January and 26–28 August 1862.

<sup>23</sup> Randolph Roth, "The Indulgence of Passion: Murders of Husbands and Wives in Northern New England, 1790–1865," in Christine Daniels, ed., *Over the Threshold: Intimate Violence in Early America, 1640–1865* (New York: Routledge, forthcoming).

<sup>24</sup> New Hampshire witnessed a similar surge in executions in the late 1860s and 1870s. Of the twenty persons who have been executed in New Hampshire since 1775, seven lost their lives in the years 1868 to 1879. Blaine, "Capital Punishment in New Hampshire," 141–2. The increase in executions eventually produced a backlash against capital punishment, which led to abolition in Maine (1876–1883, 1886– ) and to a decline in executions in New Hampshire and Vermont in the 1880s and 1890s.

<sup>25</sup> The reform generation controlled the governorship from 1835 through 1861, when Erastus Fairbanks, a noted evangelical, abolitionist, temperance advocate, inventor, and entrepreneur, died in office.

<sup>26</sup> *Laws of Vermont . . . 1864*, 43. The legislature had last expanded the death penalty in 1801 and 1839, when it stiffened penalties against duelling. *Laws of Vermont . . . 1801*, 21; and *Revised Statutes of 1839*, Ch. 94, Sec. 4. All other capital punishment legislation passed between 1784 and 1864 had restricted the death penalty and diminished the number of capital crimes.

<sup>27</sup> Edith Fisher Hunter, *A History of Weathersfield for Young People* (Weathersfield, Vt.: The Hunter Press, 1985), 188–92; and *Burlington Free Press*, 13 February 1877.

<sup>28</sup> *Burlington Free Press*, 15, 16, 18, and 21 October 1875; 2 and 10 October 1876; 19 November 1877; and Miscellaneous File 846, Vermont Historical Society.

<sup>29</sup> On national trends, see Bowers, *Legal Homicide*, 49–58.

<sup>30</sup> Bowers, *Legal Homicide*, 49–58. Extralegal executions had declined dramatically in the United States, from 1,540 in the 1890s to 130 in the 1930s. Legal executions remained above 1,000 in each decade, however, and peaked at 1,670 in the 1930s, when the public demanded a crackdown on violent crime. Few Vermonters perceived a local upswing in violent crime during the Depression and Vermonters had never executed robbers, burglars, or rapists, a practice still common in the 1930s in southern states.

<sup>31</sup> Meurlin and Rugg, *Capital Punishment in Vermont*, 40–41; and correspondence to the author from Clinton Krauss, October 26, 1996, concerning Krauss's forthcoming study of Mary Rogers.

<sup>32</sup> See *State of Vermont: Vital Statistics for the years 1960–1965* (Burlington, Vermont: Vermont Department of Public Health).

<sup>33</sup> *Laws of Vermont*, 1965, 28; *House Journal* (1965), 50; *Senate Journal* (1965), 172–3, 176, 214–15, 328; and *Burlington Free Press*, 5, 6, 26, and 31 March 1965.

<sup>34</sup> The murdered officers include: Alexander Fontecha, chief of the Lyndonville Police Department (1965); Dana Thompson, chief of the Manchester Police Department (1972); and Arnold J. Magoon, Game Warden District Chief of the Law Enforcement Division of the Vermont Fish and Wildlife Department (1978).

<sup>35</sup> *Public Acts*, 1987 Session, No. 60, "An Act Relating to Aggravated Murder and the Penalties for First and Second Degree Murder," 124–7. Legislative committee minutes are a potentially fertile, but untouched source on the death penalty debate since 1917. See, for example, House Judiciary Committee Minutes, 7 and 14 March 1957, Vermont State Archives. There is also material on capital punishment in the gubernatorial records at the Archives.

<sup>36</sup> See *State of Vermont: Vital Statistics for the years 1976–1995* (Burlington, Vermont: Vermont Department of Public Health).



# The Evolution of the Vermont State Tax System

*What makes a good tax? The Vermont Constitution teaches that a tax must have a public purpose and its impact in achieving this purpose must be proportional, taxpayer by taxpayer.*

By PAUL GILLIES

That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore, is bound to contribute his proportion towards the expense of the protection, and yield his personal service, when necessary, or an equivalent thereto but no part of any person's property can be justly taken from him, or applied to public uses, without his own consent, or that of the representative body of the freemen, . . . and previous to any law being made to raise a tax, the purpose for which it is to be raised ought to appear evident to the Legislature to be of more service to community than the money would be if not collected.

*Vermont Constitution, Chapter I, Article 9th.<sup>1</sup>*

“**T**o contribute his proportion towards the expense of that protection” is the constitutional standard for all taxation in the State of Vermont. It is an idea that instigates controversies over equity, uniformity, and fairness. It is a weapon for those who feel they have to bear a greater burden than others in like circumstances. It is a measure the legislature uses to determine the contours of tax law—how taxes should be levied and who should pay according to what standard. The requirement that taxes must be applied to “public uses” is another benchmark, distinguishing between those uses that are legitimate expenditures of government and those that are not. That taxes ought to be judged on whether the money would be of “more service to community” if collected than if not collected is a standard that has

had virtually no real impact on taxation in Vermont. It functions as a guide to the legislature, and the judiciary has to date been reluctant to second-guess the legislature on its tax decisions.

Vermonters are characteristically fiscal conservatives. This we are taught from birth, as a part of the litany—"Use it up, wear it out; make it last, or do without." Sometimes this idea is coupled with the reminder that Vermonters are socially liberal, as if the one extreme balances off the other. Our early tax history shows a decidedly conservative bent. This is a state that accepted payment of the local highway tax in the labor of the landowner as late as 1892. This is a state that paid the same wage to the governor from 1777 to 1857 before giving him a raise. Up to the time of the Civil War, the state rarely ventured into anything but the most modest expenditure for public officials' salaries. Vermont's only big expenditures in that period were as follows: to pay off the debt to New York on land titles, a part of the settlement leading to statehood; the building of the state prison at Windsor and the State House (three times) at Montpelier; the repayment of the securities of the failed State Bank; and a misappropriation, called a "defalcation," in the State Treasurer's Office in 1860 of over \$48,000.<sup>2</sup> Even then, there was little need for borrowing, none for bonding, and rarely a deficit.

The Civil War cost Vermonters at the state and local levels a good deal of money—it almost bankrupted some communities.<sup>3</sup> But the state paid off that debt before any other state in the union. Then, as the nineteenth century ended, there were reports that state spending was out of control. This became an issue in the 1906 campaign for governor, when Percival Clement charged that total state expenses had gone up 112 percent in the thirty years ending on June 30, 1901, while the population had grown less than four percent over that time. In this he saw "gross negligence and misconduct in the management of the moneys of the State."<sup>4</sup>

The state became more careful with its public money, and state spending seemed to level off in the first decades of the twentieth century, until it started to rain in November 1927. That flood was the worst fiscal disaster in Vermont's history. Since that time, the reputation for conservative fiscal thinking has sometimes slipped. There have been big spending years, followed by big deficits, and deficits created by federal tax cuts since Vermont coupled its income tax to the federal standard in 1967. Today taxes are high in the Green Mountain State. So are public budgets, and there are signs of tax revolt all around us, from the difficulties in adopting a school budget to the perennial demands for property tax reform.

Why do we tax? Who and what do we tax? How do we tax? These basic questions have been asked and answered continuously in Vermont since at least 1778. Each new deficit or surplus, recession or economic

improvement, each major change in the federal tax code, each newly-identified social problem, prompts a new inquiry into the "system," which some would not dignify with such a name. Certainly, if it can be characterized as a "system," it did not grow up that way. It was erected one stick at a time, added to, torn down and built back up with fresh ideas at least half a dozen times. Each year it continues to define itself. To understand it, we need to take a brief look at what we have and how it came to be. This requires a look at the legislation, reports of commissions that studied the problems of Vermont taxation, and the leading cases.

### THE VARIOUS TAXES

Town charters enumerated the first taxes to be paid by Vermont landowners. The charter of Berlin, for instance, required landowners to pay one ear of corn on December 25 of each decennial anniversary of the charter, "if lawfully demanded, the first Payment to be made on the Twenty-fifth day of December, 1763." Landowners were also expected to pay one shilling annually for each hundred acres they owned, settled on, and possessed.<sup>5</sup> There is no record of any landowner ever paying either part of this tax. Vermonters did not pay taxes to New Hampshire or New York.

Before towns organized, they were run by proprietors, who met and levied taxes on the acreage of the original divisions of the land. These paid for public improvements—surveying, highways, bridges, and clearing a town common. These were the first taxes actually paid in Vermont.

The first state tax was the confiscation and sale of Tory estates by the Court of Confiscation, created by statute in 1778.<sup>6</sup> This policy allowed Vermont the luxury of not taxing loyal inhabitants during the first difficult years of its existence. Ira Allen wrote in his *History of Vermont*, "In consequence of internal divisions, and to make government popular, it was thought good policy not to lay any taxes on the people, but to raise a sufficient revenue out of the property confiscated and the ungranted lands."<sup>7</sup> As State Treasurer Ira Allen reported, the state had collected 190,433 pounds from the sale of Tory estates during those years, amounting to 43 percent of the total amount of money spent to maintain state government from 1777 to 1791.

In 1780, the legislature taxed towns by requiring them to raise provisions for fighting the Revolutionary War, each to collect so many pounds of beef and specified amounts of other food and equipment for the troops.<sup>8</sup> The next year the legislature for the first time formally taxed inhabitants' property. This 1781 land tax of ten shillings on each hundred acres of land was adopted in April when the legislature met at Windsor. Its purpose was to raise money to pay the war debt of the Revolution.<sup>9</sup> This set the standard for taxation for the next sixty years. Land and personal

property would be assessed by statute at set values—so much per acre, so much per animal. Listers would not *appraise*; they would simply list the value of the taxpayer's property. It was a crude income tax, based on the assumption that property created wealth in proportion to its size, and that government could legitimately claim a portion of that wealth. This system ended in 1841, when full appraisal by the listers of all categories of real and personal property became the standard.<sup>10</sup> Beginning in 1779, each male between the ages of sixteen and sixty was also listed for poll taxes, at six pounds a head,<sup>11</sup> and lawyers and merchants assessed amounts proportionate to their businesses through a "faculty" tax.<sup>12</sup>

The property tax was the state's principal source of revenue from 1781 until 1882. It remained an important part of the total state revenues until 1931, when the income tax was first adopted. Even today the property tax remains the principal source of town and town school district revenue and the largest tax, producing more in total revenue than the state's four major taxes put together.

By the time of the Civil War, wealth had changed. Liquid capital—stocks, bonds, bank deposits, and other forms of credit—was hard to tax, because assessment of its worth depended on the willingness of the owner to disclose it. When such property was listed, the value of it was often based on the owner's estimate rather than any objective standard, and the dismal state of town grand lists did not help, with property frequently appraised far lower than true value in order to ensure the town kept its state taxes low. Eventually, the law was written to require banks to disclose money on deposit, mortgages, and bank stock, but stocks, bonds, and notes continued to escape taxation. Governor John Barstow, in 1882, called this the "race of fraud."<sup>13</sup>

In 1882, recognizing the inadequacy of the property tax, the state adopted the corporate franchise tax. This was a direct state tax on railroad, insurance, guarantee, express, telegraph, telephone, steamboat, car, and transportation companies, and banks, savings institutions, and trust companies. The tax varied depending on the business, but was based on a percentage of gross earnings.<sup>14</sup> Some railroads had been taxed as early as 1874, but others enjoyed exemption by corporate charter. The 1882 tax was uniform and universal. In 1885, the state collected over \$200,000 from the corporation tax, and about \$171,000 in state property taxes (a ten cent on the dollar levy on the grand list).<sup>15</sup> The state property tax for 1880 was twenty cents, before the corporation tax was passed.<sup>16</sup> A tax on shares of stock in banks, steamboat and transportation companies, trust companies, "moneyed" and other corporations, except railroad corporations, was also adopted in 1882. It added the value of shares to the

town grand list,<sup>17</sup> and precipitated a “double taxation” controversy that consumed a good deal of legislative time during the next decades.

In 1890, the state imposed a mandatory state tax on the town grand list of five cents on the dollar for the support of public schools. This money was then reallocated to the towns on the basis of the number of legal schools maintained during the previous year. In 1892, the state abolished the system of district schools and created town school districts in their place. Towns were required to appropriate a sum not less than one-fifth nor more than one-half of the grand list for the support of schools.<sup>18</sup>

A town highway tax payable in labor had been a feature of Vermont law since 1778, but in 1892 the system was abolished in favor of a straight tax of twenty cents on the dollar to pay for town highways. That same year the legislature imposed a state five-cent highway tax, to be collected by the state treasurer and then reapportioned to the several towns on the basis of highway mileage. This law required selectmen to file an annual report with the state, giving the mileage of all highways in the town. The state highway money came with strings: it could not be used for bridges; it was for permanent repairs of main thoroughfares; and it could be held over until the following year if needed.<sup>19</sup>

A collateral inheritance tax of five percent of the value of decedent estates was adopted in 1896.<sup>20</sup> A direct inheritance tax based on a sliding scale was added in 1912. In 1980, the basis of the tax was changed to a formula derived from computing the amount of credit allowed to the decedent's estate under the IRS Code.<sup>21</sup> A gift tax was adopted in 1969 and repealed in 1980.<sup>22</sup>

In 1923, the legislature first authorized the taxing of gasoline. James P. Taylor of the Vermont Chamber of Commerce was its foremost proponent.<sup>23</sup> Governor Redfield Proctor recommended it in his inaugural address—a one-cent gasoline tax collected from the wholesaler. “The theory of this tax on gasoline is that those who use the roads most should contribute most to their maintenance. It would help to equalize the burden on road up-keep and would provide sufficient revenue to assist in abating the dust nuisance.”<sup>24</sup> Revenues from the tax were dedicated to highway maintenance. In 1923, the tax was one cent per gallon.<sup>25</sup>

In its hunt for additional sources of tax revenues, the legislature in 1925 enacted a tax on intangibles.<sup>26</sup> Two years later the tax was amended to become a virtual tax on the income generated from intangibles. Together the reforms attempted to resolve one of the longstanding problems with the property tax—underreporting and tax evasion. The intangibles tax did not work the magic its sponsors had hoped, however, in part because of the state's needs for additional expenditures in response to the



1927 flood. In 1929, Governor John E. Weeks reported that he had asked the New England Council to appoint a committee to study the tax system of Vermont. It made its report in 1931, unanimously recommending the adoption of a state income tax.<sup>27</sup>

That year the state adopted the income tax as a basis for state revenues.<sup>28</sup> Income was easier to tax because the source of the funds was easier to find, and this new source of revenue allowed the state to abolish the state highway and education taxes, the intangibles tax, and the general statewide property tax. A flood tax, dedicated to paying the cost of repairing roads, bridges, and public buildings after the 1927 flood, was also imposed in 1931 (\$1.50 on each poll in 1931, down from \$2.50 in 1929, before the income tax was adopted), but even this was repealed in 1935, at the time the state tax of ten cents on each pint of spirituous liquor was imposed.<sup>29</sup>

After the flood tax was repealed in 1935, the property tax was no longer a source of state revenues. Problems of equity and disclosure forced the state to abandon it. The clanking machinery of appraisal was unreliable, town to town. But the problems associated with state aid never really went away. Later, when state aid to education formulas used the grand list as a measure for distribution of funds, reliable grand lists again became an issue. The latest remedy is a listing penalty against state aid to education for grand lists assessed at an equalized rate of less than 80 percent of market value.<sup>30</sup>

The income tax changed only slightly in its first few decades. A 1947 change graduated the tax according to the amount of income at increments of one to four percent of net income.<sup>31</sup> These rates were doubled by 1957, and, in 1966, the state adopted the current system, assessing state income taxes as a percentage of the federal income tax.<sup>32</sup>

A tax on the generation of electric energy was also adopted in 1931. Governor Stanley Wilson announced in 1933 that the tax raised almost \$240,000 in 1932, that "the cost of collection has been small," and that the "tax has not been passed on to the consumers through increased rates."<sup>33</sup>

As noted above, taxes on alcoholic beverages arrived as Prohibition ended. In a special session in 1934, the legislature imposed a 3.25 cent tax per gallon on beer and wine, and the following year a ten cent per pint tax on liquor.<sup>34</sup>

In 1939, Governor George Aiken pointed out a familiar problem: "a constant shrinkage of revenue from certain erstwhile profitable sources," would cause a possible deficit that year of several hundred thousands of dollars.<sup>35</sup> The House and Senate appointed a Special Commission on Vermont Finances by joint resolution on January 24, 1936, and the commission made its report in 1938. It proposed a number of new tax sources,

including taxes on amusements, bottled drinks, fuel oil, games of skill, oleomargarine, motor fuel dealer's licenses, and a general retail sales tax, all of which would come in time. That year, cigarettes became the subject of taxation.

The cigarette tax, lobbyist Hubert Dowling pointed out in a brochure entitled, "Reasons Why There Should Be No Cigarette Tax," was regressive, since smoking and income were unrelated. He wrote it would be destructive of business, because of the increase in bootlegging and purchases of cigarettes outside the state, and harmful to the maple industry, since maple syrup was used in the production of cigarettes and Virginia might consider taxing our syrup. The tax passed nonetheless, amounting to one mill per cigarette.<sup>36</sup>

Meals and rooms taxes were first authorized in 1959.<sup>37</sup> Governor Robert Stafford proposed them, reluctantly.

No new tax is popular. All are resisted. A tax on rooms and meals is certain to arouse the understandable opposition of those engaged in the tourist trade, but I think such taxes are justified at this time on the grounds that Vermont is doing a great deal to attract the tourist who presently contributes only indirectly to the economy of the state; and since the taxes would apply equally to all motels, restaurants, and hotels in the state, no one would suffer in loss of business.<sup>38</sup>

In 1960, there were \$568,000 in new revenues from the three percent tax on meals and rooms.<sup>39</sup>

The property transfer tax was started in 1967.<sup>40</sup> That year the tax amounted to one-tenth of one percent of the selling price. In 1969, this was quintupled to one-half of one percent, and in 1988 to one and one-quarter percent for property other than residential use, to pay for the planning process pursuant to Act 200.<sup>41</sup>

"If we support taxation based on ability to pay we cannot condone a system which makes the poorest Vermonter pay more of his income in property taxes than those more fortunate," explained Governor Philip Hoff in his 1968 message to the legislature.<sup>42</sup> To respond to the inequity, the legislature enacted the property tax relief program the following year.<sup>43</sup> It authorized relief from property taxes for taxpayers over the age of sixty-five whose property tax or rent exceeded seven percent of the total household income, based on a sliding scale of relief.<sup>44</sup>

State government faced a financial crisis in 1969. Governor Deane Davis reported that the cost of state programs had increased 780 percent in three years, and a deficit was imminent without a new source of revenue. He proposed a general sales tax of four percent, which his advisers calculated would raise \$25 million a year. That year a sales tax of three percent became the law.<sup>45</sup>

In 1973, Governor Thomas Salmon promised that "Vermont is not for sale!" At his encouragement, that year the land gains tax became law.<sup>46</sup> Land held less than six years is taxed on the basis of the difference between the cost at purchase and at sale. The objective was to restrain land speculation in Vermont.

The current use program was established in 1977,<sup>47</sup> and the working farm tax abatement program in 1988.<sup>48</sup> Both were designed to relieve the pressures on agricultural and forest land caused by high property taxes.

The legislature imposed a tax on certified solid waste facilities in 1987, at a rate of \$2.40 per cubic yard of waste delivered to the facility or \$6.00 per ton.<sup>49</sup> While not a direct tax on the public, the tax was passed along to consumers in the form of user fees. The purpose of the tax was to raise revenue to pay for solid waste planning and regulation, discourage the use of landfills, and encourage the use of recycling.

In some respects, the history of taxation in Vermont is the history of a state trying to deal with alternatives to the property tax and looking for a better way to tax income. The various taxes (and funding mechanisms, such as *pari-mutuel* pools, state lottery, and fees) are all designed to raise revenue and achieve policy objectives, but a completely acceptable mix of sources seems to evade Vermont continually. No session passes without more legislation on taxes. In 1869, the Council of Censors declared that "we have had too much legislation; that the continual tinkering of the laws, by making amendments one year and repealing them the next, and the numerous minor modifications of our statute which our legislation has produced, have not been profitable to the State."<sup>50</sup> There is a need for more stability in tax laws, but that goal will continue to evade the state as long as there is no stability in expenditure, as long as economic downturns and federal income tax changes continue to surprise us.

#### THE REPORTS

The State Library devotes a shelf to tax studies. Most of them contributed little more than additional library dust. Still, they represent the best thinking of their era on how to repair what seemed so obviously wrong about the tax system of the year in which the report was issued. What has survived is haphazard and not comprehensive. For many important tax reforms, no documentation exists, at least on this shelf. Nevertheless, the studies that continue to occupy that space have their stories to tell.

There is the 1865 report of a special committee of the legislature to investigate a proposal to tax the income of U.S. bonds, stocks, and other securities. The idea was not favored by the committee. A minority report

explained that only productive property should be taxed, and argued that stocks were inherently unproductive. The majority of the committee rejected the idea for a different reason, concluding that the idea of taxing federal securities was unconstitutional and void.<sup>51</sup> Though nothing came of the proposal, the seed was planted that something had to be done to reach intangible property.

Jumping ahead thirty-five years, we find the 1900 report of a committee appointed to study "Double Taxation in Vermont."<sup>52</sup> Double taxation was wrong, most agreed, but finding a solution to the problem took many years. The system levied taxes on real property through the property tax and on the mortgage that secured debt on that same property, through personal property taxes assessed against the banks and then passed on to taxpayers through the cost of borrowing money. In this committee's view, the heart of the problem was inequality of tax burden due to tax evasion. In some towns real estate mortgages were simply not listed on the grand list; in others they were listed at less than the value of the mortgage. The lack of reliable grand lists also created inequities. To answer these problems, the committee recommended reform of the assessment process, including a proposal to eliminate all exemptions on real property and a method for ensuring that only the value of the real property actually owned by the landowner was taxed to him or her.

Nothing came of this recommendation, and in 1908 another commission was appointed to study the question of double taxation. What a difference a few years (or a different committee) made! In this report, double taxation is seen as a chimera, a problem only in the minds of those who fear the worst from taxes.<sup>53</sup> To illustrate the problem, the committee used the example of a farmer who pays tax on his land. At the same time, the value of his debt is assessed on the lender, the interest rate paid by the debtor presumably reflecting the tax paid by the lender. To the committee this was not a problem, since the tax was on the debt, not on the mortgage. The real problem, according to the committee, was a lack of full disclosure. Under the laws at this time, the taxpayer could offset the amount of debt against value of taxable personal estate. This was simply too great an opportunity for fraud. The taxpayer (or the listers) would overstate the value of debt, leave out taxable personal property altogether from the list (especially shares of stock), and underassess the value of real and personal estate in order to avoid state taxes.

