46-FALL Vt. B.J. 16

Vermont Bar Journal
Fall, 2020

Department

Ruminations

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LIMITATIONS OF LAW AND HISTORY

Time runs out on most things. Bread has its official expiration date, followed by inedible mold. Fruit and radioactive waste decay. Life has death. Library books become overdue after two weeks, and threaten fines. Iron erodes. Faces and other body parts sag. Recess is over with the bell.

In law, there are statutes of limitations; in equity, there is laches. There comes a time when it's too late--to prosecute most crimes or with civil or equitable claims to raise your objection to something that's happened to you. Once the period tolls, whatever was wrong or unjust is beyond challenge. Justice must be timely sought; late-claimed rights wither and die. You've slept on your rights, and you may never have heard the alarm.

Limitations exist for practical reasons. If a party could bring a claim at any time, the courts would be filled with cases for which evidence would have been lost, memories polluted, stories enhanced by retellings, and resources wasted. If you could be prosecuted for a crime no matter how many years had passed since the date of the offense, there is a risk there would be more innocent people convicted, based on false testimony. Limitations play a role in redemption. They shrive our sins and crimes, our bad behavior, allowing a reset, a cleansing of history that need not come back to haunt us.

Lately, the statues of Confederate generals and of those who promoted slavery have come down hard, toppled by protesters. Columbus has been decapitated and thrown into the river. Military bases, sports teams, and even the UVM library are being renamed, as a way of condemning racism and other wrongs, as a form of expiation or atonement. These judgments altering our view of people and events know no time limit, and there is no due process, no appeal, no hearing beyond the chanting of slogans. The sins and crimes of men and women found to be lacking in lasting respect are unforgivable and swiftly punished, justified by revisionist historical thinking and the mores of the present. Time never runs out on them.

Still, there needs to be some process, even with an inquisition and sanctions that know no temporal bounds.

Statutes of Limitations

The law sets limits on how long most crimes can be prosecuted, although the Vermont legislature has decided that some crimes have no limits and others have longer terms. Those without limits include "aggravated sexual assault, aggravated sexual assault of a child, sexual assault, sexual exploitation of a minor as defined in subsection 3258(c) of [**Title** 13], human trafficking, aggravated human trafficking, murder, manslaughter, arson causing death, and kidnapping."[1] These crimes can be prosecuted at any time, no matter how long a time since the offenses were committed. Forty years is the limit for prosecution of lewd and lascivious conduct with or against a child, maiming, sexual exploitation of a child, and sexual abuse of a vulnerable adult.[2] Eleven years is the limit for arson and first degree aggravated assault.[3] Prosecutions for lewd and lascivious conduct, sexual abuse of a vulnerable adult under subsection 1379(a), grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses,

false claims, fraud under 33 V.S.A. § 131(d), and felony tax offenses made after six years from the commission of the crime are unactionable.[4] Most all other felonies and misdemeanors have a statute of limitations of three years.[5] Most civil actions have a six-year statute of limitations.[6]

According to William Blackstone, the purpose of statutes of limitation is "to preserve the peace of the kingdom, and to prevent those innumerable perjuries which might ensue if a man were allowed to bring an action for any purpose at any distance of time."[7]

Back at the beginning, in 1779, Vermont adopted a one-year statute of limitations for most crimes, except capital crimes.[8] Capital crimes had no limitations. It treated rape as a capital crime, with a type of statute of limitations. The crime could be prosecuted at any time, "provided that, in time of distress," the victim "did make an outcry on the occasion."[9]

The first civil statute of limitations came eight years later, in 1787, when Vermont first established a six-year limit to the filing of most actions. That year the 15-year period to prove adverse possession and prescriptive use was adopted. That act suspended the limitation periods for minors under the age of 21, femes covert, those who were non compos mentis or in prison or beyond the seas. The clock would restart itself for minors, after coming of age, and others if they recovered their mental capacity, were released from imprisonment, or returned from overseas.[10]

