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THE RISE OF CORNELIUS
PETER VAN NESS
1782-1826

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Cornelius Peter Van Ness was a colorful and vigorous leader in a formative period of Vermont history, but he has remained in the dusk of that history. In this paper Mr. Bassett has sought to recall him and his activities and through him throw definite light on his eventful times. In this study Van Ness is brought to the dramatic months of his attempt in the senatorial election of 1826 to succeed Horatio Seymour. When Mr. Bassett has completed his research into that phase of the career of Van Ness, we hope to present the results in another paper. Further comment will be found in the Postscript. Editor.

INDIVIDUALISM is the boasted virtue of Vermonters. If they are right in their boast, biographies of typical Vermonters should reveal what individualism has produced. Governor Van Ness was a typical Vermonter of the late nineteenth century, but out of harmony with the Vermont spirit of his day. This essay sketches his meteoric career in administrative, legislative and judicial office, and his control

of Vermont federal and state patronage for a decade up to the turning point of his career, the senatorial campaign of 1826.¹

His family had come to New York in the seventeenth century.² His father was by trade a wheelwright, strong-willed, with little book-learning. A Revolutionary colonel and a county judge, his purchase of Lindenwald, an estate at Kinderhook, twenty miles down the Hudson from Albany, marked his social and pecuniary success.³ Cornelius was born at Lindenwald on January 26, 1782. His family's activity in politics for Jefferson and Burr developed his political aptitude and conditioned his political preference. His brothers went to Columbia, but, never fond of abstract learning, he chose a business career. He was soon drawn to the law; in 1804 he married, inherited on his father's death a few months later about \$40,000,⁴ and started practice at Kinderhook.

Profits and promotion could not be rapid at home, so he moved, in 1806, to St. Albans, Vermont, a booming village just back of the frontier in the Eastern Townships of Quebec.⁵ Catering to northern Vermonters and Yankee pioneers across the border, and playing the

1. The parent biography of Van Ness is a three-column obituary by his intimate friend, George B. Sawyer, in the *New York Times* of January 8, 1853. David A. Smalley, who succeeded Van Ness as Democratic boss of Vermont, added to this obituary in Abby Maria Hemenway, ed., *Vermont Quarterly Gazetteer*, 5v. and index, Ludlow, Burlington . . . 1860-1891, 1: 608-614. Of five Vermont biographical dictionaries published between 1885 and 1917, two include Van Ness, copying inaccurately from Sawyer or Smalley: Jacob G. Ullery, comp., *Men of Vermont*, Brattleboro, 1894, and Prentiss C. Dodge, ed., *Encyclopedia Vermont Biography*, Burlington, 1912. The *Dictionary of American Biography* included William P. Van Ness, brother of Cornelius and United States Judge of the Southern District of New York, and no other member of the family.

2. For information about the family, especially Cornelius's eldest brother, see Allen C. Clark, "General John Peter Van Ness, a Mayor of the City of Washington, his Wife, Marcia, and her Father, David Burnes," *Columbia Historical Society Records*, 22: 125-204 (1919).

3. William P. Van Ness fell heir to Lindenwald, but a creditor took it over, and sold it to Martin Van Buren. John C. Fitzpatrick, ed., "The Autobiography of Martin Van Buren," Vol. 2 of *American Historical Association Annual Report . . . for . . . 1918*, 16-17.

4. Aaron Burr to Theodosia Alston, December 31, 1804, in *Memoirs of Aaron Burr, with Miscellaneous Selections from his Correspondence*, M. L. Davis, ed., 2v., New York, 1837, 2: 253.

5. Marcus L. Hansen, *The Mingling of the Canadian and American Peoples*, Vol. I, *Historical*, comp. and prep. for pub. by John B. Brebner, New Haven, 1940, 70-74.

real estate market, was good business. Van Ness joined nine other practicing attorneys preoccupied with disputes over land titles.⁶ St. Albans, with the best harbor in the county, promised to outstrip her more populous lakeshore rival, Georgia, when it was chosen shire town in 1800. It already had a jail, a courthouse, an academy, and a settled minister when Van Ness arrived.⁷

On the burning embargo issue of 1808, Van Ness and Asa Aldis, another lawyer immigrant from down country, took the unpopular Republican side. This position made them available for the prosecution of smuggling suits and eligible for federal office, but won the hatred of many whose very livings depended on this now illicit trade with Montreal. In the prosecution of the Black Snake smugglers, during the strenuous political campaign of 1808, Van Ness had the honor of assisting David Fay, United States District Attorney, and W. C. Harrington, States Attorney for Chittenden County.⁸ This case was the most notorious of a group of smuggling cases crowding the court dockets for the next seven or eight years, because it involved the chase and capture of one of the most important potash smuggling boats, a murder trial, and a public execution. Until the Hudson-Champlain canal and the industrialization of the United States freed the Champlain Valley from dependence on the foreign port of Montreal, every border disturbance dominated local politics, like the smuggling from 1808 to 1815.

