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“Blood Calls for Vengeance!” The History of Capital Punishment in Vermont

Vermonters had greater misgivings about capital punishment than their laws and public pronouncements implied.

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Before 1987, Vermont reserved the right to punish certain crimes with death, but Vermonters seldom exercised that right. From 1777 to 1987, only fifty-five people were sentenced to death in Vermont, and only twenty-seven of those were executed. Although there were brief periods when Vermonters invoked the death penalty with something approaching enthusiasm, during most of their history they refused to sentence capital felons to death, and state officials commuted or overturned nearly half of the death sentences handed down.¹ Clearly, Vermonters had greater misgivings about capital punishment than their laws and public pronouncements implied.

At first, Vermonters did not seem to have such misgivings. In Vermont's early years, when the fledgling republic's government was weak and disorganized and when violence was a fact of life, Vermonters twice used arbitrary, *ad hoc* procedures to condemn capital suspects. In 1778 Vermont rebels captured David Redding, a Tory from New York, who had fought with the British at Saratoga and had stolen horses for Burgoyne's army. A court created by the authority of the Republic of Vermont sentenced Redding to hang for "enemical conduct" against the United States. Redding won a new trial when Governor Thomas Chittenden and the Vermont Council learned that the English common law required a jury of twelve in capital cases (Redding's jury had had only six members) and that Redding had not been properly extradited from New York, where he had committed his capital offenses. Governor Chittenden remedied

these problems by gathering a full jury and by appointing the prosecutor, Ethan Allen, a United States attorney with broad jurisdiction. After a brief trial, the new jury found Redding guilty. He was sentenced to death, and two days later he was hanged before a large crowd, which included the governor and the members of the General Assembly, who viewed the proceeding as confirmation of their newly-won authority. As historian Michael Bellesiles observes, no one attending the hanging seemed to mind "that Redding had committed no crime in Vermont other than escaping from its officers, that Vermont was not then part of the United States, and that Vermont had no authority to appoint attorneys to act in the interests of the United States."²

Vermont's second execution, which probably occurred in 1779 or 1780, was also the product of an improvised judicial proceeding. Surviving accounts of the execution pose problems, because they were handed down by oral tradition and conflict on particulars, and because they recount events in the Abenaki community from the perspective of Yankee observers who viewed the Abenaki as savages.³ According to these Yankee accounts, Toomalek was a member of a small band that lived in and around the intervals of the Connecticut River near Newbury. A short, powerfully built man, he was in love with a young woman, Lewâ, who had married his rival, Mitchell. Toomalek decided to murder Mitchell, and one evening he surprised the couple as they sat by a fire at the foot of a hill near the upper end of the Ox Bow in Newbury. He fired at Mitchell, wounding him seriously but not fatally. A second charge struck Lewâ in the breast. She died of her wounds that night.

An Abenaki council tried Toomalek for murder. It acquitted him, however, because he had killed Lewâ accidentally and had only wounded Mitchell. Mitchell soon remarried, but matters did not end there. One day Toomalek, in company with a white man named Ebenezer Olmsted, took a bottle of rum and went to visit Mitchell. Mitchell drank with them and then had words with Toomalek, who taunted Mitchell into striking the first blow. Mitchell drew his knife and made a feeble pass at Toomalek. Toomalek then stabbed Mitchell through the heart.

An Abenaki council again acquitted Toomalek, this time because Mitchell had struck the first blow. But Toomalek soon killed again. He cut the throat of a young man called Pi'al who in Toomalek's opinion had insulted a young woman. The next morning, an Abenaki court heard the evidence and sentenced Toomalek to death.

The Abenaki court proceedings may not have been strictly traditional, but they were sanctioned by local authorities of the Republic of Vermont. The trial was conducted under the supervision of an Abenaki acquainted with the English legal system. The verdict was then referred

to the Reverend Clark Powers, the Congregationalist minister of Newbury, to ensure that it was "agreeable to God." Toomalek was executed later that day on the ground floor of the county court house in Newbury, then a county seat. Toomalek arrived "without guard or attendance" and seated himself before the father of Pi'al, who as the nearest blood relative of the victim was required by Abenaki law to carry out the sentence. Toomalek said his Catholic prayers, covered his eyes, and shouted "Mack bence!" ("Kill me quick!"), which Pi'al's father did by firing a musket ball into Toomalek's head. Toomalek's parents, who were in attendance, claimed the body for burial.