The general law of statutes of limitation changed little over the years, but the exceptions increased. Legislation or rules narrowed or expanded the usual period. The crime of profane cursing or swearing in 1821 had to be prosecuted within ten days of the incident or there could be no fine.[11] The Human Rights Commission must bring charges against the State within six months of the end of the conciliation period.[12] The Uniform Commercial Code provides a four-year statute of limitations for suing for a breach of a contract for the sale of cattle.[13] When a crime is a continuing offense, such as escape, the period of limitation of prosecution begins only upon retaking of the ***17** escapee into custody.[14] Easements of necessity which are not clearly observable on the ground are abandoned after 40 years if not renewed on the **record**, according to the **Marketable Title Act**.[15]

The most dramatic change in the law of statutes of limitation occurred in 1989, in a pair of cases that abandoned the traditional firm deadlines set in legislation. The high court decided the commencement date for calculating the limitation of civil actions was the date of discovery, not necessarily the date of the act that had previously started the stop clock. For some years the court had resisted adopting a discovery rule, but in *Lillicrap v. Martin* and *University of Vermont v. W.R. Grace and Company*, the Supreme Court finally reversed itself. The period of limitation begins when "the plaintiff has or should have discovered both the injury and the fact that it may have been caused by the defendant's negligence or other breach of duty."[16] The expansion of this rule to cover any civil action was a bold move on the part of the high court, although proving or arguing against discoverability is not an easy task in most cases.

There is a story behind every statute. There is a one-year statute of limitations for recovery for skiing injuries, adopted after the Supreme Court's ruling in *Sunday v. Stratton Corp.* (1978), in which a novice skier was injured after an accident caused by loose snow on a novice trail. The case shocked the ski industry and threatened that large part of the Vermont economy, and the legislature's decision to reduce the statutory period for filing complaints was a direct response to the decision.[17]

Attempts to expand the general statute of limitations, however, are difficult. The high court has ruled that exemption for lands belonging to the state from the six-year limit does not apply to suits claiming injury to the State's groundwater, which are barred by the general six-year statute of limitations. This is because the statute never intended that groundwater be included as an interest in land. The statute, enacted in 1785, was adopted to provide a remedy for settlers who had improved land without legal **title**, who would be compensated for their investments prior to any forfeiture by the true **title** holder.[18]

Parties fight over when the period begins. The court has recently held that a cause of unjust enrichment between unmarried inhabitants does not accrue until the domestic partnership ends, because only once the relationship ends is there any loss or injury.[19] Incarceration does not toll the statute unless the plaintiff is imprisoned at the time the cause of action accrues.[20] In cases of fraudulent concealment, the fraud must occur before the cause of action accrues.[21]

A rule of civil procedure explains that the issue of a statute of limitations is waived if not raised as an affirmative defense.[22] But if raised at trial, when court gives the parties the opportunity to file written argument on the issue, the claim has been allowed to proceed.[23] Even if not raised in the pleadings, the trial court is authorized to decide *sua sponte* that a statute of limitations barred recovery of damages on a motor vehicle retail installment sales contract, and dismiss the case.[24]

This year, late in the session, the legislature passed an act providing that "[a]ll statutes of limitations or statutes of repose for commencing a civil action in Vermont that would otherwise expire during the duration of any state of emergency declared by the Governor arising from the spread of Covid-19 are tolled until 60 days after the Governor terminates the state of emergency ...."[25]

In the civil law, there are limitations that come with the conduct of the case. Failing to answer can amount to default.[26] Failing to provide evidence in discovery prevents its use at trial. There's a one year limit on challenging a judgment for mistake, inadvertence, surprise, or excusable neglect; newly-discovered evidence that was undiscoverable in time to move for a new trial; or fraud, intrinsic or extrinsic, misrepresentation, or other misconduct by opposing parties.[27] In the criminal law, there is the constitutional obligation for a speedy public trial.[28]

All the various moving parts of the law contain some restrictions, penalties, or risks associated with pleading, discovery, the trial, and the appeal, and before the Supreme Court with deadlines for filings. There are so many intrinsic and extrinsic stops and catches, it's a wonder as many cases make it to judgment.

