

Snelling Center for Government
Orientation for new legislators
Vermont Statehouse, January, 1999

While I was pleased to be invited to address you today, once I started preparing this talk, I began to wonder why. It occurred to me what I had so casually agreed to was no less than presenting the whole complex history of the General Assembly in a half hour or less, during lunch, to people who are probably already suffering from information overload.

I suspect you are beginning to feel the weight of legislative tradition. After all you are joining an institution that has been in existence 220 years. We are meeting in a building that has housed the legislature for over 140 years in a town that has hosted government for 190 years. The fact that so much effort has gone into recreating the state house to its 1856 splendor only adds to the sense of legislative continuity. Not to mention all the procedures, rules, and protocols you are learning that exude years of organizational activity and tradition.

To demonstrate the pull of legislative tradition, let me quote from the 1968 House Journal. "Mr. Speaker; It is our habit, here in these hallowed halls, to cling rather tenaciously to tradition. We accept with reluctance changes and innovations. . .

Today we witness the departure of an honored tradition that has been part of this House since the days of the War between the States. We feel the tragic sorrow of the end of an era—an era that gave ground grudgingly, that fought for survival unflinchingly, and finally succumbed to the modern age.

This is the first time in over a hundred years this House has convened without the presence of the battle-tested, time honored cuspidors."

Okay, if veteran legislators could get this worked up over spittoons, what chance do you have to offer changes and innovations? Let me see if I can offer some hope.

Governor Edward Smith was our last 19th century governor. In his retiring message to the 1900 General Assembly he observed that the preceding biennium was "remarkable as being on the border land between the two centuries, from which could be watched not alone the closing sunset of the nineteenth century but also could be plainly seen the rosy dawn of the twentieth." He challenged the incoming legislature to ". . . remember in your work that you are legislating for the twentieth century instead of the nineteenth."

Governor Isaac Tichenor (known to contemporaries as Jersey Slick) made no such observations as he welcomed the

1800 General Assembly. Instead he was content to note that the General Assembly had to elect presidential electors and to assume the representatives would not fall for the blandishments of the, in his words, immoral, unchristian, and unAmerican Jeffersonians. So much for civility.

Since I have been graciously given a half hour to encapsulate the 220 year history of the General Assembly, I will restrict myself to comments on the two legislatures, prior to yours, that occupied the borderland of centuries. I will briefly look at the organization, politics, and issues of those two legislatures. In doing so I hope to at least suggest the twin themes of continuity and change which have marked how we govern ourselves.

I should add a caution here. Though we are about to travel to a long adjourned past, my role, the role of the Archives, is not that of the historian. The Archives preserves and keeps accessible government records deemed to have continuing value. These include two hundred year old town boundary surveys and records you will create in the upcoming session. Indeed, many of you, as new legislators, will be charged with recording the actions and intent of your committee. These records will come to the Archives to be used by lawyers tracing legislative intent, government officials seeking to understand their mandates, future

legislators wanting to know the context of an issue, and by citizens reviewing the actions of their government and their immediate representatives. In other words, I will be in touch.

Okay, let's go visit your fellow legislators who stood on the dividing line of centuries. As you could guess, the 1799 General Assembly seems the most foreign to us. It was elected annually, with elections held in September. It convened October 10th and adjourned November 5th. It met in Windsor. There was no permanent seat of government and the sessions of government alternated east and west of the Green Mountains in order to assuage sectional differences. The 1798 General Assembly had met in Vergennes; in 1800 it would meet in Middlebury.

Each town was accorded a representative and 162 representatives attended the 1799 session. Contemporary understandings of a citizen legislature discouraged representatives from serving consecutive terms. To give one rather extreme example, in 1810 Peru elected Peter Dudley representative. In 1811 it elected no one. In 1812 it elected Peter Dudley. In 1813 it elected no one and so on until 1819 when it began a period of nine elections when it sent no one to Montpelier.

In 1799 there was no senate. Women could neither vote nor serve. There were no standing committees. Committees were formed each session to address the general needs of government and to respond to petitions from citizens. The speaker could not nominate committees. Instead committee members were nominated from the floor and every seconded nomination would be put to a vote. Committees formed to consider petitions would issue a report and then disband.

The governor headed a twelve member Council, annually elected on a statewide basis. The Governor and Council could either concur with, or propose amendments to, bills passed by the house. There was no executive veto, though the Governor and Council could suspend passage of a bill until the following session.

By 1898 numerous changes had altered the General Assembly. Montpelier was now the permanent seat of government and the legislature had been meeting there since 1808. Biennial sessions began in 1870 and the General Assembly met for a few months every other year. The speaker gained the power to nominate committees in 1803 and standing committees first appeared in the rules in 1816. In 1836 a thirty member senate was added and the executive council was abolished. The governor now had a veto that could be overridden by a simple majority.

