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MEAD MEMORIAL CHAPEL

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Mead Memorial Chapel

Search

September 27, 2021

NEWS

Middlebury Chair of the Board of Trustees George Lee and President Laurie Patton sent the following message to the Middlebury community on Monday, September 27, 2021.

Dear Middlebury Community,

This past spring, the Vermont Legislature made a public apology for its former legislation authorizing the forced sterilization of at least 250 Vermonters as part of the implementation of a eugenics policy in the first decades of the 20th century. The move had bipartisan support from legislators and followed the examples of other states in coming to terms with this painful part of our nation's history.

That statement by the state legislature raised a question for us at Middlebury about the role played by Governor John A. Mead, Class of 1864, whose gift established Mead Memorial Chapel, in advocating and promoting eugenics policies in Vermont in the early 1900s. It compelled us to ask whether it is appropriate to have Mead's name so publicly and prominently displayed on the Middlebury campus, especially on the iconic chapel, a place of welcome for all.

After a careful and deliberative process, Middlebury's Board of Trustees has made the decision to remove the Mead name from the chapel, for the reasons we will describe below.

We want to stress up front that this was a process involving deep reflection and discussion. No issue like this should be undertaken lightly or often.

Eugenics and Governor Mead

Eugenics is a subject that should strike us at our core, requiring that we confront our values, our history, and some difficult choices around legacy and accountability. Based in early 20th-century notions of racial purity and "human betterment," eugenics policies sought to isolate and prevent the procreation of so-called "delinquents, dependents, and defectives" to bring about a more "desirable" society. Such policies were enacted through the involuntary confinement of community members in state schools, hospitals, and other facilities—and the unconscionable practice of forced sterilization.

According to ample scholarly research in this area, victims of Vermont eugenics included people who were poor; who suffered from mental illness, incurable diseases, and physical disabilities; so-called "illegitimate children," French Canadians, Abenakis, women more than men, those who were illiterate, and people of mixed racial ancestry. All were targets. Eugenics

policies separated families, caused untold individual suffering, and left lasting physical and emotional scars.

It is difficult for us to write these words. However, because of this painful history, it was important for Middlebury to follow its established process for these kinds of considerations and commission a working group to look into the question. Specifically, the president asked the group to examine the role that Governor Mead had in these policies, and what implications that had for us and for the iconic building named after him on campus. She asked the group to conduct its work with a generosity toward the historical context of the time, as well as rigor in historical analysis.

Our Deliberations

The working group approached its assignment with care and deep reflection, recognizing the complexities involved: the immorality of eugenics practices; the political and philosophical practices and conventions of the time; the awareness that the chapel—and the ceremonies and events that for decades have taken place within it—has deep personal, spiritual, and cultural meaning for generations of Middlebury people, and still does so today.

The president also asked them to consider the actions of other states and universities that have acknowledged eugenics in their own histories. They also considered the archival research in these and related areas by many historians and policy experts, including Middlebury students, faculty, and staff.

Following its review, citing his central role in advancing eugenics policies that resulted in harm to hundreds of Vermonters, the working group determined that “the name of former Governor Mead on an iconic building in the center of campus is not consistent with what Middlebury stands for in the 21st century.”

The group advised that “the President recommend to the Board of Trustees to remove ‘Mead’ as part of the building’s name.”

Our Decision

The president received the working group's recommendation this summer. Following our institution's protocols, she forwarded the recommendation to the Prudential Committee of the Board of Trustees, which, according to its charter, has authority to act on behalf of the full board. The Prudential Committee voted unanimously that Middlebury should remove the Mead name. We want to stress again that this is an action we do not take lightly and do not expect to undertake often.

We are communicating this news to you now that we are back on campus so we can allow these questions the community conversation they deserve, which was not possible over the summer months. While the history of eugenics in Vermont, and Mead's instigating role, are well documented, they have not been widely discussed or acknowledged.

History and Timeline: The Gift and Eugenics Policies

Sharing some of the historical context that we studied over the summer might be helpful here. John Mead graduated from Middlebury in 1864. He became a physician, industrialist, Vermont governor, and a College trustee. The building's name honored him and his wife, Mary Madelia Sherman, when they gave $74,000 in 1914 to create a new, prominent chapel (of marble and wood, with bell tower and spire) on the highest point on campus. The ef fort was a key piece of President John Martin Thomas's vision for a grander Middlebury. Thomas wanted a structure that would express "the simplicity and strength of character for which the inhabitants of this valley and the state of Vermont have always been distinguished."

In many ways, visual representations of the chapel have become synonymous with the College. The working group was conscious of this, as well.

In 1912, two years before the chapel gift was made, in his outgoing speech as governor, John Mead strongly urged the legislature to adopt policies and create legislation premised on eugenics theory. His call to action resulted in a movement, legislation, public policy, and the founding of a Vermont state institution that sterilized people—based on their race, sex, ethnicity, economic status, and their perceived physical conditions and cognitive disabilities. John Mead's documented actions in this regard are counter in every way to our values as an

institution, and counter to the spiritual purpose of a chapel, a place to nurture human dignity and possibility, and to inspire, embrace, and comfort all people.