Appeals

An appeal deadline is as ruthless and unforgiving as a statute of limitation. File now or accept what has happened is the rule. The old Justice of the Peace courts had a two-hour appeal deadline.[29] Today, thirty days is the default, unless a statute sets a shorter or longer deadline.

Appeals from local and state government routinely require something in writing filed with the proper office in 30 days after decisions are made.[30] Decisions of the zoning administrator must be appealed within 15 days.[31]

There is an 18-month statute of limitations for claims against the State, before it is too late to file in Small Claims Court. No claim can be filed before the claimant has exhausted any administrative grievance procedure. There's a 90-day deadline for decisions to be made by departments or agencies on such claims, and if none is issued ***18** by that time the grievance is deemed granted.[32]

The idea that government's failure to act in a timely manner should result in the grant of a claim or appeal is a feature of several statutes. When zoning administrators take more than 30 days to rule on permit applications, the permits are granted by operation of law.[33] If the zoning board or development review board takes more than 45 days to render a decision on an appeal after the close of evidence, a conditional use permit, or a subdivision, it too is deemed approved.[34] State permits are not treated that way in the law.

Laches

Laches is to equity what statutes of limitation are to law, except there are fundamental differences. Laches has no time limit. It requires proof of substantial merit, and is more likely to be denied as a defense to a claim than granted in Vermont. The purpose of laches is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[35] Justice John Dooley has written, "Laches is not an elixir that automatically relieves landowners of the effects of any erroneous assumptions they may make as they use and develop their property--particularly in the face of public policy determinations that conflict with the assumptions in question."[36]

In his *Commentary of Littleton*, Sir Edward Coke explained that laches is "an old French word for slacknesses or negligence, or not doing."[37] As with the statute of limitation, laches is an affirmative equitable defense.[38] Plaintiffs' attorneys routinely add it to the list, along with statute of limitations. It is frequently not used beyond the answer.

Laches once had more clout than it does today, when law and equity were separate systems. Laches is tough. Most Vermont decisions seem to hesitate even discussing it. On appeal, the deference to the trial court is a steeper hurdle to overcome.[39] The evidence supporting the defense must show prejudice, actual or implied, resulting from the delay, making it inequitable to enforce the right.[40] Laches claimed as a shorter period than a statute of limitations is bound to fail. It's where there is no applicable statute where laches can work.

In 1986, a utility company wrote the Village of Derby Line that it reserved the right to challenge the village's legal ability to condemn property of the electric cooperative. In 1994 it raised the issue before the Public Service Board. On Appeal the Supreme Court found this supported a finding of laches. This 'reservation' could not preserve the claim in the indefinite future. "Otherwise, parties in positions similar to VEC could always wait and see how the case developed, and then make procedural claims as 'trump cards.'"[41]

The Supreme Court didn't find laches in the appeal of the fight over Burlington's waterfront, where a railroad's claim to own filled land was rebuffed. The railroad had argued that "prerevolutionary public trust doctrine" had passed its due date, but the court was unpersuaded.[42]

Equity brings other stops. There are claim and issue preclusion, barring not only issues actually litigated but those which should have been raised.[43] Equitable estoppel plays on the same team, preventing a party from "asserting rights which may have existed against another party who in good faith has changed" position in reliance on earlier representations.[44] Success in that claim is rare.

The law and equity favor repose. Time passes, parties don't act, without excuse, and the right to make a claim or defense is lost.