In 1809, Van Ness moved to Burlington, perhaps because his Republicanism hurt his private practice. The same year, the Federalist Benjamin Swift moved to St. Albans from Bennington, the stronghold of the Republican Fays and Robinsons. Burlington was scarcely any larger than St. Albans,⁹ but Van Ness saw his main chance in moving. Judge Jonas Galusha of the Supreme Court was running against the Federalist Governor Isaac Tichenor, and it may have been understood among Republican insiders that Fay, the District Attorney, should succeed Galusha.

Galusha won, and Fay went to the bench, creating a vacancy for

6. Some of these doubtless earned part of their living in other ways. Hemenway, *Gazetteer*, 2: 323, omits Seth Wetmore. Van Ness was also the ninth to be admitted to the Franklin County bar, during the August term, 1806. *Ibid.*, 2: 93.

7. *Ibid.*, 2: 292.

8. *Ibid.*, 1: 467-468 and 2: 342-347.

9. Burlington 1,689; St. Albans 1,606 in 1810. In 1820, however, Burlington 2,111; St. Albans 1,636. *Ibid.*, 1: 474 and 2: 102.

a lawyer experienced in smuggling cases, familiar with the border, and yet not so sympathetic with the borderers that he would hesitate to try cases affecting their pocketbooks. Van Ness had these qualifications, but at the age of twenty-eight he needed an influential friend at court. At this point, his family connections proved invaluable. He was recommended by Brockholst Livingston, in whose office his brother John had prepared for the bar, now on the United States Supreme Court with circuit duties including the District of Vermont. On receiving his appointment, Van Ness became the youngest, by almost ten years, of any who entered the office of District Attorney in the nineteenth century.¹⁰ It may be thought that in those days, preferment could be expected much earlier than in more settled times, when the population contained more older, yet still active men. This is a general truth, yet all Vermont federal officeholders appointed before Van Ness were between four and twelve years older on the dates of their appointment.

When war with Britain broke, a new problem arose. Restrictions on trade with Canada had had no official relaxation since the end of 1807, but now, instead of breaking the Non-Intercourse Act, border smuggling became trading with the enemy. Times were hard without foreign trade; the Country was not united behind the President; customs revenue had dwindled; the army needed equipment which could not be had for love or money in the states. To observe the letter of the law, yet admit goods and receive revenue, the government permitted the British merchants at Montreal to operate behind a false front. One Monzucó, a neutral Latin, living in Burlington and operating the vessel *Saucy Fox*, took oath that he was the owner of the imported goods. Samuel Buell, collector of the port of Burlington, was replaced in 1813 by Van Ness, the youngest collector down to the World War, barring two whose birthdates are unknown, to handle this ticklish problem.¹¹

10. *A List of the Principal Civil Officers of Vermont from 1777 to 1918*, John L. Comstock, ed., under the direction of the Secretary of State, being a revision and enlargement of *Deming's Vermont Officers*; 355. All other analyses of the age and tenure of Vermont officers, in this article, are derived from this compilation.

11. His enemies charged Van Ness in 1826 with venality in securing the job. Official correspondence concerning the change of collector does not exist; the customs files of the Treasury Department before 1833 have been burned. Fair copies of letters to collectors of small ports, in the National Archives, include no letters to the Burlington collector for the period, 1809-1817.

Van Ness was the heir apparent to Senator Robinson in dispensing Vermont patronage, for he was the leading Republican federal officeholder.¹² Elijah Paine, the Federalist District Judge, could have little influence with Madison. Van Ness had already been influential in turning cases over to Asa Aldis, the Republican leader of Franklin County, and his former colleague.¹³

Money, acquired and inherited, now made Van Ness affluent, as political power and money had made him influential. He was ready to put his capital to work for himself and his town. Burlington, as the concentration point of the Vermont militia, had the abnormal stimulation of government defense works, and the business of supplying the soldiers, to buttress it against the business uncertainties and invasion scares of the war years. It shared preeminence as a lake port on the Vermont shore with St. Albans and Vergennes, where McDonough built his fleet in the War of 1812. But as a pioneer in steam navigation, Burlington merited contemporary ridicule and later glory alone.¹⁴ The *Vermont* was built in 1808, and after six years' operation, about as notable for breakdowns as carryings-on, it sank in the Richelieu in the fall of 1815.

While the *Vermont* was still carrying troops and stores to Plattsburg, Van Ness, with the Catlins of Burlington, Amos Barnum of Vergennes, and New York and Albany capitalists, secured a New York charter for the Lake Champlain Steamboat Company in 1813. They acquired the exclusive franchise for the New York waters of Lake Champlain indirectly from Fulton and Livingston, and launched the *Phoenix* in 1815. That fall, the Vermont Assembly completed the company's monopoly by granting an exclusive twenty-three year franchise for lake steam navigation to Barnum and Woodbridge of Vergennes, John Winans, the builder of the first *Vermont*, and Van Ness.¹⁵ For over a decade, Van Ness was interested in lake steamboating.

He kept the office of collector until the appointment of Senator

12. Jonathan Robinson had become Madison's chief adviser on Vermont appointments, according to Walter H. Crockett, *Vermont, the Green Mountain State*, 5v., New York, 1921, 2: 611. However, there is no correspondence to or from Robinson in Gaillard Hunt, ed., *The Writings of James Madison*, 9v., New York, London, 1900-1910.