Educational Task Force and the Way Forward

Our purpose in all these deliberations must have our educational mission at the center. This is not about erasing history, but just the opposite—engaging with it so we can learn from it. The working group advised that we convene a representative committee of community members to consider the opportunities for reflection and education this moment provides. That Educational Task Force will be appointed in October and be made up of members with diverse points of view. It will work with a variety of departments and groups on campus and develop recommendations for how we can acknowledge and educate about Middlebury's decision to first honor a member of this community, and then remove that honor. It will also consider whether and how the chapel should be renamed.

We will continue to reflect together about these broader issues in several ways, which you will hear about throughout the year. As we do that, we will hold two distinct and equally essential principles in mind: 1) a generosity of spirit toward and genuine curiosity about historical context, and 2) an understanding that many voices have not been, and need to be, represented in our historical record. Our educational efforts might include signage, architectural installations, public art—with the goal of encouraging constructive dialog and debate around not only the issue of the chapel name, but also its wider implications as a complex issue of our time. Students, faculty, and staff already have begun to think about this work.

Moving forward from here, and as the Educational Task Force takes shape, we will refer to the chapel as "Middlebury Chapel" or "the chapel."

We want to thank the student, faculty, staff, alum, and administrative members of the working group: Provost Jeff Cason, Dean of Admissions Nicole Curvin, Chief Diversity Officer Miguel Fernandez, Vice President for Advancement Colleen Fitzpatrick, Vice President for Communications David Gibson, Alumni Association President Janine Hetherington '95, Director and Curator of Special Collections Rebekah Irwin, Student Government Association

President Roni Lezama ’22, Associate Professor of History Joyce Mao, Executive Vice President David Provost, and General Counsel Hannah Ross, chair.

We know that this decision may come as unexpected news to some. It may take some time to absorb. We are intensely aware of the profound feelings that the chapel evokes, and the special place it holds in the life of Middlebury and the lives of Middlebury people. The significance of those memories remains at the core of our Middlebury experience, no matter what the name of the building is. The meaning it has brought—and will continue to bring to so many—will inspire us all for generations to come.

We thank the Vermont Legislature for their bipartisan example and look forward to communicating with you in the weeks and months ahead. We invite you to join us in our efforts.

The strength of the hills will remain with us.

Sincerely, and on behalf of the Middlebury Board of Trustees,

George C. Lee
Chair, Middlebury Board of Trustees

Laurie L. Patton
President

ESSENTIAL READINGS

Roll Call History, Vermont House and Senate

Office of Communications
Painter House

Exhibit 7 - 011

The Middlebury Campus

Monday, Dec 13, 2021

NEWS

John Mead's name removed from chapel for role in eugenics

By Ideal Dowling
September 30, 2021 | 6:01am EDT

Abigail Chang

The college removed the Mead name from the chapel entranceway early Monday.

In the early morning of Monday, Sept. 27, the stone slab engraved with "Mead Memorial Chapel" was removed from its place atop the entrance of the chapel. A few hours later, college President Laurie Patton and Chair of the Board of Trustees George Lee sent an email to the community explaining that chapel would no longer bear the name John Mead, Vermont governor from 1910 to 1912 and Middlebury class of 1864, due to his role in promoting eugenics policies in the state that led to the involuntary sterilization of an estimated 250 people.

In 1914, Mead and his wife Mary Madelia Sherman donated $74,000, the equivalent of about $2 million in today's money, for the creation of a new chapel. As the highest point on campus, the site of freshman convocation and a frequent symbol on college merchandise, the chapel has since become an iconic feature of Middlebury's landscape and branding. It will now be referred to as "The Middlebury Chapel" or just "the chapel."

llowing unanimous decisions in the Vermont House and Senate in spring of 2021 to "sincerely apologize and express sorrow and regret" for the state's eugenics campaign, a working group composed of members from the Senior Leadership Group chosen by Patton, as well as student, faculty and alumni representatives, began working in May 2021 to develop a recommendation for the Board of Trustees on the question of removing Mead's name from the chapel.

The working group members included Provost Jeff Cason, Dean of Admissions Nicole Curvin, Chief Diversity Officer Miguel Fernandez, Vice President for Advancement Colleen Fitzpatrick, Vice President for Communications David Gibson, Alumni Association President Janine Hetherington '95, Director and Curator of Special Collections Rebekah Irwin, Student Government Association President Roni Lezama '22, Associate Professor of History Joyce Mao, Executive Vice President David Provost and General Counsel Hannah Ross, who acted as chair of the group.

The committee was gathered with the aim of including a variety of viewpoints. "Different members brought their own expertise and experience to these conversations," Ross said.

Over the course of a month, the committee reviewed a comprehensive and varied group of materials largely put together by Irwin. The first group of documents were Vermont Public Records, mainly from 1911 to 1914 but including some published onward through the 1930s. One of the reports, submitted to the "Trustees of the Vermont State Hospital for the Insane," explicitly named Mead as an advocate of eugenics. In the report, a hospital official wrote, "Governor Mead has an idea in view, which in my opinion, should be endorsed by legal enactment, for the sterilization of these degenerates." The degenerates in question were identified as "dangerous imbeciles," particularly females during the "procreative period."