Death as a Limitation

Death terminates criminal charges. There's no point in pursuing the accused beyond the veil. Under the common law, ***19** in civil cases, when a party to a suit sounding in defamation, malicious prosecution, false imprisonment, or invasion of privacy died, the claims became null and void.[45] In Vermont, statutes have largely changed this rule, but the principle remains: unless a statute alters the common law, death usually means the end of civil litigation. In 1844, Chief Judge Charles K. Williams ruled that a suit against a bank director's bond does not survive his death. He reiterated that only actions expressly exempted by statute from the common law survive.[46]

Death of a party can terminate civil actions pending at the time of death in Family Court. The Vermont Supreme Court has ruled that a death of a party during the nisi period abates the divorce, although it doesn't nullify the parties' agreement dividing the

marital property, as that contract would be enforceable independently of the divorce order.[47] Maintenance awards in divorce end with the death of the obligor.[48] The death of a principal automatically revokes a power of attorney given by the principal.[49]

By statute, executors or administrators may commence, prosecute, or defend "actions which survive to the executor or administrator and are necessary for the recovery and protection of the property or rights of the deceased and may prosecute or defend the actions commenced in the lifetime of the deceased," in the name of the deceased.[50] Actions for the recovery of damages for a bodily hurt or injury, occasioned to the plaintiff by the act or default of the defendant, if either party dies during the pendency of the action, also survive.[51] These actions may be commenced and prosecuted by or against the executor or administrator, whether commenced in the decedent's lifetime or after death.[52]

Violations of the Consumer Fraud Act and Act 250 survive the death of the developer. In a case involving the violation of a permit, the court substituted the developer's wife (executrix and distributee of developer's estate) for her husband after his death. Because the survival act was remedial in nature, the court looked past the limitations of the survival statute to justify continuing the case, even though the damages may be called penalties.[53]

There are many ways to skid off the runway of our lives because of how long we waited or the mistakes we've made along the way. The stops are cold and hard; they show no sympathy for the **valid** claims that are lost, the crimes that go unprosecuted. These are limits imposed by the law. Then there are the limits we impose upon ourselves. The egg timer, the microwave, the alarm clock, the Echo Dot ("Alexa, 10 minute stop watch!")--we can set limits, and when they are ripened, there's a sound--a bing, a chime, a buzzer, in relative rhythms and sound levels, charming or irritating, signaling when the time is up. The law's deadlines come without such alarms, other than the shrieks and bellows that accompany the discovery that the end has arrived or worse, past. The recent rule changes, allowing electronic filing up to midnight of the day things are due has saved many an appeal and many a panic attack.[54] But time creeps up on us, when we're not paying attention.

History

History is always vulnerable. There are facts, but how we regard them is not limited by time. Every generation rewrites its past, and often condemns the traditional conclusions about important persons and events made by its predecessors. Time reveals prejudices that color how we treat history.

First came the pandemic, then the heightened awareness of the killing of George Floyd and others, and marches and demonstrations, and the pulling down (or the official removal) of statues. Marble, granite, and bronze statuary erected to Confederal Generals of the Civil War, at a time when their reputations were honored in the southern states were particular targets. The statue of Theodore Roosevelt with a Black man and an Indian man walking on either side of his horse is gone from front of the New York Museum of Natural History. Columbus has suffered rough treatment by demonstrators. Andrew Jackson's statue on a rearing horse could not be budged, even though only the back legs hold it up, because of a set of iron bars cast into the bronze legs and trunk. But it might come down in time, if we are to punish all slaveholders, all racists or other terrible characters in the long drama of history.

History is always open for reinterpretation, as new evidence arises or new challenges to conventional wisdom come into fashion. That does not make the study of history unreliable. No science is so firm in its conclusions that resists rethinking. The revisionists refine (or upend) what we've always accepted as true.

One recent example is *The Rebel and the Tory*, the new history by John J. Duffy, H. Nicholas Muller III, and Gary Shattuck. Their research into early New York court **records** on the legal fights in the 1760s and 1770s over land **titles** proves that the traditional view of Vermont's origins that relied on what Ethan Allen said he did when he returned from Albany was plainly wrong. The courts weren't as partisan as Vermont historians had held, or as committed to driving settlers off their land. The

failure of the Vermonters' claims belonged to Ethan Allen himself, whose negligence in not providing the necessary certified copies of essential ***20** documents (including copies of the New Hampshire **titles**) in time for the trials, left the court no alternative but to favor the New Yorker patent holders' claims.