According to the committee, the problem of any tax system is avoidance of duty. The practice of always seeking a loophole is demoralizing. "[O]ur main purpose is to bring home the thought that if every taxpayer, before finding fault with the law as it exists, would carefully examine his own conduct and motives relative to this subject and be sure that he

has contributed his honest proportion of taxes, there would be much less dissatisfaction, and certainly much less cause for dissatisfaction, with existing laws and less necessity for the appointment of commissions of this character." The committee proposed longer terms for listers, and election by ballot. It called for the adoption of a direct inheritance tax and a tax on foreign business corporations. It also proposed a delinquent tax penalty for late payments, since discounts alone were clearly not enough to compel payment. While stepping back from the idea of eliminating all exemptions,<sup>54</sup> the committee stressed the need for full appraisal of all exempt property, to ensure that voters and taxpayers understood how much tax capacity was being lost to exemptions.

The commission also proposed a uniform low rate for taxation of intangible property. "The underlying reason why intangibles can never be uniformly and successfully taxed at anything but a rate lower than that which on the average now prevails in this state is, that at such average rate the burden of taxation on this class of property becomes so heavy as to operate as a partial confiscation thereof; in fact this system has been aptly characterized as 'confiscation tempered by favoritism.'"

Vermont hillsides were bare in 1908, and the commission believed that high land taxes were one reason. Landowners were being forced to cut timber to pay the taxes, sometimes before the timber was mature, often as only a temporary buffer against a tax sale. As an early effort at current use value appraisal, the commission suggested taxing forest land as if it were already cut, and then taxing lumber by the cord or board foot.

The legislature respected the work of the commission and adopted some of its proposals. That year it instituted the first delinquent tax penalty of eight percent,<sup>55</sup> and three-year terms for listers.<sup>56</sup> It adopted the direct inheritance tax.<sup>57</sup> It did not repair the intangibles problem or offer any solution to the double taxation issue.

In 1930, as noted earlier, Governor John E. Weeks arranged for a total study of Vermont's tax system by experts appointed by the New England Council. This report is the source of the early thinking on the income tax, which was adopted in 1931. In that act the state property tax was also repealed, along with the intangibles tax, and direct highway and education taxes. The legislature favored the income tax over its predecessors for its uniformity and efficiency of administration, its promise to remove from towns the temptation to undervalue their grand lists, and the additional revenue it would bring to the state.<sup>58</sup>

The 1930 commission report recommended further study of the idea of taxing electric utilities.<sup>59</sup> The commission reminded the legislature of the consequences of bad tax laws, that "[w]ise taxation can promote

prosperity and unwise taxation can hamper it. Unwise taxation may have two bad results: the destruction or depletion of wealth and the unwise redistribution of it by excessive taxation of certain industries. Looked at as a state problem, unwise taxation necessarily results in the ultimate reduction of the wealth of its citizens on which the revenue of the state depends." The commission's report made recommendations, none of which were adopted by the legislature.

In 1937, the legislature appointed a commission to study Vermont's financial problems.<sup>60</sup> The commission concluded that the problem was a lack of uniformity in collections. It proposed eight new taxes as sources of revenue, especially for money to fund Vermont's Old Age Assistance Program, that seemed in particular need in 1937.

It is time that we reconsider the whole problem of the interrelationship of state and local finances, estimate the proportion of public expenditures which each may be honestly expected to carry, and arrive at a just and feasible allocation of costs. With the whole trend of the times in the direction of more varied and inclusive governmental services, with the tendency in Vermont more and more towards centralizing the burden of financing these services, and with the state already under heavy obligations, the only sensible course is to take stock of the entire situation and lay plans intelligently from the long-range point of view. Otherwise, even with reviving business prosperity, we shall find ourselves involved for years to come in a biennial muddle of unsatisfactory makeshift attempts to resolve our problems.

The cigarette and tobacco tax was adopted in 1939 in reaction to this report. The report is important for showing Vermont the way to new revenue sources.

A commission was appointed in the early 1950s to study all phases of taxation. Its report continues the explorations of the 1937 commission in locating and recommending new sources of revenue, including pari-mutuel betting, an amusement tax (24%), tax on soft drinks, and retail sales tax, both of these latter taxes to be considered as long range options.<sup>61</sup>

The most important modern study of taxation in Vermont was written in 1966.<sup>62</sup> It was a study of Vermont's needs and tax resources and the question of how to estimate taxes. The commission sought to help relieve the burden of the income tax on individuals by making the income tax rate structure more progressive, raising exemptions, and adopting an income tax system that "piggy-backs" the federal tax. This last was adopted that year.<sup>63</sup> With the help of consultant William Miller, the commission recommended recasting the state aid to education formula to give it the flexibility to respond to changes in the amount of money appropriated by the state for education. After it was law, everybody called it the Miller Formula. The ideas proposed by the commission that were not adopted

are at least as interesting. It wanted to address the problem of farm and forest land and its tax liability by zoning and not by a differential tax schedule. It favored a sales tax at a time when talk of that reform was as suspect as talk of a statewide property tax is in some quarters today.<sup>64</sup>

Two studies from the 1980s round out the bibliography of taxation in Vermont. The first is a 1983 study of the general fund by a group of executive branch officials.<sup>65</sup> It argued for decoupling the Vermont income tax from the federal, to avoid unforeseen future deficits. It recommended an increase in the meals and rooms tax to offset federal tax cuts. The second is a 1986 report from a Windham Foundation Conference on tax policy.<sup>66</sup> This study recommended a uniform statewide property tax on all non-residential property to generate revenues that would be redistributed to towns on a per-student basis. The study recognized the need for wealthy communities to pay for equalizing education throughout the state.

These will not be the last reports on taxes in Vermont. We are a state of inventors, and we will never give up trying to find a better way. A better appreciation for proposals made in the past that have not found a home in Vermont law, however, might help future commissions in their search for the truth and the way.

#### THE LEADING CASES

Another way of investigating the idea of taxation in Vermont is to see how the judicial branch has handled the questions that come up as each new tax is imposed. It is almost a tradition that as a new tax takes effect a taxpayer will challenge its constitutionality.

Most attacks failed. One of the few successes arose from a local tax question from the City of Vergennes in the 1880s. A charter provision authorized city authorities to build sidewalks and levy assessments against property owners served by them, but challengers argued it was unconstitutional. It contained no fixed, certain, and legal standard for assessment. The village trustees were left to determine how the taxes were to be assessed, in the words of the act, "as they shall deem just and equitable." The law itself did not require uniformity—proportional contribution, that is. Even though no citizen had yet been taxed and the trustees had not shown themselves to be unfair or unwilling to recognize uniformity as the leading principle, the court struck down the charter section. Without standards, there is no right to tax.<sup>67</sup>

The longest-running litigation in the history of Vermont involved a fight between the Vermont Central Railroad and the Vermont and Canada Railroad over the line between Rouses Point and Essex Junction and the rights and liabilities of the parties.<sup>68</sup> The immediate questions relating to the role of receivers and who would control the road were settled

by the supreme court by 1882, but that same year the corporate franchise tax was enacted. Running a railroad became much harder, especially for the Vermont Central and its successor, the Central Vermont, since that railroad had enjoyed complete exemption from all taxes by charter from the 1840s. The tax was a harsh blow to all railroads, but especially the C.V.R.R. The gross receipts tax provided that the tax should be paid by the lessor and deducted from the rent agreed on in the lease. The Rutland Railroad claimed that this was an impairment of its contract with the Vermont Central, from whom it had leased miles of road, and a violation of the U.S. Constitution. The Vermont Supreme Court remained unpersuaded:

The object of the legislation was to make each railroad in the State, *as a railroad*, contribute to the public treasury its proper share of the burdens of taxation. Under the act of 1874 the plan of treating railroads as real estate was adopted as the basis of a scheme of taxation. This act not proving acceptable, in 1882 the plan was adopted of graduating the taxation upon the basis of earnings. In both cases the tangible thing upon which the State laid its hand was the railroad itself, and unless we substitute the shadow for the substance, the thing taxed under the act of 1882 was "the property of the Rutland R.R. Co."<sup>69</sup>

The court found that the payment requirements of the law were no impairment of contract, but an acceptable method of collecting the tax. The court did cut back on the tax in one way, however. It held that the Rutland Railroad was correct in arguing that a portion of its operations involving interstate commerce was out of bounds for the state to tax. But the court rejected the main challenge to the law, that it was an impairment of contracts.

Within ten years of its enactment, the 1896 inheritance tax was challenged on the way it treated some property. While taxing the value of estates passing as inheritance, the law exempted bequests to charitable, educational, or religious societies or institutions. The tax commissioner refused to allow an exemption for nonresident corporations, and one sued him to learn whether this constituted a violation of Article 9. The court found the tax constitutional. It is not a tax on property at all, announced the court, but on the transmission of property. The exemption for payments to Vermont charitable, educational, or religious societies or institutions, and not to similar foreign corporations, was also approved. Proportional contribution, according to the court, is to be measured by the impact on the taxpayer. "It seems clear that privileges of this character, as well as property, are to be considered in determining the just proportion of the individual."<sup>70</sup> As long as exemptions are based on reasonable distinctions, they would not be upset on grounds of uniformity or equality.



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The Burlington city charter authorized the city to build public wharves, borrow and bond to pay for them, and condemn land to accomplish that purpose. The Central Vermont Railroad resisted the condemnation of its property in 1909, arguing that the wharves were for private use, and that this was not a public purpose. The court disagreed. "[W]hat is a public purpose within the meaning [of the charter], is a question for the Legislature to decide, and concerning which it has a large discretion, which the courts can control only, if at all, in very exceptional cases, and this is not such a case."<sup>71</sup> The court served notice that it would not second-guess the legislature's decision that "the purpose for which it is to be raised [is] of more service to community than the money would be if not collected."

The intangibles tax came under attack in 1911. This was a tax of seven-tenths of one percent on the average deposits of savings banks and trust companies. A national bank challenged the tax and the court agreed that the state could not tax a national bank as a condition of the privilege of doing business there without the consent of Congress. But the court agreed that the state could tax the depositors and their interests. The court decided that taxing nonresidents would be wrong since those assets would not be sited in Vermont. For resident depositors, the court sustained the tax.<sup>72</sup>

The court has shown such deference to the legislature over the years on matters of taxation. In 1921, it upheld the taxability of land owned by a trust fund. The court would not invade the legislative function of judging the constitutional mandate. "That [the legislature has] appeared to fail at times must be admitted; but, considering the magnitude of the task, the results attained compare favorably with those in other jurisdictions." The trust fund was taxable.<sup>73</sup>

Two years later a taxpayer challenged the tax on premiums paid for insurance, which applied to all persons, companies, associations or corporations residing or doing business in Vermont who were paying premiums to insurance companies not authorized to do business in this State. This tax the court found to be unconstitutional and void, since it deprived parties of the liberty to contract guaranteed by the Fourteenth Amendment of the U. S. Constitution.<sup>74</sup>

The first big challenge to the Vermont income tax came in 1934. The court sustained the tax, finding no conflict with the Fourteenth Amendment unless the tax clearly results in "flagrant and palpable inequality between the burden imposed and the benefit received as to amount to an arbitrary taking of property without compensation." The test is uniformity and equality, and the question for the court was whether the classification was rational and whether all those within the same class are treated similarly.<sup>75</sup> The court validated the Vermont income tax.

In 1974, the year the land gains tax took effect, the tax was immediately challenged by an unhappy taxpayer. The challenge to the tax was based on its stated purpose—"to limit a person's property tax on his basic housing to five percent of his household income; and to provide partial funding for such property tax relief by imposing a tax on the gains from certain sales in exchanges of real property." The taxpayer felt that this stated purpose was a mask hiding its real purpose, which was to deter land speculation in Vermont, but the court disagreed, and upheld the tax. "Legislation may frequently serve multiple objectives. There is no requirement that the objectives served by the manner in which a tax is collected and those served by the manner in which it is spent be related to each other for constitutional purposes."<sup>76</sup>

In 1989, a taxpayer challenged a provision of the Burlington city charter that authorized the city to appraise nonresidential property at 120 percent of fair market value. Business interests in the city questioned this standard as violating Article 7 (Common Benefit clause) and Article 9 of the Vermont Constitution. The court found no problem with the method of assessment. The court held that the test is reasonableness (a reasonable relation to the purpose for which the tax is established) and that the classification scheme must be fairly and equitably applied among like classes of taxpayers. If the purpose is to raise overall city revenues, then there is no offense to the idea of proportional contribution, since there is a public purpose to the object of the tax.<sup>77</sup>

Taxes bring out the litigiousness in people. To the extent that the Vermont Constitution is used to challenge a tax, however, it will be an uphill battle for taxpayers. The government has the high ground, benefiting from the traditional deference shown the legislative branch by the courts and the willingness of the courts to respect tax classifications that are at least minimally reasonable.

#### FINAL THOUGHTS

What makes a good tax? That depends on your perspective. The Vermont Constitution teaches that a tax must have a public purpose and its impact in achieving this purpose must be proportional, taxpayer by taxpayer. The legislature has the power to develop classifications and grant exemptions that give advantage or disadvantage to categories of taxpayers without risking constitutional repeal. Only the legislature can say whether a tax is of more benefit to the community than if there were no tax. Analysts add other standards, such as whether the tax will not be so burdensome as to destroy or discourage the taxpayer, how convenient and costly the tax is to administer, how clear its provisions are to the taxpayer, and how much of a return it is capable of producing.

The state's experience with the property tax shows that a good tax is one that does not encourage disobedience to its strictures, whether that means the inclination to underreport assets for the property tax or to shop in New Hampshire to avoid the sales tax.

In 1920, the Hon. Fred B. Thomas delivered a paper to the Vermont Bar Association Annual Meeting on "The Property Tax." There he tried to define why we tax. He began by offering the old explanation, that taxes are a payment for protection or security, a necessary cost of the liberty to make a living and live peacefully. He admitted such ideas had passed from favor, and that today most people, if they try, will justify taxes as a duty to contribute to the needs of the state. This second generation theory is still quite current. It follows from the recognition of duty, not compensation. How much is enough is the next question. Some Vermonters think we've passed that point already.

Tax policy is not an exact science. Politics color every debate and no change comes without full consideration of the fiscal impact on each town, with corresponding support or opposition for the change depending on the result of that test. Fear of a statewide property tax remains fervent in many corners of Vermont. Others argue the property tax is exhausted and has outlived its useful life. Cities and towns urge the state to grant them the option of adopting other local taxes. In each legislative session there are debates on tax reform, and every five years or so another commission is appointed to study the system and propose improvements that will repair the problems of fairness, progressivity, and a sufficient tax base to justify necessary expenses, including the exploration for new sources of taxation. The hunt for a balance will continue, but, if the history of state taxation in Vermont is any pattern, no answer will hold good for long.

## NOTES

<sup>1</sup> In the 1777 Constitution, Article 9 provided, "That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expense of the protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man, who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law, but such as they have, in like manner, assented to, for their common good." Section XXXVII of the 1777 Constitution provided, "No public tax, custom or contribution shall be imposed upon, or paid by, the people of this State, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clear to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens." The 1786 Council of Censors proposed, and the Constitutional Convention of the following year adopted, an amalgamation of these two parts. This change included the substitution of "that" for "the" before the word "protection," the substitution of "or that of the Representative body of the Freemen" for "or that of his legal representatives," and the deletion of words, "No public tax, custom or contribution shall be

imposed upon, or paid by, the people of this State, except by a law for that purpose" and "which being well observed, taxes can never be burthens." In the 1793 Constitution, the phrase "no part of a man's property" became "no part of any person's property."

<sup>2</sup> See Frederick Augustus Wood, *The Finances of Vermont* (New York: Columbia University, 1913). Also by Wood, *The History of Taxation in Vermont* (New York: Columbia College, 1894).

<sup>3</sup> Frederick Wood calculated the total town debt arising from the Civil War at almost ten million dollars. Compare this to the total grand list in 1865 for state tax purposes at \$1,037,660.05. *Vermont House Journal* (1865), 399.

<sup>4</sup> *Clement v. Graham*, 78 Vt. 290 (1906). See also Otto T. Johnson, *Nineteen-Six in Vermont* (privately printed, undated).

<sup>5</sup> Albert Stillman Batchellor, ed., *The New Hampshire Grants, Being Transcripts of the Charters of Townships* (Concord: Edward N. Pearson, 1895), 29-34.

<sup>6</sup> Mary Greene Nye, ed., *Sequestration, Confiscation and Sale of Estates*, State Papers of Vermont VI (Montpelier: Secretary of State, 1941).

<sup>7</sup> Ira Allen, *The Natural and Political History of the State of Vermont* (London: J.W. Myers, 1798; reprint Rutland: Charles E. Tuttle Company, Inc, 1969), 64-65.

<sup>8</sup> "An Act for the Purpose of Procuring Provision for the Troops, to be Employed in the Service of This State for the Year Ensuing," November 3, 1780, Allen Soule, ed., *Laws of Vermont 1777-1780*, State Papers of Vermont XII (Montpelier: Secretary of State, 1964), 212-17.

<sup>9</sup> "And whereas the Land is the great Object of the present War, and receives the most solid Protection of any Estate, a very large part of which has hitherto paid no part of the great Cost arisen in defending it, while the Blood and Treasure of the Inhabitants of the State has been spent to protect it, who many of them owned but a very small part thereof," was the justification for this first land tax. John A. Williams, ed., *Laws of Vermont 1781-1784*, State Papers of Vermont XIII (Montpelier: Secretary of State, 1965), 23-28.

<sup>10</sup> Fred B. Thomas, "The Property Tax," *Vermont Bar Association Proceedings* 16 (1920), 151-64.

<sup>11</sup> The poll tax, a feature of Vermont local government from the beginning, was abolished in 1978, with a four-year transition to lessen the pain of withdrawal, effective 1982. Once disconnected from voting status, as it was in 1974, the poll tax simply lost its vitality as a part of the system of local revenues.

<sup>12</sup> *Laws of Vermont, 1777-1780*, 44-49.

<sup>13</sup> *Journal of the Senate*, October 5, 1882, 33.

<sup>14</sup> *Laws of 1882*, No. 1, 3-11.

<sup>15</sup> William H. DuBois, "Treasurer's Report," 1885, *Vermont State Officers' Report for 1885-6* (Rutland: The Tuttle Company, 1886), 8-9.

<sup>16</sup> *Laws of 1880*, No. 143, 136-37.

<sup>17</sup> *Laws of 1882*, No. 3, 20-1.

<sup>18</sup> *Vermont Statutes* (1894), 175-201.

<sup>19</sup> *Laws of 1892*, No. 56, 54-7.

<sup>20</sup> *Laws of 1896*, No. 46, 38-41.

<sup>21</sup> 32 V.S.A. § 7442a.

<sup>22</sup> See note following 32 V.S.A. § 7411.

<sup>23</sup> Andrew E. Nuquist and Edith W. Nuquist, *Vermont State Government and Administration: An Historical and Descriptive Study of the Living Past* (Burlington: University of Vermont, 1966), 168-69.

<sup>24</sup> *Journal of the Joint Assembly*, January 4, 1923 (Montpelier: Capital City Press, 1923), 595.

<sup>25</sup> *Laws of 1923*, No. 83, 90-92. In 1929, the tax was raised to four cents (No. 30, 38-41); in 1947, to four and a half cents (No. 25, 46-7); 1949, five cents (No. 35, 34-35); 1955, five and a half cents (No. 209, 180-81); 1957, six and a half cents (No. 251, 246); 1968, eight cents (No. 380, 632-33); 1971, nine cents (No. 35, 57); 1981, eleven cents (No. 87, 330); and reached its current thirteen cents in 1986 (No. 207, 411). 23 V.S.A. § 3106.

<sup>26</sup> Governor Franklin Billings vetoed the intangibles tax in 1925. His veto message explained that, "the subject matter of taxation is one concerning which there is probably more divergence of opinion than concerning any other subject, and dissatisfaction with taxation laws is bound to continue and trouble people in the future as it has through past ages." But he felt he had to veto the bill because the proposal would shift the tax burden from bank stocks to real property by taxing intangibles at a different rate (and not including them as part of the grand list for property tax purposes). The legislature voted to override the veto, and the intangibles tax became law. *Senate Journal* (1925), 439-42.

<sup>27</sup> *Report of the Vermont State Tax Commission*, Montpelier, 1930.

<sup>28</sup> *Laws of 1931*, No. 17, 17-46. At first there were two rates. Individuals and corporations each paid two percent of income.

<sup>29</sup> *Laws of 1935*, No. 28.

<sup>30</sup> 16 V.S.A. § 3475.

<sup>31</sup> *Vermont Statutes* (1947), § 934. See also, *Report of the Commission to Study Inconsistencies of Income Tax Laws*, 1941. *Vermont House Journal* 1941, 11-13.

<sup>32</sup> 32 V.S.A. § 5822.

<sup>33</sup> *Journal of the Joint Assembly*, January 5, 1933, 511.

<sup>34</sup> *Laws of 1934* (Sp. Sess.), No. 1, 422; *Laws of 1935*, No. 28, 35. The liquor tax rose to twenty-three cents a pint in 1937 (No. 35, 35); twenty-five cents in 1939 (No. 34, 48); thirty-five cents in 1945 (No. 20, 21); forty-five cents in 1947 (No. 109, 174); \$5.10 a gallon in 1957 (No. 277, 290-91); \$5.60 a gallon in 1969 (No. 144, 468); twenty-four percent of gross revenues in 1974 (No. 129, 3); and the present twenty-five percent in 1981 (No. 96, 397). Beer and wine rose to ten cents a gallon in 1937 (No. 38, 68); fifteen cents in 1949 (No. 142, 137-38); twenty cents in 1957 (No. 265); twenty-five cents in 1969 (No. 144, 276-77); wine alone rose to fifty cents a gallon, with beer still at twenty-five cents, in 1976 (No. 243, 345); and both climbed to their present rates of 26.5 cents for beer and 55 cents for wine in 1981 (No. 96, 397).