Other resources included the scholarship of independent historians Mercedes de Guardiola, Kevin Dann and Nancy Gallagher, an online archive called "Vermont Eugenics: A Documentary History," Vermont newspapers from the early 20th century, college archival records, college Trustee minutes, correspondence between John Mead and Middlebury President John Thomas, College Advancement records and documents in the Records of the Office of the Governor at the State Historical Society in Middlesex, VT, according to Irwin.

Irwin further noted that the group considered experiences of other schools in similar situations, such as the efforts of the "Yale University Committee to Establish Principles on Renaming." This document also guided the University of Vermont's renaming of the Bailey Howe Library. Other schools that have grappled with the symbolism of building names, mascots and campus symbols include Bryn Mawr College, the University of Richmond, Princeton University and Georgetown University.

Of all the information available, particularly influential was the State Legislature's background research, witnesses and documentation around Bill J.R.H.2. This Joint Resolution points directly to a 1912 bill put forward by Governor Mead, which was passed by the Vermont General Assembly but then vetoed by Governor Allen M. Fletcher due to constitutional concerns, that led "directly to Vermont state agencies and institutions adopting policies and procedures that carried out 'the intent of the vetoed legislation and the beliefs of the eugenics movement,'" wrote Irwin in an email to The Campus. "The state legislature itself drew that painful line back to Mead's proposed legislation," she continued.

After a careful review of these materials, the group made its recommendation to remove Mead's name in June 2021. The Board of Trustees made its decision unanimously by late August.

The email announcement stressed the working group's concerted efforts to recognize the complexities

involved in renaming: "We want to stress upfront that this was a process involving deep reflection and discussion. No issue like this should be undertaken lightly or often," it read.

For Lezama, this comprehensive process led to a clear conclusion. "People will praise academia for being a place to have young students deliberate hard topics, but as we actually consider the individual lives of the students that compose Middlebury, it's also about providing equitable spaces for these students, especially BIPOC and low-income students, to thrive. There is no 'maybe we should hear them out' when it comes to a subject like eugenics that is terribly harmful and has very serious impacts on the well-being of students," he said.

As the only student in the group, Lezama's main goal was to ensure that the name change itself, though symbolic and powerful, is not the end of the college's efforts to support students from historically marginalized communities. "This is about moving forward and actively educating ourselves on harm that is done to members of our community, past or present. With these actions, Middlebury has an opportunity to differentiate itself from the rest of academia by actively taking a stance against ideals that harm its students. A space representing eugenics has no place on our campus."

However, not everyone in the Middlebury community shares Lezama's conviction that the removal of Mead's name was the proper choice. James Douglas '72, a former governor of Vermont and executive in residence at the college, expressed a number of reasons he was unhappy with the decision. The first regarded the process itself: "I was shocked to see the lack of transparency. This was done by a secret committee. The [slab's removal] was done under the cover of darkness. I don't understand that mentality, when in other endeavors the college has been open and inclusive," he said.

According to Ross, the early morning removal of the slab was due to the Facilities Department's schedule, which begins its workday at 7 a.m.

Next, Douglas explained why he does not feel the removal of Mead's name is a fair representation of Mead's career. "I certainly don't condone the study of or implementation of a eugenics program, but those were different times. There was a great deal of support for eugenics among people with distinguished careers, including Teddy Roosevelt, Margaret Sanger, W.E.B. Du Bois and Helen Keller. So, I think it's unfair to apply a 21st century lens to another era in our history," he said.

Douglas also noted that the removal announcement ignores many other positive aspects of Mead's career, including his support for progressive child labor laws, his creation of a school of agriculture that is now Vermont Technical College, his doubling of highway funding and his efforts to reform campaign finance. "I really believe that someone's legacy should be determined by the entirety of his or her life, not by comments that are later unfortunate. No one is perfect, especially with the hindsight of history," Douglas said.

Asking issue with the college's claim that the name removal does not amount to an erasure of history, Douglas replied, "Of course they are. One important element of history is that he gave the money, and his name has been on it for more than a century. I think it would be appropriate to return the money [for the chapel] and other money that he gave to the college."

According to the administration, Mead's financial gift to the college was not conditional upon his name being put on the building, so the college is not obligated to return the gift to the Mead family.

Lastly, Douglas was perplexed as to why the action was taken when the vast majority of students were likely unaware of Mead's history and connection to eugenics. Nor does he believe the Vermont legislature's formal apology necessitated the name removal. "I don't think [the apology] leads to this cancellation of the legacy of the philanthropy of Governor Mead. The college has made a serious mistake," he said.

Though there have been no previous calls for the removal of Mead's name by Middlebury community members, Irwin noted that more and more colleges and universities across the country are beginning to engage in honest debates and conversations about what and who they choose to commemorate. "It's about how those choices express our values," she said.

Thinking of the broader implications of the decision, Douglas commented, "There is a growing attitude in academia of wokeness and political correctness. We all need to take a deep breath. A college campus is the kind of place we ought to be able to have these discussions, even uncomfortable decisions. This decision runs counter to the purpose of higher education."

Reiterating the official announcement, Ross stated, "This is not about erasing history, but just the opposite — engaging with it so we can learn from it. Our educational mission is at the center of all these deliberations."

