

Legislative Council/Snelling Center for Government

Orientation for new legislators

December 1, 2000

The State Archives in the Secretary of State's Office is charged with keeping accessible government records with continuing value. As a consequence, our records provide unique perspectives on the evolution of government and governance. We can, in short, stretch current issues back, into the past.

Let me illustrate. About 600 million years ago multicelled life forms proliferated. These life forms, in the words of one writer, were "soft and gooey, like jellyfish." Then one of the life's great innovations occurred: exoskeletons.

Why and how exoskeletons appeared at that particular time has long puzzled paleontologists. Personally I think if paleontologists turned to politicians, they might find the answer. After all, I suspect most of you still feel the bruises of a particularly difficult campaign season. Clearly as people, and cells, combine into ever more complex organizations, it becomes necessary to develop, if not an exoskeleton, at least a thick skin.

Of course you are not here because your skin proved thicker than your opponents' did, rather your ideas and pledges resonated better with voters. In a few short weeks you will begin to translate those ideas and pledges into law. If I may offer some advice, don't lose the exoskeleton.

But I don't mean to be discouraging. As legislators you will have many wonderful resources to draw upon. You have already been introduced to several of them through these orientation workshops, the Legislative Council, the Joint Fiscal Office, and the Snelling Center on Government. The State Archives is another.

The Archives can provide evidence of government actions; by stringing that evidence together, over time, it can provide context to current issues, and, by clarifying intent, it can help accomplish your goals. Whether you want to take Vermont back, forward, or simply take it for a spin around the block, you need points of reference to determine whether you are moving, and in what direction. The Archives is one such point.

I confess I love my job and I love archival records; I could fill your afternoon with tales from the crypt. However, my time and your patience are limited. Consequently my remarks may be like reading Sherlock Holmes

stories with their passing references to intriguing, but never described cases. I still hope someone will unearth Watson's notes on the giant rat of Sumatra, so tantalizingly mentioned in the case of the Sussex Vampire. I hope, in turn, to leave you wanting to learn more about the story of self-government.

Let us start with numbers.

Twenty-one: The number of times no gubernatorial candidate received a majority and the joint assembly decided the election. Interestingly enough, contests for lieutenant governor are the most likely to go to the joint assembly; that has happened twenty-six times.

Three: The number of governors elected by joint assembly in the 20th century.

Three, again: The number of incumbent governors who received a plurality but were not elected by the joint assembly; the last time that happened was in 1853.

Those numbers may be of interest since it is likely over the next two years you will consider our system of electing state officers.

Zero: The number of governors who served more than two terms between 1841 and 1964. A related number is ten percent, at most; that is the percent of incumbent house members who served consecutive terms between the 1870s and

1920s. That is a striking number when you realize this year is considered a high legislative turnover with only 70% of the incumbents returning. The ten percent cap is even more striking given the fact that there were up to 248 house seats during the 1870-1920 period.

Those numbers reflect an informal, but rigidly applied, rotation in office system that defined state government for over a century. These are interesting numbers to think about as we debate the relative responsiveness or remoteness of state government; the changing definitions of citizen legislators; and the social and political cultures that continually shape representation.

Seventeen: The number of statewide (non-constitutional) referenda held between 1785 and the present. Those seventeen referenda put twenty-nine questions to the voters. These numbers beg an interesting question: how were referenda fashioned to avoid violating constitutional prohibitions against delegating the legislative authority to the people?

Nine: The number of referenda that addressed moral issues. Seven dealt with temperance, two with state-sponsored gambling.

Five: The number of temperance referenda held between 1847 and 1853.

Fourteen: The margin of defeat for temperance in 1848; that is fourteen votes out of over 34,000 cast. In 1853 statewide prohibition was passed by 521 votes out of over 44,000 cast.

Three: The number of political parties wrecked, in part, by constantly resorting to referenda on temperance. After the 1853 temperance referendum, the Whig and Free Soil parties disappeared forever, while the Democratic Party lapsed into over a hundred years of minority status. Fifty years elapsed before another referendum was held (and yes, it concerned temperance).