<sup>35</sup> *Laws of 1934* (Sp. Sess.), No. 1, 422; *Laws of 1935*, No. 28, 35. The liquor tax rose to twenty-three cents a pint in 1937 (No. 35, 35); twenty-five cents in 1939 (No. 34, 48); thirty-five cents in 1945 (No. 20, 21); forty-five cents in 1947 (No. 109, 174); \$5.10 a gallon in 1957 (No. 277, 290-91); \$5.60 a gallon in 1969 (No. 144, 468); twenty-four percent of gross revenues in 1974 (No. 129, 3); and the present twenty-five percent in 1981 (No. 96, 397). Beer and wine rose to ten cents a gallon in 1937 (No. 38, 68); fifteen cents in 1949 (No. 142, 137-38); twenty cents in 1957 (No. 265); twenty-five cents in 1969 (No. 144, 276-77); wine alone rose to fifty cents a gallon, with beer still at twenty-five cents, in 1976 (No. 243, 345); and both climbed to their present rates of 26.5 cents for beer and 55 cents for wine in 1981 (No. 96, 397).

<sup>36</sup> *Laws of 1939*, No. 35, 49-56. In 1949, the tax was increased to two mills (No. 30, 32); 1957, to two and a half mills (No. 163, 120-21); 1959, three and half mills (No. 243, 299-300); 1963, four mills (No. 226, 309-310); 1969, six mills (No. 144); 1983, eight and a half mills (No. 2 [Sp. Sess.], 4-5); and 1991, nine mills on July 1, 1991, to ten mills on July 1, 1992 (No. 32, 64-65); and finally to twenty mills on April 14, 1995 (No. 29, 1995).

<sup>37</sup> *Laws of 1959*, No. 217, 246-55.

<sup>38</sup> *Journal of the Joint Assembly*, 1957, 786-87.

<sup>39</sup> William Wheaton, ed., *Vermont Facts and Figures* (Montpelier: Department of Budget and Management, 1973), 355. The tax was raised to four percent in 1968 (No. 346, 551); in 1969, to five percent (No. 144, 472-73); 1989, six percent (No. 51, 102-3); and in 1991 to eight percent until July 1, 1993, when it went back to seven percent (No. 32, §§ 18, 20, 62-63).

<sup>40</sup> *Laws of 1967*, No. 146, 211-15.

<sup>41</sup> *Laws of 1969*, No. 144; *Laws of 1988*, No. 200. Codified at 32 V.S.A. § 9602. The tax on residences up to \$100,000 of value is one-half of one percent. On all other transactions, the rate is one and one-half percent.

<sup>42</sup> *Journal of the Joint Assembly*, January 12, 1968, 385.

<sup>43</sup> *Laws of 1969*, No. 139. Now codified at 32 V.S.A. § 5961 and following.

<sup>44</sup> 32 V.S.A. § 5967.

<sup>45</sup> *Laws of 1969*, No. 144. The rate was increased in 1982 to four percent (No. 170, 178-79) and five percent in 1991 (No. 32, § 10, 59-60). Despite intentions to reduce the tax to four, it remains at five percent (January 1, 1997).

<sup>46</sup> *Laws of 1973*, No. 81, 228-38.

<sup>47</sup> *Laws of 1977*, No. 236.

<sup>48</sup> *Laws of 1988*, No. 200.

<sup>49</sup> 32 V.S.A. § 5952.

<sup>50</sup> Paul S. Gillies and D. Gregory Sanford, eds., *The Records of the Council of Censors* (Montpelier: Office of the Secretary of State, 1991), 645.

<sup>51</sup> *Vermont House Journal* (1865), 150-53, 192-96.

<sup>52</sup> "Double Taxation in Vermont," Report of the Special Committee Appointed To Report a Measure for Its Relief to the Legislature of 1900 (Burlington: Free Press Association, Printers and Binders, 1900). (October 3, 1900).

<sup>53</sup> Commission to Investigate Double Taxation *Report of the Commission on Taxation Appointed under No. 501 of the Acts and Resolves of the General Assembly of the State of Vermont* (Montpelier, 1908).

<sup>54</sup> Governor Charles Bell, in his 1906 retiring remarks to the legislature, said that, "Taxation is a simple matter when all property, both real and personal, without exemption of any class or kind, is made to pay its just proportion. The moment we begin to legislate in favor of one class, some other class is sure to suffer, and trouble begins." *Journal of the Joint Assembly* (1906), 520.

<sup>55</sup> *Laws of 1908*, No. 201, 175.

<sup>56</sup> *Ibid.*, No. 82, 73.

<sup>57</sup> *Ibid.*, No. 31, 27-29.

<sup>58</sup> *Report of the Vermont State Tax Commission* (Randolph: Roy L. Johnson Company, 1930).

<sup>59</sup> This led to the 1933 report of a commission duly appointed to investigate this subject. *Report of Commission to Investigate the Subject of Taxation of Public Utilities, Vermont House Journal* 1933, 79-87.

<sup>60</sup> *Vermont Finances, Report of a Special Commission*, Joint Resolution, January 24, 1936. The text of this report is missing, but a four-page flyer describing its conclusions is filed in the committee minutes of the 1937 House Ways and Means Committee.

<sup>61</sup> *Report of the Commission to Study the Question of Taxation*. August 30, 1952.

<sup>62</sup> *Report of the Tax Study Committee to the Legislative Council, Relating to R-23 of the Acts of 1966*. Montpelier, December 28, 1966.

<sup>63</sup> *Laws of 1966*, No. 61 (Sp. Sess.).

<sup>64</sup> While not part of the story of state tax reform, in 1972, the Department of Budget and Management proposed an interesting new approach to property taxes in a document called "The Rockingham Study" (*The Rockingham Study, General Property Tax Reform Plan*. [Dept. of Admin., Budget and Management Division, 1972]). This proposal would have required classification of all real property according to its use. After this is done, each property would be subject to a possible mixture of taxes depending on its type. Everyone would pay a graduated "cost of government" tax based on land use and size of holding. There would be a graduated income-based education tax, a graduated real property transfer tax, a "cost of buying in" tax to pay for extension of town services. The study proposed eliminating the personal property tax, business inventory tax, and tax on structures (thus eliminating the need for appraising real property). It also proposed collecting property taxes by the payroll deduction method, with the state responsible for all billing and enforcement. Monthly payments would be made by the state to municipalities. These good ideas did not become law.

The record also includes an interesting monograph on equalizing grand lists from 1976, co-written by Gerow Carlson, who subsequently headed the Property Valuation and Review Division. Carlson argued that the problems of assessment could be resolved by the introduction of the computer to the appraisal system of Vermont towns. The computer would permit annual up-dating of every value on the roll. Computers are now common tools for property assessment in Vermont, at the state and local levels, but they have not fulfilled the vision of Gerow Carlson in 1976 (Gerow W. Carlson, Robert J. Finnegan, *Assessment Administration in Vermont*. [October, 1976]).

<sup>65</sup> *Vermont's General Fund Taxes: A Study*. The Tax Study Group, Executive Department, State of Vermont. October, 1983.

<sup>66</sup> *A Review of Vermont's Tax Policies, Report of the Eighth Grafton Conference, June 22-24, 1986* (Grafton: The Windham Foundation, 1986).

<sup>67</sup> *Barnes v. Dyer*, 56 Vt. 469 (1884).

<sup>68</sup> See Max L. Powell, "The Twenty-Seven Years' Litigation," *Vermont Bar Association Proceedings* (1907), VIII (Montpelier: Argus and Patriot Press, 1909), 100-44. Also, *Report of the Joint Special Committee to Investigate the Vermont Central Railroad Management* (St. Albans: Messenger Printing Establishment, 1873).

<sup>69</sup> *Rutland R.R. Co. v. Central Vermont R.R. Co.*, 63 Vt. 1, 26, 21 Atl. 262 (1890).

<sup>70</sup> *In re Hitchcock's Estate*, 78 Vt. 259, 265, 62 A. 724 (1906).

<sup>71</sup> *City of Burlington v. Central Vermont Railway*, 82 Vt. 5, 71 A. 826 (1909).

<sup>72</sup> *State v. Clement National Bank*, 84 Vt. 167, 78 A. 944 (1911).

<sup>73</sup> *City of St. Albans v. Avery*, 95 Vt. 249, 114 A. 31 (1921).

<sup>74</sup> *State v. International Paper Co.*, 96 Vt. 506, 120 A. 900 (1923).

<sup>75</sup> *Colgate v. Harvey*, 107 Vt. 28, 175 A. 352 (1934). See also, *Pabst v. Commissioner of Taxes*, 136 Vt. 126, 388 A.2d 1181, appeal dismissed 439 U.S. 922 (1978). Test of classification will be upheld if it "serves any of the purposes that are conceivably behind the statute in question and that are within the powers of the legislature to pursue."

<sup>76</sup> *Andrews v. Lathrop*, 132 Vt. 256, 315 A.2d 860 (1974).

<sup>77</sup> *In re One Church Street*, 152 Vt. 260, 565 A.2d 1349 (1989).



## State Government and Education: “For the Due Encouragement of Learning and the Better Regulating and Ordering of Schools”

*. . . at the time Vermont entered the Union in 1791 the educational system effectively consisted of two discrete components, one espousing a comprehensive state vision, the other local, or more accurately, district control.*

By P. JEFFREY POTASH

**B**uried deep within the 1777 Vermont Constitution's plan of government, section 40 dealt with education, specifying that "A school or schools shall be established in each town, by the legislature for the convenient instruction of youth . . . One grammar school in each county, and one university in the State ought to be established by the General Assembly." This section was borrowed, as indeed was much of the document, from the short-lived Pennsylvania constitution of 1776, delivered to the delegates assembled at Windsor by Ethan Allen's good friend, Dr. Thomas Young, and proposed by him as a suitable model for replication. However, Vermont delegates did make modifications, most notably shifting the responsibility for paying teachers' salaries from the "public" at large to "each town."<sup>1</sup> This subtle change, which acknowledged the New England tradition of local school management, delegated tremendous power to Vermont towns to shape education and established the basis for two centuries of rancorous debate and disagreement between state and local school officials regarding the relative power of each to determine educational policy.

That debate persists. It has grown increasingly heated in recent years over such issues as funding, inclusivity, common standards, and com-

mon curricula. A review of the debate will help us to ascertain the extent to which recent trends continue or mark a dramatic break from Vermont traditions. It is tempting, in an era of rapid technological change and global transformation, to assert that the past is of little or no value for guiding the future. Yet the Vermont constitution, including its educational provisions, remains, with remarkably few modifications, the “fundamental law” of the land. That means we are dealing with a live tradition whose roots are over two hundred years old. Therefore, Vermonters must consider the possibility that there is value in revisiting Vermont’s educational past.

Vermonters’ decision to include education in their constitutional blueprint underscores their belief in education as integral to the enlightenment experiment. The decision is all the more significant when one recognizes that the federal constitution to which Vermont pledged allegiance in 1791 made no mention of education whatsoever. This belief in education, however, was not peculiar to Vermonters. The concept of a system of graduated public education was indeed articulated most impressively in Thomas Jefferson’s “Bill for the Diffusion of Knowledge.” Unlike Vermont, however, Virginia ultimately rejected such a blueprint.

Jefferson’s premise was simple: the future of a fledgling republic rested in the capacity of its educated citizenry to contribute to its welfare to the best of their abilities. Jefferson believed that humans were innately unequal in their talents, intellect, and virtue. Education thus became a vehicle through which a “natural aristocracy” of educated citizens could be cultivated.<sup>2</sup> The hierarchical scheme of schools that Jefferson advocated, and Vermont’s founders actually incorporated into their constitution, guaranteed all citizens three years of reading, writing, and arithmetic, regardless of ability to pay. Overseers were then to select the most talented pupils and send them to grammar school. Following another review, a tiny percentage of scholars were permitted entry at the university. Through the elimination of pay as the principal determinant for education, Vermont’s citizens were empowered to achieve their Jeffersonian “calling” and, therein, ultimately promote the common good.

Visionary, in a word, describes the mandate contained within Vermont’s 1777 constitution. Here was an independent state, populated by fewer than 30,000 souls scattered throughout its often isolated reaches. These were persons for the most part wholly preoccupied with carving out small self-sufficient farms from the largely aboriginal forests. Considering the constitution’s bold objectives, one must ask: just how practical was the scheme it prescribed?

The constitutional pronouncement was accompanied by absolutely no financial commitment on the state’s part. That, combined with the grim



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fiscal realities of the severe post-war depression of the 1780s, quickly undermined the bold spirit of educational initiative. Shut off from lucrative British markets and subsequently unable to repay debts accrued while settling their farms, Vermonters concentrated on averting financial collapse. Some radicals, determined to prevent creditors from obtaining warrants to dispossess them of their properties, agitated through the familiar (albeit illegal) vehicle of the anti-court riot, hoping to suspend court operation. Moderates fueled the debate between rival politicians Nathaniel Chipman and Governor Thomas Chittenden over the creation of state banks and the institution of general tender. These acts, they hoped, would ease paper money shortages while permitting farmers to repay debts with unsalable farm produce such as wheat and corn.

Fiscal realities undoubtedly contributed to educational retrenchment during the 1780s. The revised Vermont constitution of 1786 deleted all mention of a state university, substituting the promise that "laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force and duly executed," seemingly an oblique reference to the unstable political climate. Town responsibilities were similarly watered down, substituting for the declaration that "schools shall be established" the more voluntary sounding "a competent number of schools ought to be maintained in each town for the convenient instruction of youth."<sup>3</sup>

Notwithstanding this retrenchment, the revolutionary vision remained intact in the public imagination throughout the final decades of the eighteenth century. One such reaffirmation of these fading ideals appears in Samuel Williams' *Civil and Natural History of Vermont*. Published in 1794, this first ever history of Vermont was written to inform a curious European audience about what was happening in America and, given his obvious biases, to lavish praise upon Americans generally and Vermonters in particular for having converted European enlightened philosophic thinking into a workable social system. This historical background served for Williams as a prelude for understanding contemporary Vermont. The struggle for independence, only recently completed, arose through the determined efforts of all Vermonters to overthrow the arbitrary bonds of authority in their quest to achieve their natural rights. In describing the egalitarian mood of contemporary Vermont society, Williams found commitment to education an essential ingredient:

Among the customs which are universal among the people in all parts of the state, one that seems worthy of remark is the attention that is paid to the education of children. The aim of the parent is not so much to have his children acquainted with the liberal arts and sciences; but to have them all taught to read with ease and propriety; to write a plain

and legible hand; and to have them acquainted with the rules of arithmetic, so far as shall be necessary to carry on any of the most common and necessary occupations of life . . . Such kind of education and knowledge, is of more advantage to mankind, than all the speculations, disputes, and distinctions, that metaphysics, logic, and scholastic theology, have ever produced. In the plain common good sense, promoted by the one, virtue, utility, freedom, and public happiness, have their foundations. In the useless speculations produced by the other, common sense is lost, folly becomes refined, and the useful branches of knowledge are darkened and forgot.<sup>4</sup>

If the Revolutionary inheritance forms one of the key foundations behind two centuries of Vermont educational policy, a second equally important, though frequently incompatible, reality is shaped by the colonial New England inheritance, local autonomy.

The centrality of the town in New England life was an outgrowth of two impulses. The first was Congregationalism, which permitted communicants in each town the freedom to select their membership and frame much of the language governing church policies and doctrine. The second was political democracy, which meant that the majority of public concerns, ranging from the construction of roads, bridges and meeting houses to resolution of land disputes, was decided in the democratic confines of the town meeting.

Local autonomy for educational policy was similarly entrenched in the New England way of life. Recall the 1777 constitutional framers' provision for support of teachers that is local and generated by the town as opposed to the state or "public" at large. Townspeople traditionally maintained complete control over collecting taxes, building schools, and hiring teachers. Local autonomy was further magnified by the further breakdown of towns into numerous small school districts. On average, Vermont towns boasted anywhere between five and twenty-five discrete school districts, each functioning, as one historian has describe it, as "a little scholastic republic."<sup>5</sup> Replete with an independent board of officers, each district was typically responsive to the petty political animosities that invariably arise in response to questions surrounding such explosive issues as taxation, location, construction cost, and maintenance of school buildings. That such discussions often generated hard feelings is best demonstrated by a Pomfret gentleman who, protesting the poor services provided for his children, found himself cast out of the district in town meeting and separated into a school district in which his family were the only members. In the absence of any person to whom he might appeal, the hapless soul was forced to suffer the indignity until the following year when his public apology resulted in reinstatement and relief.<sup>6</sup>

The degree to which district policies prevailed over the constitutional vision of a graduated statewide network of public schools was evident

to New Hampshire historian Jeremy Belknap during his extensive travels throughout Vermont at the turn of the eighteenth century. Belknap described a checkerboard of educational variations. While acknowledging the presence of fine quality schools in some towns, he reported that others, often adjoining towns, remained altogether "destitute." There is in Vermont, he observed, "still in many places a great and criminal neglect of education."<sup>7</sup>

It is quite easy to say then, that at the time Vermont entered the Union in 1791 the educational system effectively consisted of two discrete components, one espousing a comprehensive state vision, the other, local or, more accurately, district control. In the absence of any state aid to supplement local taxes, the power of the latter over the former was best described by John Huden, who observed that "every district was its own certification bureau, every teacher his own curriculum director, every family its own textbook committee."<sup>8</sup>

The first major statewide challenge to local control originated during the 1820s. An understanding of historical context is essential for grasping the motives governing this movement. Vermont in the 1820s was substantially altered from what it had been a half century earlier. With Vermont's entry into the Union, an unparalleled flood of immigrants poured into the state; by 1820, total population numbered a quarter million. While many came as speculators, free thinkers, and marginalized political or religious radicals, larger numbers were guided by a desire to replicate the traditional comforts of the New England way. They built white clapboard churches and constructed roads and canals to overcome the obstacles that inhibited trade. Accompanying this flurry of settlement and construction was an explosion of religious revival and social reform. A maturing Vermont was seeking to create, according to Randolph Roth, a "new order," which balanced the revolutionary commitment to equality and popular government with a return to the traditional New England emphasis on religious piety and social order.<sup>9</sup>

Accompanying the dramatic growth of rural villages, Vermonters found themselves caught up in national and international events: the Embargo of 1807 and subsequent War of 1812; the industrialization of textile manufacture, which produced sizable mills and gave rise to a sheep craze lasting three decades; and, finally, during the 1820s, the emergence of Jacksonian democracy. All underscored Vermonters' growing attachment to the American spirit of progress and democratic reform.

The profoundly egalitarian mood of the 1820s generated reformist demands to abolish traditional havens of favoritism, including the Bank of the United States, property requirements for suffrage, and imprisonment for debt. This energy for social reform contributed to public clamoring for educational reform. In 1824, Gov. Cornelius Van Ness called

for a legislative mandate to impose state controls to guarantee equality of educational opportunity. The philosophic rationale he presented harkens back to the theme of the well-being of the republic so beautifully articulated by Thomas Jefferson:

The universal diffusion of early education is so indispensable to the promotion of social order, of morality, and religion, and to the maintenance and permanency of republican institutions, that its cause demands our most decided and vigorous support.<sup>10</sup>

Van Ness further alluded—for the first time ever—to the use of federal aid to support the schools, noting that “we cannot but be struck with astonishment, that the General government, with such ample means as it possesses, should so long have delayed to lend its direct and efficient aid to the general purposes of education.”<sup>11</sup> While this recommendation would, in the waning years of the nineteenth century, launch native son Senator Justin Morrill’s efforts to fund land grant colleges, it would take more than a century before federal support for elementary and secondary schools became a reality.

Besides Van Ness, the most vocal proponents of educational reform were members of self-avowed “working-men’s societies,” voluntary organizations scattered throughout Vermont’s industrial and urban centers. Championing the cause for “free, equal, and Republican education,” these societies used the editorial pages of their newspapers to lash out against “despotism . . . Which consigns the multitude to comparative ignorance, and secures the balance of knowledge on the side of the rich.”<sup>12</sup> The dichotomy they presented, distinguishing rich and poor, reflected an emerging awareness that a commercialized Vermont proffered opportunities for some but not all.

Reforms in the 1820s aimed primarily at developing a system of state-wide supervision to introduce greater uniformity into Vermont’s crazy quilt of schools. In 1827, Vermont became only the third state in America and the first in New England to establish a state board of commissioners of common schools. Immediately the board embarked on its charge by debating the issue of texts. Tradition permitted parents to select their children’s readings, with the predictable result that teachers were placed in the difficult position of trying to instruct from several dozen books at once. Accordingly, the state board of commissioners compiled and distributed a narrowed list of standardized texts from which parents could select.

Doubtless the commissioners were ill-prepared for the public’s clamorous response. Widespread condemnation led legislators to revoke this bill. Not content to stop there, five years later the legislature succeeded in disbanding the board of commissioners. Reflecting on the fate of the book bill, commissioners reported that

so generally diffused through the great mass of the community is the sense of personal as well as political independence, and so sleepless is the jealousy of arbitrary power, which is almost instinctive in the popular mind, that the attempt, however well-intentioned, to dictate the books to be used in our common schools is regarded by many as invasion of the right of private judgment and consequently incompatible with the genius of our free institutions.<sup>13</sup>

Additional reform efforts aimed at partial state funding of schools met with an equally ignominious fate. Fearful of assessing a direct state tax on Vermont residents to fund education, the legislators chose instead to levy a 6 percent tax on excess bank profits along with tavern and peddler license fees. As historian David Ludlum observes, "this provided no solution, for the sum grew so slowly that an impatient Legislature a few years later confiscated it for ordinary expenses."<sup>14</sup>

Efforts to impose statewide regulation during the 1820s were soundly defeated by those staunch proponents of local or, more accurately, district autonomy. Reformers, however, refused to buckle under and, some twenty years later, mounted yet a second campaign for statewide educational reform.

Other efforts to improve education during this period met with success. Two prominent illustrations deserve recognition: Emma Hart Willard's innovative school for girls, operating in Middlebury between 1814 and 1818 before moving to its more famous Troy, New York quarters, developed a rigorous and wide ranging curriculum consciously modeled after Middlebury College. In Concord, Vermont—in what some Vermonters maintain was the first teacher training (or "normal") school established in America—the Rev. Samuel Read Hall used his own text, *Lectures on School-keeping*, to inspire interest in such traditionally neglected areas as American history and geography.<sup>15</sup>

The next great state initiative began in the mid-1840s and culminated with the successful creation of a uniform common school system in 1850. It reflected earlier effort in its results but differed markedly from them in its ideological and social origins. Vermont itself had changed. The burgeoning economy of the 1820s had foundered in the great depression of 1837. Many Vermonters had lost faith in unstoppable progress. Salvation for some took the form of sheep. By 1840, a "sheep craze" had placed 1.7 million sheep in the state—leaving one wag to comment facetiously "that everything save for the kitchen sink had been given to sheep."<sup>16</sup> The process of farm consolidation to obtain economies of scale meant that Vermont's rural communities suffered dramatic declines as small farmers, their sons and families trekked westward in search of new opportunities.