The Educational Task Force is currently planning to work with a variety of departments and groups on campus to develop recommendations on how to acknowledge and educate about the decision to first honor a member of this community and then remove that honor, according to Ross. "Our educational efforts might include signage, architectural installations and public art – with the goal of encouraging constructive dialogue and debate around not only the issue of the chapel name but also its wider implications as a complex issue of our time," she said.

As of now, there are no plans to actively enforce the new name or obligate employees to refrain from referring to the chapel as Mead Chapel, according to Ross. The Educational Task Force may consider a publicity campaign to promote a new name if one is chosen for the chapel, but such a campaign is not part of the administration's current plans.

Ideal Dowling

Ideal Dowling '22 is an Editor at Large.

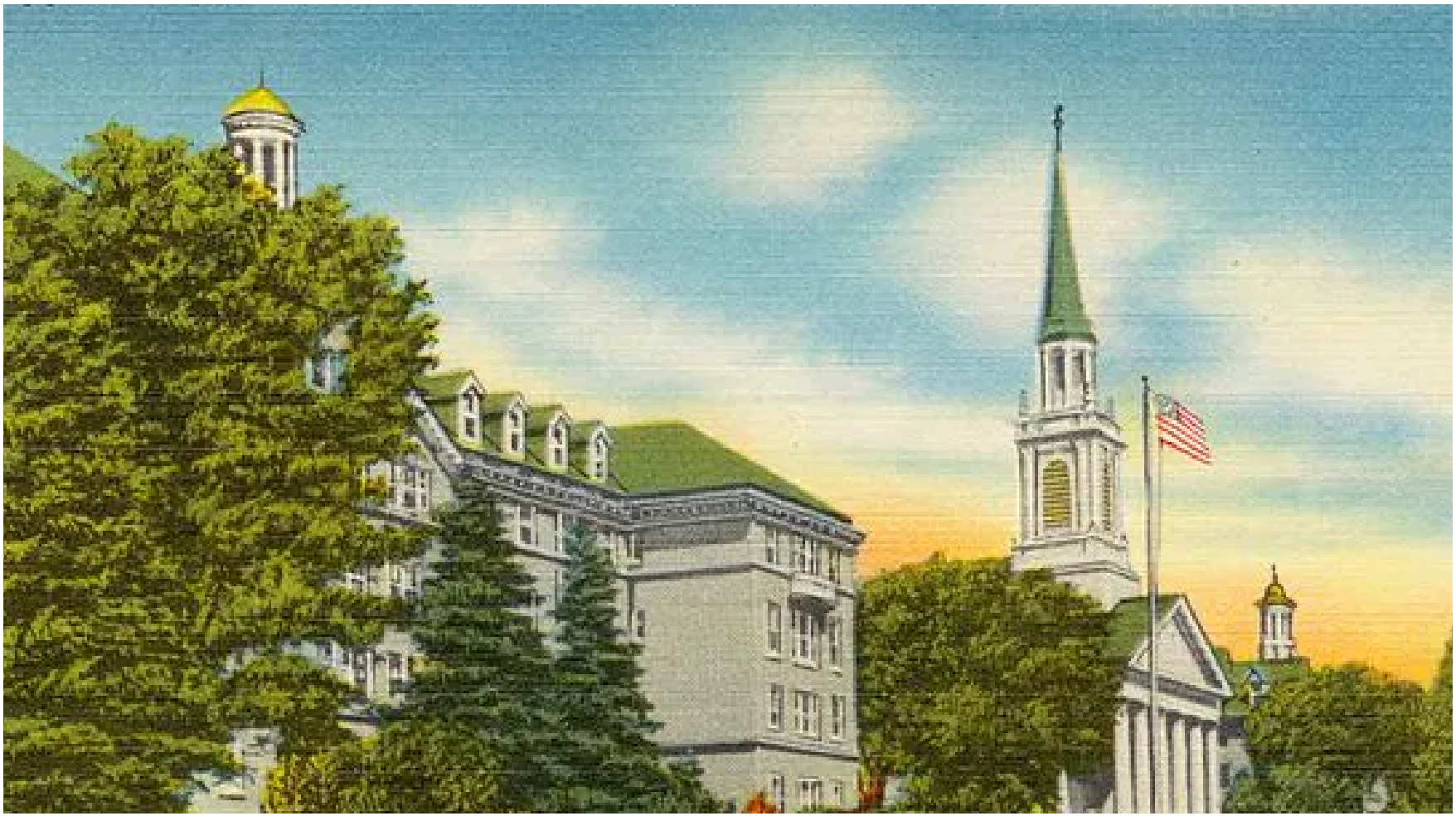
She previously served as a copy editor and Local section editor.

Dowling is majoring in Political Science and minoring in French and History. During the summer of 2021, she worked as a consultant for the startup accelerator Aegis Ventures and as a research assistant for Professor Stanley Sloan as he worked on his book "De-Trumping U.S. Foreign Policy: Can Biden Bring America Back?" In addition to her work at The Campus, Dowling is captain of Middlebury's women's squash team and an employee at the Middlebury College Museum of Art.