13. Hemenway, *Gazetteer*, 2: 323.

14. For the history of Lake Champlain transportation from 1791 to 1826, see Thomas H. Canfield's article in *ibid.*, 1: 670-693.

15. *Laws of Vermont*, 1815, 120-122.

James Fisk in 1817, although the year before Monroe had appointed him to the Northeastern Boundary Commission,¹⁶ at a salary of about \$4,500 a year.¹⁷ In the fall of 1818, Van Ness prepared a report later conceded by Gallatin, who continued the negotiations, as concise, impartial, and sufficient to make its reader master of almost every point of the controversy. Less admirable were his persistent attempts to collect more salary than had been allotted to him.¹⁸

During his years as Boundary Commissioner, he found time to serve four terms in the General Assembly, 1818-21, achieving a reputation as a parliamentary leader at the outset by the way he handled the contest over the chartering of the Bank of Burlington. Teamed with a similar group in Windsor, the moneyed men of Burlington had been pressing for the incorporation of a bank since before 1803.

The strong Vermont tradition of hostility to banks and paper money was a serious obstacle to the inauguration of the Vermont private banking system.¹⁹ The hostile attitude was as old as the hard times of 1785-86, when Vermont debtor-farmers sympathized with the followers of Daniel Shays in Massachusetts. In Rutland and Windsor Counties, attempts were made to stop the courts from rendering judgments in favor of creditors, who were mostly non-residents. Conditions were so desperate that the 1786 Assembly was preoccupied with currency problems. The popular referendum of the following January was a debtors' triumph. It turned down the legal tender act, and the proposals to establish a bank or pass a general money bill, but supported payment in kind by a nearly four to one majority.

Burlington and Windsor lost the next skirmish in 1803. The Assembly passed their charter bills, but after the Governor and Council

16. For a summary of the Commission's work, see Crockett, *Vermont*, 3: 147-152.

17. *Journal of the General Assembly of Vermont*, 1820, 27.

18. In the Van Buren papers of the Library of Congress are several long communications in which Van Ness argues the unconstitutionality of the Act of March 3, 1821, which reduced his salary. He also brought pressure to bear on President Adams, through Congressman William C. Bradley, of Westminster, Vermont, his colleague on the Commission. See John Quincy Adams, *Memoirs . . . Comprising Portions of his Diary from 1795 to 1848*, Charles F. Adams, ed., 12v., Philadelphia, 1874-1877, 6: 334, 466, 516.

19. See William P. Dillingham, "Banking Interests of Vermont," in *The New England States . . .* William T. Davis, ed., 4v., Boston, 1899, 3: 1472-1478.

non-concurred, referred them to the next session.²⁰ Nathaniel Niles of West Fairlee, spokesman for the Republican Councillors, assigned reasons for non-concurrence typical of the arguments of any debtor-farmer, repeated by Vermont Democrats until well after the Civil War. Here was formulated the perennial fear of the abuse of the control of money.

Bank bills, the argument ran, not being legal tender, would displace, like a drop into a bucket, an almost equal amount of legal tender. The seaports, and consequently the foreigners with whom they traded, would drain off the legal tender, and Vermonters farthest from Burlington and Windsor would suffer most. Yet easy credit, it explained in the next three points, would stimulate speculation at the expense of "those honest, honorable and sure sources of mediocrity and independence."²¹ Gambling in Vermont real estate on credit had been a major occupation since the country was opened up; the Council viewed it with alarm. Frankly believing in an economic basis of politics, it stated its other objection:

Banks have a violent tendency . . . to draw into the hands of the few, a large proportion of the property, at present, fortunately, diffused among the many; and in this way, straiten [*sic*] the circumstances of the many, and thus render them still more dependent on the few, and of course make them, thro' necessity, yet more subservient to their aspiring views: and by this means, the tendency of banks seems to be, to weaken the great pillars of a republican government, and, at the same time, to increase the forces employed for its overthrow.²²

The stock arguments of any opposition, that the action was hasty and unconstitutional, were thrown in for good measure. Such novel proposals, probably involving a perpetual grant, needed more thorough investigation. Finally, a page straight out of Jefferson: the business of government was to protect property and promote the general welfare, not to foster speculation and to "direct the efforts of individuals."²³

20. *Journal*, 1803, 235. Constitutionally, non-concurrence was a suspensory veto. At the next session, the Assembly could enact the same bill irrespective of the action of Governor and Council. See Daniel B. Carroll, "The Unicameral Legislature in Vermont," *Vermont Historical Society Proceedings*, n.s. 3: 14, 19-20, 65.

21. E. P. Walton, ed., *Records of the Governor and Council of the State of Vermont*, 8v., Montpelier, 1873-1880, 4: 390.

22. *Ibid.*, 4: 391.