Still, many of the institutional characteristics of 1799 remained. Elections were still held in September. Sessions still began in October, though adjournment was now usually after Thanksgiving (understandable since the legislature no longer met every year). There was still town representation, with the house now totaling 246 members. Women were still excluded.

The informal rotation in office system was even more rigorously applied. From the 1870's until the 1920's never as many as 10% of the representatives served consecutive terms. In 1898 only fifteen of the 246 representatives had served in the 1896 House. In the senate there were no returnees, though twenty-one senators had previous House experience.

The organization of the General Assembly has continued to evolve. Your General Assembly is as different from the 1898 legislature as that body was from the 1799 session. While there is continuity, we have also constantly tinkered with our concepts of citizenship and the mechanics of representation.

Okay, what about the politics of the General Assembly? Here the contrast between the borderlands of 1799 and 1898 are remarkable.

In 1799 the General Assembly was in the throes of extreme factionalism, divided between Jeffersonians and the Federalists. Control of the legislature passed back and forth between the two factions and its deliberations were marked by intense political rivalries.

Between 1789 and 1813 eight statewide elections failed to produce a majority winner and were thrown into the General Assembly for resolution. Results were unpredictable. In 1789 the legislature elected Moses Robinson governor, though he finished second to incumbent Thomas Chittenden. In 1813 the Jeffersonian Jonas Galusha fell 155 votes short of a majority but the legislature elected Federalist Martin Chittenden by a controversial and disputed 112-111 vote.

For those of you who are wondering, this upcoming session will mark the 26th time the lieutenant governor's race has been thrown into the General Assembly for resolution.

Control of the General Assembly swung back and forth between the parties. One consequence was that the party in control would replace all the supreme court justices elected when the other party was in power. (judges, like legislators, were annually elected). This practice became so regular that the 1813 Council of Censors warned that the

judiciary must be kept independent of the "violence of popular factions" if our system of law was to survive.

Factionalism also spilled over into legislative deliberations. When the 1799 General Assembly received a petition for laying out and surveying a post road, Representatives Clark, Ward and Burt were nominated to consider the measure. Rep. Burt asked to be excused from sitting on any committee that included Rep Clark. During the previous session Clark had been convicted and expelled by the House for falsifying the canvass of votes for the executive council in order to advantage his party. The residents of Castleton immediately re-elected him, but the 1798 legislature refused to re-seat him. Clark was re-elected in 1799, and though seated, members of the opposition party refused to serve on committees with him.

In contrast, the 1898 General Assembly was a sea of political tranquility. Since 1854 the Republican Party had dominated state government. From 1854 until 1958 it won every statewide election and controlled the General Assembly by wide margins. In 1898, for example, the party controlled all thirty senate seats, and 203 of the 246 house seats (depending on your political persuasion you may think this an enlightened age, or a time of despair). I do not have the time to discuss the why's and how's of

Republican hegemony, except to observe that it was maintained through inter-locking formal and informal mechanisms that governed political recruitment and muted factionalism. The party also had the capacity to adapt to changing realities; a point I will return to in a minute.

The third area of my breathless rush through the border lands is the nature of legislation. Again, time permits only a cursory glance. One interesting difference between 1799 and now is that then, most legislation was directly connected to petitions to the General Assembly. Individuals and municipalities sent hundreds of petitions on issues great and small

Another rather startlingly difference is that in 1799 the General Assembly freely wandered into what we would now consider judicial matters. In response to petitions from losing litigants it might pass acts ordering new trials. In response to petitions from debtors, the General Assembly might exempt an individual from civil prosecutions for a number of years.

Throughout the 1790's legislators were petitioned to resolve tensions between economic development and the environment, and between competing economic interests. The 1799 General Assembly, for example, received several petitions from inhabitants of towns who felt their health,

as well as their property, were being ruined by actions of mill owners. The mill owners raised ever higher dams in order to power more and more mills. The mills aided the local economy by processing grain, producing lumber and other necessary items, as well as providing local employment.

On the other hand, the higher dams not only flooded the property of surrounding land owners, but also became a source of disease during summer months. A 1799 petition from Tinmouth residents, for example, claimed that after the construction of a mill dam in 1793 "they began to be Effectuated with the fever. . .and other bilious complaints" that became so "general that almost every person in town became effectuated with it by reason of which large crops of grain and hay were in a manner lost, besides large bills of Cost to the Doctors" that caused "great damage and [the] inconvenience of your petitioners."