The Republic of Vermont soon put an end to *ad hoc* capital proceedings. It refused henceforth to recognize Abenaki sovereignty, and it passed laws to regulate capital punishment. In 1779 the assembly voted to punish a wide range of crimes with death: murder, treason, rape, blasphemy, sodomy, bestiality, counterfeiting, burglary and robbery (on the third offense), perjury (if its purpose was "to take away a man's life"), arson (if it "be to the prejudice or hazard of any person's life"), the maiming of a person's eyes, tongue, or "privy members," and the concealment of the birth and death of an illegitimate newborn.⁴ The condemned could appeal capital verdicts to the state supreme court or could ask the assembly to commute their sentences by majority vote. Otherwise they would be hanged in public in the counties where they had committed their crimes.

These drastic punishments stood atop a system of punishments that had been inherited from colonial times and were designed to force conformity to the laws of God. Few early Vermonters believed that felons could be rehabilitated. Criminals could be forced to obey the law only by surveillance, humiliation, pain, and the threat of more severe punishment. Most Vermont felons, if not sentenced to die, were stripped to the waist in public and brutally flogged. Others might be branded on the hand or forehead with a hot iron shaped in the form of a letter denoting their crime ("C" for counterfeiting, "HT" for horse thief), or mutilated, usually by having the lower part of an ear severed with a knife.⁵ The state thus marked convicted felons for life. They could not escape the shame of their scars or the fear those scars aroused.⁶

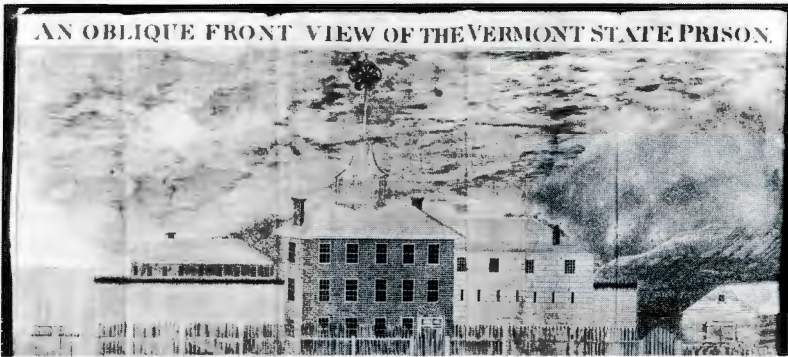
Only when these punishments were deemed inadequate did Vermonters turn to capital punishment. Capital felons were "sores" on the body politic that could not be healed; they had to be cut out. They were removed in public executions that displayed the wrath of the state and the importance of obedience and contrition. The condemned were usually escorted at noon from the county jail to the gallows, which were erected on high ground so that spectators could get a good look at the proceed-

ings. Crowds of six to ten thousand people, including men, women, and children, were not uncommon. From the gallows a minister would preach the dangers of impiety and admonish listeners to reform before it was too late. The condemned were then asked to confess their crimes and to beg God's forgiveness. If they did so (and most did), they showed the crowd that their executions were justified, but that they might yet be saved—spiritually, at least. Vermonters considered such deaths “good.”⁷

Capital punishment, however, served practical purposes as well. Vermont's government was weak. The republic had few law enforcement officers, and their investigative techniques were poor. The assembly concluded that it could deter serious crime only by threatening potential felons with the death penalty. Furthermore, the Republic of Vermont, like the original thirteen states, had no prison. It had only county jails, which were small and not very secure. They held mostly debtors who had the “freedom of the prison yard”—they could take jobs around town during the day to provide for their families and work off debts but had to return to the jail at night. County jails occasionally held capital convicts for terms of a year or more, and they regularly held capital suspects who could not post bond or were denied bail.⁸ But Vermont had only a limited capacity to protect society from dangerous criminals. Capital punishment seemed the only solution.