23. *Ibid.*

In 1805, the House again chartered Burlington and Windsor banks, and again acquiesced in the non-concurrence of the Governor and Council. In the same year, the Vermont State Bank began its brief and unhappy career, plagued by the vicissitudes of business under embargo and war conditions, and vexed by hostile legislation in near-by states, and the failures and bad banking practices of individuals and other banks.²⁴

Burlington businessmen declared that the removal of their branch of the State Bank to Woodstock in 1812, where it closed the following year, hurt business. More seriously affecting the situation was the shock of the re-opened Canadian trade to warborn industry.²⁵ Graver still was the total crop failure of 1816. Those who could, took cash for their land—unless the severe frosts had made it a frozen asset—and headed for the Ohio. A few speculators made money on the first imported grain, but few were lucky and many ruined. Conditions improved in 1817, but the export of money with the emigration was a trump for the bank party.

The current religious revival was a striking companion of hard times. Establishment of new churches had little more than caught up after the interruption of the war;²⁶ but religious enthusiasm swelled and membership rose. One of the new members of the First Calvinistic Congregational Church of Burlington was Cornelius P. Van Ness, received by profession of faith on May 18, 1817.²⁷ Four of his children, Cornelia, Marcia, Cornelius and John, were baptized on July 12, 1818.²⁸

24. For several sessions, legislatures passed a number of private stay laws on behalf of the Bank's debtors, some of whom may not have repaid their obligations in full. See, for example, acts of suspension involving almost five thousand dollars in *Laws of Vermont*, 1818, 138-140. Seth Wetmore, one of Van Ness's fellow lawyers in St. Albans, was a notable defaulter. Hemenway, *Gazetteer*, 2:314. See also Dillingham, "Banking Interests of Vermont," 3:1477, and Crockett, *Vermont*, 2:609.

25. For example, the Vergennes Iron Works. See the autobiography of Philip C. Tucker in Lee S. Tillotson, *Ancient Craft Masonry in Vermont*, Montpelier, 1920, 164-165.

26. From a list of dates of the establishment of churches, furnished by Rev. Samuel N. Bean, Supervisor of Church Records, Vermont Historical Records Survey, it appears that 69 were founded in 1808-12, 11 in 1813-15, and 78 in 1816-20.

27. MS. records of the First Calvinistic Congregational Church of Burlington, 1:54.

28. *Ibid.*, 1:235.

Governor Galusha praised the revival in his annual speech of 1817, but paid most attention to business conditions. "The deficiency of a circulating medium, owing to an increased emigration of our inhabitants to the west, who have converted their property into cash for transportation, and the unfruitfulness of past seasons, in addition to the common causes which uniformly produce a scarcity of money at the close of a war, has caused some serious embarrassments. . . ."29 He added, in the spirit of his 1818 vote against the bank charters, that the cure was hard work and thrift, not "the ruinous system of paper credit."³⁰

At the 1817 session, Windsor won a charter, but its provisions were so strict that no bank was organized under it. Bonds of \$30,000 were required of directors, and lesser bonds for the cashier and the clerks. The bank was taxed \$1,000 the first year, and \$1,500 annually thereafter, besides six per cent of its income. Stockholders were liable beyond the value of their shares. A Burlington bill passed the same Assembly, 82-73, but after the non-concurrence of the Governor and Council in both charters, it was rejected, 69-66, while the Windsor charter passed with further amendments.³¹

It was a wise policy, after this defeat, for the interests promoting the Burlington bank to pick Van Ness as their spokesman in the renewed campaign of 1818. He had a direct stake in their success. They kept him as president of the board of directors from their organization until his election to the Supreme Court. He carried weight with the anti-bank Republicans, as a dispenser of patronage and a strong supporter of the recent war.

No doubt the business of the boundary commission, which had just closed an important session on October 4, kept Van Ness from the opening of the session. As a newcomer, he could have little part in the organization of the House; anyone could introduce the charter bill. During the second week, however, he was active before the judiciary committee, took a week-end leave of absence, and then settled down to his main business.

The bill, rewritten by the banking committee, passed its first tests, was ordered printed for the members, and made the order of the day for October 27. Van Ness called it up on that day, and debate started

29. *Assembly Journal*, 1817, 15.

30. *Ibid.*

31. The action of the 1817 session on bank affairs is summarized in *Governor and Council*, 6: 206.

in earnest. The attack, opened by Jonathan Draper of Shaftsbury, concentrated on shortening the life of the charter, or postponing to the next session, or dismissing the bill outright. It survived the Draper motion to dismiss, 89-91, and after a week's debate passed the House, 97-81.³²

The next day, Governor Galusha broke the Council deadlock by voting against it.³³ The yeas and nays were not recorded when the House passed the bill again on November 5, but if one can judge by the 70-102 vote against the motion of William Nutting of Randolph to postpone to the next session, the margin was wider than at first. Van Ness, appointed to assign reasons to the Governor and Council,³⁴ delivered his message, which is not recorded, so that the Council concurred the same day. But they changed their minds overnight, suggesting an eight per cent tax on dividends, and penalties for suspension of specie payments, and sending David Fay to explain these amendments to the House.³⁵ After two more days' jockeying, the Council had their way in part, agreed to a profits tax of six per cent, and the bill became law on November 9.³⁶ Van Ness had just moved to make the Windsor bank bill the order of the afternoon, and it passed without a record vote.