*Emma Hart Willard ran an innovative school for girls in Middlebury, 1814–1818, and published A Plan for Improving Female Education (1819).*

There were other causes for dramatic changes in Vermont's rural landscape. Commerce, industry, and especially the arrival of the railroad spawned unparalleled urban growth. Burlington, Vermont's largest town in 1840, boasted 4,000 residents; that figure almost doubled to 7,700 in 1850, and doubled again, to 16,000, in 1870.

Progress, however, exacted a heavy price, including the rapid deforestation of Vermont's forests. The shattering of Vermont's cherished homogeneity followed the arrival of the Irish and French-Canadians. Most devastating was an explosion of emigration facilitated by ease of railroad travel. By 1850, fully 42 percent of native born Vermonters resided out-

side the state, the bulk drawn from Vermont's youth who had abandoned exhausted soils and marginal hill farms to venture to the beckoning west.<sup>17</sup> Confronted by the waning of Vermont's golden age, Vermonters were catapulted into an identity crisis.<sup>18</sup>

The spirit of these trying times was reflected in the broader culture. James Fennimore Cooper's Natty Bumpo decried the senseless substitution of commerce and greed for God's nature. The Hudson Valley school painters romanticized a God's wilderness unsullied by humans. Thoreau retreated into the sanctity and silence of Walden Pond. Vermonters, too, tried to hang on to a lost innocence, as dramatically evidenced in the mythicization of Ethan Allen by historian Zadock Thompson and author Daniel Thompson. They employed exorcism to erase Allen's missteps from the public record and artistic invention to create a swashbuckling frontier hero in the mode of Daniel Boone.<sup>19</sup>

The above background helps us understand the impulses directing those who convened in Middlebury in May, 1845, to discuss educational reform. Much like the reformers of the 1820s, these men championed education as a vehicle for stabilizing a society in flux. Statewide solutions were essential to create standards for teachers, develop a program of systematic visitation and supervision, and impose uniformity in the use of text books.

What distinguished these reformers of the mid-1800s from their earlier counterparts was their place in society. In contrast to their workingmen predecessors, these reformers, like Horace Eaton, William Slade, and Thomas Palmer (two of whom served as governor of Vermont) were men of considerable economic substance, political Whigs who championed the spirit of the native "self-made man" while harboring fears of Irish immigration and the growing disparities between themselves and the enlarging numbers of poor.

The explanation of why so many of Vermont's shining lights chose now to rally around the flag of educational reform can readily be deduced from Horace Eaton's first Annual Report of the State Superintendent of Schools in 1846.

Experience proves that as society advances in age, there is ever growing up a tendency to widen disparities of rank and condition. And what means can be devised that shall be so effectual in guarding against them as the general diffusion of knowledge? Here is an equalizing power—a leveling engine, which we may rightfully and lawfully employ. Its operation will not undermine, but consolidate and strengthen society. Let every child in the land enjoy the advantages of a competent education at his outset in life—and it will do more to secure a general equality of condition, than any guarantee of equal 'rights and privileges' which constitution or laws can give.<sup>20</sup>

Here is a conscious renunciation of the spirit that had originally animated the campaign for a uniform system of schools. These conservatives were reacting to a pervasive fear that, in the absence of an educational safety valve, increasing numbers of poorer Vermonters might choose—as they had in selecting Ethan Allen—to pursue extralegal methods with which to redress grievances. Moreover, this shift in tone was not an isolated phenomenon; we find it contemporaneously in Vermont's temperance movement. During the 1820s and 1830s, advocates employed moral suasion to induce individuals to take a pledge renouncing the consumption of liquor. Frustrated by limited success in the 1840s, reformers turned their sights on prohibition. Here, as in educational reform, the later impulse was decidedly paternalistic.

The momentousness of the Middlebury gathering seems to have captured the legislature's attention, for within five years, Horace Eaton and his colleagues affected a multitude of major reforms. Foremost among these was state-controlled supervision, designed to break down local autonomy and impose a measure of standardization. At the local level, town superintendents, elected by the voters, were responsible for visiting schools at least once a year and for examining and certifying teachers. Town superintendents, in turn, were supervised by a county superintendent (a position which shortly thereafter was deemed unnecessary and abolished). At the top of the bureaucratic pyramid was a state superintendent (initially Horace Eaton himself), whose responsibilities, besides advising county superintendents, focused on securing information abroad, preparing an annual report, and submitting recommendations to the legislature.

In his first Annual Report in 1846, State Superintendent Eaton enumerated several problem areas requiring state intervention. Foremost on his list were the more than two thousand small school districts scattered across the state. Each Vermont district, he observed, enrolled an average of thirty-seven pupils, a figure roughly half that of similar districts in New York or Massachusetts. This situation dictated that a single teacher was responsible for teaching two or three pupils at ten different levels.

Consolidation, Eaton maintained, was imperative to meet the challenge of the scarcity of funds available for each school. Schoolhouses he visited were generally in miserable condition with sparse furnishings: an 1847 survey of 1,190 schools throughout Vermont revealed that fewer than half had blackboards, only ninety had maps or charts, and only twenty-eight were furnished with globes.

An infusion of state moneys was necessary, according to Eaton, to bolster the salaries of teachers as an incentive for enlarging the pool of





*Horace Eaton was governor of Vermont, 1846–1848, and simultaneously the first state superintendent of schools. He called for a substantial infusion of state money and a uniform school system.*

labor and thereby improving overall quality. The response here was rather interesting. It was not, in effect, to raise salaries. As sociologist Margaret Nelson of Middlebury College found in her recent studies, the primary response to the problem was to substitute young, unmarried females for traditional male teachers. Proponents like Eaton argued the appropriateness of this change on the grounds that a woman's "moral and intellectual qualifications, her devotion, her unselfishness, her calm quiet resolution, her love of children and natural aptitude to teach, may all find ample scope, and profitability to the public good."<sup>21</sup> It is quite possible that the key term here is "profitability to the public good," for Nelson's research reveals that towns paid female schoolteachers, on av-

erage, about half the salary awarded to their male counterparts. These eager young women, says Nelson, generally taught school for two years, sufficient time to showcase their maternal instincts, bolster their dowries, marry, and embrace the "cult of true womanhood."<sup>22</sup>

The reforms of the 1840s had several other noteworthy features. Recognizing that only about half of Vermont's school age children attended school at all, with far fewer doing so regularly, Eaton insisted that the legislature address the issue of mandatory attendance. Furthermore, he urged the General Assembly to deal with the problem of the persistent "Babel-like confusion of books." However, cognizant of the 1820s fiasco, Eaton chose not to press his challenge, and several years would pass before superintendents possessed anything more than advisory powers in this area.

By 1850, Eaton and his fellow reformers could point to an impressive list of accomplishments. As David Ludlum observes:

A healthy consolidation of districts was in progress. Teachers' wages had been raised and the profession made more attractive. Attendance was increasing, until the average for the school year almost doubled former figures. State financial assistance, a powerful weapon, had been employed to enforce compliance with the law. In short, a system of state-controlled, tax supported, nonsectarian schools—the ideal of Horace Mann—was becoming a reality.<sup>23</sup>

To imply that this extensive state initiative had effected a panacea for problems facing Vermont schools, however, is to dramatically overstate the case. A generation later every superintendent's report (either local or state) was still laden with jeremiads bemoaning persistent shortcomings.

An enlightening exchange between historians Marshall True and Betty Bandel of the University of Vermont, published in the spring, 1972 edition of *Vermont History*, reveals the difficulty in assessing education reform at the middle of the nineteenth century. Marshall True, taking aim at the popular romanticizing of the one room schoolhouse, recites a litany of offenses culled from state and local superintendents' reports. The Burlington school superintendent's 1855 report included a portion of an editorial published in the Rutland *Herald*, which commented wryly that "If each school house in Vermont is twenty-feet square then they would all cover twenty acres. What a heap of rubbish. One half of them are black, rickety, ugly boy-killing affairs where comfort never comes and where coughs, consumptions, fevers, and crooked backs are manufactured wholesale." He appended the comment "these words pretty well describe the condition of things among us in Burlington." Moreover, the educational system continued to be plagued by an absence of quality teachers. In the case of Chittenden county, thirty percent of the teachers were

uncertified. As Secretary of the State Board of Education Adams wrote: "Many of the teachers of the district schools of our state do not know enough of reading, spelling, geography, grammar, and arithmetic to teach these studies passably and have little desire to improve."<sup>24</sup>

Indeed, True concludes, the core of the educational experience for most Vermont school children was discipline. Hiram Orcutt's *Hints to Common School Teachers*, published in 1859, advised teachers that school children had to be taught "the necessity of subjection." "The gaining of knowledge," he maintained, "is a secondary consideration. It should be better to leave this entirely out of the question than to have it substituted for discipline." In sum, True concluded, the preoccupation of Vermont education with austerity and authoritarianism was simple: the late nineteenth-century Vermont classroom was "in part a battleground in which the issue was discipline."<sup>25</sup>

Betty Bandel offers an alternative interpretation. "Mr. True," she observes, "has found something very interesting—but . . . it has to do not with schools but with human nature, and particularly human school superintendent nature. New school superintendents view with alarm. Their purpose in life is to stir us up to see what is wrong in what we have for so long taken for granted."<sup>26</sup> Bandel concludes that the polemical nature of reports was then, as perhaps it is now, a necessary convention to call attention to the educational process.

Regardless of how we interpret the results for students, it is safe to say that the statewide common school system introduced in the middle of the nineteenth century marked a permanent departure from local autonomy. Throughout the second half of the nineteenth century, the role of the state as enforcer of uniformity continued to expand. In 1856, a newly formed five-member state board of education, including the governor and lieutenant governor, was given the power to select texts and to prohibit the use of all other books. In 1870, legislation required sheriffs to enforce school attendance for children between the ages of eight and fourteen. While the onus was later shifted onto parents, the law effectively imposed compulsory attendance. Kindergartens were introduced in 1888; and, following considerable debate, an 1892 state law dissolved all existing school districts and substituted the town as the sole instrument for defining and enforcing educational policy.

The "vicious Act of 1892," as it became known to traditional strong advocates of district control,<sup>27</sup> marked the broadening influence of state control over education throughout the state. To be sure, many Vermonters remained disgruntled, particularly with the preponderance of consolidated schools. Newbury's superintendent bemoaned the growing cost of transporting students to school and campaigned for the elimination

of centralized schools on the grounds that they invariably bred "rude pupils."<sup>28</sup>

Retrenchment, however, was not what reformers had in mind. Indeed, growing calls for Progressive reform at the turn of the twentieth century strengthened efforts to increase the state's role in education. Pedagogical innovations, shaped by the pragmatic movement led by Vermont native John Dewey, questioned traditional methods of teaching. State Superintendent Mason Stone's 1900 report illustrates this third reformist movement. In this section, which he called "Defects," Stone remarked:

The great sin of our public school system is the lack of a definite and exalted aim, a lack resulting from a grievous defect of the present organization of the State . . . Because the teacher is usually aimless,—because untrained and undirected—she does not and probably cannot engage herself to sort the useful from the useless, the essentials from the non-essentials; but, with a morbid and superstitious regard for the text-book, immerses the child at the beginning and requires him indiscriminately to gulp the good, bad and indifferent of consecutive lessons, regardless of his capacity, his liking or the effect upon him. As a result teaching is irksome to the teacher, the work is unpalatable to the pupils, all is spiritless and intangible. This makes school life hard, barren and sordid, because labor without heart or inspiration is drudgery.<sup>29</sup>

The standardized text, so ardently fought for as an improvement in education during the first three-quarters of the nineteenth century, now twenty-five years later is characterized as part of the problem rather than the solution to dull, routinized, and ineffective learning. Mechanization has supplanted inspiration, and Stone laments the repressive environment, which he charges has tragically suppressed "self-activity" and curbed "vivacity."<sup>30</sup>

Stone's critique meshed well with growing Progressive concerns over the great new industrial leviathan that had taken hold of America in the latter years of the nineteenth century. Reformers charged that industrial consolidation, illegal trusts, urban political machines, and other new entities had undermined the traditional American moral fabric. In Vermont, the progressive impulse asserted itself in Governor Allen M. Fletcher's 1912 invitation to the Carnegie Foundation for the Advancement of Teaching to undertake a study of the entire state's educational system. Dr. Henry Pritchett, President of the Carnegie Foundation, selected ten nationally known educational experts from around the country, and accepted the challenge presented to "hew to the line and let chips fall as they would in seeking after the truth of the educational conditions of the state."<sup>31</sup>

The research took two years, with a report published in 1914. The results were extremely unflattering. Teachers, school houses, and pro-

grams all were portrayed in singularly unfavorable fashion. An excerpt on teachers, for instance, described "the typical rural school teacher as a young woman of about twenty-three who . . . is a graduate of a four-year high school, but also has had no professional training. Never having been taught the methods and devices that might enable her to meet the situations of the classroom, she either succeeds or fails in accordance with her native ability."<sup>32</sup> Pedagogy was similarly inadequate, with elementary school curricula lacking "in substance and in form." And school-houses, as we've come to expect, were characterized as "dingy," and "dilapidated."<sup>33</sup>

Progressive reformers laid ultimate blame for conditions on the state's failure to overcome the evils of localism. Local control, in the words of the Carnegie Report, marked a "failure to adapt . . . to modern conditions."<sup>34</sup> Harkening back to Jefferson by insisting that "education is a common good," reformers, observing that "the majority of the children educated within a community do not stay within the community," insisted that "not only should the child be educated for the state, but, in a larger degree, he should be educated by the state."<sup>35</sup> Problems that persisted in spite of state initiatives were now deemed resolvable only through further centralization and a significant boost in state funding.

In response to the report, the 1915 legislature voted an additional \$250,000 to be placed in the School Fund and passed new laws designed to streamline the bureaucracy and promote "efficiency." A small state board was appointed by the governor and given the power to appoint a state commissioner and union superintendents, all paid for by the state. Mason Stone, who as commissioner of schools had originally called for the Carnegie study, now voiced his opposition to the "dictatorial" manner in which state control had all but eclipsed local autonomy, labeling the new board "autocratic" and the new organization "antithetical to the republican form of government."<sup>36</sup> Stone and his supporters, however, were thoroughly repudiated, when Milo Hillegas, the Columbia University professor who had helped write the Carnegie Report and—most importantly—a non-Vermont, was appointed to serve as the first state commissioner.

Hillegas labored vigorously to develop teachers' institutes, courses of study, college courses, and other means to improve the quality of Vermont education. In the end, though, historian John Huden observed that the "Carnegie legislation of 1915, born in grave emergency, was strangled in its infancy by the exigencies of WWI."<sup>37</sup> Eight years after the law was passed and the progressive era was replaced by the *joie de vivre* libertarianism of the 1920s, proponents of local control were again successful in breaking down the uniform system of supervision, curtailing

the board's powers, and transferring the responsibility for hiring and paying superintendents to the towns.

The seesaw struggle between the state and localities persisted throughout the 1930s and 1940s with now predictable consequences. Andrew Nuquist's *Town Government in Vermont* reported that during 1943-44, the state of Vermont paid only fourteen percent of the total cost of its public schools compared with a national average of thirty-three percent paid by all state governments. Towns, burdened with the bulk of expenses, were obliged to allot upwards of half their budgets to school costs, "and find that even with this exertion they have second rate schools."<sup>38</sup>

Yet another attempt (phase four in Vermont's reformist history, for those still counting!) to impose greater state regulation of schools arose during the 1960s. Democratic Governor Philip Hoff, buoyed by his victory on legislative reapportionment, proposed to substitute "comprehensive" and "regional" school districts for traditional local and union schools to facilitate equity and efficiency. With Hoff's blessing, newly appointed Commissioner of Education Richard Gibboney went even further by recommending that educational facilities be consolidated on an unprecedented county level, using Addison County as a model. In March, 1966, Gibboney submitted a plan to Vermont's Board of Education calling for all Addison County students to attend a single high school, three middle schools, and a number of grade schools, all governed by a single, county-wide school board. This model, Gibboney promised, placed within Addison County's "grasp a great opportunity for leadership that could distinguish it within Vermont and the East."<sup>39</sup>

While Gibboney's plan received initial support from the Board of Education and the Vermont Educational Association, it unleashed a tremendous public uproar among proponents of local control. Carrying the debate onto the legislative floor, these traditionalists warned that Gibboney and fellow educational "professionals" were plotting nothing less than the elimination of lay school boards and the cherished principle of local control. Maintaining that "what was good enough in the past is still good enough now," the legislature's steadfast opposition led Hoff to disassociate himself from the plan, and Gibboney, in turn, was forced to submit his resignation. In announcing Gibboney's resignation, Chairman of the State Board of Education Harold Reynolds assured Vermonters that public education would continue to rest in the hands of elected school boards and not in those of statewide administrators desiring "to set up another level of government."<sup>40</sup> Once again, reform efforts fell victim to a pervasive public mistrust, borne out in past performances, that greater state control of education promised far more than it could deliver.

Ironically, though Vermont's school reform effort failed, the reform impulse itself, fueled by the growing federal determination to assert its influence upon American education, continued to develop momentum. The Soviet launch of the satellite Sputnik in 1958 placed union schools near the top of the state's education agenda and indirectly spurred innovations like "tracking." Introduced during the 1960s, tracking was a response to growing numbers of baby-boomers competing for college admission. So, too, new programs introduced by federal mandate during the 1960s—special education, gifted and talented programs, Headstart, etc.—expanded education's role as an instrument for addressing what educational historian Michael Katz calls "environmental assumptions" which held that "altered environments can change character and behavior."<sup>41</sup> In this heady atmosphere of reform, a document distributed by the Vermont Department of Education in 1968, titled "Vermont Design for Education," illustrates the magnitude of this change. Schools, it reported, were to be governed by "a student-centered philosophy," wherein each "student must be accepted as a person."<sup>42</sup> Henceforth, schooling options were expanded to facilitate individualized attention. Serving individual students with vastly disparate needs and capabilities thus became the paramount gauge for determining how well the educational bureaucracy was doing.

Reforms of the 1960s provoked strenuous opposition in the 1970s and 1980s from conservative social commentators such as Diane Ravitch, E. D. Hirsch, and Lynne Cheney. Cheney charged that "revisionists" had functionally undermined the traditional fabric of American society by gutting the "standards" embodied in the traditional educational curricula.<sup>43</sup> These voices reinforced the cry for "back to basics," with advocates charging that falling test scores of Vermont's students proved that the growing expense of education yielded few if any concrete benefits.

The introduction of the federal government as a major player within the educational bureaucracy clearly altered the character and objectives of Vermont's schools, and the outcry against reforms did not reverse the trend. The educational pendulum has not swung back in the direction of greater local control. Advocates of statewide control, led by Governor Howard Dean, have continued to champion new statewide programs, among them, "Success by Six" and "Reading Recovery" for youth, "School to Work" for secondary students, and "Adult Basic Education" for an estimated eighty-eight thousand Vermont adults who "lack literacy skills needed to succeed in today's world."<sup>44</sup>

The foremost achievement of statewide educational policy, however, was the adoption by the State Board of Education in August, 1993, of

"Vermont's Common Core of Learning." Presented as a "revolution" in education, wherein "old [disciplinary] wars are broken down" and teachers "work with students as coaches and guides and partners in learning," the Common Core defined "what every student should know and be able to do" and set forth performance standards and "essential learning experiences." It was drafted under the premise that Vermont's educational shortcomings—which many critics insist are the fallout from three decades of state and federal policies—could only be solved by more, not less, centralized control. Much as in the progressive era of the 1910s, Vermont proudly took the lead in educational reform.<sup>45</sup>

What should we glean from this brief historical journey into Vermont's educational past? From the outset of its creation, Vermont's educational system has been a hybrid. Visions of the benefits of a graduated statewide system, nurturing the unique contributions of all citizens, have been tempered by a pragmatic realization that the greatest powers, those of funding and day-to-day delivery of educational services, ultimately reside with each locale.

That historical amalgam has, for more than two centuries, given rise to a series of pendulum swings. Those seeking to extend the state's ability to impose greater uniformity succeed in part, then find themselves pressed to the defensive when insufficient financial resources and exaggerated promises induce localities to defend their traditional rights.

Over the past three decades, the growing influence of the federal government has bolstered the call for greater statewide uniformity in a variety of educational areas and accelerated both the pace and the scale of reform. Yet past memories of unfulfilled state mandates, deeply ingrained skepticism toward educational professionals, and attitudes passed down from one Vermont generation to the next, insisting that educational values must originate in the locale—all contribute to a continuing resistance to jettisoning powers traditionally exercised by Vermont localities.

History shows us that education has been a policymaking battleground for Vermonters from the moment independence was announced: so it is likely to continue to be in the future.

Vermont's founders recognized this, when, in article VI of the Vermont Constitution of 1777, they took Thomas Jefferson's comment that "the earth always belongs to the living generation" to heart and reminded future Vermonters that they retained "an indubitable, unalienable and indefeasible right to [undertake] reform . . . judged most conducive to the public weal."<sup>46</sup> How Vermonters choose to exercise that power for providing clarity of educational direction and administration in the future remains to be seen: posterity must ultimately be the judge.



## NOTES

<sup>1</sup> David Schaeffer, "A Comparison of the First Constitutions of Vermont and Pennsylvania," *Vermont History* 43 (Winter, 1975), 33-43.

<sup>2</sup> Thomas Jefferson's "A Bill for the More General Diffusion of Knowledge," details his plan; Jefferson used the term "natural aristocracy" in an October 28, 1813 letter to John Adams. Both documents can be found in Wilson Smith, *Theories of Education in Early America 1655-1819* (New York: Bobbs-Merrill Company, 1973), 232-239, 306-312; see also Gordon Wood, *Creation of the American Republic* (New York: W.W. Norton Co., 1969), 426-27.

<sup>3</sup> A copy of the Vermont Constitution of 1786 can be found in Paul S. Gillies and D. Gregory Sanford, eds., *Records of the Council of Censors of the State of Vermont* (Montpelier, Vt., 1991), 85-90.

<sup>4</sup> Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, N.H., 1794), 324-325.

<sup>5</sup> David Ludlum, *Social Ferment in Vermont, 1791-1850* (New York: Columbia University Press, 1939), 223.

<sup>6</sup> Henry Hobart Vail, *Pomfret Vermont* (Boston: Cockayne, 1930), 269-71.

<sup>7</sup> Jeremy Belknap, *The History of New Hampshire* (Dover, N.H.: J. Mann & J. K. Remick, 1812), 247.

<sup>8</sup> John Huden, *Development of State School Administration in Vermont* (Montpelier: Vermont Historical Society, 1943), 18.