Vermont, however, had few executions in the years following the deaths of Redding and Toomalek. Unlike New Hampshire, which in 1796 executed Thomas Powers, a mulatto laborer, for the rape of a white woman, and unlike Massachusetts, which executed robbers well into the nineteenth century, Vermont declined to execute felons who did not kill. Juries instead called for brandings, whippings, and maimings. The legislature gradually decreased the number of capital crimes and in 1808 founded the Vermont State Prison, which finally gave courts the option of sentencing serious felons to lengthy terms. The prison removed feared criminals from the body politic without killing them and fostered the hope that they could be reformed by hard work, strict discipline, and instruction.⁹

Another reason there were so few executions in Vermont is that there were not many murders in this period. It is not clear why. Perhaps it was only that life regained a semblance of normalcy after the Revolution ended. Perhaps it had to do with the egalitarianism and vigilance of Vermont communities. A number of illegitimate infants were suffocated and there were a few impulsive killings by deranged citizens like Frederick Burnham of Woodstock, who slashed the throat of his three-year old grandson at the dinner table and vowed to kill “all his posterity.”¹⁰ Only one Vermont murderer was condemned to death between 1781 and the War of 1812—Cyrus Dean. Dean was a crewman on the *Black Snake*, a vessel



"An Oblique Front View of the Vermont State Prison." Frontispiece from John Russell Jr., An Authentic History of the Vermont State Prison (Windsor, 1812). Attributed to Isaac Eddy.

that smuggled goods to and from Canada during the Jeffersonian embargo. In 1808, Dean and his compatriots opened fire on a revenue cutter that had hailed them on Lake Champlain and followed them up the Onion River. The smugglers killed three of the cutter's crew, all Vermont militiamen. Most Vermonters may have opposed the embargo, but few sympathized with smugglers who attacked Vermont's soldiers. The leaders of Vermont's Republican Party were particularly incensed, because they believed the smugglers were part of a Federalist Party plot to destroy democratic government and betray the nation into the hands of the British. According to the *World*, a Republican newspaper in Bennington, "*Treason stalks in open day light . . . Blood calls for vengeance!*" Eyewitness accounts of the *Black Snake* affair conflicted, so Dean's fellow smugglers could be convicted only of manslaughter or lesser charges. Dean, however, was found guilty of murder and executed as a warning to those who would harm government officials.¹¹

From 1812 to 1861 the number of capital convictions rose, but executions remained rare. Vermont sentenced thirteen convicted murderers to die, but hanged only three. Samuel Godfrey and Luther Virginia, like Dean and Redding, were executed because they had defied the government of Vermont. Godfrey, a convicted thief, fatally stabbed the warden of the Vermont State Prison in 1814 in a dispute over the warden's decision to discipline Godfrey for his alleged involvement in a labor slowdown by the inmates. Luther Virginia, also a convicted thief, served three years in the Vermont State Prison after his employer, a tavern keeper in Highgate, successfully prosecuted him for taking money from the cash

drawer. Soon after Virginia's release from prison in 1819, he returned to his former employer's tavern, spoiling for a fight. He argued with his employer and then robbed and murdered a customer. Godfrey and Virginia admitted responsibility for their crimes and remained stoic to the end.¹²

Condemned felons who refused to make good deaths threw the system of capital punishment into a state of confusion. James Anthony, a hard working tailor who in 1814 murdered a friend from a prominent Rutland family in a dispute over a bet, committed suicide in his jail cell shortly after he was sentenced to die. Rebecca Peake, who in 1835 poisoned her husband and two of her stepchildren to protest her husband's decision to convey his property primarily to his children by his first wife, also killed herself while awaiting execution.¹³ Some Vermonters considered their deaths just punishment for their crimes. But others viewed their despair as a sign of remorse that might have led to their rehabilitation had their lives not been cut short by the threat of capital punishment.

An apparent miscarriage of justice in the murder trial of Stephen and Jesse Boorn also fostered opposition to capital punishment. The Boorns, ne'er-do-well brothers, were condemned in 1819 for the murder in Manchester of their mentally deranged brother-in-law, Russell Colvin. Colvin's body had not been found, but the prosecution claimed that the Boorns killed Colvin out of jealousy. Colvin, along with his wife and children, had been supported by the Boorns' parents and had stood to inherit the bulk of the parents' property. Public sentiment ran against the brothers in part because their sister, Colvin's wife Sally, became pregnant by another man soon after her husband's disappearance. That led the jury to suspect that she had colluded with her brothers to get rid of her husband. The Boorns, fearing conviction and perhaps hoping for leniency, confessed. They soon recanted their testimony and professed their innocence. But the Boorns were convicted at the next term of the county court and sentenced to hang. They were spared at the last moment when Colvin (or a convincing impersonator of Colvin) miraculously reappeared. The defense claimed he had simply wandered off in a fit of amnesia some seven years before. Some Vermonters concluded from this case that the legal system was too flawed to hand down death sentences.¹⁴