OPINION

Why I'm Skipping My 50th Reunion at Middlebury College

I'll miss seeing my classmates and reminiscing about our college days. My regret would be greater, however, if I were to pretend that I was happy with cancel culture at my alma mater.



The spire of Mead Chapel towers over the Middlebury Campus. Wikimedia Commons

JAMES DOUGLAS
Thursday, May 19, 2022
04:52:28 pm

A half-century ago this month I graduated from Middlebury College. I will not be attending my 50th Reunion.

At the crack of dawn seven months ago, while the campus was just coming to life, Middlebury College removed the sign denoting the name of the institution's house of worship.

It had been Mead Memorial Chapel for more than a century, since a former Vermont governor, John Mead, donated the funds to construct it on the grounds of his — and my — alma mater. He specified its name, to which the trustees readily agreed.

There was no warning that the name would be removed, no public discussion, no hint that such a defenestration was to occur. Instead, the College issued a statement shortly after the deed was done. I thought it was misleading and insulting, and seven months later I'm still hoping that a way will be found to restore Governor Mead's name to the chapel.

The basis for this furtive removal of Mead's name was the Governor's support, in his Farewell Address of 1912, for proposals to restrict the issuance of marriage licenses to those of limited intellectual capacity and to appoint a commission to study the use of vasectomy as a more humane process of sterilization.

The former was passed by the legislature after he left office, but vetoed by his successor. Nonetheless, Governor Mead was proclaimed a eugenicist and the College implied, without evidence, that he was motivated by racism.

The cancellation of Governor Mead contradicts the very purpose of the College. A higher education institution exists for the pursuit of truth and knowledge. That requires a generous exposure to varied ideas and ideologies. Nigerian writer Chinua Achebe observed: "If you only hear one side of the story, you have no understanding at all."

Middlebury's denigration of Governor Mead sullies the reputation of a decent man, as well as a generous benefactor. The September 27 statement portrays him as essentially a precursor of Hitler, rather than presenting him in the context of his time. Support for eugenics was mainstream in the early 20th century, embraced by leaders in society, education and government, including, most likely, the Trustees who gratefully accepted his gift.

Presidents, prime ministers, judges, scientists, authors, even the founder of Planned Parenthood supported it. Importantly, the bulk of eugenics activity in Vermont occurred in the 1920s and 1930s, after the Governor's death.

The College vastly overstates Governor Mead's role in this matter; he didn't actually do anything, but merely expressed an opinion. That's what should trouble every fair-minded observer of this episode: Middlebury is regulating thought, precisely the opposite of what a liberal arts college should do.

John Mead not only served his state with distinction; he and a group of classmates interrupted their studies to join the Union Army. He appeared in arms at Gettysburg and subsequently returned to complete his degree. He practiced medicine for a while, but his prosperity derived from several manufacturing firms that created prosperity for many families. He was a Middlebury trustee, received an honorary degree, and gave generously to our alma mater, beyond financing the Chapel.

Mead was viewed as a progressive. He supported women's suffrage, toughened child labor laws, strengthened campaign finance statutes, and established Vermont Technical College. He doubled funding for highways and

ored clean energy, urging the substitution of hydroelectric power for coal. He was seriously considered for the vice-presidential nomination on the national ticket in 1912.

Vermont's native son, Calvin Coolidge, observed that "Education is to teach men not what to think but how to think." That requires hearing different ideas and acknowledging them in context. It means learning from history, not erasing it.

The College bases its decision on inconsistency with its values. On the contrary, purging the legacy of someone who revered our alma mater and gave generously to support it, due to a single remark that we a century later deem unacceptable, hardly conforms to the purpose of the academy.

Nearly everyone's legacy is mixed. I'll bet all of us have at some point made a remark or written a comment that, upon reflection, seems inappropriate, even offensive, and that we later regret. Is that the sole basis on which a long and distinguished career should be judged? Under the scrutiny of the Thought Police, no one's legacy is safe.

Yale Professor Anthony Kronman, in his book "The Assault on American Excellence," urges against erasure of history. Rather, he writes, we should "contextualize" it. That's what Middlebury ought to do, not purge the good name of a beloved and generous alumnus.

I'll miss seeing my classmates and reminiscing about our college days. My regret would be greater, however, if I were to pretend that I was happy to be there, in the shadow of Mead Chapel, the scene of the College's expunction of the Governor's legacy.

I hope that the institution's officials reconsider this unfortunate deed. Cancel culture is alive and well at Middlebury, so, for now, I'll celebrate alone.

JAMES DOUGLAS

Mr. Douglas served four terms as the 80th governor of Vermont. He is the author of "The Vermont Way."

ACTA
AMERICAN COUNCIL OF TRUSTEES AND ALUMNI

December 6, 2022

Mr. George Lee
Chairman
Goldman Sachs
555 California St
#45
San Francisco, CA 94104

Dear Mr. Lee:

I write to share with you the American Council of Trustees and Alumni's (ACTA) thoughts on the decision to remove the name of the Mead Memorial Chapel and, more widely, the imperative of building a stronger culture of free expression at Middlebury College.