<sup>9</sup> Randolph A. Roth, *The Democratic Dilemma* (Cambridge: Cambridge University Press, 1987), 110-111.

<sup>10</sup> *Governor and Council* (Montpelier: J. & J. M. Poland, 1879), 7: 441.

<sup>11</sup> *Ibid.*, 448-449.

<sup>12</sup> *Working-Man's Gazette*, 7 October 1831.

<sup>13</sup> *Report of the Board of Commissioners For Common Schools . . . 1828* (Woodstock: Rufus Colton, 1828).

<sup>14</sup> Ludlum, *Social Ferment in Vermont*, 225.

<sup>15</sup> Emma Willard, *An Address to the Public: Particularly to the Members of the Legislature of New York, Proposing a Plan For Improving Female Education* (Middlebury: J. W. Copeland, 1819); Samuel Read Hall, *Lectures on School-keeping* (Boston: Richardson, Lord & Holbrook, 1829).

<sup>16</sup> Quoted in Paul W. Gates, *The Farmer's Age* (New York: Holt, Rinehart & Winston, 1960), 224.

<sup>17</sup> Lewis D. Stilwell, *Migration From Vermont* (Montpelier, Vt.: Vermont Historical Society, 1948), 216.

<sup>18</sup> This theme is developed in Randolph Roth, "Why Are We Still Vermonters? Vermont's Identity Crisis and the Founding of the Vermont Historical Society," *Vermont History* 59 (Fall, 1991), 197-211.

<sup>19</sup> For elaboration, see P. Jeffrey Potash, "Deficiencies In Our Past," *Vermont History* 59 (Fall, 1991), 212-226.

<sup>20</sup> *First Annual Report of the State Superintendent of Common Schools* (Montpelier: Eastman & Danforth), 33.

<sup>21</sup> *Eighth Annual Report of the Vermont Board of Education* (Burlington: Free Press Book and Job Printing Office, 1864), 80.

<sup>22</sup> Margaret K. Nelson, "Vermont Female Schoolteachers in the Nineteenth Century," *Vermont History*, 49 (Winter, 1981), 5-30.

<sup>23</sup> Ludlum, *Social Ferment in Vermont*, 236.

<sup>24</sup> Quoted in Marshall True and Betty Bandel, "'School Days, School Days . . .': An Exchange," *Vermont History* 40 (Spring, 1972), 85-104.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, 97.

<sup>27</sup> Cited in Andrew E. Nuquist and Edith W. Nuquist, *Vermont State Government and Administration* (Burlington: Government Research Center, 1966), 265.

<sup>28</sup> E. W. Goodhue, county education supervisor, while maintaining that the Newbury superintendent was among many "making political capital out of the opposition," felt "bound to acknowledge that a majority of the people in this county seem to be opposed to the new school law." See *Thirty-First Vermont School Report* (Montpelier: Watchman Publishing Co., 1890), 34-35.

<sup>29</sup> *Thirty-Sixth Vermont School Report* (Albany: Wyncoop, Hallenbeck, Crawford, 1900), 23.

<sup>30</sup> *Ibid.*, 24.

<sup>31</sup> *Report of the Commission to Investigate the Educational System and Conditions in Vermont* (Brattleboro: Vermont Printing Co., 1914).

<sup>32</sup> *A Study of Education in Vermont* (Montpelier: 1914), 42.

<sup>33</sup> *Ibid.*, 56-58.

<sup>34</sup> *Forty-Third Vermont School Report* (Montpelier: Capital City Press, 1915), 10.

<sup>35</sup> *Ibid.*, 15-16.

<sup>36</sup> Mason Stone, *History of Education: State of Vermont* (Montpelier: Capital City Press, 1934), 78. Also see Michelle A. Cross, "Mason S. Stone and Progressivism in Vermont Public Education, 1892-1916," *Vermont History* 62 (Winter, 1994), 26-40.

<sup>37</sup> Huden, *Development of State School Supervision in Vermont*, 205-209.

<sup>38</sup> Andrew E. Nuquist and Edith W. Nuquist, *Town Government in Vermont* (Burlington: Government Research Center, 1964), 148.

<sup>39</sup> Quoted in Albert Norman, "The Case of the Slippery Pig: Primacy as an Issue in Vermont Education, 1965-67," *Vermont History* 45 (1977), 109.

<sup>40</sup> *Burlington Free Press*, 15 July 1967.

<sup>41</sup> Michael Katz, *Reconstructing American Education* (Cambridge, Mass.: Harvard University Press, 1987), 150-151.

<sup>42</sup> *Vermont Design for Education* (Montpelier: State of Vermont Department of Education, 1968).

<sup>43</sup> Diane Ravitch, *The Troubled Crusade: American Education, 1945-1980* (New York: Basic Books, 1983); E. D. Hirsch, *Cultural Literacy* (Boston: Houghton Mifflin, 1987); Lynne Cheney, *Tyrannical Machine: A Report on Educational Practices Gone Wrong and Our Best Hope for Setting Them Right* (Washington: National Endowment for the Humanities, 1990).

<sup>44</sup> *Vermont School Progress Report* (Montpelier: State of Vermont Department of Education, 1996).

<sup>45</sup> *Vermont's Common Core of Learning* (1993) and *Content Standards* (1995) are distributed by the State of Vermont Department of Education in Montpelier.

<sup>46</sup> A copy of the 1777 Constitution can be found in Gillies and Sanford, *Records of the Council of Censors*, 3-18.



## Abstracts of Series Papers Not Appearing in This Volume

### **The Theory and Practice of Representation**

*By* ERIC DAVIS

FROM 1776 TO 1789 Americans debated the proper form and structure of representation. While strong legislatures and weak executives marked many early state governments and the Articles of Confederation, by the 1780s efforts had begun to restrict legislative authorities. Competing viewpoints on representation were argued during ratification of the United States Constitution. Federalists maintained that (1) large representative districts were less susceptible to domination by any one interest and provided broader opportunities for finding qualified candidates; (2) legislative terms should be long enough to attract "fit" candidates and allow representatives sufficient experience in addressing the issues before them; and (3) legislative bodies should be checked internally through a bicameral structure and externally through an effective executive veto power.

Vermont, which did not become a state until after the ratification debates, preserved a model of representation that more closely conformed to early revolutionary ideals. Vermont's theory of representation, as articulated in the constitution, included (1) small legislative districts (town representation) and numerous legislators to maintain a close relationship between citizen and representative; (2) annual elections to further strengthen ties between citizens and legislators; and (3) a simple, unicameral structure to avoid a social aristocracy controlling an upper chamber. The constitution gave the governor a limited advisory "veto." An informal but rigorously enforced tradition quickly evolved to discourage legislators from pursuing consecutive terms.

While numerous efforts were made to bring Vermont into line with national and other state models of representation, most such attempts suffered defeat at constitutional conventions. In 1836 the constitution was amended to create a bicameral legislature, with the new senate providing at least some population-based apportionment. At the same time the governor's veto authority was enhanced with a majority vote necessary for a legislative override. In 1870 another constitutional amendment moved Vermont from annual to biennial elections.

The nature of representation continued to evolve in the twentieth cen-

tury. The most notable change was the 1965 reapportionment, mandated by the federal courts, that replaced town representation with population-based apportionment. Recent decades witnessed the end of the informal tradition of term limits, and incumbents are now routinely re-elected to multiple terms.

This essay raises issues about what constitutes a "citizens' legislature" and provides references to proposed constitutional changes affecting representation, as well as court cases associated with the reapportionment debates of the 1960s.

## **State Government and the Public Health**

By DR. LESTER WALLMAN

THOUGH CONTEMPORARIES spoke of eighteenth-century Vermont's "salubrious and healthy" climate, health and medical issues emerged as governmental concerns fairly early in the state's history. In 1784 and 1787 the General Assembly passed smallpox legislation. The 1787 law gave selectmen broad authority to quarantine infected residents, procure the necessary medical care, and approve inoculation. Money to pay for the mandated medical care came from the smallpox victim, though indigent victims received care at town expense.

Though state government periodically addressed the special health needs of some Vermonters, including the visually and hearing impaired and the insane, it was not until the late nineteenth century that Montpelier began debating broader public health issues. Beginning in 1872 the Vermont Medical Society began lobbying the General Assembly for a state board of health with adequate power "to investigate everything that injuriously affects the public health."

The General Assembly repeatedly thwarted efforts to create such an entity until passage, in 1886, of legislation for a state board of health. In 1888 the governor vetoed an effort to extend the board's powers beyond an educational and advisory role. Executive and legislative branch opposition to state public health initiatives was attributed to concerns over local control, local resistance to European and other national health care discoveries, and fears of creating a professional health care elite.

The state supported some health measures, particularly those protecting Vermont's increasingly important dairy industry. A state hygiene laboratory was established in 1899 to examine milk and water and, in 1909, inspection of milk was required. Such protections helped give an advantage to Vermont milk in the Boston and New York markets.

Public health received more favorable support from the Vermont court

system. In 1911, for example, the Vermont Supreme Court, in upholding the Board of Health's regulation prohibiting swimming in a public water supply, gave explicit government recognition to the germ theory of disease.

Outbreaks of polio beginning in the 1890s, persisting problems with tuberculosis, and the deadly Spanish influenza epidemic of 1918 contributed to greater acceptance and expansion of government's role in health care. The extent of that role continues to be debated, as evidenced by the 1940s fight over a comprehensive national health service and the 1990s health care reform debates.

This paper notes the separate components of the public health debates, including distinctions between health care, which focuses on preventive practices (eating well, avoiding drugs, using seat belts, etc.) and medical care, which focuses on responses to disease (medicine, surgery, and other treatments). Other components of the medical care debate center on assuring equal access and financing. Debates about financing raise questions about ways to afford medical care and the sources of its high costs, whether they be technology, medical training, or malpractice litigation. Being able to discern these different components helps make sense of the evolving health and medical care debates.

### **When Government Takes Your Property Will You Really Get Paid? An Analysis of Chapter I, Article 2nd of the Vermont Constitution By BARBARA G. RIPLEY**

EMINENT DOMAIN derives from the ancient practice of "purveyance" through which royalty had the right to buy up provisions, ahead of anyone else and without the owner's consent, at an appraised value. Eminent domain is considered an essential attribute of sovereignty. An expression of eminent domain is found in Article 2, Chapter I of the Vermont Constitution: "Private property ought to be subservient to public uses when necessity requires it, nevertheless whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money." Throughout Vermont's history the courts, the general assembly, and citizens have grappled with what constitutes "public uses," "necessity," and "equivalent in money."

If a necessity can be determined and the use is available to the public as a matter of course, the public use provision in Article 2 applies. A public use can be local in character. In 1860 the Vermont Supreme Court deemed the taking of property for a local schoolhouse a public use since the education of children benefited the country as a whole.

Public use does, however, differ from public benefit. In an 1871 case

the Court rejected a mill owner's argument that raising a dam—and thus taking private property by flooding neighboring land—was a public use. Since the mill owner could not be compelled to accept everyone's grain, the mill provided only a public benefit, but not a public use.

Many court cases centered on “necessity” and how well a particular necessity has been defined. A municipality, for example, might have authority to condemn private property for its public water supply. The use of that authority, however, embraced only property immediately necessary for providing that water.

Additional debate surrounds the question of when a taking occurs. In the exercise of its police power the state can make regulations to protect the public health and safety that do not entail the actual taking of property but that restrict its use as private property. Zoning and land use planning are examples. At what point do such restrictions constitute a taking? In an 1898 case the Court held that a taking did not occur when a municipality dynamited a mill owner's dam to prevent flooding of an adjacent public highway. The necessity of averting imminent public injury by dynamiting the dam did not constitute a taking even though the mill owner's use of his property was restricted.

Linked to the question of what constitutes a taking is how to determine an “equivalent in money.” The market value of property is often used in calculating damages when land is taken, but does not always encompass the effects a proposed public use might have on the owner's enjoyment and use of the property.

Vermont case law is rich in discussion of Article 2 as each generation has grappled with the balance between the rights of private property and the necessity of public use, from the establishment of grist mills and an early road network, to development of a railroad network in the nineteenth century, to today's debates over land use planning. The debate continues to evolve as a growing population density vies for a finite amount of land.

## **Improving the Quality of Elections: Campaign Reform in the New Age of Shame**

*By* JAMES H. DOUGLAS

ELECTIONS DEFINE DEMOCRACY and Vermonters have debated campaign reform throughout our history. Reforms have centered on meeting the constitutional mandate that elections be “free and without corruption;” that access be guaranteed for all eligible voters; that participation in elections be encouraged; and that nobody be able to buy an election or

even a vote. Campaign reform is a continuing issue because of the creativity of candidates in seeking electoral advantage and because of changing realities, such as the advent of mass communication.

Historically, Vermont has provided liberal access to the polling place. Unlike other states, for example, eighteenth-century Vermont did not set thresholds of wealth or property for suffrage, though the franchise was limited to male, taxpaying residents, twenty-one years old or older. Again, unlike most other states, Vermont does not disenfranchise convicted felons; only those convicted of election fraud can be denied the vote. Over time, as societal perceptions changed, voter eligibility was broadened to include women and those eighteen or older, and the taxpayer requirement was eliminated. Broadening the franchise has, in part, reflected changing national practices, such as amending the U.S. Constitution in 1920 to enfranchise women or in 1971 to lower the age of majority. Vermont did not passively await national amendments; enfranchising Vermont women, for example, involved decades of petitioning the general assembly and gradually winning women's suffrage in school and municipal elections prior to 1920.

Current debates on broadening access to elections center on balancing administrative security of the checklist against providing flexibility for last minute voter registration.

Questions of electoral access embrace the procedures by which political organizations and individuals place themselves on the ballot. The state did not print ballots until 1892. Previously, political parties printed their own ballots or voters simply wrote their choices on a piece of paper. Since 1892, debate has often focused on defining thresholds whereby political parties or independents can qualify to appear on the ballot. In some cases efforts have been made to keep unpopular parties off the ballot, such as the Communist Party in the 1930s. In more recent years Vermonters have questioned whether our thresholds are too low, leading to a proliferation of candidates and parties and an ever expanding, and to some, confusing ballot.

The influence of money on campaigns has long been a concern. In 1900, for example, a candidate for the U.S. Congress provoked editorial comment by hiring a "literary bureau" to produce campaign material and pollsters to track his progress. Contemporaries warned such practices would soon limit candidacies to the wealthy. In 1915 Vermont adopted its first campaign finance reporting requirements and subsequently enacted other reforms; extended the reporting requirements to the general as well as primary election; attempted mandated limits on expenditures; tightened reporting requirements and extended them to legislative races; and offered a system through which candidates can voluntarily pledge

to limit expenditures. Campaign finance reform occasionally runs afoul of First Amendment guarantees, and the courts have interpreted mandated spending limits as restrictions on free speech.

Even successful government efforts to control campaign fund raising and expenditures often encounter what Douglas refers to as the tooth-paste theory of political money: if you squeeze it in one place, it just goes somewhere else.

Campaign finance is also linked to media access and the increasingly expensive, but effective, tools of mass communication. What responsibilities do the media have for providing access to candidates, particularly those who cannot raise the large sums associated with buying television and radio spots? A related question centers on the quality of campaign coverage and whether news media cynicism or designation of "major" or "minor" candidates colors the electorate's perception of candidates. Such continuing issues affect the very foundation of our democratic process.

### **Observations on Local Government and Centralization in Vermont** By SAMUEL B. HAND

SOONER OR LATER most debates over public policy evoke language pitting local control versus centralization of services. Almost every participant in these debates uses language that embraces local control, though the arguments lead to dissimilar conclusions. This essay focuses on debates engendered by Percival Clement in the 1902 gubernatorial campaign and by proposals of amendment raised by the Council of Censors in 1856. In both cases opponents and proponents described themselves as defenders of local control while casting the opposition as advocates for greater centralization.

Clement, a renegade Republican seeking the governorship in 1902, raised concern over the "astronomical" rise in state expenditures, a rise he largely attributed to mismanagement and a trend of giving the state greater authority to redistribute local tax money to provide for more centralized control of public services such as education, welfare, and highways.

The regular Republican organization countered with charges that it was Clement who posed the threat to town government (local control). They argued that trading some local autonomy for financial advantage was a civic virtue since towns could not uniformly meet the fiscal demands associated with good roads, education, or other services.

The reality was that Vermont had been suffering from rural depopulation and eroding town tax bases since the 1830s. Under a system of town representation, these declining rural towns controlled strong House



majorities, majorities they used to pass, in the words of one governor, "drafts upon the stronger in favor of the weaker." The "stronger" were those municipalities that had strong tax bases but neither the votes nor the political incentive to oppose state levies on their grandlists. During the 1890s, for example, levies on local grand lists were redistributed through state formulae to support town roads and equalize educational funding. Without such levies and redistribution the Republican leadership feared that town governments, the basic unit of local control, would wither.

Similar arguments surrounded the 1857 Council of Censors' proposals to amend the constitution. The council noted that a then legislative majority of 120 towns could be achieved while only representing one-third of Vermont's population. They therefore proposed a 150-member House, apportioned on the basis of population. To avoid the fate of similar proposals by earlier Councils of Censors, the 1857 censors called a constitutional convention based on population, rather than the traditional town, representation. The outcry against this undermining of town representation was such that the council's proposals were rejected and the council began a slide in prestige that led to its abolishment in 1870.

The centralizing forces inherent in rural depopulation and town representation remained in force until reapportionment in 1965. Indeed, the increasing cost of services and the increased range of services accelerated the process. Since reapportionment, the local control debate has continued, with regional or district forms of government frequently proposed as new units for local control. As with the changing nature of representation, the continuing debate over local control is a search for the appropriate linkage between governed and government, with additional concerns for matching the size of the governing unit with its ability to provide increasingly complex and expensive services.

### **"Trustees and Servants:" Government Accountability in Early Vermont.**

*By* PETER R. TEACHOUT

THIS ESSAY EXAMINES how the framers of Vermont's 1777 Constitution and other early leaders provided for the accountability of public officials within the legal, social, and political realities of their time. The bulk of the essay covers eighteenth-century understandings of what constituted freedoms of the press and of speech. Additional attention is given to eighteenth-century interpretations of legislative and executive branch accountability.

The Declaration of Rights of the 1777 Constitution asserted that all

power derived from the people, and consequently "all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them." The Declaration also enumerated the people's right to freedom of speech "and of writing and publishing their sentiments," and included the qualified statement that freedom of the press "ought not" be restrained (Article 14). Chapter II, Section 32 of the 1777 Constitution further bolstered accountability by asserting that "The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature or any part of government." Article 14 and Section 32 were combined in the 1786 constitution, with the original freedom to publish "sentiments" replaced with "sentiments concerning the transactions of government."

Government accountability was a relatively new concept in 1777 and was restricted by common law, tradition, and contemporary expectations. Common law forbade prior restraint of publications, but allowed post-publication punishment. The 1779 General Assembly, for example, passed two laws restricting freedom of expression. One act called for fines, "imprisonment, disenfranchisement, or banishment" for defaming any court or justice or magistrate. The law's rationale was that "defaming the civil authority of the State greatly tends to bring the same into contempt, and thereby to weaken the hands of those by whom justice is to be administered."

There were at least two cases stemming from these laws, including one involving a member of the General Assembly. The concept that government had a right to punish once publication occurred began to erode, however, with the trial of U.S. Representative Matthew Lyon of Fair Haven under the Sedition Act of 1798. Imprisoning a sitting congressman for making negative remarks about the president did not sit well with Vermonters, as evidenced by Lyon's re-election while in jail.

Another eighteenth-century concept Vermont's founders wrestled with was parliamentary privacy, the idea that government officials had a right to conduct their deliberations in private. Throughout the colonial period there were no newspaper reports on legislative debates. Neither the U.S. nor Vermont constitutional conventions were open to the public and the U.S. Senate's deliberations were originally considered private as well.

Vermont's 1777 constitution manifested a commitment to openness tempered by lingering allegiance to parliamentary privacy. Section 12 of Chapter II, for example, required that the doors of the House of Representatives be open "for the admission of all persons, who behave decently" but with the potentially broad exception, "when the welfare of this state may require the doors to be shut."

Similarly, while Section 13 called for the recording of votes and proceedings of the General Assembly, it was unclear whether the public

or press would have access to these records. A 1787 resolution directed the clerk of the assembly to copy for the press roll call votes and "that no other part of the Journals be reprinted without the special order of the legislature."

The interplay of promoting openness while enumerating exemptions to the public inspection of records or attendance of meetings, has continued throughout our history. Accountability is not an issue that was decided by the founders and passed down as an immutable heritage. Rather it is a constantly evolving concept debated within the context of political expectations and changing information technology.

D. GREGORY SANFORD

# BOOK REVIEWS

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## *Western Abenaki Dictionary. Vol. 1, Abenaki-English; Vol. 2, English-Abenaki*

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By Gordon M. Day. Mercury Series, Canadian Ethnology Service (Hull, Quebec: Canadian Museum of Civilization, Paper 128, Vol. 1, 1994, pp. 609, Can. \$34.95; Paper 129, Vol. 2, 1995, pp. 528, paper, Can. \$34.95).

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**W**estern Abenaki, an Algonquian language indigenous to Vermont, is called by its few remaining speakers at Odanak, Quebec, *Wôbanakiôdwawôgan*, or "Dawnland person speech." Drawing on nearly thirty years of study with thirty-eight Western Abenaki speakers, all acknowledged here by name, from New England, New York, and Quebec, Day presents over 11,500 words of the language with English glosses in the first volume. Using over 3,000 English key words, he provides an English index to those entries in the second. Both volumes are needed to benefit the most from this monumental work.

By no means a complete vocabulary of the language, which has great productive capacity for word formation, nor even an exhaustive use of Day's data, this set is a full, basic dictionary of the living language of the twentieth century. The reader will find words of everyday conversation and narration as well as words of great historical and cultural interest: names of Vermont's native flora and fauna, such as *moskwawaskw*, or "muskrat plant, i.e. sweet flag, *Acorus calamus*" (v. 1, p. 325); Abenaki cultural terms, such as *Ojihozo*, or "he makes himself from something,

the primal Transformer in Abenaki mythology, now on Rock Dunder in Lake Champlain" (v. 1, p. 397); topographic terms, with eighty-five different kinds of rivers named under the key word "river" (v. 2, p. 319–322); and place names, such as *Mozôdebiwajo*, or "moosehead mountain, Mt. Mansfield, Vermont" (v. 1, p. 328). Finally the reader will find borrowings from centuries of contact with Europeans—e.g., *alamaska*, or "he says Mass"—(v. 2, p. 244) and recent innovations—e.g., *skwedaibab-maksek*, or "airplane, literally fire glider or sailer" (v. 2, p. 7).