Fifty-two: The number of amendments to the Vermont Constitution ratified since 1793. Vermont has the shortest and least amended of all the state constitutions. Vermonters have always made careful distinctions between constitutional and statutory law. In the words of the 1869 Council of Censors, "The very *soul* of an organic law--of a constitution for a commonwealth, is *permanency*. The people demand some permanent law so that legislatures...will [not] be occupied in "tinkering" it."ⁱ

Seven, ten and four: The various timelocks we have used to limit when constitutional amendments can be considered. Under the current four-year time lock the constitution is not open for amendment until 2003. While Vermont's founders believed in the permanency of constitutions, they did not believe they had created a perfect, and therefore immutable, document. Vermont was the first state to include and follow, as part of its constitution, an amending process.

Zero: The number of constitutional conventions in Vermont, following the change to our amending process in 1870. In 1969, based on two disputed attorney general opinions, a referendum was held on whether to hold a constitutional convention and on what topics it should address. The measure was defeated by a 9,000-vote margin out of almost 39,000 votes cast.

123: The number of gubernatorial vetoes since 1839. Of that 123, forty have occurred since 1977.

Seven: The number of vetoes overridden since 1839.

Forty-five: The number of times the Vermont Supreme Court has declared a statute unconstitutional and thus null and void. This number only refers to statutes, not judicial review of municipal regulations or state administrative rules.

Five: The number of statutes declared unconstitutional by the Court since 1982.

Okay, those are some numbers from the archival record. They provide evidence, and some measurement, of the changing processes of government

Evidence and measurement are two functions that an Archives can provide. A third function is to provide context.

Every generation of Vermonters has debated the core issues of government and governance. It is not that we are incapable of resolving these issues; rather each generation must address them within its own social expectations and fiscal realities. I contend that you will not confront any issue in the next two years that has not, in some manner, been debated by your legislative predecessors. To the degree that the records allow, the Archives can provide context on how we got here from there.

The fabric of our experience is so tightly woven that plucking at even apparently obscure threads can lead to those core issues of government and governance.

Take the case of John Mattocks of Peacham. Mattocks was a prominent Vermont lawyer who also served as governor and U.S. Representative in the 1840s. He once argued a

case before the Essex County Court in Guildhall. The trial did not end until late on Saturday.

Mattocks started back to Peacham but midnight found him in Waterford. On Sunday, despite state prohibitions against travel on the Sabbath, Mattocks completed his trip to Peacham, where he was arrested by the sheriff. Called to defend his actions before a jury, Mattocks argued that, "I went home, knowing my residence was in a better place than the wicked town of Waterford, where there is no church, no clergyman, no public worship, no sabbath, and no religion." ⁱⁱ

Whatever our own perceptions of Waterford, in the 19th century this proved a persuasive argument and Mattocks escaped further penalty.

Mattocks' successful defiance, however, underscored the problem confronting those protestant sects wanting to enforce the Sabbath as a day of prayer, contemplation, and rest. As more and more people went about their business on Sundays, the more those sects believed Vermonters were ignoring moral imperatives at the risk of their collective souls. That concern, echoed across the nation, was known as the Sabbatarian movement.

In Vermont that movement thrived in the late 1820s and early 1830s. Vermont already had laws prohibiting travel,

public gatherings (except for worship), "secular labors and employments" and other activities on Sundays.ⁱⁱⁱ Church reformers wanted to extend the prohibitions and require strict enforcement.

Okay, all of this is certainly obscure enough. But tug a little harder on the thread and we end up in the present. First, we continue to directly experience the consequences of Sabbatarianism, for nationally the movement succeeded in prohibiting the delivery of mail on Sundays. Locally we retained Sabbatarian laws, we knew them as Blue Laws, until 1976.

Tug even harder on this thread and you become enmeshed in one of the core issues of government and governance: the relation between church and state. Church-state tension was clearly core to the Sabbatarian debate. Sabbatarians believed that there were "no acts of human beings with which religion had no concern."^{iv} Therefore government had an obligation to enforce fundamental religious tenets (I hasten to add this debate was carried out exclusively within protestant denominations. Even within those denominations, town social and economic demographics shaped the responses of individual churches).