When the first histories of Vermont were written, the myth became 'fact.' Historians from Samuel Williams to Walter Hill Crockett consequently wrote and "sustain[ed] the satisfying characterization of a Vermont David confronting and defeating a New York Goliath; of freedom-loving democrats resisting autocratic New York tyrants skillfully manipulating a biased legal system."[55] Historians were complicit in repeating the myth. Samuel Williams relied on Ira Allen for details of his first history of Vermont (1794).[56] In letters to Allen, Williams revealed he was not above applying a little cosmetic on the face of the founders. "I have inserted every thing that you mentioned to me, and I believe it now stands in a light that cannot be construed unfavorable to any person who is concerned in it, and by the british in Canada or elsewhere."[57] His candor condemns Williams and leaves questions that undermine reliance on his story.

In a 1978, J. Kevin Graffagnino wrote an article tracing the major Vermont historians from Williams to the present. He showed how often the authors relied on previous works, without researching whether there was proof of what was told, beyond the words of their predecessors. He wrote, "Critical statements and judgments about events, movements and individuals in Vermont's early heritage passed from one generation to the next virtually unaltered, having accepted them as the foundation of their discussions of the Vermont of following years."[58]

New sights into old myths are often refreshing as an academic exercise. When it comes to pulling down statues, however, the process is rougher. This process doesn't wait for scholarly analyses. The offensive object must be taken down, and sometimes vandalized, to prove the depth of the feelings of the actors.

When there is deliberation, it often becomes confused and complicated. Consider two recent decisions, made after hearings. The Vermont Board of Libraries changed the name of the Dorothy Canfield Fisher Award. Guy Bailey's name was removed from the front of UVM. Eugenics was the culprit in both cases. Both Fisher and Bailey supported the movement to sterilize what were called "*dependent, delinquent, and deficient families*."[59]

Dorothy Canfield Fisher was regarded as one of Vermont's great writers. Her *Vermont Tradition* is a classic.[60] According to a *Vermont Digger* article by Luke Zarzecki, Fisher's name was struck from the library award after evidence was presented to the board of her writings disparaging American Indians and French Canadians. The board also heard testimony from those who argued Fisher's connections to eugenics were slim, and the final version of the resolution contained no reference to it, instead concluding that her name was "no longer relevant to today's young people."[61]

Guy Bailey was UVM's President from 1919 to 1940. He was Vermont Secretary of State from 1908-1917. As President he supported the work of Professor Henry Perkins, whose work included a challenge to Vermont couples to have children "in sufficient numbers to keep up to par the 'good old Vermont stock.'" Perkins' inspired Commission on Country Life, through its principal publication *Rural Vermont: A Program for the Future* (1931), supported practices to prevent the marriage and reproduction of "feeble-minded persons."[62] Nearly 80 years after his death, Guy Bailey became the subject of embarrassment to the university, and now only the name of a generous donor remains on the façade of the library.

If Bailey and Fisher are rejected, what should we do with Oliver Wendell Holmes, Jr., who is remembered for so many important opinions, but who also wrote, "Three ***21** generations of imbeciles are enough." In his majority decision authorizing sterilization, he explained,

> We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, to prevent our being swamped with incompetence. It is better for all the world,

> if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.[63]

Where should this stop? Vermont Supreme Court Judge Stephen Jacob owned a slave named Dinah. While he is heralded for his defense of a claim by the Selectmen of Windsor to pay for her maintenance, after she became a pauper, shielding himself by the Vermont Constitution's express prohibition against slavery, he was still a slaveowner.[64] He bought Dinah at a slave auction. What punishment should he receive?