The 1799 General Assembly answered such petitions by requiring the mill owners to open their dams during summer months to lower the water to its natural level. This is a wild guess, but I suspect water quality, stream flow and economic development-environmental issues may be part of your deliberations as well.

Let me mention one last set of laws from 1799—those involving the statewide property tax. From the 1780's until the passage of a corporation tax in the 1880's, the statewide property tax was the primary source of revenue for state government. As such the General Assembly was fairly heavy-handed in collecting the money. Land owners who failed to pay their tax would have their land sold at the amount necessary to cover the tax. The owners then had one year in which to make good their taxes or title would pass to whomever had bought the land at the tax sale. Tax collectors who failed to send the government the tax due from their town could be, and were, jailed. Towns that did not submit their taxes could be doomed by the General Assembly and the property of the selectmen sold.

A statewide property tax still existed in 1898. The 1898 tax was twenty cents on the dollar on the grand lists of the towns. By 1898, however, statewide property taxes were not only used to support state government. Stop me if this sounds familiar, but from 1890 until 1931 state levies on town grand lists were also used to equalize educational funding among municipalities. Indeed, similar levies were used to equalize spending on roads and bridges among the towns.

Remember I noted that Republican success was partly attributable to the ability to adapt to changing realities? Well this is one of those cases. Since the 1830's Vermont towns had either been losing population or experiencing little or no population growth. In either case their tax bases were dwindling as municipal services became more expensive.

The median population of Vermont's towns had fallen from 1,224 in 1850 to 935 in 1900. By the 1890's representatives from towns with populations under 935 represented 20% of Vermont's population but wielded a legislative majority under the town representation system.

The Republican legislature responded to these demographic and political realities in several ways. The 1890 General Assembly passed the state levy on grand lists to centralize the collection and redistribution of education funds. The 1892 General Assembly abolished the district school system-that is multiple school districts within each town-in favor of town wide school systems. In 1894 the General Assembly provided for free text books and in 1898 it mandated that towns with populations over 2,500 had to establish high schools.

The wealthier municipalities and school districts could not muster the votes to stop these moves. The

legislative majority of small towns was simply too great. And those smaller towns were willing to give up a measure of local control in exchange for funding. As long as they wielded a legislative majority they could maintain a form of local control through their domination of the House. (that is why the end of town representation in 1965 altered the whole local control debate).

Under the new funding system small towns such as Dover, Dorset, Stowe and Stratton became receiving towns. Many of these towns not only had small populations, but were also in mountainous areas which could not support farming and thus further stressed the local tax base. It was not until the 1930's and the emergence of the ski industry that the economic well-being of those mountain towns began to change.

And, I hasten to add, there were limits to the centralizing impulse. Efforts to further pool money from the wealthier communities were denounced. A November 26, 1902 Free Press editorial attacked one such proposal in the following terms: "Communism runs mad!. . .picking pockets through the State School tax. . .Some towns pay in more than they get back. . ."

Attacks on statewide property taxes, spearheaded by the Farm Bureau, led to their replacement by a state income tax in 1931.

Okay, so what's all this mean? First, though Vermont has had a representative democracy and a General Assembly for 220 years, within that continuity there has been constant change. Our concepts of citizenship and the nature of representation have constantly evolved. The structure of the General Assembly has changed and will continue to change. Your General Assembly no doubt will appear foreign to the legislators serving in the border land of the 22nd century.

Second, politics, civil and uncivil, have always marked our system of government. At times our system has been strained by intense partisanship. At other times, indeed, for the majority of our political past, partisanship has been muted by mutually agreed upon customs and understandings. Though I did not discuss it, when the public has perceived factionalism as being too disruptive to the legislative process they simply abandoned the existing factions and formed new alliances. That was the fate of the Federalists, the Whigs, and the Democratic Party of the nineteenth century.

Third, though change has been constant, legislators have always grappled with the same core issues of government and governance. We have always debated education, taxation, economic development, environmental protection, public health, etc. It is not that we are unable to resolve these core issues, it is that each generation must address them within the fiscal realities and social expectations of its time.

Finally, beneath even these continuing issues are the core questions about the very nature of self-government. Though rarely explicit in our debates, they are there none the less. They will be embedded in the debates and votes you make in the coming years.

In researching for this talk I did find an instance when one of these underlying questions was explicitly discussed. In 1799 legislators extensively debated the statement "that free government is founded on jealousy, not in confidence." While the immediate issue was whether state governments could nullify federal acts, the debate offered different perspectives on human nature and on how democratic government must reflect that nature. It is at such times, above the cacophony of politics, one can begin to hear the music of government.

I hope in the coming months you have an opportunity to hear, or better yet, to make, that music.