The introductory material, repeated in each volume, includes a brief history of the language community at Odanak; discussions of language variation, loan words, and orthography; a pronunciation guide; a guide to the structure of entries; and lists of the grammatical terms and abbreviations used. A special feature is a list of selected word roots, the first of the meaningful building blocks that can appear in the often complex Abenaki word stems.

The writing system used is practical, avoiding unusual symbols except for *ô* which, following an Abenaki tradition, stands for a nasalized vowel sound not similar to any English sound. It is also scientific, fully reflecting the actual sounds of the language. It is essentially a respectful refinement of the orthographies of the great nineteenth-century native Western Abenaki scholars Pîl Pol Wzôkihlain, Joseph Laurent, and Henry Lorne Masta, with the variations from these originals well documented in the section on orthography. The pronunciation guide is non-technical, yet gives careful descriptions and English equivalents, where possible, along with the Western Abenaki key words.

Each Abenaki-to-English entry, given in Abenaki alphabetical order, begins with a citation of a full Abenaki word (usually in the shortest pronounceable form). Each entry contains a word class code, keyed to the section explaining grammatical terms, and an English gloss, sometimes with a further explanation or etymology. Western Abenaki is a highly inflected language: many possible forms of each noun or verb are produced with prefixes or suffixes that express grammatical meanings. (Use of the inflected words requires knowledge of the grammar not available in this book.) Sample inflected forms are included for nouns (usually the plural and locative forms) and for many of the verbs. Body part names and kin terms, which in Western Abenaki are obligatorily possessives and always occur with a personal prefix, are mostly cited only as word stems without any examples of the actual spoken prefixed forms.

This book is an essential key to Vermont's surviving indigenous language and one important tool for the Abenaki people for maintaining their linguistic heritage. It is an indispensable reference work for anyone

interested in the topography and place names of Vermont, New Hampshire, New York, and Quebec.

Gordon Day and most of the Dawnland speech people who contributed to it did not live to see this book printed, but, no doubt would join in the humble plea Sosap Lolô (Joseph Laurent) made in the introduction to his *New Familiar Abenakis & English Dialogues* of 1884:

May this little volume, which will learn the white man how the Abenakis vocal organs express God's attributes, the names of the various objects of the creation: beasts, birds, fishes, fruits, etc . . . be welcomed by the white as well as by the red man, and its errors and defects overlooked with indulgence.

JOHN D. NICHOLS

*John D. Nichols is professor of Native studies and linguistics at the University of Manitoba and a student of Algonquian languages and literatures.*

*Historic Contact: Indian People and Colonists  
in Today's Northeastern United States in the  
Sixteenth Through the Eighteenth Centuries*

By Robert S. Grumet (Norman: University of Oklahoma Press,  
1995, pp. 544, \$47.50).

*Ninnuock (The People): The Aboriginal People  
of New England*

By Steven F. Johnson (Marlborough, Mass.: Bliss Publishing,  
1995, pp. 296, paper, \$15.00).

*The American Revolution in Indian Country*

By Colin G. Calloway (Cambridge: University of Cambridge  
Press, 1995, pp. 350, \$59.95, paper, \$17.95).

Although the aboriginal peoples of the Atlantic seaboard were the first tribal nations of the continental United States to meet Europeans, they have not, for the most part, been the most thoroughly studied. The one outstanding exception has been the Iroquoian League of Five Nations, which has attracted the bulk of scholarly attention, perhaps more than all the other tribes of the Northeastern Woodlands combined. However, as these three volumes illustrate very well, increased knowledge as often

as not raises new questions even as it provides some answers. The complexity of these early societies remains today an intellectual challenge for scholars, just as in their day they presented a political challenge for colonial administrators and a personal challenge for settlers bent on acquiring aboriginal lands.

Each of these authors has his own particular perspective: Grumet, in his substantial *Historical Contact*, uses archaeological, ethnographic, and other data to flesh out and help assess historical documentation of intertribal and colonial-tribal relationships in the American Northeastern Woodlands. Johnson, in *Ninnuock*, assesses New England accounts in the light of latter-day anthropology and ethnography. Calloway, the historian, relies largely on historical documentation, both primary and secondary, for his survey of Indian participation in *The American Revolution in Indian Country*.

Grumet launches his study by announcing his particular use of terms (pp. 6-7). For one, he favors *country* instead of *tribal homelands* or *territory* to promote the perception of places as arenas of interaction; another term he proposes is *traveler* instead of *explorer*, which he calls "conquest cant." But customary usage can die hard, and the excluded terms, along with others on his list, bob up here and there in his text.

Grumet admits that some answers elude archaeological evidence. He illustrates this by pointing to difficulties in identifying sites as aboriginal after the spread of European manufactures and the adoption of European-style houses by Native Americans, both processes well under way in the Northeast by the end of the seventeenth century. A counterbalancing factor was the Indian production of distinctive artifacts for markets opened up by the new trade; however, this evidence is not always clear, as stylistic influences worked two ways, and Europeans adopted Indian motifs and some production techniques. Another archaeological trail was created as Indians moved their semipermanent settlements with increasing frequency in their retreat before the advancing colonial frontier. These settlements tended to become larger and more densely populated as they relocated.

In tracing out this history region by region, with the help of maps and sidebars on particular sites, Grumet presents a vivid and detailed tableau of three centuries of experiences in a wide variety of settings and conditions. These experiences ranged from peaceful cohabitation to violent confrontations, which in the case of King Philip's War (1675-1676) engulfed all of New England and destroyed a people. Nevertheless Grumet concludes that in spite of massive loss of land and intense colonial pressures to assimilate — for one small example, in seventeenth-century Massachusetts, colonial law required Indians to dress in the manner of English

settlers—Indian identity did not disappear. Two characteristics that enabled Indians to survive as Indians, although in culturally altered forms, were their mobility and adaptability. An initial reaction of peoples who had settled into a semipermanent agricultural lifestyle was to re-emphasize their earlier seasonal round as hunters and gatherers.

Grumet's work can best be described as a mosaic of the history of the Northeastern Woodlands. Ranging over so many diverse locales, with such a variety of histories, it casts its net wide rather than probing the depths. If the tableau that emerges is intricate rather than fully integrated, it still provides context that is both helpful and useful.

Where Grumet's style is that of an archaeological report, Johnson's is anthropological. He is at his even-handed best when describing Indian societies as they were when Europeans arrived and their reactions to the pressures of colonialism. He is less at ease with the European aspect, such as that of the French, as attested by his fuzzy treatment of the "Baron de St. Castine" of Pentagouet (there were two, father and son).

As Johnson points out, by the time the Pilgrims arrived at Plymouth in 1620, the Indians had already experienced a century of contact with Europeans, who were fishing and trading off the Atlantic coast and in the Gulf of St. Lawrence since the beginning of the sixteenth century and possibly earlier. A number of New England Indians had even been to Europe and back; Squanto was not the only one to have such an adventure. A Passamaquoddy legend related how the mythic giant creator-hero Glooskap had crossed the ocean in his magical stone canoe to discover England and France; "since that time white men have come to America" (p. 125).

Johnson wonders at the spread of Christianity among the Indians, "considering that the Algonkians believed in allowing all people to hold their own religious convictions" (p. 151). He points to the psychological effects of the epidemics as well as to the environmental changes that resulted from European agricultural practices, both of which were disorienting to the Native Americans. He also sees social and political factors, such as ambitious youths who "saw Christian conversion as an alternative path to tribal leadership," enabling them to bypass the authority of the sachems (pp. 149–150). By adopting Christianity, they could aspire to supervisory positions over "praying towns." In spite of such reservations, he describes Samson Occom (1723–1792), the Mohegan who converted at sixteen years of age to later become a Presbyterian missionary, as a "Moses" to the Indians. On another note, Johnson is too sweeping when he claims that Occom was "the first Native American Indian known to have written for publication" (p. 226). That statement should be qualified: Occom was the first American Indian to have his writing (a sermon) published



in English, in 1772. (In his bibliography, Johnson lists a 1780 edition of Occom's work.) To the south, Indians had long been publishing in Spanish.

One can also wonder about Johnson's practice of not indicating his footnotes in his text but only by chapter and lead-in quotation at the end of the volume, making it almost inevitable that the reader will not refer to them. That is a pity, as they contain some interesting information.

Colin Calloway's account of Indian participation in the American War of Independence fills in an often overlooked chapter in American history. As he makes clear in his well-paced text, Indians had a great deal at stake in that watershed event. Trade and territorial integrity were major concerns, overriding imperial-settler political differences. As Calloway observes, Indians were as much guided by self-interest as were the colonists. They never arrived at a consensus as to where those interests lay, and so Indians fought on both sides, even to the point of Indians fighting against Indians, as happened with the Abenaki and Iroquois when they split among themselves. Ironically, their choices turned out to be irrelevant, as no matter which side they joined or how well they distinguished themselves in battle, they emerged the losers. The Stockbridge Indians fought for the Americans, only to lose what little of their land remained after 1783, as well as their voice on the town council. Dispossession and marginalization were justified by the popular fiction that Indians had been aggressors and that all had fought for the British. As Calloway demonstrates in great detail, this was far from the case.

The principles for which the war were fought were not later extended to Indians any more than they were applied to the issue of slavery. Good intentions on the part of some could not prevail against postwar expansionism, which allowed very little place for Indians. Only in recent years has the tide of public sentiment changed sufficiently to begin the difficult task of correcting—or at least easing—past injustices.

By presenting the fundamental role of Indians in American history, these three works counterbalance past attempts to write them out of the past. Far from being irrelevant relics of the past, Indians have been vital forces in forging today's identities. The challenge for historians is to learn and acknowledge how much today's America owes to those ancient roots.

OLIVE PATRICIA DICKASON

*Olive P. Dickason is professor emeritus of history, University of Alberta.*

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## *Northeastern Indian Lives, 1632–1816*

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*Edited by Robert S. Grumet (Amherst: University of Massachusetts Press, 1996, pp. 396, \$55.00, paper, \$18.95).*

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This wonderful book provides biographical sketches of sixteen individuals, thirteen men and three women who were significant leaders in a variety of northeastern societies in the first two centuries of the Anglo-American occupation and domination of their lands. The writers, recognized historians and anthropologists, offer insightful, informed perspectives on the personalities, their people, the colonists, and the times. By employing the biographical tradition, these authors give us glimpses into the lives of historic Indian figures and, by extension, offer some sense of how these people coped with their rapidly changing worlds.

A foreword by one of the most prominent early biographers, A. F. C. Wallace, reminds us that this scholarly entry into a society, via its life histories, is only now getting the academic attention it deserves. The editor, Robert S. Grumet, makes similar comments about the changing emphases and perspectives of Indian biography over the past 150 years. Although not an extensive examination of the role of biography (or autobiography) in advancing the development of the history of the first peoples of North America, Grumet's introduction does demonstrate the shifting purposes these biographies have served. The earlier hagiographic tradition has been replaced by the current one, chronicling the complexities and challenges of Indian responses to the pressures of colonialism.

The societies represented in this compilation cover the northeast from Maine to Ohio. The sketches, arranged chronologically, examine the lives of lesser-known men and women (except for Molly Brant's biography), uncovering new stories and new insights. Only one of these biographies, that of Moses (Tunda) Tatamy, a Jersey Delaware who came to settle in Pennsylvania in the mid-1700s, has been previously published. The stories begin at a time "when defeat, destruction and dispossession were still unthinkable possibilities" (p. 12), so we see the varying and evolving strategies individuals forged to manipulate or adapt to the political and economic situations in which they were thrust. The women's stories are especially interesting, for they not only emphasize the different roles women could play, such as political and cultural intermediary Molly Brant (Mohawk), or doctor-healer Molly Ockett (Pigwacket), but show that for the Saconet, at least of the late 1600s, women could also be principal sachems, as was Awashunkes.

Each biography contains a wealth of historical and cultural information this review cannot begin to impart to the reader. And they do even more. Each biographer discusses the limitations of the written sources necessary to construct the life history; some reflect on the uses of biography. Thus there is an important methodological and theoretical underpinning to this volume. For instance, the author of the biography of Miantonomi (Narragansett) says that we may never know what he thought most significant about his own life (p. 17); such declarations certainly assure us that the studies have been carefully crafted. Similarly, in the chapter on Uncas (Mohegan) the writer notes that today Uncas would be considered a self-serving collaborator, very different from the nineteenth-century portrayal of him as a "consistent ally of the English" (p. 45).

Most of the sketches indicate that these historical figures found ways to adjust to the pressures of the English and the European rivalry. Some served as power brokers, who were highly important to the early colonists, as was Wyandanch of the Montauks; others were mediators, such as Suscaneman of Matinecock and Shickellamy, an Oneida, in Pennsylvania. Still others allied themselves with the English for their peoples' security, as did Rawandagon, an Abenaki. Beginning with Waban of the Natick, the biographies look at northeastern people who already had at least a generation of experience with the colonists. A number of the sketches show how Indian and European customs began to mingle, as in the land tenure practices of Daniel Spotso of Nantucket or of the "cultural broker" (p. 224), Theyanoguin, who twice traveled to England but was still very much rooted in Mohawk traditions. Some tried to escape the "intercolonial and intercultural conflict" (p. 278), as did the Delaware brothers Pisquetomen and Tamaqua, originally of the Delaware and Schuylkill River valleys. They moved to the Ohio River valley in the mid-1700s on the strength of the English promise to restrict settlement, only to find themselves soon after again caught up as strangers in their lands.

Along the way, by means of incidental, repetitive themes in all these fascinating stories of diplomacy, ingenuity, resistance, and accommodation, we learn still more. For instance, the mix of northeastern peoples both through intermarriage and alliances throughout the 200 years is striking. We also find that in the seventeenth century interpreters came from the English side, but by the second generation Indian leaders were sending their children to schools and were themselves accepting Christianity.

This edited work will be of use to readers interested in Algonquian and Iroquoian histories, New England history (much can be learned about the reaction of the English as seen through the individual lives), and the

biographical tradition in ethnohistory. This book would serve well as an accompanying text to the history of Indian-settler relations in the Northeast. Finally, as a book dedicated to the memory of Gordon Day, it is a most worthy and fitting tribute. He would have been pleased.

TOBY MORANTZ

*Toby Morantz is associate professor of anthropology at McGill University. She does research and writing on the fur trade in northern Quebec and the history of native-white relations in Canada.*

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### *The Strength of a People: The Idea of an Informed Citizenry in America, 1650-1870*

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By Richard D. Brown (Chapel Hill: University of North Carolina Press, 1996, pp. 272, \$29.95).

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One of the characteristics that distinguished the United States as a "new nation" founded on Enlightenment principles was the widely held belief that American citizens had to be well-informed in order to exercise the responsibilities of citizenship. In a society in which political power was distributed widely, at least in comparison with other late eighteenth-century polities, political knowledge could not be confined to an elite few. Rather, all those who would take part, directly or indirectly, in the election of officers and the making of political decisions, had to share a basic knowledge of American political institutions and the issues with which those institutions were currently grappling. In the post-Revolutionary years, this meant a diffusion of political knowledge among most white male Americans, those persons who possessed the electoral franchise in the years shortly before and after 1800.

*The Strength of a People: The Idea of an Informed Citizenry in America, 1650-1870*, is Richard D. Brown's exploration of the development of the concept of the diffusion of civic knowledge among the citizenry from Restoration England through post-Civil War America. Brown argues that this important political concept of Revolutionary America had its origins in struggles over English liberty a century before American independence, and that, as American society was transformed in the first half of the nineteenth century, the concept of an "informed citizenry" took on very different connotations from those associated with it during the Revolutionary and Founding periods.

Political developments in seventeenth-century England shaped the development of an informed citizenry in three ways. Freedom of inquiry into political questions, an essential assumption of an informed citizenry, was made legitimate by the acceptance of religious toleration, which substantially increased the range of questions that were considered "open," rather than settled by dogmatic "truth." A free press emerged in England around 1700, with the demise of licensing laws, the spread of printing presses beyond official "Stationers' Companies," and the establishment of many newspapers, in both London and provincial cities. Finally, as the concept of "citizen" in England extended beyond the gentry, the demand for books, newspapers, and political discussion increased.

As these ideas about an informed citizenry were developed by Radical Whigs in England in the early eighteenth century, Brown shows how the same concept was planted in the colonial political consciousness. It became activated as an important part of the American political philosophy with the attempts of Parliament and the Crown to reform the imperial system between 1763 and 1775 through measures such as the Stamp Act, the Townshend duties, the Tea Act, and the Coercive Acts. The provincial Congress of Massachusetts, in words written by John Adams, proclaimed in 1776 that "As a government so popular can be supported only by universal knowledge and virtue, in the body of the people, it is the duty of all ranks to promote the means of education for the rising generation." In this statement, Adams propounded what Brown argues is a crucial precept of the "informed citizenry" movement: that free public education is the best means of developing virtuous and knowledgeable republican citizens. However, Brown notes that the new states' willingness to back up this concept with action was limited: only Massachusetts and Connecticut supported grammar schools at the time of the Revolution, while other state legislatures rejected proposals to back up principle with action. For example, Virginia's representatives rejected Thomas Jefferson's 1779 Bill for the More General Diffusion of Knowledge.

Brown notes that by the 1820s most politically active Americans believed the ideal of an informed citizenry had been fulfilled. The spread of suffrage to nearly all white men, the expansion of literacy among that public, and the rise of voluntary associations to promote political and civic activity (a trend noted with considerable approval by de Tocqueville in *Democracy in America*) meant that the ideal of an informed citizenry had spread. It had evolved beyond the negative concept of a revolutionary bulwark against tyranny to become a positive concept supporting the involvement of an enlightened citizenry in all aspects of public and civic life. Still, Brown correctly notes, this concept applied only to a small percentage of adult Americans. Further, American practice could

not be said to be consistent with American ideology when women, African-Americans, and native Americans were systematically excluded from voting and nearly all other forms of political participation. Even after the addition of the Fourteenth Amendment to the Constitution with its broad definition of citizenship, there was still a disjunction between rhetoric and practice.

Richard Brown has presented a comprehensive analysis of the development of the concept of informed citizenship in America. Still, this is a book for the specialist, since it assumes considerable familiarity with the major trends in English and American history and political philosophy from 1650 through 1800 and beyond. The general reader who would like an account of the political and social climate of America in the late eighteenth or early nineteenth century would be better advised to read a good primary source, such as Jefferson's *Notes on the State of Virginia*, or de Tocqueville's *Democracy in America*.

ERIC L. DAVIS

*Eric L. Davis is professor of political science at Middlebury College, where he also serves as vice president for information technology.*

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### *No King, No Popery: Anti-Catholicism in Revolutionary New England*

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By Francis D. Cogliano (Westport, Conn.: Greenwood Press, 1995, pp. 192, \$52.95).

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Francis D. Cogliano has written a solid, detailed account of the fortunes of New Englanders' "anti-popery" and the rise of a post-Revolutionary toleration that allowed Roman Catholics to worship publicly without legal hindrance. *No King, No Popery* covers the colonists' denunciations of "popish idolatry" in the 1740s, the tug-of-war between elites and the working class over "Pope's Day," the Revolutionary alliance with the French and the new sense that George III was a more dangerous tyrant than the pope, and finally the new state constitutions, which guaranteed freedom of worship for Catholics. Taking toleration as his main criterion, Cogliano considers religious freedom well established by the 1780s. Other scholars, using a more stringent test of full legal equality, believe that Vermont in the early 1800s provided New England Catholics their first chance at such liberty (pp. 113–131).

The thesis of *No King, No Popery* is that toleration resulted from a Revolutionary-era revision of the Anglo-American antipapist tradition. The result was ironic, for antipapism helped lead New Englanders into Revolutionary ideology, but the Revolution and its aftermath hobbled antipapism. In the seventeenth and early eighteenth centuries, antipapism was an essential element in Protestant self-definition as well as a powerful force in English politics. New Englanders emphasized the former aspect, since colonists rarely saw Catholics, much less those in orders, who were to antipapists the real enemy. By the middle of the eighteenth century, antipapism had much more to do with social tensions in New England than it did with Catholics. Pope's Day, a festival in which laborers, black and white alike, took to the streets parading effigies of the pope and the devil as well as exacting tribute from the well-to-do, allowed the working class to express resentment against their social betters under the cover of an entirely orthodox antipapism. Cogliano provides an excellent account of the disorder and the rituals of Pope's Day and of the elites' promotion of a calmer version of the festival (pp. 23-35). The patriots' alliance with the French led a circumspect New England elite to encourage their contemporaries to tolerate Catholics. Freedom of worship for New England Catholics and an important chapter in the history of religious toleration were the result.

Cogliano neglects one key part in his account of New England antipapism. New Englanders like Timothy Dwight redirected antipapist rhetoric toward deists, skeptics, and the French Revolutionaries. Voltaire and Hume, for instance, took the place of the Catholic clergy in New England Federalist thought. In Dwight's mind, philosophes used mystification and idolatry (in this case, of philosophy and reason) to confuse ordinary people, distracting them from public virtue and the road to salvation. New England Federalists needed enemies against which to define themselves, and the antipapist tradition helped them understand who their enemies were. Consideration of the Federalists would have fit Cogliano's thesis well. He makes much of the refocusing of antipapist rhetoric from the pope to the king, and the next shift would seem to follow naturally.

Still, Cogliano has made a signal contribution to our understanding of the growth of toleration and of a liberal ideology in which toleration and diversity would be much valued. Under the direction of elites, toleration and diversity tended to mute working-class anger and frustration at social inequality. However crude and distasteful it was, pre-Revolutionary antipapism gave members of the working class a way to express their resentment at such inequality. The elite could not halt such expressions but could subdue and channel them by funding only the more peaceful Pope's Day celebrations and disapproving of the more riotous

ones. In encouraging toleration, the elite began to strip away from the working class a traditional way of understanding its hardships and frustrations.

In particular, toleration and diversity based on individual identity and prerogatives, however much we may cherish all of these in the modern United States, have hamstrung any American discussion of economic inequality. On page 117 Cogliano quotes article 2 of the Declaration of Rights accepted by the Massachusetts Constitutional Convention on October 30, 1779: "It is the right and duty of all men in society, publicly and at stated seasons, to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner most agreeable to the dictates of his own conscience; or for his religious profession of sentiments; provided he doth not disturb the public peace, or obstruct others in religious worship." One story of nineteenth- and twentieth-century U.S. history is the application of this respect for individual conscience and choice to spheres other than the religious and to characteristics such as gender, race, sexuality, and ethnicity. The parallel story, however, is the way in which this respect has displaced concern with alleviating economic inequality. Of course it is a shibboleth that Americans are individualistic, but it is a pressing need to understand the way in which respect for individuals displaced concerns about social welfare. Insofar as that happened after the War of Independence—Cogliano is right about the timing and the initial focus on religion—then we are still in the post-Revolutionary period and still under the sway of the Revolutionary elite.