The case that did the most, however, to turn Vermonters (especially Vermont elites) against capital punishment was that of Norman Cleveland, a prominent physician and civil magistrate from Irasburg. In 1829, Cleveland accidentally killed Hannah Rose, a poor young mother of several children, during a botched abortion. At the trial the victim's mother, Lucy Frazier, testified that Cleveland, whose wife was infertile, had asked Rose, whose husband had abandoned her and her children, to serve as

a surrogate mother for his child. Rose refused. But Cleveland persisted, offering to support not only his child but Rose's entire family. Rose threw him out of her house and threatened to leave town if he did not leave her alone. But she could not support her children and her mother on her own, and in the end, she agreed to bear his child.¹⁵

Rose was soon pregnant. But Cleveland had second thoughts. According to Lucy Frazier's testimony, he declared himself "ruined" and swore that he and Rose would be sent to prison for adultery "unless an abortion was procured." Rose "did not object to his using medicine to accomplish his purpose," but Cleveland insisted on surgery. The first attempt failed. Cleveland returned to Rose's house a week later to try again. Rose "began to cry" and "groaned and begged him to leave her alone," but Cleveland was adamant. They went upstairs, where Cleveland performed the fatal procedure. Cleveland asked Rose's mother to give out that Hannah had died of "puking," but she refused.

At his trial, Cleveland denied every charge, including adultery. But the testimony was damning, particularly his admission to a friend that "if he had not been the means of her situation he could have operated safely." Judge Hutchinson instructed the jury that the law was clear: if Cleveland had operated "with a deliberate intent to destroy the child" and "with such an instrument and in such a manner as was attended with danger to the woman," he was guilty of premeditated murder. The jury found Cleveland guilty and the court sentenced him to die.

Cleveland's powerful friends in Orleans County and around the state fought back. They vilified Hannah Rose and portrayed Norman Cleveland as a victim of prejudice. Their petition campaign, which won wide support, especially in Orange and Windsor counties, persuaded the Vermont General Assembly to commute Cleveland's sentence to five years in prison.¹⁶ The vote was 120 to 72. Several newspapers complained that Cleveland had gotten away with murder. But many judges, lawyers, politicians, and citizens concluded, in light of this and the Boorn case, that death sentences indicated little more than that the condemned were unpopular with their neighbors.

Persuaded by that argument and encouraged by recent campaigns against the death penalty in Maine, Massachusetts, New Jersey, Ohio, New York, Pennsylvania, and Great Britain, Governor Silas Jenison asked the Vermont legislature in October, 1838 to abolish capital punishment. Alluding to the recent cases in which public opinion had come forward "to arrest the arm of the law, and . . . to demand a commutation or mitigation of punishment," Jenison argued that a majority of the state's citizens favored abolition. But he rested his case primarily on his convic-



Silas M. Jenison, Governor of Vermont 1835–1841. Jenison's address to the legislature in 1838 called for abolition of the death penalty and opened an era of reform of the Vermont penal system.

tion that imprisonment and rehabilitation could better deter crime than capital punishment.

All experience shows that crime has not increased, but diminished, as the criminal laws of a country have become less barbarous and vindictive. Retaliatory punishments have in a measure ceased, and the only sound and substantial reasons for the infliction of punishment are based upon the reformation of the criminal and the security of the public. That is evidently the policy of our laws in all cases except in the infliction of the punishment of death.