Former Vermont governor John Mead supported eugenicist practices, and I join with Middlebury in condemning these appalling views. However, powerful authorities quietly rescinding the name of the chapel avoids difficult conversations about the past—and thus denies students the opportunity for historical understanding and consideration of complex moral questions. Ironically, failure to deliberate contributed to the widespread use of eugenics in the early 20th century. Further, Middlebury's clandestine decision-making mirrors elitist cultural practices that contributed to eugenics' formerly widespread acceptance.

We are aware of the constructive debates in 2017–2021 on issues of speech and inclusion at Middlebury College. Members of the community joined deliberations of the Committee on Speech and Inclusion, the Engaged Listening Project, and multiple Critical Conversations. This work bore fruit in the following affirmation in the Middlebury Handbook's Policy on Open Expression:

> A robust and inclusive public sphere is one where all voices can be heard and have the opportunity to contribute to the conversation. Middlebury's mission . . . requires a learning environment where all community members practice engaging across difference, perspective taking, and critical thinking to expand their understanding of the range of attitudes, values, ideas, actions, issues, policies, and practices that exist on campus and in the world beyond.

Middlebury's mission rightly defends reflective truth-seeking as vital to the institution's inclusive identity. As President Patton noted in her April 2017 address to faculty, free expression and inquiry undergird the school's other commitments. She noted, "Education must be free enough to expose students to a wide-range of conflicting and even disturbing ideas, for only then will we be able to give our students the wisdom, the resilience, and the courage to make this a better world." The challenges our nation faces—and our world confronts—

Exhibit 7 - 022

require institutions of higher education to be bold and thoughtful in their approach.

Middlebury's reputation has suffered from the 2017 shout-down of Charles Murray and the violent assault on Middlebury's distinguished professor Allison Stanger, followed two years later by the disinvitation of Polish philosopher and political leader Ryszard Legutko. Some institutions, like the University of North Carolina–Chapel Hill, are earning high praise for their commitment to freedom of expression; others are betraying their heritage.

While Middlebury has made efforts to affirm open inquiry, campus enforcement of these policies and sentiments remains inadequate. The Foundation for Individual Rights and Expression (FIRE) gives Middlebury a Red rating, and the college ranks 189th out of 203 schools surveyed by FIRE. This statistic exemplifies the widespread challenges Middlebury College faces in carrying out its support for free expression.

It is for this reason that I would like to introduce to you the ACTA Gold Standard for Freedom of Expression. ACTA's Gold Standard is a blueprint designed to help institutions of higher education commit to a culture of free expression, foster civil discourse, cultivate intellectual diversity, break down barriers to free expression, and advance leadership accountability. The Gold Standard provides specific steps that would put into action Middlebury College's stated affirmation to expand free expression on its campus and help the institution take bolder steps to uphold free inquiry and inclusion.

If you share the concern to protect free speech and intellectual inquiry, know that the historic spirit of Middlebury, and its free speech policies, are on your side. The very purpose of Middlebury College is to pursue *Scientia et Virtus*, knowledge and virtue. We encourage you as a trustee to discuss with colleagues their ideas and opinions regarding how to expand these protections and promote more inclusive discourse on campus. On issues of intellectual diversity and free expression, you can lead by example, even within the privacy of boardroom meetings and personal conversations.

If you would like additional information about the ACTA Gold Standard for Freedom of Expression or a private consultation, please contact **Steven McGuire, ACTA's Paul & Karen Levy Fellow in Campus Freedom, at SMcGuire@GoACTA.org**.

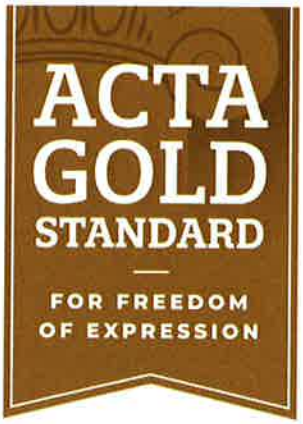
On behalf of ACTA, thank you for your commitment to free expression and intellectual inquiry at Middlebury College, and I encourage further action on issues of such vital importance to your community.

Warm regards,

Michael Poliakoff
President

Enclosures

ACTA Gold Standard for Freedom of Expression



1. Commit to a Culture of Freedom of Expression

- Adopt the Chicago Principles on Freedom of Expression or a similarly strong statement.
- Establish clear expectations regarding free expression in student, faculty, and staff handbooks and codes of conduct.
- Include a free expression unit in new-student orientations.
- Protect the diversity of political viewpoints by adopting an institutional neutrality policy such as the Kalven Committee Report.

2. Foster Civil Discourse

- Sponsor campus debates that model civil discourse.
- Encourage establishment of student groups promoting free expression.
- Protect the rights of invited speakers and listeners to engage with controversial ideas.
- Establish and enforce consequences that deter disruption of sponsored speakers, events, and classes.

3. Cultivate Intellectual Diversity

- Encourage presidents, provosts, and deans to model respect for a broad range of viewpoints.
- Guarantee that viewpoint diversity is reflected in student life policies and practices.
- Support academic centers dedicated to free inquiry and intellectual diversity.
- Make intellectual diversity a stated goal in faculty hiring, evaluation, and promotion.