Many Vermont officials and other citizens supported the return of slaves to Nigeria. They included Jonas Galusha, who had served as Governor 1809-1813 and 1815-1820; Cornelius Van Ness, who was Governor 1823-1826; Ezra Butler, Governor 1826-1828; Samuel Prentiss, who served on the Vermont Supreme Court, in the U.S. Senate, and as U.S. District Judge; Timothy Merrill, Supreme Court; and William Slade, Jr., Governor and Congressman. Vermont abolitionists treated those favoring colonization as racist, and so does history. How should our disgust with their position be memorialized?[65]

The possible candidates for purging are part of an ever-expanding list. The work ahead, if every objectionable thought, word, or **deed** is punished, will take generations. In that time, it is possible that the arc of history will bend in a different direction, and the actions taken this year seen as further indication of our own time's prejudices.

To what end is the sanitizing of the past? Is it for our own consciences that we seek to punish the reputations of no-longer-righteous citizens?[66]

A Constitutional Amendment

One of the proposed constitutional amendments adopted in this legislative session is to alter Article 1 to read, "That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety." Excised from the wording adopted in 1777 are the words at the tail end of the above, which read, "*therefore no person born in this county, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice, after arriving to the age of twenty-one years, unless bound by the person's own consent, after arriving to such age, or bound by law for the payment of debts, damages, fines, cost, or the like*." Testimony before the legislature promoting the amendment focused on the belief that the article actually authorized slavery.[67]

What's interesting about the proposal is the sensitivity of the movers of the amendment to the wording of the article, which had remained essentially in place without controversy for 243 years.

Statues of Limitation

There is no value in putting a limitation on history. The very point of historical analysis is to enlighten, and it would be ridiculous to be bound to some former historical conclusion or honored writer because too much time has passed since something written became gospel. It isn't asking too much to insist that the judgments of the present about the past that are based on what we now believe is acceptable should be done with greater caution. We need a set of standards, and some attempt at due process, ensuring a fair hearing before disinterested decision-makers, rather than a chant or a spray-painted slogan.

Unlike law, history is entirely retrospective. You can't be guilty of violating a statute that wasn't in place when you committed the act it condemns. Realizing this, there ought to be some consideration given to the context of those acts. We should pause

before we sentence people for holding opinions we now find disagreeable, as if they should have known better. Pre-sentism is just wrong.

We ought to be sure of our history, recognizing that what we believe today may be rejected in the years to come. We must never forget that not all historians are correct in every detail, or even honest in reporting what they have found. The *truths* of history are largely provisional.

We need to sort out just how severe to be with the dead respondents we seek to hold liable for their sins and opinions. Washington was a slave-owner. He was more than that, of course, but should the slave-owning part of his biography outweigh his other accomplishments, enough to order the ***22** removal of the Washington Monument? What about people who believed something now regarded with horror and then changed their minds? Suppose Guy Bailey later recanted his support of eugenics and persuaded the legislature to repeal the sterilization law. Could his name be retained on the library wall?

We might adopt a bill of rights for dead people. It would guarantee due process to them, the right to a fair hearing before a disinterested decision-maker. It would require all charges be supported by verifiable facts. The dead would be entitled to representation. They would not be guaranteed a speedy trial, but at least they would have an opportunity to be heard before any judgment was rendered. In keeping with history's lack of any limitations, the dead would have a right to a new hearing at any time, without having to prove excusable neglect or defend against accusations of claim or issue preclusion. No judgment would be final. The dead can never sleep on their rights.

Footnotes

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1 13 V.S.A. § 4501(a). The Vermont Supreme Court has ruled that attorney misconduct prosecutions are not limited by the time that may have passed since the offensive conduct occurred. *In re McCarty*, 194 Vt. 109, 75 A.2d 589 (2013).

2 13 V.S.A. § 4501(c).

3 13 V.S.A. § 4501(d).

4 13 V.S.A. § 4501(b).

5 13 V.S.A. § 4501(e).

6 12 V.S.A. § 506.