The two bills had followed parallel courses in the House and the charters, both with heavy restrictions, differed only in detail. Burlington was permitted a capitalization of \$150,000, to Windsor's \$100,000. Both had the same limits on note circulation imposed previously on the Vermont State Bank: the amount of specie on deposit, and three times the amount of paid-in capital. Both had the same potentially strict state supervision; the same \$8,000 bond required of directors; the same dividend limit of six per cent per year; the same maximum of twenty votes per stockholder, graded down to one vote for each of the first four shares; the same obligation to bank for the state. For suspending specie payments, the banks were to be charged twelve per cent interest, and were liable to have their charters vacated by the Supreme Court for non-payment.³⁷

32. *Assembly Journal*, 1818, 101-103; 127-128.

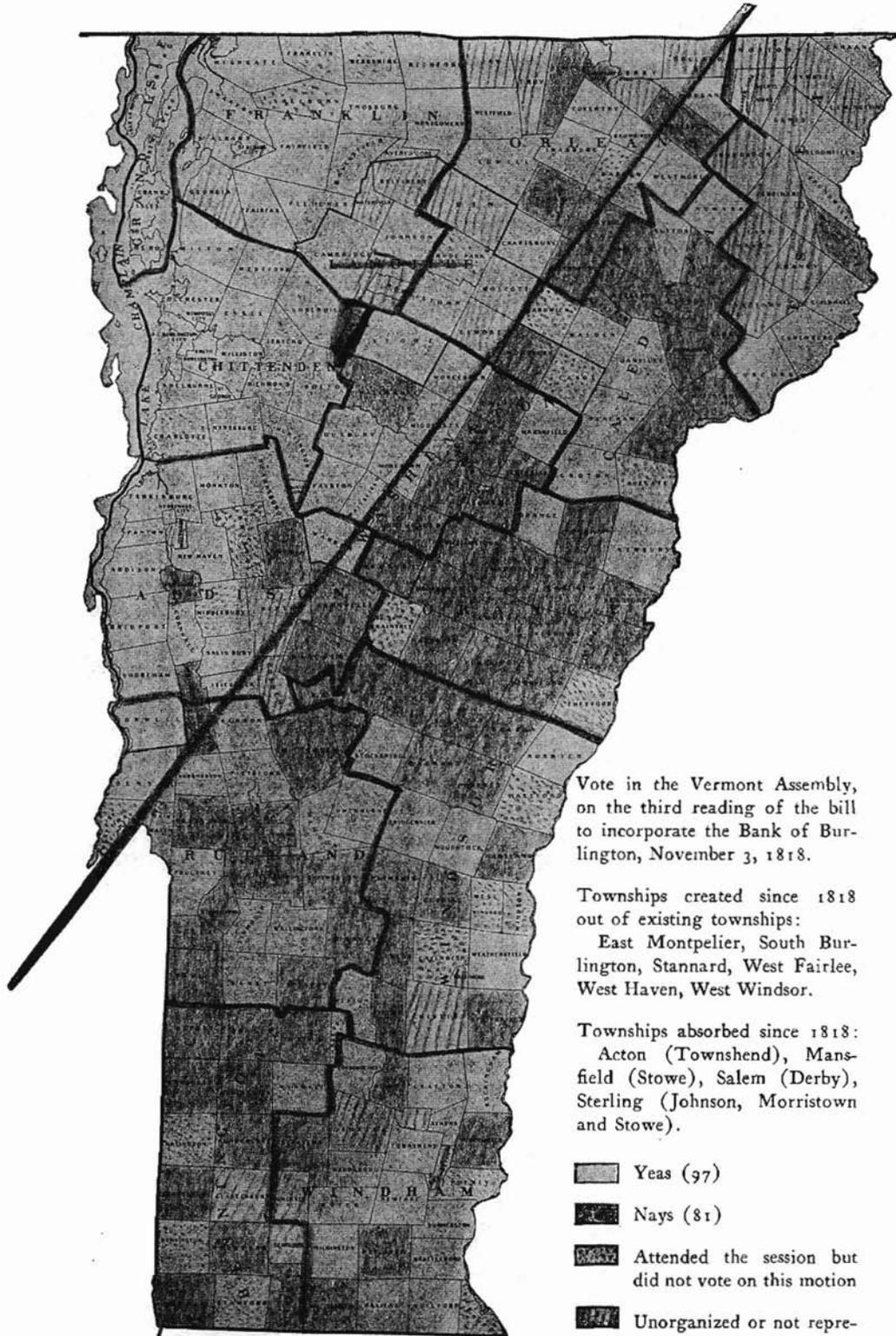
33. *Governor and Council*, 6: 240.

34. *Assembly Journal*, 1818, 137-138.

35. *Governor and Council*, 6: 241-242.

36. *Assembly Journal*, 1818, 155.

37. *Laws of Vermont*, 1818, 183-192 (Burlington), and 192-202 (Windsor).



Vote in the Vermont Assembly, on the third reading of the bill to incorporate the Bank of Burlington, November 3, 1818.