Opponents of Sabbatarianism argued that government enforcement of religion was an attack on the basic tenets

of the revolutionary republicanism that gave birth to the United States and Vermont. If government enforced religious practices in one area then it would soon enforce them on "our presses, our schools, our dealings with merchants, and mechanics, and our social intercourse in neighborhoods." v

Debating the balance between church and state, between the secular and the religious, between moral suasion and moral coercion has echoed through our history of self-government. It even reverberated through some of our debates of this past year.

And that is what I find so fascinating about archival records: You can start with a tired, 19th century lawyer, anxious to get home, and end up in the middle of a debate at the dawn of the 21st century.

I started by noting that archival records are a key resource at your command. How can you access them? Certainly we welcome you to visit us in the Secretary of State's Office, whether you want to view the 1777 Constitution, examine records associated with issues of today, or just want to stop by and chat. We also realize that your time is precious and we have begun to take steps, within the limits of our resources, to make the records more accessible to you. If you visit our website within

the Secretary of State's homepage you can find the histories of referenda, election by joint assembly, and more. We hope to add in the coming months sections on judicial review, the use of the veto, and the constitutional convention fight of 1968-69. I encourage you not only to use our site, but also to suggest ways we can improve our service to you.

Throughout my remarks I have referred to the archival record because I need to make a distinction; the state archives fulfills a recordkeeping, not a historical, function. Yes, developing context from archival records involves the tools of the historian, that is the selection and interpretation of records. But the prime role of archival records is to provide evidence of the process and intent of our institution, state government.

As state archivist I am your partner, as well as your servant. While I keep archival records accessible, you create them. The procedures you are learning during this orientation illustrate that point. When you introduce a bill, each step from drafting to enactment produces records that are evidence of the process you followed, of the testimony you heard and responded to, and of the expectations you, and your fellow legislators, have about what your bill will accomplish. Records associated with

each step of that process will be preserved. Citizens, lawyers, the courts, subsequent legislators, and others will come to the Archives to interpret your intent. How well your intent is met will depend, in part, both on the quality of the records you create, and on how well I keep them accessible.

This is not an abstract consideration. As we meet, the U.S. Supreme Court is considering the intent of Florida's election laws. Closer to home, the Vermont Supreme Court also looks at the intent, as well as the language, of statutes. In May of this year, for example, the Court cited the testimony and minutes of the Senate Education Committee in reaching its opinion on home study programs^{vi}. Again, the better your records, the more you control how your actions are interpreted.

On January 3rd you will take an oath or affirmation that will not only bind you to a code of conduct, but also to all those who have taken that oath before, all the way back to the first legislators of 1778. You will accept the most awesome, and fulfilling, responsibilities a citizen can. As state archivist I look forward to working with you; as a Vermonter, I thank you.

Gregory Sanford, Vermont State Archivist

ⁱ Gillies, Paul S. and D. Gregory Sanford, ed., Records of the Council of Censors of the State of Vermont (Montpelier, VT: State of Vermont, 1991) p. 584.

ⁱⁱ Baldwin, Frederick W., Biography of the Bar of Orleans County, Vermont (Montpelier, VT: Vermont Watchman and State Journal Press, 1886) p. 15

ⁱⁱⁱ Laws of the State of Vermont 1797, p. 196

^{iv} Roth, Randolph A., The Democratic Dilemma: Religion, Reform, and the Social Order in the Connecticut River Valley of Vermont, 1791-1850 (Cambridge University Press, 1987) p. 168

^v Shalhope, Robert E., Bennington and the Green Mountain Boys: The Emergence of Liberal Democracy in Vermont, 1760-1850 (Johns Hopkins University Press, 1996) p. 308

^{vi} Vermont Dept. of Libraries Homepage. November, 2000.
http://dol.state.vt.us/gopher_root3/supct/current/99-351.op