Jenison was the first governor to have come of age politically since the War of 1812, an era of idealism, optimism, and reform. His generation had no memory of the dark days of the Revolution or of the uncertainty that followed. Vermont had established its sovereignty and its institutions were secure. The state no longer needed to make an example of the Reddings, Toomaleks, Deanes, Godfreys, and Virginias, now that social peace and moral progress were assured.¹⁷

If abolition proved impossible given the “strong feelings and prejudices” that existed on the subject, Governor Jenison asked that the leg-

islature at least end public executions, which in his opinion had a “demoralizing” effect on the public. He preferred private executions “within the walls” of the state prison.¹⁸

Jenison’s address marked a turning point in the history of capital punishment in Vermont. The House passed an abolition bill by a vote of 126 to 68 only nine days after his address. The Senate defeated the bill, 17 to 11, and would defeat every abolition bill down to the Civil War, because a majority of state senators insisted that capital sanctions deterred would-be murderers and traitors. But Vermont came within three votes of being the first state to abolish capital punishment.¹⁹ More important, the House and Senate found a compromise by the next legislative session that ended capital punishment in fact, if not in law.

That compromise came too late to help Archibald Bates of Shaftsbury, who committed a murder the week that Governor Jenison delivered his address. Bates, jealous of the attention his parents paid his sister-in-law and angry at their decision to leave their farm to her and his brother, shot her in the back through a window as she nursed her newborn child. Bates was convicted just after the legislature adjourned and therefore never had an opportunity to petition for commutation. He was executed promptly.²⁰ But for the next twenty-five years, as long as Governor Jenison’s reform-minded generation held power, majorities in the House and Senate passed every commutation bill that came before them on the grounds that each condemned murderer was either insane or guilty of at most manslaughter. The legislature thus found a practical, politically expedient alternative to both abolition and capital punishment by handing down life sentences in the five cases of homicide in which local jurors, grand jurors, and states’ attorneys sought the death penalty. Vermont did not join Michigan (1846), Rhode Island (1852), or Wisconsin (1853) in abolishing capital punishment altogether, but it did follow the example they set until the last year of the Civil War.²¹

Vermont resurrected capital punishment on January 20, 1864, when it hanged Samuel Kavanaugh and William Barnet in front of a select group of witnesses at the Vermont State Prison. Kavanaugh, an Irish laborer who lived in a basement apartment on the waterfront in Burlington, had stabbed his wife during a drunken quarrel. Barnet, an immigrant from England who lived in a small cottage in Burlington and emptied privies for a living, had also killed his wife. According to neighbors, each man had a history of alcoholism and spouse abuse. Both men denied responsibility for their crimes. Kavanaugh claimed that his wife had not been stabbed – that she had fallen accidentally and gashed her head on a stove. Barnet protested that his wife had cut her throat with a butcher knife.²²

Kavanaugh’s and Barnet’s crimes angered Vermonters. But wife mur-

derers were not the only targets of the public's wrath. Sympathy for murderers of all types declined between 1864 and 1882. In those years Vermont sentenced eighteen murderers to death. One committed suicide in prison and five won new trials or commutations. The remaining twelve were executed. They comprise nearly half of all people ever executed in Vermont.

Why the surge in executions? The simplest explanation may be the best: murders were suddenly more common and heinous. The homicide rate in Vermont and New Hampshire was still the lowest in the nation: 1.6 per 100,000 persons per year from 1848 to 1865. But it had more than doubled since the 1820s. The marital homicide rate had increased four-fold in the 1830s and 1840s, and the nondomestic homicide rate for teens and adults had increased three-fold in the 1850s and early 1860s.²³

Worse perhaps than the increase in murders was the character of these murders. The marital homicides that had occurred before the 1830s had not been willful. Each stemmed from mental illness or from an unlucky blow in a domestic fight, and husbands and wives killed each other in equal numbers. By mid-century, however, most marital homicides were willful. Possessive, alcoholic, and chronically abusive husbands like Kavanaugh and Barnet used clubs, guns, knives, hatchets, or poison to kill their wives. Vermont jurors and legislators had little sympathy for such wife murderers and handed down death sentences freely in the 1860s and 1870s.

In contrast with spousal murders, most nondomestic homicides that had occurred before the 1830s took place under unusual circumstances. Many stemmed from spying, smuggling, and undeclared warfare along the Canadian border, or from the violence of prison life. By mid-century, however, nondomestic homicide had entered everyday life. Its usual causes were robbery, property disputes, sexual assaults, and drunken quarrels among friends and acquaintances. The risk of murder was still low, but every Vermonter was now at risk.