Townships created since 1818 out of existing townships:

East Montpelier, South Burlington, Stannard, West Fairlee, West Haven, West Windsor.

Townships absorbed since 1818:

Acton (Townshend), Mansfield (Stowe), Salem (Derby), Sterling (Johnson, Morristown and Stowe).

-  Yeas (97)
-  Nays (81)
-  Attended the session but did not vote on this motion
-  Unorganized or not represented

Analysis of the vote of November 3, when the bill first passed the Assembly, reveals certain political and economic correlations.³⁸ No members from any town on the shores of Lake Champlain, a trade route with a tendency to focus on Burlington, voted against the charter. Windham County, and the five northwestern counties from Addison to Orleans, voted 72-16 for the charter. The vote in the region northwest of a line drawn from the northeastern corner of Orleans County to the southern tip of Lake Champlain was 57-8. The eight previous gubernatorial elections show these northwestern counties and Windham County to be the area of Federalist strength.³⁹ The first non-concurrence of the Governor and Council disclosed the same regional division.

Votes were not recorded on the Windsor bill.⁴⁰ The Windham County bank petition did not come to a vote until the final days of the session, when on the motion to dismiss, only fifty-eight nays, including Van Ness's and those of fifty-one others who had voted for Burlington, could be rallied against sixty-nine yeas.⁴¹ Obviously, many members had left for home, or did not vote for other reasons. Ten from the northwestern counties, who had supported the Burlington bill, now did not want adjournment postponed by another bank fight; in the south, the net change was only one in the same direction, and in Essex County, three. Five other towns petitioning for banks—Weathersfield, Woodstock, Brandon, Johnson, and Craftsbury—supported the Burlington charter, although their own projects never reached a vote.⁴²

Federalism in Vermont, as expressed on the important bank issue, was not dead, but boring from within the Republican Party. Pres-

38. See accompanying map.

39. After the party carried only Grand Isle and Windham Counties in 1817, it petered out.

40. The yeas and nays on the motion to refer to the next session are indexed as for Windsor (*Assembly Journal*, 1818, 157-158) but that reference is a recorded vote for the Burlington bill.

41. *Ibid.*, 153-154.

42. The previous year, the opposing sides held their lines firm, almost regardless of proximity to the prospective banks. All votes, after the non-concurrence of the Governor and Council on both bills, were on November 6 (*ibid.*, 1817, 187-190). Comparing the vote on passage of the Burlington bill (defeated, 66-69) and on referring the Windsor bill to the next session (defeated, 65-66), we find only twenty-two changes, most of which were abstentions. These took strength from the opposition, as there was a net change of two who voted to refer, after supporting the Burlington charter.

sure for more banks continued, as the Country came to the brink of another depression. Galusha's annual speech of 1819 referred to complaints of the scarcity of money in the midst of abundant wealth and prosperity. He proposed, as before, investigation and reform, curtailment of unnecessary expense, a bankruptcy law "which would discourage credit where it ought not to be given," and the encouragement of domestic manufacturing; but no more banks. The states with the most banks and the easiest credit, he declared, were complaining the loudest.⁴³

After Brattleboro pushed through its charter in 1821, Governor Skinner's next annual message referred to "the ruinous effects of multiplying banks. . . . [Grant one charter, and it is harder to resist the next] . . . enough has already been done to satisfy every . . . [banking requirement] for the public good." The business of the state did not need more; farmers could not support more; they would only suffer from "usurious depredations."⁴⁴

Two other episodes in Van Ness's legislative career added to the company of enemies which he, like other successful men, accumulated as he stepped from victory to victory. The first was the contested Congressional election of 1818. Since 1812, the whole state had voted on a general ticket,⁴⁵ so that the party which elected the state officers chose all the Congressmen too. The effect of this change in 1814 was to recall every Republican Congressman, although some parts of the state, such as Bennington County, remained strongly Republican. Other states were proposing to settle the question by amending the federal constitution; the outcome of the 1818 election made Vermont determined to change its own method at once.⁴⁶

Van Ness, not satisfied with the ticket nominated by the legislative caucus of 1817, which supported only two of the incumbents, backed the four who were willing to run again, one of the new caucus candidates, and Ezra Meech, the choice of a caucus in the Burlington area.⁴⁷ Of the three places contested, the Van Ness men won two comfortably, and by controlling the canvassing committee,⁴⁸ threw

43. *Ibid.*, 1819, 11-13.

44. *Ibid.*, 1822, 11.

45. *Laws of Vermont*, 1812, 132-139.

46. *Governor and Council*, 6: 455-460 (Appendix C) discusses this movement.

47. Crockett, *Vermont*, 3: 157-158; Hemenway, *Gazetteer*, 1: 622 (biographical sketch of W. A. Griswold by G. B. Sawyer).

48. Thirty-nine members, three from each county, appointed by the Speaker,

out enough votes to return the sixth, Congressman Orsamus C. Merrill. The pretext that the rejected ballots had been printed⁴⁹ was overruled by the Congressional committee on elections. That gave William A. Griswold of Danville the sixth highest number of votes, but he was not there to claim his seat. Rollin C. Mallory of Poultney, seventh, won the place by default. Before the contest had been settled, the Vermont Assembly—Van Ness probably voting nay—passed the redistricting law.⁵⁰ Although his side had won two of the three contested places, he had made more enemies than friends.