7 William Blackstone, *Commentaries on the Laws of England; in Four Books* (Albany, N.Y.: Banks & Company, 1902), 777.

8 "An act for the limitation of prosecutions in diverse cases," 12 February 1779, *Laws of Vermont 1779-1780*, ed. Allen Soule, *Vermont State Papers XII* (Montpelier, Vt.: Secretary of State, 1964), 146.

9 "An act for the prevention of rape," ibid., 40.

10 "An act for the limitation of actions," March 10, 1787, *Laws of Vermont 1785-1791*, ed. John A. Williams, *State Papers of Vermont XIV* (Montpelier, Vt.: Secretary of State, 1966), 339-341.

11 "An act for the punishment of certain inferior crimes and misdemeanors," November 15, 1821, *Laws of Vermont of a Publick and Permanent Nature* (Windsor, Vt.: Gideon Ide, 1825), 270.

12 9 V.S.A. § 4554; *Vermont Human Rights Com'n v. State, Agency of Transportation*, 192 Vt. 552, 60 A. 702 (2012).

13 9A V.S.A. § 2-725(1).

14 13 V.S.A. § 1501(b)(2); *State v. Burns*, 151 Vt. 621, 151 A.2d 593 (1989).

15 *Gray v. Trader,* 209 Vt. 210, 204 A.3d 1117 (2018).

16 *Lillicrap v. Martin*, 156 Vt. 165, 176, 591 A.2d 41, 46 (1989); *University of Vermont v. W.R. Grace and Company*, 152 Vt. 287, 290, 565 A.2d 1354, 1357 (1989).

17 *Sunday v. Stratton Corp.*, 136 Vt. 293, 390 A.2d 398 (1978).

18 *State v. Atlantic Richfield Co.,* 202 Vt. 212, 148 A.2d 559 (2016); 12 V.S.A. § 462f.

19 *McLaren v. Gabel*, 2020 VT 8, ¶ 36.

20 12 V.S.A. § 511(a).

21 12 V.S.A. § 555; *Jadallah v. Town of Fairfax*, 207 Vt. 413, 186 A.3d 1111 (2018).

22 V.R.C.P. 8(c).

23 *DBI/Coinvestor Fund III, LLC v. Cowles*, not reported, December 2, 2019.

24 *DaimlerChrysler Services North America, LLC v. Ouimette*, 175 Vt. 316, 175 A.2d 38 (2003).

25 "An relating to the emergency judicial response to the COVID-19 public health emergency," No. 95, *Laws of 2019-2020*.

26 V.R.C.P. 55.

27 V.R.C.P. 60(b).

28 Vt.Const. Chap.I, Art.10; *State v. Brillon*, 129 U.S. 81, 129 S.Ct. 1283, 173 L.Ed2d 231 (2009).

29 *Vermont Statutes Revision of 1947* (Montpelier, Vt.: Secretary of State, 1948), § 1507.

30 3 V.S.A. § 815(d); V.R.C.P. 74 & 75; 24 V.S.A. § 4447.

31 24 V.S.A. § 4465.

32 32 V.S.A. § 932(b).

33 24 V.S.A. § 4448(d).

34 24 V.S.A. § 4464(b)(1).

35 *Dutch Hill Inn, Inc. v. Patten*, 131 Vt. 187, 193, 303 A.2d 811, 815 (1973).

36 *Chittenden v. Waterbury Center Community Church, Inc.,* 168 Vt. 478, 494, 726 A.2d 20, 31 (1998).

37 J.H. Thomas, ed., *Systematic Arrangement of Lord Coke's First Institute of the Laws of England* I (Philadephia: Alexander Towar, 1936), 143.

38 V.R.C.P. 8(c).

39 *Preston v. Chabot*, 138 Vt. 170, 172, 412 A.2d 930, 931 (1980) (observing that "a trial court's determination on the issue of laches is a matter of much discretion").

40 *Comings v. Powell*, 97 Vt. 286, 293, 122 A. 591, 594 (1923); *Wilder's Ex'r v. Wilder*, 82 Vt. 123, 129, 72 A. 203 (1909).