Why the incidence and character of murder had changed in northern New England is a difficult question. A rise in economic inequality, a decline in independent ownership of shops or farms, and a nationwide surge in violence (much like the one the United States has experienced over the past thirty-five years) were most likely responsible. But Vermonters did not seek such explanations. They turned to capital punishment as a deterrent and a means of retribution.

Discrimination against the foreign-born may also have been partly responsible for the rise in death sentences and executions. Only one of the eight condemned people of foreign birth won a commutation, as opposed to four of the ten of native birth. The Civil War too may have been

important. It inured the next generation of Vermonters to killing and convinced many people that death was a fit punishment for criminals, be they secessionists or murderers. The more rebels and condemned murderers who died, the more convinced Vermonters were that their deaths were justified.²⁴

State authorities helped foster that conviction. Vermont's Civil War governors, Frederick Holbrook and J. Gregory Smith, believed in the death penalty. Having come of age politically in the late 1840s and 1850s, an era of sectional rivalry, ethnic antagonism, declining expectations, and rising homicide rates, they shared a darker view of human nature. They rejected the reform generation's assumption that homicide could only be irrational or accidental; only harsh punishment could deter the wicked.²⁵

The legislature concurred. It affirmed Kavanaugh's and Barnet's death warrants in the fall of 1863, and it expanded the death penalty in the wake of the St. Albans raid of October, 1864, in which a band of Confederate horsemen rode down from Canada, robbed a bank, and killed a local businessman with a stray bullet. In November, 1864, the legislature passed "An Act Defining Offenses Against the Government" and "An Act to Prevent Raids," which prescribed the death penalty for anyone who conspired to levy war against the state or who participated in raids that brought harm to persons or property.²⁶ Furthermore, the state managed executions carefully to diminish sympathy for the condemned. The prison staff constructed and tested gallows scientifically to ensure that executions would be as painless as possible. It also restricted press coverage to reporters who sent the proper message about the relationship between crime and capital punishment.

These practices and public attitudes had a chilling effect on the justice system. Vermonters accepted the justice and efficacy of capital punishment to such a degree that two alleged murderers were executed despite flaws in the cases against them. Evidence suggests, for example, that Henry Gravelin, a prosperous French-Canadian farmer from Weathersfield, was not guilty beyond a reasonable doubt of murdering Herbert White, one of his parttime hands. As Edith Fisher Hunter notes in her history of the case, Gravelin had long been suspect in the eyes of his neighbors, who "wondered how a sixteen-dollar-a-month farmhand could become so prosperous." Gravelin had arrived in Windsor County in 1854 penniless. By 1876, he owned several farms and employed four or five men. He attributed his success to hard work and to his wife, who was devoted to "the promotion of my happiness and the accumulation of wealth." Gravelin's neighbors, however, suspected that he had prospered by robbing and murdering his farm hands. They noted that he had bought large

farms for cash just after two Canadian hands disappeared and after another hand was found drowned in a well. Neighbors also accused him of burning out a farmer whose land he coveted. Thus, when Herbert White was found murdered on Gravelin's property in 1876, authorities did not look far for suspects, nor did they follow leads that suggested that Charles Shiette, who shortly after the murder divorced his wife and left for parts unknown, committed the crime. The surviving evidence does not prove Gravelin innocent, but it suggests that he was a victim of prejudice and a poorly handled investigation.²⁷

Asa Magoon of Orange was likewise a victim of the harsher system of justice. Magoon went to the gallows for the murder in 1875 of Rufus Streeter, a disabled (and dishonorably discharged) Civil War veteran who lived with him. On the day of the murder Streeter and Magoon had attended a horse race in Barre, where they drank heavily. On their way home that night they stopped to visit Hannah Perrin, a hard-drinking widow who had known them for years. The next day Streeter's stabbed and mutilated body was discovered near Perrin's house. Magoon swore that he had left Streeter with Perrin and headed home, although he had been too drunk to remember much more about the evening. Magoon was not a credible witness. He was well known in Washington County for his drinking and quarrelling, and he had once threatened Streeter's life. Few people believed his story—at least until Hannah Perrin confessed on her death bed in 1888 that she had killed Rufus Streeter.²⁸

Perrin's confession might have been false. But it underscores the fact that the state had only circumstantial and weak physical evidence against Magoon. Like Henry Gravelin, he was convicted largely because of his reputation. Their cases were not typical, however. Most people executed between 1864 and 1882 were guilty beyond a reasonable doubt, and most made good deaths, confessing their crimes and acknowledging the justice of their punishment. But the Magoon and Gravelin cases indicate that state officials may not have conducted homicide cases quite so carefully in this era, once they acquired a taste for capital punishment, and that they were not very sympathetic to social outcasts who refused to confess their crimes and repent.