During his third term, Silas Hathaway of St. Albans introduced a resolution to oust him for dual officeholding.⁵¹ The committee on elections reported against Hathaway,⁵² and the resolution was dismissed, perhaps on the theory that serving on an international commission was not holding "office of profit or trust under the authority of Congress."⁵³

Van Ness's other activities as a member of four Assemblies were closely connected with his profession. The typical busy man, he made time to revive his private practice along with his legislative and diplomatic duties. His first act of the 1818 session was to raise the question of equal inheritance for men and women, a proposal far ahead of his time.⁵⁴ He consistently favored an easier bankruptcy law, with the abolition of imprisonment for debt.⁵⁵ Again in the minority, he supported a new salary bill for Supreme Court justices. He headed the list of members of the judiciary committee after his first term, resigning the appointment in 1821. He was elected to succeed Dudley Chase as Chief Justice, after Chase declined his 1821 re-election.⁵⁶

His elevation to the bench brought him nearly to the top of the and probably on the recommendations of the county delegations. This made the northern counties more heavily represented than their population would warrant.

49. *Burlington Northern Sentinel*, October 16, 1818.

50. *Assembly Journal*, 1818, 117-118. The yeas and nays are given only for the motion to refer (defeated, 81-102), Van Ness voting yea.

51. *Ibid.*, 1820, 27.

52. *Ibid.*, 86. No reasons were recorded.

53. *Constitution of the State of Vermont*, Part II, Section 26.

54. *Assembly Journal*, 1818, 56. Considered worthy of mention in *Niles' Register*, November 14, 1818, with the redistricting bill and the bank bills, as the important business of the session.

55. E.g., *ibid.*, 1819, 165.

56. *Ibid.*, 1821, 21, 79, 90.

Vermont judicial ladder. If the duties of chief justice satisfied him, he could be re-elected each year, until he retired, or was promoted to the United States Court for the District of Vermont. He was only thirty-nine, about three years younger than the average age of Vermont Supreme Court justices up to that time. Only two others, Nathaniel Chipman and Richard Skinner, had ever been, or ever have been since, made chief justice before they reached forty. Van Ness was young enough to wait until the death or retirement of Elijah Paine, District Judge, who was already sixty-five. Who would have prophesied in 1821 that Paine would still be judge in 1842? Van Ness was his heir apparent, for two of the three appointments to the District Court had been made from former Vermont Supreme Court justices, and the same practice was followed in two of the remaining three nineteenth century appointments.

Whenever he chose to re-enter politics, he was an extremely available candidate. Every governor up to that time, except for the two Chittendens, had previously been a Supreme Court justice. And while this almost unbroken succession ended with Van Ness, the next half century saw six other justices crown their careers as governors. There was equally good precedent for justices becoming senators. Horatio Seymour, elected the previous year, and Dudley Chase, the retiring chief justice, alone of the twelve Vermont senators before 1821, had not served on the Court before going to the Senate. The preference for justices in the national House was less marked, but before 1821, five had totalled twenty-six years of service.

In some respects, he was still in politics. He held office by annual election in Joint Assembly. Thrice in the previous twenty years a shift in party control had turned all the incumbent judicial "rascals" out, but the bitter partisanship of those days was apparently over. Ten years later, when the Anti-Masons controlled the state, one of the major tenets of their platform was to ban every Mason from office; yet, in 1831, two Masons were elected.⁵⁷ After the return of the Republicans in 1815, never again was a complete panel removed on the sole test of party. The long years of Whig and latter-day Republican supremacy did not prevent the election of five Democrats and one Freesoiler.

57. Charles K. Williams, and probably Stephen Royce, who became the Court's hardy perennials. See the *Montpelier Watchman and State Gazette*, November 7, 1831. David M. Ludlum, *Social Ferment in Vermont, 1791-1850*, 122, assumes that Governor Palmer appointed them.

Chief Justice Van Ness began his duties under a new system, whereby single Supreme Court justices, with two county judges, constituted county courts, and the Supreme Court was restricted to appellate jurisdiction in questions of law, and chancery cases.⁵⁸ He could make friends among the bar in every shire town, and mend his fences in the best non-political way. His supporters claimed that in these years his popularity grew by leaps and bounds.

While he was making friends, he influenced people by control of the patronage, for he loved the game of politics more than the studies of the bench. As judges must, he could investigate exhaustively, concentrate on essentials, reason closely, and state his conclusions simply. Yet he was pre-eminently an orator, with "a torrent of impassioned argument, . . . sweeping away juries and assemblies, and . . . moving from their moorings the anchored caution and gravity of the bench . . . he loved . . . the conflicts of the bar, and fought his cases with all his might, when not for himself, as if for himself."⁵⁹ He knew how to enjoy the honors of his high office, but his temperament must have chafed against the enforced idleness of his non-judicial talents.