JOHN SAILLANT

*John Saillant is a lecturer in the Department of History at the Massachusetts Institute of Technology and an associate of the W. E. B. Du Bois Institute for Afro-American Research, Harvard University.*



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*Jonathan Carpenter's Journal: Being the Diary  
of a Revolutionary War Soldier and  
Pioneer Settler of Vermont*

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*Edited by Miriam and Wes Herwig (Randolph Center, Vt.: Greenhill Books, 1994, pp. 144, \$24.00).*

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One of the most important contemporary accounts of life on the Vermont frontier, the journal of Jonathan Carpenter Jr., is in the manuscript collections of the Vermont Historical Society. Written between 1770 and 1783, it recounts the experiences of a boy who reached maturity during the Revolutionary War.

Leaving his apprenticeship as a joiner in Rehobeth, Massachusetts, in 1775, Carpenter began the first of five enlistments for militia service before he contracted as a seaman aboard an American privateer. The capture of that ship, the *Reprisal*, by the British resulted in seventeen months of imprisonment for Carpenter. A brief stint on another privateer after his release from captivity provided Carpenter with passage back to New England and the opportunity to acquire a sizable purse of prize money.

Carpenter's journal entries relating to the worsening imperial crisis of the early 1770s and his experience as a militiaman during the War of Independence are sparse and often based on secondhand information. Carpenter's commentary, written from the perspective of a common soldier, pales in comparison to the extraordinarily detailed memoir published in 1830 by another private soldier, Joseph Plumb Martin. Still, Carpenter's journal conveys with some wit and charm (interspersed with occasional doggerel verse) the conventional patriotic canon of the period and reflects the military enthusiasm that many Americans exhibited during the first stage of the war.

Carpenter's record of his privateering ventures and comments about his imprisonment on a British prison ship and subsequently at Forton Prison near Portsmouth, England, are of particular interest to naval historians. This portion of Carpenter's journal was previously edited and published by John K. Alexander as "Jonathan Carpenter and the American Revolution: The Journal of an American Naval Prisoner of War and Vermont Indian Fighter" (*Vermont History* 36 [Spring 1968]: 74-90). After his release to France as part of a prisoner exchange, Carpenter signed on as a crewman aboard the American privateer *General Mifflin*. The cruise from France to New England was successful and provided

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Carpenter with 150 pounds sterling in prize money—capital he would later use to purchase land in Vermont.

The segment of Carpenter's diary that covers 1780–1783 will probably be of greatest interest to readers of this review: It records the diarist's Vermont experience from the time he purchased land in Pomfret, Vermont, through his militia service during the British-inspired Indian raids on settlements in the White River Valley, and his final move to Randolph Center, Vermont.

After his return to Massachusetts in late 1779, Carpenter decided to journey to the "Northward Country" to seek his fortune. Carpenter recorded the ordinary rhythms and routines of pioneer life on the northern frontier—maple sugar making, spring planting, harvesting—as well as the details of extraordinary happenings. The young diarist was attentive to community activities such as militia musters, town meetings, public fasts, and house raisings. He made observations on killing frosts, snowfalls, hailstorms and eclipses, and his diary reflects the concern that Carpenter shared with others about a plague of caterpillars, a blight on the wheat crop, and the destruction of livestock by wolves.

In 1780 Carpenter engaged in three months of militia service at Barnard, Vermont, where he helped construct Fort Defiance. While on duty with Captain Cox's rangers based at the fort, Carpenter fashioned a powder horn he inscribed with his name and other text and decorations. (The Vermont Historical Society acquired this powder horn in 1993.) During his tour of duty, Carpenter scouted the White River area in search of more than the enemy; he was also on the lookout for an ideal piece of land. While in Middlesex (now Randolph, Vermont) he found his "promised land," as fine and level a tract as he had seen in the region. Almost two years later Jonathan returned to the site in Randolph Center and purchased a parcel that he developed and occupied until his death in 1837.

The editors of the diary are to be commended for their carefully transcribed and richly annotated edition of a valuable primary source for Vermont during the Revolutionary War. Miriam and Wes Herwig are local historians who know their subject well and have treated it with sensitivity. The volume is enhanced by indices, maps, and illustrations.

GARY T. LORD

*Gary T. Lord is Dana Professor of History at Norwich University in Northfield, Vermont.*

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## *The Gunboat Philadelphia and the Defense of Lake Champlain in 1776*

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By Philip K. Lundeberg (Basin Harbor, Vt.: Lake Champlain Maritime Museum, 1995, pp. 111, paper, \$14.95).

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The new, expanded edition of Philip K. Lundeberg's 1966 story of the gunboat *Philadelphia* is a laudable addition to our knowledge of this historic vessel and the northern campaign of 1776. The stunning cover painting by Ernest Haas is a fitting beginning to the book, which summarizes the latest research on the Battle of Valcour Island and the gunboat *Philadelphia*. It exhibits excellent maps, drawings, paintings, and many photographs and illustrations never before published. *The Gunboat Philadelphia and the Defense of Lake Champlain in 1776* is a worthy tribute to America's "oldest armed man-of-war on exhibit in North America" and the faithfully built replica *Philadelphia II* at the Lake Champlain Maritime Museum.

Lundeberg is no stranger to the Champlain Valley and its history. As curator of the Division of Naval History in the Museum of History and Technology, Lundeberg had a firsthand role in the Smithsonian Institution's exhibit of the *Philadelphia*. In the 1960s Lundeberg also carefully examined a sister gondola that had been raised from Arnold's Bay in 1952 and then lay exposed to the elements in a field near Ausable Chasm. In November 1967 Lundeberg and Alan B. Albright directed the Smithsonian's first investigation of the area around Schuyler Island in search of a gunboat scuttled by Benedict Arnold's crews in 1776. Divers using towsleds did not find the gunboat, so Lundeberg returned the following year with a side-scan sonar unit. That search, like others that followed, was not successful in locating the lost gondola.

Lundeberg's book not only provides a superb history of the gunboat *Philadelphia* but also renders an excellent explanation of the operations during the American Revolution on Lake Champlain, when British and American forces vied for control of the strategic water highway that linked Canada to the Hudson River. Integrating the story of the American thrust into Canada in 1775 and the subsequent panic-stricken retreat of the American army the following spring, Lundeberg furnishes a solid background to the 1776 naval race on Lake Champlain. He carefully explains details of the construction of the British warships at St. Jean, Quebec (St. Johns in eighteenth-century journals), and the Herculean effort by the Americans at Skenesborough (present-day Whitehall, New York) to build their fleet.

The author describes the Battle of Valcour Island through the eyes of British and American participants alike, often weaving original quotations into the narrative. Intriguing aspects of the engagement afford readers an eyewitness glimpse of one of the most significant yet often overlooked battles of the American Revolution. Lundeberg is clear that the American fleet's pivotal role was not due to any success in battle—most of the vessels were eventually destroyed—but “the very fact of its existence and steady reinforcement forced Governor [Guy] Carleton to the cumbersome task of assembling a navy to guarantee safe passage for his army” (p. 18). This delayed the British invasion of 1776 until the fall. Carleton's objective was subsequently reduced to “clean that place of the Rebels who are upon it with a considerable naval force” (p. 18). Ultimately, the delay would be consequential for the British, providing the Americans time to organize a viable defense a year later at Saratoga.

The book also brings to light some fascinating details of the crew of the *Philadelphia*. Two weeks after the Valcour battle, Benedict Arnold penned a letter of commendation to the captain, Benjamin Rue, who “behaved himself as an Officer and a Gentleman, and deserves the esteem and applause of his Country for his good conduct and bravery” (p. 34). Payroll records from the *Philadelphia*, discovered in 1973, allowed for new research into the crew's background. Lundeberg offers some interesting facts of Rue's service in George Washington's army at Trenton, Princeton, and on the Delaware River. In contrast, Mate Joseph Bettys of the *Philadelphia*, captured when the galley *Washington* surrendered on October 13, 1776, entered the British army instead of accepting parole to the American side. After years of participation in savage raids against Americans, Bettys was caught near Albany and hanged in 1782.

The saga of Colonel Lorenzo F. Hagglund, a skilled salvage engineer, carries the story of the *Philadelphia* into the twentieth century. Hagglund first learned of the 1776 Valcour engagement while stationed in Plattsburgh for military training during World War I. He returned during the 1930s, raising the remains of the schooner *Royal Savage* at Valcour Island in 1934. The following year Hagglund came back with a crew of volunteers, including J. Ruppert Schalk and his yacht *Linwood*, to search for the gondola *Philadelphia*. In a short period the vessel was discovered and raised intact. After several museums refused Hagglund's offer to donate the *Philadelphia*, he exhibited the vessel on a barge in the Lake Champlain region. After Hagglund's death in 1961, the *Philadelphia*, along with several hundred artifacts, was transported to the Smithsonian for permanent display at the National Museum of History and Technology (presently the National Museum of American History). Although Lundeberg notes that Hagglund's recovery of the vessel in 1935

would not meet modern standards of nautical archaeology, he credits Hagglund for raising the vessel "remarkably intact" and being "a capable caretaker for twenty-five years" (p. 42).

The section of the book covering the *Philadelphia's* construction delves into the origins of this class of vessel, which combined characteristics of the New England "gundalow" with those of galleys built for the Pennsylvania State Navy in 1775. A careful survey of the *Philadelphia* by Howard P. Hoffman at the Smithsonian culminated in a detailed set of plans of the vessel, which have been reproduced in the book. In the afterword Arthur B. Cohn, director of the Lake Champlain Maritime Museum, provides an engrossing account of the building of an exact replica of the *Philadelphia* at the museum using Hoffman's plans. For Cohn, the replica "demonstrated a cost-effective and historically sound alternative to raising fragile, historic shipwrecks" (p. 61). Construction of the *Philadelphia II* began in May 1989 and took slightly more than two years to complete. The builders used the same materials, including oak crooks for frames, that the colonial shipwrights had used at Skenesborough in 1776. John Gutter, one builder of the *Philadelphia II*, mused that "over and over again, we were impressed by the extraordinary accomplishment of the men who had gone before us. It is likely that they built a gondola in as little as two or three weeks" (p. 76).

The *Philadelphia II* was launched at Basin Harbor on August 18, 1991, before a crowd of more than 4,000 onlookers. The following year a twelve-week inaugural tour brought the replica to many ports along the lake, allowing 12,000 visitors to board the vessel. A second tour in 1993 took it as far north as St. Jean. The construction and exhibit of the *Philadelphia II* is a testament to the power of volunteerism and the foresight of the museum's staff. The Lake Champlain Maritime Museum, under Cohn, is an exceptional resource and a model of community spirit. The museum's growing exhibits, Nautical Archaeology Center, educational programs, ongoing archaeological field schools, boatbuilding projects, and other operations have contributed to a heightened interest in the maritime heritage of Lake Champlain. This book, published by the museum, should be in the library of anyone interested in the history of Lake Champlain.

RUSSELL P. BELLICO

*Russell P. Bellico is a professor of economic history at Westfield State College and the author of Sails and Steam in the Mountains: A Maritime and Military History of Lake George and Lake Champlain and a second book entitled Chronicles of Lake George: Journeys in War and Peace.*

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## *Transforming Rural Life: Dairying Families and Agricultural Change, 1820–1885*

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By Sally A. McMurry (Baltimore: Johns Hopkins University Press, 1995, pp. 284, \$39.95).

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The middle decades of the nineteenth century were a time of profound and sweeping changes in American agriculture and hence rural life. As Sally McMurry notes, “Participants in this transition anticipated in it both social benefits and costs. In its wake they set about forging new ways of living and working” (p. 171).

The specific transition that McMurry is referring to is the shift in cheese manufacturing from a home-based to a factory-based enterprise. This change did much more than affect the location of the operation; it also meant that what had been a significant occupation for women was now becoming one primarily for men. This changed the dynamics of the farm family in several ways. On the one hand, it freed women from a time-consuming and often arduous task. On the other hand, it also removed them from a central role in the economic fortunes, and therefore sometimes the decisions, of the family.

In this thorough and well-researched book, the author focuses on one county in the middle of the Eastern dairy belt—Oneida County in central New York. (Oneida County is nearly twice the size of the average Vermont county, with Utica its largest city.) But her research and her themes go far beyond the borders of this geographical locale. Central New York agricultural traditions followed certain precedents from New England. As in Vermont, early farms in New York were generally diverse in what they produced; wheat was a significant cash crop in those days. And just a bit earlier than in Vermont, dairying ultimately became the chief agricultural enterprise.

One of the most engaging aspects of this book is its emphasis on how individual people responded to these changes. A number of diary accounts of Oneida County cheesemaking families add significantly to McMurry’s work. Perhaps even more fascinating is her analysis of the lively discussions that were carried on in agricultural journals of the day. Topics such as the education of women (made easier as the burden of cheesemaking was removed), whether men or women should milk the cows, and the question of whether cheese should be made on Sundays all provoked sharp exchanges among readers. In fact, one of the opinionated letter writers on this last question is a certain “R.N.” from Randolph, Vermont.

Another noteworthy aspect of *Transforming Rural Life* is that McMurry looks at her subject from all angles. While it may be trite to state that an author covers all parts of a story, McMurry truly seems to have done so. Her endnotes, which include discussions with fellow Penn State professors in departments of nutrition to veterinary medicine, are testimony to this. Her sources and perspectives include farm women in midwestern states and women engaged in other industries, from shoemaking to textiles.

McMurry paints a provocative portrait of nineteenth-century farm life and how its people reacted to the whirlwind of change that swept them up. The dairy and the cheesemaking industries were certainly not the only facets of agriculture that saw the effects of mechanization and increased production. Although McMurry does not implicitly suggest that the transformation of dairying and cheesemaking in the mid-nineteenth century is representative of the entire spectrum of agriculture, it is a compelling case study for what was occurring in the larger scene as well.

Throughout the period of McMurry's study, men's and women's roles were shifting. On many farms women came to have fewer and more specialized responsibilities, such as care of poultry. "The turn away from the farm for essentials coincided with the general cultural reorientation outward, away from the farm, for cultural ties, market opportunities, and employment" (p. 193). The traditional farming system was being replaced by a factory and market system that was harder to define. This had an impact not only on rural communities but on rural households as well. McMurry believes that most farm women were willing to pass on the cheesemaking responsibilities from the home to the factory, even though the results of this change may have gone far beyond what the women might have imagined at the time.

My only quibble (and it is a small one) is that the author sometimes overanalyzes and draws too many conclusions. For example, when referring to the switch from native cattle to the higher-producing Holstein in the 1870s and 1880s, she cites as a factor the "cultural and social climate": "To replace democratic rationalizations for the native cow with concerns for heredity and explicit ranking was consistent with the new social context" (p. 178). Only later does she go on to note that these cows gave more milk—the likely reason most farmers switched to the new breed. But such minor concerns do not take away from the book's overall excellence. As a study of the dairying and cheesemaking industries and the rural people involved in them, it is a fine monograph reflective of a larger story.

DAVID A. MILES

*David A. Miles is director of operations at Billings Farm and Museum in Woodstock, Vermont.*

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## *Inventing New England: Regional Tourism in the Nineteenth Century*

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By Dona Brown (Washington, D.C.: Smithsonian Institution Press, 1995, pp. 262, \$29.95).

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The body of historical literature treating New England in the nineteenth century has long lacked a book devoted to the origins and development of tourism and its impact on the natural landscape, the economy, and the cultural life of the region. *Inventing New England* competently and admirably fills this void. Written by Dona Brown, assistant professor of history at the University of Vermont, this study chronicles and interprets tourism as an important early form of industrial capitalism that came to rival – if not in many respects sustain and even eclipse – agriculture, forestry, maritime commerce, textile manufacturing, and other economic pursuits commonly associated with New England before World War I. But Brown does not concentrate solely on economic history; the strength and brilliance of her work are in her successful synthesis and integration of economic, social, and cultural history. Moreover, she accomplishes this in a highly readable, enlightening, and entertaining form. *Inventing New England* has not only solid scholarly underpinnings but also potentially broad appeal.

With commendable editorial judgment, Brown does not deal with New England as a whole but focuses on five locations where tourism made a significant mark between 1830 and 1910: New Hampshire's White Mountains; Martha's Vineyard and Nantucket in Massachusetts; rural, agricultural northern New England; and southern Maine. By concentrating on middle-class tourism, she intentionally excludes well-known vacation havens for the wealthy, such as Newport, Rhode Island; Bar Harbor, Maine; and the Berkshires. She also skirts the so-called working-class resorts like Salisbury Beach, Massachusetts, and Cape Cod. To provide background for her case studies, Brown devotes her first chapter to the "northern" or "fashionable tour" (p. 23) – the Hudson River Valley from New York City to Albany, and Saratoga and Ballston Springs, then west following the Erie Canal route to Niagara Falls. Attention to this "first commercial region to develop in the 1820s" (p. 3) and the "new cult of romantic scenery" (p. 34) is critical to an understanding of what subsequently happened in the adjacent New England states and the factors behind this phenomenon.

In Chapter 2 the author "explores how the White Mountains were drawn into a national cultural industry as well as a national commercial net-



work" (p. 4) in the three decades before the Civil War. Here she skillfully links the quest for the romantic landscape experience by means of "scenic touring" (p. 4) with the expansion of railroad systems, the veritable explosion of the resort hotel industry, and, in broader terms, the creation of "a consumer-oriented society and economy" (p. 6). Chapter 3 presents a contrast in geography, economic roots, and vacation life-styles, focusing on Martha's Vineyard, the Wesleyan Grove Methodist camp meeting ground, and its transformation in the 1860s into a resort community that combined informality, privacy, leisure, and the spiritual life. Brown sees Wesleyan Grove and its offshoots both as models for the northeastern coast and as representative of such transforming experiences as "economic speculation, the shift in vacation styles, and the segregation of tourist towns along class lines" (p. 103).

In the final three chapters of the book, treating the last quarter of the century, Brown examines "the process by which tourism spread into the backwaters of New England, transforming the economic hardship and dislocations of those places into a powerful marketing device" (p. 9). She traces the evolution of a new form of tourism, "driven by a profound 'sentimentalization' of New England" (pp. 8-9), which displaces other industries, provides escape outlets from urban life and its stresses, and fosters the emergence in the popular mind of "a mythic region called New England" (p. 9). A "single overriding narrative" ties together these chapters—"the story of how tourism brought New England itself into the marketplace" (p. 10), where tourist experiences were turned into commodities. Those seeking the "exoticism of a preindustrial island fantasy" (p. 10) were attracted to Nantucket, with its nostalgic associations and romanticized history conditioned by the trappings of life in a maritime community. Others sought out the agricultural districts of northern New England, tempted by carefully orchestrated state promotional campaigns playing on memories of rural roots, the simple life, and the lure of the farm vacation experience. Still more people were drawn to old coastal towns, such as those in southern Maine, where they could immerse themselves in "colonial" history and folklore, savor the architecture of their ancestors, indulge in the seascape, and connect with the past.

In *Inventing New England*, Brown does a superb job of explaining how the vision of New England as a region, in terms of myth as well as reality, fostered the growth of tourism in the nineteenth century and has remained a powerful driving force behind the industry in our times.

BRYANT F. TOLLES JR.

*Bryant F. Tolles Jr. is associate professor of history and art history and director of the museum studies program at the University of Delaware. He is the author*

of *The Grand Resort Hotels of the White Mountains* (Boston: David R. Godine, 1996) and has recently completed a manuscript on summer cottage architecture in the same region.

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## *Put The Vermonters Ahead: The First Vermont Brigade in the Civil War*

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By George W. Parsons (Shippensburg, Penn.: White Mane, 1996, pp. 216, \$24.95).

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**I**n the American Civil War the First Vermont Brigade attained distinction as one of the most celebrated brigades in the Army of the Potomac, if not the entire Union army. The brigade's tenaciousness during its four-year history is reflected in its losses: 1,172 were killed in battle or died of wounds and 1,372 died of disease and imprisonment.

The brigade had the notoriety of retaining the same five regiments from its original fall 1861 organization, the Second, Third, Fourth, Fifth, and Sixth Vermont Regiments. Only after suffering devastating losses early in General Ulysses S. Grant's overland campaign in 1864 were its ranks supplemented by the addition of the First Vermont Heavy Artillery Regiment. The Vermont Brigade remained one of the few units in the Union army known officially by its state name and composed entirely of men from one state.

Vermont Brigade veterans never compiled regimental histories of their military service. Perhaps they thought that George G. Benedict, in his two-volume *Vermont in the Civil War* (1885), more than adequately fulfilled the assignment. Benedict described the service of the First Vermont Brigade from formation to discharge in his first volume. George Parsons has undertaken the writing of a modern history of the brigade with *Put the Vermonters Ahead*, but he fails in the task. Enthusiasts of the First Vermont Brigade, the Army of the Potomac, and the Civil War will be disappointed in the book's quality. The Vermont Brigade deserves better.

The Vermont Brigade served four active years, yet the author dedicates only 156 pages to its history. The remaining pages are appendices that list, for example, brigade members who won the Medal of Honor and field and company officers. A qualified writer might be capable of encapsulating the brigade's rich history in so few pages, but Parsons's awkward style falls far short of that result.

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In the preface the author acknowledges his appreciation to the staffs of the Vermont Historical Society and the University of Vermont's Bailey/Howe Library, both repositories of rich Civil War manuscript collections. But Parsons uses little of the material. The only primary sources present in the book are gleaned from Wilbur Fisk's letters to the *Green Mountain Freeman*, published most recently as *Hard Marching Every Day*, and the U.S. government's *Official Records*. Because of Parsons's lack of documentation, the officers and men of the Vermont Brigade remain only two-dimensional. When Parsons tries to describe the feelings of the soldiers, he uses general comments, without quotations for supporting evidence.

Even though he uses predominantly secondary sources, Parsons does at least adequately annotate his work. Several citations, however, are to incorrect pages. And the author takes troubling liberties in his interpretation of the sources. For example, on page 140 Parsons discusses how the Vermont Brigade regained its strength in front of Petersburg, Virginia, and states that it had 2,446 men in the spring of 1865. Parsons credits Benedict as his source, but when I checked the citation I discovered the figure was for January 1, 1865, not March. Although this is a small detail, its inaccuracy leads one to distrust the validity of the text as a whole.