41 *Petition of Vermont Elec. Co-op., Inc.*, 165 Vt. 634, 635, 687 A.2d 883, 885 (1994).

42 *State v. Central Vermont Ry.,* 153 Vt. 337, 353, 571 A.2d 1128, 1136 (1989).

43 *Berlin Convalescent Ctr., Inc. v. Stoneman*, 159 Vt. 53, 56, 815 A.2d 141 (1992).

44 *Fisher v. Poole,* 142 Vt. 162, 168, 453 A.2d 408, 411 (1982).

45 *Whitcomb's Adm'r v. Cook*, 38 Vt. 477 (1866).

46 *Treasurer of Vermont v. Raymond*, 16 Vt. 364 (1844).

47 *Estate of Lord v. Estate of Ladd*, 161 Vt. 270, 640 A.2d 29 (1994).

48 *Justis v. Roy*, 159 Vt. 240, 617 A.2d 148 (1992).

49 *Davis v. Windsor Sav. Bank*, 46 Vt. 728 (1874).

50 14 V.S.A. § 1451.

51 14 V.S.A. § 1452.

52 14 V.S.A. § 1453,

53 *State v. Therrien*, 161 Vt. 26, 32, 633 A.2d 272 (1993).

54 V.R.C.P. 6.

55 John J. Duffy, H. Nicholas Muller III, and Gary G. Shattuck, *The Rebel and the Tory* (Montpelier, Vt.: Vermont Historical Society, 2020), 161.

56 Samuel Williams, *The Natural and Civil History of Vermont* (Walpole, Ma.: Isaiah Thomas and David Carlisle, 1794).

57 Samuel Williams to Ira Allen, July 28, 1794, John J. Duffy, *Ethan Allen and His Kin Correspondence, 1772-1819* (Hanover, N.H.: University Press of New England, Spring 1998), 423-424.

58 J. Kevin Graffagnino, "The Vermont 'Story': Continuity and Change in Vermont Historiography," 46 *Vermont History* No. 2, 77-99 (Spring 1978).

59 *Rural Vermont: A Program for the Future* (1931); https://www.uvm.edu/uvmnews/news/uvm-trustees-approve-removal-baileys-name-bailey/howe-library; "We reached our recommendation based primarily on the fact that Bailey's active involvement as president of the University in supporting and promoting the Eugenics Survey of Vermont is fundamentally at odds with the University's mission. We also considered Bailey's mismanagement of University financial resources," said trustee and committee chair Ron Lumbra.

60 Dorothy Canfield Fisher, *Vermont Tradition: The Biography of an Outlook on Life* (Boston: Little, Brown & Co., 1953).

61 https://vtdigger.org/2019/03/31/15-months-unanimous-vote-still-no-change-book-award-name/.

62 Two Hundred Vermonters, *Rural Vermont A Program for the Future* (Burlington, Vt.: The Vermont Commission on Country Life, 1931), 294-296.

63 *Buck v. Bell,* 274 U.S. 200, 207, 47 S.Ct. 584, 585 (1927).

64 *Selectmen of Windsor v. Jacob*, 2 Tyl. 192 (1802).

65 Abraham Lincoln also once embraced colonization as a remedy for slavery, both before the Civil War and as late as 1863. Phillip W. Magness and Sebastian N. Page, *Colonization After Emancipation: Lincoln and the Movement for Black Resettlement* (Columbia, Mo., University of Missouri Press, 2011).

66 One answer might be the creation of a Vermont Historical Reckoning Commission, to try the officials who held opinions that are no longer courant and respectable, and issue formal findings condemning the memory of these former worthies.

67 Imprisonment for debt was abolished in Vermont in 1846, and the last 15 words of the sentence became irrelevant that year. No one will miss them, as they have no force or effect. But the 40 words before them will be missed. The only mention of abolishing slavery is among those words. A better change would be to remove everything after "apprentice," so that the article would read, "That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety; therefore no person born in this county, or brought from over sea, ought to be holden by law, to serve any person as a servant, slave or apprentice."

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