When Richard Skinner did not choose to run again for governor in 1823, Van Ness prepared to succeed him by letting his name be proposed by the county nominating conventions. He never had to campaign actively for governor, because his opposition was small and unorganized.⁶⁰

His inaugural address was unusually long, and expressed what came to be a typical Whig position on almost every issue.⁶¹ He pointed with pride to the peaceful and prosperous condition of the Country. The completion of the Champlain-Hudson canal in 1823 had inaugurated a new era, he said, recommending further internal improvements. Agriculture, Vermont's chief business, could not prosper without a home market developed by a tariff-protected industry.

Two of the many reforms dear to the heart of the evangelical hu-

58. For his judicial opinions, see Daniel Chipman's *Vermont Reports*, II, covering 1813-1824.

59. Hemenway, *Gazetteer*, 609, 613-614, quoting Sawyer's obituary.

60. The vote was in 1823: Van Ness 11,479, Dudley Chase 1,088, scattering 843. In 1824: Van Ness 13,413, Joel Doolittle (another former Supreme Court judge) 1,962, scattering 346. In 1825: not reported. See *Governor and Council*, 7: 67, 111, 161.

61. *Assembly Journal*, 1823, 8-12.

manitarians received his blessing: aid to the indigent deaf (because he was bound to recognize the report of investigation instigated by previous Assemblies), and common schools. It may seem strange that he felt it necessary to assert, ". . . there is . . . no injustice in compelling the rich to contribute to the education of the poor."⁶² Give the poor a chance, he continued, and you help combat vice and misfortune with universal knowledge, and preserve social equality. Against reformers as a class, however, he warned that "the stability of laws is next in importance to their wisdom."⁶³ Some zealots, he feared, would always find something to reform, and hurt our institutions by their agitation.

He tossed a bouquet to Captain Alden Partridge's new academy (now Norwich University) for trying to prepare an organized citizen soldiery to defend the republicanism for which the wars of liberation were being fought.

Although remote from the nations of the old world, and sheltered from the fury of the storms that agitate them, yet we cannot behold with indifference the enslaved and degraded state of the people who compose them, and the outrages which are committed on their rights. Every American breast must beat high with sympathy at this crisis, for the Greeks and the Spaniards; the former of whom are bravely struggling to break the iron fetters of their slavery, and to reassume a rank among the nations; and the latter are endeavouring, though it is feared but too feebly, to defend their constitutional liberties, against the rude encroachments of lawless and despotick power.⁶⁴

His annual speeches of 1824 and 1825⁶⁵ made in general the same recommendations, with special emphasis, in the presidential year, on the need of a law governing the choice of electors, and in 1825 on possible canals for Vermont.

He turned over to the Assembly southern state legislative resolutions in favor of Jackson with remarks which revealed none of his

62. *Ibid.*, 10.

63. *Ibid.*, 9.

64. *Ibid.* Van Ness's son, James, interested himself in the question, "Are the European Nations in a condition to admit of a Republican Government?" as part of his graduating exercises in 1825. *Sentinel*, August 12. Governor Van Ness wrote letters of introduction for Jonathan P. Miller, when he left the University of Vermont after the fire of 1824, which helped persuade the Greek Association to give him passage to Europe, where he fought in the Greek Revolution. Crockett, *Vermont*, 3:218.

65. *Assembly Journal*, 1824, 11-13; 1825, 12-15.

private attitude. At the same time, his brother John in Washington was promoting the candidacy of W. H. Crawford. Van Ness preferred a general ticket of presidential electors, arguing that the Constitution orders the people of the state, not of a part of it, to be represented in the Electoral College.

The abolition of imprisonment for debt, at least as applied to women, seemed to him long overdue. The Assembly paid no more attention than it had in 1819.⁶⁶ The next governor renewed the fight, but women were not exempt until 1834.⁶⁷

At the height of the canal fever, Van Ness authorized a commission to secure an army survey. A canal would promote immigration and business expansion in its trail; but he warned against wasting public or private capital on doubtful schemes "for the honour of imitating others, more favourably situated, and possessing more ample means. . . ."⁶⁸ The survey, justifying his caution, saved money that might have been wasted on premature construction, and later was useful to the railroad builders.

He greeted the inauguration of President Adams with a deft compliment while paying tribute to Monroe, "the last revolutionary patriot . . . it is a source of great felicity, that the succession has fallen on a statesman and patriot of the present day, whose transcendent talents, extensive experience, and purity of character, furnish an un-failing pledge, that, under his guidance, her progress, to say the least, will be unimpeded and untarnished."⁶⁹

Van Ness declined the nomination for a fourth sure term, and concentrated on succeeding Horatio Seymour in the senatorial election of 1826. Friends and enemies later acknowledged that he was senatorial timber, and all signs, as far as recorded by historians of Vermont, pointed to his success. So William C. Bradley reported to President Adams on December 10, 1825.⁷⁰ Van Ness had reached the great test of his life, the threshold his ambition sought. Would he continue to be the arbiter of Vermont politics?

66. See above, page 16.

67. *Laws of Vermont*, 1834, 8.

68. *Assembly Journal*, 1825, 13.

69. *Ibid.*, 11.

70. Adams, *Memoirs*, 7: 77.