*Put the Vermonters Ahead* does not convince the reader that the author comprehends the true context of the campaigns. Novices to Civil War history may find several of the campaign overviews confusing. Moreover, the book suffers for the lack of a strong editor who would doubtless have insisted that some sections be rewritten, would have eliminated contractions and many colloquialisms, and might have asked Parsons to reconsider his judgment that orders were "idiotic" (p. 114). Parsons is involved in the Medal of Honor Society, and his interest in this elite group of warriors emerges through the text as he describes the exploits of every Vermont Brigade member who won the medal. This is a redeeming value of the book but hardly justifies its purchase.

A modern, detailed history of the Vermont Brigade has yet to be written. With the constant discovery of new manuscript materials, the project is overdue. A reader interested in the Vermont Brigade should find a copy of Benedict's *Vermont in the Civil War*. After 110 years, it remains the definitive history of the brigade and its exploits.

DONALD H. WICKMAN

*Donald H. Wickman is a historian who works at the Lake Champlain Maritime Museum and Community College of Vermont.*

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## *A Pinprick of Light: The Troy and Greenfield Railroad and Its Hoosac Tunnel*

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By Carl R. Byron (Shelburne, Vt.: New England Press, 1995, pp. 144, \$16.95).

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The five-mile Hoosac Tunnel in western Massachusetts, an extraordinary engineering feat, for forty-one years reigned as the longest tunnel in North America. Its creation was a tortuous enterprise indeed. Early interest in the tunnel centered on a canal to compete with the Erie and Chesapeake Canals, which at the time rivaled Boston's port. The first engineering study in 1826—by one Loammi Baldwin, who developed the Baldwin apple—estimated the costs for a canal and tunnel to be as low as \$390,000. The Massachusetts legislature did not consider the plan feasible, and nothing more happened until Alvah Crocker opened his Fitchburg Railroad from Boston to Greenfield in 1845. To advance to Troy, New York (under the banner of the Troy & Greenfield Railroad), Crocker knew he would have to tunnel under Hoosac Mountain at an estimated cost of \$2 million.

In the twenty-four years between the ground-breaking on January 7, 1851, and the test run on February 9, 1875, a rich tale of ineptitude, frustration, politics, bankruptcy, death, perseverance, and ultimate triumph played itself out. Carl R. Byron's *Pinprick of Light* is a gem of a book, covering all the fascinating detail of this story with avid interest, nicely limned prose, and a keen sense of humor. Over several years the author assembled an impressive photographic archive to illustrate the book, and the ninety black-and-white illustrations and photographs are crisply reproduced.

The first revenue freight train passed through Hoosac on April 5, 1875; the first official passenger train on October 13. If the final cost to the Commonwealth of Massachusetts in dollars was staggering at just over \$17 million, the final cost in lives was unforgivable: 196 men died on the job. The state sold the T&G and the tunnel to the Fitchburg Railroad in 1887 for \$6 million—a mere third of its investment—to rid itself of the annual interest payment on Hoosac's bonded debt, the largest single item in the state budget.

Rail operation through the tunnel was hindered from the start by noxious coal fumes from the steam locomotives; crews often lay on the cab floor, where the air was better. Not until May 1911 was electrification introduced, at a time when the Boston & Maine (which bought the Fitch-

burg Railroad in 1900) was under the control of the New Haven Railroad. Thereafter all trains through the tunnel stopped, banked their fires, and coupled on electric "motors"—built to New Haven plans—for the trip through. Then the process was reversed at the other end. The Boston & Maine dieselized this route in August 1946, ending the need for this colorful but expensive electric operation.

As in all railroading, the Hoosac Tunnel had its share of mishaps and wrecks, and these are explained in clear detail. The worst happened February 21, 1912, when an eastbound passenger train rear-ended a freight train 1,000 feet inside the tunnel. Four crew members died, but the toll would have been much higher had it not been for a courageous engineer who managed to back his train out of the flaming tunnel.

The world's first official railroad enthusiasts' trip took place along this line, when a special train of fans traveled 132 miles from Boston on August 26, 1934. Their destination was the now defunct Hoosac Tunnel & Wilmington Railroad, which diverged from the B&M at the tunnel's east end. Such trips were repeated frequently in subsequent years.

Author Byron is a solid historian who knows how to combine historical fact and anecdote to present a seamless and engaging narrative. Among his special skills is a firm understanding of engineering detail, so readers will easily grasp his descriptions of such technical phenomena as signals, catenary (overhead wires that bring power to the electric motors), boring machines, and surveying techniques. His recounting of train operations is equally lucid and fascinating. One especially nice touch is the account of Mabel Raguse, a turn-of-the-century schoolteacher who rode through the tunnel in steam days; Byron contrasts her experience with his own trip through the tunnel in a freight cab in 1971, thirteen years after the final passenger run.

ROBERT WILLOUGHBY JONES

*Robert Willoughby Jones, a railroad historian, has authored three books on New England railroading: Boston & Maine—Three Colorful Decades of New England Railroading; Green Mountain Rails—Vermont's Colorful Trains; and Boston & Albany—The New York Central in New England.*

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*Danvis Tales: Selected Stories*

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By Rowland E. Robinson. Edited by David Budbill. With an introduction by Hayden Carruth (Hanover, N.H.: University Press of New England, 1995, pp. 320, \$24.95).

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At the turn of the century, Vermont's Rowland E. Robinson was a household name. So popular was this farmer-storyteller that his name appeared alongside those of John Godfrey Saxe and Daniel Pierce Thompson in the stained glass window over the original entrance to the Fletcher Free Library, dedicated in Burlington in 1904. Saxe, a poet from Highgate, and Thompson, a historian from Montpelier, gained fame, especially among Vermont schoolchildren. But it was Rowland E. Robinson who achieved national prominence.

Robinson was a product of the age of regional writing in America, a period that gave rise to such notable local color writers as Joel Chandler Harris, Brett Harte, Harriet Beecher Stowe, Mary Wilkins Freeman, and Sarah Orne Jewett. Many readers of *Atlantic Monthly* and *Youth's Companion* who wrote Robinson to tell of their delight with his work added that they particularly enjoyed hearing his stories read aloud by someone who had mastered Antoine Bassette's French Canadian accent or Uncle Lisha's quaint Yankee dialect.

Thousands of Vermonsters, in fact, were brought up on Rowland Robinson. They fondly remember their parents and grandparents reading them his stories at bedtime. Robinson's popularity may have peaked with the publication in 1933-1937 of the seven-volume centennial edition of his works by the Charles Tuttle Company of Rutland. In the years following the publication of the centennial edition, Robinson's readership declined steadily. Ironically, the very strength of Robinson's writing—his sensitive and accurate rendering of Vermont speech patterns—proved to be his undoing. Many readers simply found his tales slow and difficult going.

But not all readers. Over the years a faithful band of devotees has championed Robinson. His work has been an inspiration for the likes of E. Annie Proulx, Howard Frank Mosher, and David Budbill. So it's not surprising that Budbill, himself a student of Vermont and its people, has edited *Danvis Tales: Selected Stories*, a wonderful compilation of Robinson's work in a single volume.

Born at Rokeby, the Robinson family homestead in Ferrisburgh, Vermont, on May 14, 1833, Rowland Evans Robinson was a lifelong student of Vermont. His keen powers of observation, interest in the tales and

legends of pioneer Vermont, and love of the life of the forest and field are best exhibited in his collections of tales, *Uncle Lisha's Shop*, *Sam Lovel's Camps*, *Danvis Folks*, and *Uncle Lisha's Outing*—the writings Budbill has chosen to work with in *Danvis Tales*. In the foreword to the centennial edition of *Uncle Lisha's Shop* and *A Danvis Pioneer*, Fred Lewis Pattee observed, "All Vermont is in his books—its uncouth diction, its Puritan inflexibility, its Yankee prejudices and superstitions, its dry and noiseless humor, its fundamental kindliness. To read the books through is like boarding for a month in a Green Mountain farmhouse in sight of Otter Creek or Vergennes." But as Budbill points out, all was not bright in Robinson's Vermont. Robinson's contributions as an ecologist and conservationist are compelling reasons to read Robinson today. Like his contemporary George Perkins Marsh, Robinson was not impressed by the industrial growth that he saw threatening his home state. He didn't need that kind of "progress." The encroachment of the railroad on the Vermont landscape, the decline of the self-sustaining family farm, the too-rapid growth of polluting factories, and the barbarous hunting practices of "crusting" deer and snaring partridge saddened Robinson.

In *Danvis Tales* Budbill has meticulously abridged the best of the books Robinson wrote between 1887 and 1897. In reducing some 950 pages of original text to a little more than 250, Budbill had to cut ruthlessly but with a clear sense of what Robinson was trying to achieve. In his preface to *Danvis Folks*, Robinson admits that he often wrote "with less purpose of telling any story than of recording the manners, customs, and speech in vogue fifty or sixty years ago in certain parts of New England." Budbill captures the essential Robinson; he gives us a glimpse of all aspects of Robinson's writing. In addition, he creates for contemporary readers a virtually seamless piece of fiction from the four Robinson books. Although you won't find such wonderful tales as "The School Meeting in District 13" or "The Treasure Diggers," you will delight in Robinson's gallery of characters and in his story of life in pre-Civil War Vermont.

Poet Hayden Carruth provides the marvelous introduction to *Danvis Tales*. Originally written as a monograph in 1971 and subsequently excerpted in the autumn 1973 issue of *Vermont History* (41, 3:181-197), Carruth's introduction details Robinson's place in the world of nineteenth-century literature and explains his genius. It is unfortunate that in revising his manuscript for this volume, Carruth did not consult the work done on Robinson and his writings since 1971, especially Ronald L. Baker's *Folklore in the Writings of Rowland E. Robinson*.

"As a portrayer of life in Vermont in the middle period of the nineteenth century," wrote John Spargo in his centennial edition foreword to *Sam Lovel's Boy*, "Rowland Evans Robinson has never been equalled." Few

disagree. His stories chronicle Vermonters' occupations, recreations, social life, and folklore. Robinson's characterizations are memorable for their fidelity to life—one finds neither caricature nor exaggeration but instead the whole social spectrum of real Vermont types. Above all, Robinson was an acknowledged master of dialects, a language historian. In his stories he records the curious idioms, unique figures of speech, proverbs, and regional pronunciations of his Vermont neighbors. And we have David Budbill to thank for making the stories of Rowland Robinson available to us once again.

PAUL ESCHHOLZ

*Paul Eschholz is professor of English and director of the Center for Research on Vermont at the University of Vermont.*

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### *Green Mountain Ghosts, Ghouls, and Unsolved Mysteries*

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By Joseph A. Citro (Shelburne, Vt.: Chapters Publishing, 1994,  
pp. 238, \$21.95, paper, \$12.95).

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Joseph A. Citro states in *Green Mountain Ghosts, Ghouls, and Unsolved Mysteries* that "in books about ghosts Vermont is routinely ignored" (p. 235). If that is so, it is not because Vermonters have no strange goings-on to report. This spine-tingling book takes us on a magical mystery tour of the state, giving ample evidence that next to the well-known geographical and political Vermont exists a phantasmal, parallel, "ethereal Vermont" (p. 53), less well known but as real to those who experience it as the ordinary state: "All the stories in this book are *real*. They may not all be *true*—or not exactly. But then, this is not a book about truth. If anything, this is a book about questions. And questions, you might say, are to the mind what lifeblood is to the vampire" (p. 17).

Perhaps you know someone who is considering a move to the peaceful, idyllic Vermont countryside. You might want to pass along to them a copy of Citro's book so that they are forewarned about what a spooky place this really is. For Vermont comes complete with its own population of ghosts, vampires, forest and lake monsters (such as Big Foot, Goonyak, and Champ), specter-conjuring spiritualists, grave robbers, and more. Howard Frank Mosher confirms the ubiquity of such pres-



ences in his foreword, where he cannot help himself from recollecting a couple of thrillers of his own.

Ghost stories have always been popular. "Almost every week," Citro writes, "I get cards or calls telling me about haunted houses I'd never heard about before. It is as if Vermont has two populations: one living, the other dead. I'm beginning to wonder which has the greater number" (p. 38). Most people who report their experiences with ghosts agree on how they look. Either you can see through them, or they float as figures of milky fog. And they are almost always identifiable with the person who once lived. One family ghost in Lyndon, Daniel Cahoon, "after his death remained every bit as congenial and hospitable as he had been in life. He especially liked to entertain house guests" (p. 41).

But consider the section on "The Vermont Character." What town or village does not have at least one eccentric to add to this list? Old-timers in Calais, for instance, can recount innumerable stories about Pardon James, whom Citro calls the "amusingly benign [person] who wouldn't touch anything" (p. 190). What Citro does not tell us is that Pardon carried a bucket with him whenever he went to the general store. The clerk took Pardon's money from the bucket and put into it the items Pardon purchased. Convenient, tolerated, considerably strange.

Each of the nine sections in the book begins with a map that shows the towns where the stories occur and with one of Bonnie Christensen's scary black-and-white illustrations. My particular favorite is her rendition of the serpent of Dead Creek, a vicious, web-footed, fanged monster hungrily eyeing the reader. As Citro remarks, "the only safe place to swim might be your neighbor's pool" (p. 126).

Why are stories about supernatural creatures, unsolved mysteries, and the like so intriguing? Perhaps because we all like to be scared a little in a safe sort of way. Perhaps because we are not really sure what it was we saw disappearing into the trees or heard clumping in the attic and are comforted to know that others have such experiences. Perhaps because we all are peculiar in our own fashion and like to be reassured that there are others like us. Whatever the reason, this particular collection is sure to be popular for years to come: Ghosts and all their relatives never go out-of-date or out of style. Is this because they never really go out of our lives?

ELEANOR KOKAR OTT

*Eleanor Kokar Ott is a folklorist who teaches in the graduate program at Vermont College of Norwich University and is codirector of the Shamanic Film/Video Archive.*

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## *The Rutland Herald History: A Bicentennial Chronicle*

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By Tyler Resch (Rutland, Vt.: Rutland Herald, 1995, pp. 140, \$18.00).

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Tyler Resch has written a brief history of the *Rutland Herald*, which commissioned and published his account. Company pride more than historical value explains the book's appearance. Although one of the nation's oldest continuously operating newspapers, the *Herald* can hardly claim a distinguished history, at least not until the 1920s. If anything, it resembled innumerable newspapers across America. For the first fifty years after its founding in 1794, the *Herald* conveyed the relative remoteness of the Green Mountain State. Originally a weekly, the *Herald* for decades ran little local news. There was scant incentive to do so, as word of mouth usually kept residents aware of area happenings. As a result, like their counterparts in many western states and territories, the *Herald's* editors had to scramble to fill their few news columns. Until the mid-nineteenth century, their task was complicated by the absence of reliable transportation and occasionally severe weather, which could combine to isolate the community and its newspaper. Not surprisingly, the *Herald* successfully fought to connect Rutland by rail. The paper's proprietors, like countless editors elsewhere, well understood that railroads could serve both their area and themselves. The *Herald* was far more blatantly self-serving at the turn of the century, when publisher Percival W. Clement used the paper to advance his political ambitions, eventually winning election as governor in 1918.

Clement's son-in-law, William H. Field, assumed control of the *Herald* in 1927 and helped to bring it respectability. Field, a Rutland native, came home after a spectacular career at the *Chicago Tribune* and *New York Daily News*. He greatly upgraded the *Herald's* business and advertising departments while enhancing the paper's local news coverage. In 1947 Robert W. Mitchell and several other investors purchased the paper from the Field family. Mitchell, a *Herald* political reporter, became publisher and rededicated the paper to news coverage. He regularly spurned newspaper chains that sought to purchase the *Herald*. At the same time, the *Herald* began to display the editorial independence that denoted the modern American newspaper. It ceased being a party sheet and occasionally endorsed Democrats. Mitchell also became a booster, urging a revival of Rutland's sagging economy. He eventually concentrated the paper's efforts on the development of winter tourism; his related enthusiasm for highway construction angered some of the state's environmentalists.

Resch's history of the *Herald* resembles numerous in-house newspaper histories. It overattends to publishers as opposed to reporters and readers. It fails to acknowledge the paper's representativeness. More disappointing but perhaps characteristic of house histories is Resch's determination to give his story a happy ending. Resch's interpretation of the *Herald* is that it improves with age and is truly admirable when the story ends. Yet a very different conclusion could be drawn. Many have rightly saluted Mitchell for refusing to sell the paper to outsiders and for devoting more resources and space to news reporting than does the *Burlington Free Press*, owned by the Gannett chain. But Resch does not report the most glaring news, that the *Free Press* has been winning Vermont's newspaper war. Between 1962 and 1996 the *Herald's* circulation increased 10.2 percent; during that same period the *Free Press's* circulation rose 64.1 percent.

JAMES L. BAUGHMAN

*James L. Baughman is professor of journalism and mass communication at the University of Wisconsin-Madison.*

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### *Families on the Land: Profiles of Vermont Farm Families*

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*Edited by Gregory Sharrow, in collaboration with Meg Ostrum.  
Photography by Stan Sherer (Middlebury: Vermont Folklife Center,  
1995, pp. 96, paper, \$9.95).*

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“I guess I’d cut off my hand to save the place if I had to,” says one young man of his family farm (p. 55). Vermont farms are indeed beleaguered, and the statistics are grim—11,000 farms in 1945, 2,000 in 1990, as Meg Ostrum reminds us—but *Families on the Land* offers hope that farming will persist, though changed and diminished. The interplay of continuity and change is, in fact, the major theme of this eminently successful collection of interviews and photographs portraying the lives of the ten families who appeared in the Vermont Folklife Center exhibit *Making and Remaking Vermont Farmsteads*, that recently toured the state. In his fine introduction to these “remarkable documents,” Hal S. Barron goes so far as to say that “in a larger sense . . . change is the tradition.” Presenting selections from more than 120 hours of oral interviews, skillfully and unobtrusively conducted by Gregory Sharrow and handsomely complemented by the photographs of Stan Sherer, *Families on the Land*

enables these dwindling but stalwart survivors to speak for themselves about the beliefs and desires that anchor them and the tides that would pull them away. The book occupies an honorable position in the vast literature of place, presenting in the actors' own voices their reflections on the formative power of homestead and work.

Although the darkest dramas of life, found in the country as elsewhere, do not show in these pages, the book is refreshingly honest in presenting a wide range of current and onetime farms, from abandoned enterprises, now housing developments, to the splendid Billings Farm, richly endowed. It might have chosen a rosier but less representative array of conspicuous successes.

Adaptation is the key to staying on the land; devotion is not enough. Ben and Floyd Hulett of Shaftsbury did not choose to adapt, and not only their farms but "an entire farm neighborhood" (p. 39) disappeared into other uses. Adaptation may require such things as prudent investment in new equipment and buildings, market-sensitive change to new products, the ability to avoid or manage debt, and access to outside income. Of the ten families in this book, seven clearly depend to some extent on money earned off the farm.

For nearly all the characters, farming is inextricably linked with the preservation of family and community. Family farming is a "way of life . . . a culture, so to speak," says Jon Branon of Fairfield (p. 95). Some say that the intangibles of character and human relations matter most, that crops, cattle, land, barns, and houses are means to an end. Yet all recognize that, more obviously than for the city dweller, the intangibles grow out of the physical environment, for here the family not only lives but also works, sometimes three generations bending to the task side by side.

The physical things mentioned most often are the buildings, the machines, and the cattle. The land appears mainly in its productive capacity. The city reader for whom the great appeal of Vermont is its mixed village, forest, and agricultural landscape will be surprised to find how seldom these farmers speak of the beauty of the land. A quick review turns up just four instances, and of these only one might possibly qualify as an example of pure pictorial interest. Sharrow's more detached eye leads him to remark on the landscape in his introductions to six of the farms, but even his comments usually have as context the land as a source of livelihood. Sharrow and the farmers know, as the tourist may not, that farming is a demanding, highly technical art, far removed from some imagined, primitive engagement with "nature."

*Families on the Land* reminds us that the flow of daily life is the stuff of cultural history, whether it is the silent testament of a barn reconfigured

for new methods of dairy production or the articulated hopes of a mother and father for their children's future on the land. This book and the related exhibit present in a compact and engaging form much that has been lost and much that lives on. While professional folklorists, ethnographers, and historians are best able to assimilate and publish the results of the extensive fieldwork behind such a project, the raw material of the historical record is in everyone's hands. There is reason to hope that the book and exhibit will encourage local historical societies and, indeed, anyone with an interest in our changing world, to gather and preserve the evidence in its many forms.

As a footnote to this review, three items will indicate that the book offers more than is suggested by a brief description of its chief topics. First, we note that the Irish Catholic Branons and the French Catholic Rainvilles, though distinctive in some respects, are remarkably similar in many ways to their compatriots of different origins. They bring to mind Crèvecoeur's observation 200 years ago that political liberty, economic opportunity, and similarity of work soften religious and national differences, making of the American a "new man." Immigrant vigor is a constant in American life, and it is interesting to learn that there were once twelve Rainville farms in Franklin County.

Next, some remarks caution us that the vaunted independence of farm life must not be confused with simple, individual freedom. David Warden casts the lot of heavily indebted farmers in particularly grim terms: "I have friends who call them serfs. 'Cause they really don't own it in the long run. They're just going around in a circle. Like the feudal system" (p. 77).

Finally, on a happier note, we find that deep, nonfarm interests may be compatible with successful agricultural production. Lawrence Rainville loves the outdoors with an exuberant passion and has set aside cover for birds and animals where his father might have made an extra dollar: "I kind of figure I have enough income, I'd like some pleasure, and that's my pleasure. Wildlife's my pleasure, plain and simple" (p. 82).

CHARLES FISH

*Charles Fish is an associate professor of English at Western New England College and is the author of the memoir In Good Hands: The Keeping of a Family Farm.*

# MORE ABOUT VERMONT HISTORY

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## Recent Additions to the Vermont Historical Society Library

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### Books

- The A. K. Miller Collection of Motor Cars and Automobilia.* Beverly Hills, Calif.: Christie's, 1996. 91p. Source: The publisher. List: \$10.00 (paper). Inventory of a Vermonter's car collection sold at auction in 1996.
- \*Barna, Ed, *Covered Bridges of Vermont.* Woodstock, Vt.: Countryman Press, 1996. 215p. List: \$17.00 (paper).
- \*Bryant, Louella, *The Black Bonnet.* Shelburne, Vt.: New England Press, 1996. 150p. List: \$12.95. Fictional account of Underground Railroad in Vermont for young adults.
- Citro, Joseph A., *Passing Strange: True Tales of New England Hauntings and Horrors.* Shelburne, Vt.: Chapters Publishing, 1996. 320p. List: \$19.95. Includes stories of Vermont.
- Close, Virginia, *Index to A History of Norwich, Vermont.* No imprint. 96p. Source: The author, 49 Turnpike Road, Norwich, VT 05055. List: Unknown (photocopy).
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