4. Break Down Barriers to Freedom of Expression

- Eliminate speech and IT policies that have a chilling effect on free expression.
- Ensure that Title IX and other disciplinary procedures do not infringe on free expression.
- Disband bias response teams.
- Review student government policies to ensure viewpoint neutrality in student group recognition and funding.

5. Advance Leadership Accountability

- Incorporate explicit policies of free expression in governance bylaws and other key institutional documents.
- Include a commitment to free expression as a criterion for presidential searches and evaluations.
- Require free expression and viewpoint diversity training for administrative staff.
- Conduct regular evaluations of the state of free expression and intellectual diversity on campus.

Forbes
Exhibit 7 - 024

By: Michael Poliakoff | August 18, 2022

University Of North Carolina Strikes A Blow For Freedom Of Speech

On July 27, the University of North Carolina (UNC)–Chapel Hill's Board of Trustees made a strong, new commitment to safeguard the free exchange of ideas on campus. Colleges and universities face immense pressure to comport with majority beliefs, but UNC's trustees proactively resolved to maintain institutional neutrality on controversial political and social issues.

The trustees' unanimous resolution built on the previous work of the faculty. To the credit of the UNC Faculty Assembly, it adopted in 2018 the Chicago Principles on Freedom of Expression, an action affirmed by the trustees in March 2021. The faculty resolution read, in part, "By reaffirming a commitment to full and open inquiry, robust debate, and civil discourse we also affirm the intellectual rigor and open-mindedness that our community may bring to any forum where difficult, challenging, and even disturbing ideas are presented."

The trustees took a remarkable further step. In addition to confirming once more the decision of the Faculty Assembly, they put the university in the vanguard of institutions committed to a robust heterodoxy of views and opinions by also adopting what is known as the Kalven Committee Report on the University's Role in Political and Social Action. The UNC resolution notes that the Kalven Report "recognizes that the neutrality of the University on social and political issues 'arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints' and further acknowledges 'a heavy presumption against the university taking collective action or expressing opinions on the political and social issues of the day.'"

In an interview with me, UNC Trustee Dr. Perrin Jones, who introduced the resolution, observed that the unanimity of the board reflected its desire for public affirmation of the university's commitment to be a forum for open and vigorous debate, which cannot happen without institutional neutrality. Board members embrace, in Dr. Jones's words, the "high bar" of living up to these "timeless principles."

Predating the Chicago Principles (2014) by nearly 50 years, the Kalven Report is a highly consequential policy document in the history of higher education. It came at a time when protests against the Vietnam War raged on and off university campuses. In this contentious climate, University of Chicago President George W. Beadle appointed a special faculty committee chaired by law professor Harry Kalven, Jr., to prepare "a statement on the University's role in political and social action." The resulting document established the university's official position of institutional neutrality and has guided its leaders ever since.

While almost 90 institutions of higher learning have adopted or affirmed the Chicago Principles as of June 2022, UNC is unique in also adopting the Kalven Report.

When formally adopted, the Kalven Report can serve as an anchor for higher education leaders amid society's unforgiving, demanding, capricious sea changes. Institutional neutrality, as articulated in the Kalven Report, allows universities to foster the search for truth without reservation or partisan prerequisites.

As the Kalven Report states, "The university is the home and sponsor of critics; it is not itself the critic." It further states: "To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community." A university cannot do this, the report continues, if administrative leaders commit the institution to specific political or policy positions: "It cannot insist that all of its members favor a given view of social policy; if it takes collective action, therefore, it does so at the price of censuring any minority who do not agree with the view adopted."

Furthermore, by remaining neutral as an institution, the

university can avoid partisan labeling and maintain its credibility with the communities it serves. A 2022 survey revealed that, when asked about the economic value of a degree over the last 20 years, 45% of Democrats said it has increased, and 25% said it has decreased, whereas only 34% of Republicans said it has increased, and 40% said it has decreased. (Among Independents, only 25% said it has increased, whereas 50% said it has decreased.) Moreover, 57% of Democrats agreed that "liberal and conservative views are equally respected on campus," whereas only 31% of Republicans and 32% of Independents agreed. Universities' roles include providing expert knowledge to society and preparing students for citizenship and civic leadership. Their ability to do so is diminished if universities lose their reputation for objectivity and unprejudiced judgment.

Colleges and universities will increasingly be put to the test, and at a time of deepening distrust of elite institutions, they must strive to pass the test of intellectual integrity. In a situation as contentious as the decision in *Dobbs v. Jackson Women's Health Organization*, the voice of institutional neutrality is likely to be determinative for civility and intellectual progress. University of Iowa President Barbara Wilson's statement captures that ethic: "As a leader of a public university, my personal reactions will remain private because ultimately my responsibility is to ensure that our institution is a place that encourages rigorous debate, dialogue, and engagement. . . . No matter where you stand on the issue of abortion, I ask that you help ensure that the University of Iowa is a place for open and respectful discussion of differences."

The UNC trustees also voted unanimously that funds from mandatory student fees must be distributed to student groups and programs with viewpoint neutrality. It has been all too easy for student government or student services officials to cut off or withhold funding from student groups, whether pro-Israel or pro-life, with whom they happen to disagree. Shortly after the UNC Board resolution was announced, UNC Student Body President Taliajah Vann clarified that her July 6, 2022, executive order barring funding to entities that limit reproductive rights did not apply to student groups.

UNC's record of fairness has been strong, and with the resolutions of July 27 the trustees clearly intend to keep it that way.

RealClear Education

By: Michael Poliakoff & Steven McGuire | November 24, 2022

Will Cornell Protect Free Speech?

Welcoming the freshman class in August, Cornell University President Martha E. Pollack admonished students: "Free speech, as difficult and as challenging as it is, is not only the bedrock of higher education. It's also the bedrock of democracy and a free society." But when conservative author Anne Coulter appeared at an event there earlier this month, a group of hecklers shouted, clapped, and whistled until Ms. Coulter, herself a Cornell alumna, had to leave the stage.

As Ms. Coulter observed afterward, the attack on her was an attack on the university itself: "The students who prevented me from speaking were not engaging in fiery argument, or any kind of argument at all, but the most anti-intellectual response imaginable: whoopie cushions, screaming, and loud circus music—mocking the very purpose of a university."

The ugly shout-down of Coulter raises a question with implications that reach beyond Cornell's storied campus, or even the Ivy League. Many university leaders talk about preserving the values of free speech and open inquiry, as Pollack does. But do they have the spine to punish students when they violate those standards?

Pollack's recent comments about the event do not inspire confidence. While she said she is "disgusted by the behavior of these students" and noted they "were warned," she promised only that "the students will be referred to the Office of Student Conduct. They will decide what the punishments are." President Pollack should be taking the lead; instead, she's deflecting responsibility.

Cornell had previously resolved to allow the event to take place despite a petition demanding Ann Coulter be disinvited. Whether one agrees with Ms. Coulter or not, she, and the students who invited her, had a right to engage in the civil exchange of ideas. Any university worthy of the name ought to resist becoming an echo chamber for like-minded ideologues. Instead, it must be a sanctuary where challenging ideas can find a hearing.

Cornell security officers escorted several of the disrupters out of the room, though ultimately, there were too many for the speech to proceed. Clearly, the administration now knows who many, if not all, of the culprits were. Its choice is clear: Either punish them with suspension or expulsion or become a second-rate campus where young Jacobins decide whom they will hear and whom they will silence.

Suppression of free speech grows like a cancer. This is not the first time a speaker has been canceled or disinvited from speaking at Cornell. Jannique Stewart was disinvited in 2019 because of her views on sexuality and marriage. Ms. Coulter was previously disinvited in 2001.

Why were the guilty students so afraid to let Ms. Coulter speak? In an Orwellian twist, they claimed, "we are not seeking to 'cancel' her merely for identifying as a conservative. Rather, we want accountability for her extremist rhetoric that qualifies as hate speech." Naturally, they think they are qualified to determine what counts as "hate speech" and how to respond to it.

The students also played into the fashionable but dangerous idea that speech is violence: "By allowing a powerful right-wing pundit who revels in hate and controversy onto campus," they claimed, "Cornell turns a blind eye to extremism that may pose a threat to vulnerable students."

Are these the fruits of a Cornell education today?

Efforts are underway at the university to subject students, staff, and faculty to ideological training sessions that teach them how to think about social and political issues. Faculty applicants are also required to submit a diversity statement that serves as an ideological litmus test. These efforts to enforce ideological conformity foster an environment that encourages the shouting down of a speaker who fails to conform.

Yet, President Pollack does not seem to know why this particular outrage happened or what to do about it. When asked how disruptions like this one can be prevented in the future, she admitted "I don't have a good answer to the question of what

will deter this in the future. It's something I think we need to continue to discuss as a community."

If Cornell truly wants to embrace free expression and open inquiry, it needs to take strong action to promote a culture of free expression and intellectual diversity.

First and foremost, students and faculty need to see that there is a zero-tolerance policy for such behavior. Cornell must punish the guilty.

Next, the university needs to rehabilitate itself. It should adopt the Chicago Principles on Freedom of Expression and the Kalven Report on institutional neutrality. It must drop its plans for mandatory social justice training.

Finally, as we and the Cornell Free Speech Alliance wrote to President Pollack earlier this year, Cornell should include robust free expression programming in its new-student orientation. Clearly, Cornell students need to be taught the behavior expected of a college student—and an American citizen. Rebuilding a culture of free expression will not be easy. These suggestions are just a beginning.

If Cornell wants "To Do the Greatest Good," as its motto says, it needs to get back to basics and embrace free expression and intellectual diversity in both word and deed. Eyes now turn to see if President Pollack will lead the way.

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Department

Ruminations

Paul S. Gillies, Esq.[a1]

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

a1 *Paul S. Gillies, Esq., is a partner in the Montpelier firm of Tarrant, Gillies & Richardson and is a regular contributor to the* Vermont Bar Journal. *A collection of his columns has been published under the* ***title*** *of Uncommon Law, Ancient Roads, and Other Ruminations on Vermont Legal History by the Vermont Historical Society. Paul is also the author of* The Law of the Hills: A Judicial History of Vermont *(© 2019, Vermont Historical Society).*

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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