The era of executions passed as quickly as it began. In the rest of the nation, and particularly in the southern and border states, legal and extralegal executions jumped dramatically in the 1890s and early 1900s as a result of economic tensions and racial strife. But in Vermont, where the populace weathered the depression of the 1880s and 1890s well, hangings all but stopped once the Civil War generation passed from power. The murder rate did not fall substantially, but Vermonters grew accustomed to a higher level of violence and lost faith in capital punishment

as a deterrent. Between 1882 and 1905 Vermont's courts sentenced only seven people to die, and only Sylvester Bell, who murdered his wife brutally in 1889, was hanged.²⁹

From 1905 to 1965, a different pattern emerged. Most Vermonters had qualms about the death penalty. Only fourteen people were sentenced to death during these years, and only one in the 1930s, the decade in which the number of legal executions in the United States peaked.³⁰ Vermont has executed eight people in the twentieth century, but it is not clear why. Their crimes were not unusual. Craig Meurlin and William Rugg believe that Vermonters may have executed prisoners like Mary Rogers, who murdered her husband, and Elroy Kent, who murdered a deaf woman, primarily because they were less intelligent than most Vermonters. Meurlin and Rugg's theory is that these felons may have been executed because they failed to engage the sympathies of jurors or state officials. They appeared cold-blooded, sullen, and unrepentant, perhaps because they did not understand the consequences of their crimes or the public's response to their demeanor. Clinton Krauss, who is studying Mary Rogers's case, believes that Rogers went to her death for other reasons: a confused defensive strategy, a restrictive appeals process, a sensational press. Most important, Rogers alienated the public by protesting her innocence in the face of overwhelming evidence and by conceiving a child in prison with a convicted rapist as she awaited the outcome of her appeals. Kent, a career criminal who had served several terms in the state institution in Waterbury, likewise failed to attract public support. He seemed beyond redemption and rehabilitation.³¹

Vermont all but abolished capital punishment in 1965. By then the economic boom that followed World War II had helped drop the state's homicide rate to its lowest level since the late-eighteenth and early-nineteenth century, less than one person per 100,000 persons per year from 1960 to 1965.³² The legislature decreed that the penalty for first-degree murder would henceforth be life in prison, except in cases where the accused had been found guilty of a previous, unrelated first-degree murder or where the victim was a warden, superintendent, prison employee, or law enforcement officer "in performance of the duties of his office." In those cases, the jury could at its own discretion hand down a sentence of life in prison or death. The state also retained the death penalty for treason in time of war.³³

Between 1965 and 1987, several law enforcement officers were killed in the line of duty, but none of their assailants was sentenced to die.³⁴ Vermont jurors were no longer willing to hand down death sentences. The Vermont legislature recognized that fact formally in 1987, when it abolished capital punishment altogether.³⁵ Of course, executions could

return to Vermont, if the callousness and prejudice of the 1860s and 1870s returns, or if the state comes to believe once again that the disobedience of its most disaffected citizens threatens social order, or if Vermont jurors and judges succumb to feelings of outrage and exasperation in the face of some particularly heinous crime. Vermont's murder rate, while still among the lowest in the nation, has hovered since the late 1970s between 2 and 4 per 100,000 persons per year, its highest level since the 1770s and 1780s³⁶; and proposals to revive capital punishment appear before the State Assembly nearly every year. For the time being, however, Vermont's misgivings about the death penalty remain strong.

NOTES

¹ On the incidence of capital convictions and executions in Vermont, see Craig Meurlin and William Rugg, *Capital Punishment in Vermont* (Honors Thesis, University of Vermont, 1974); Department of Corrections, Research and Planning Division, State of Vermont, "First Degree Murder Convictions in Vermont, 1800-1985" (typescript, Vermont State Library, 1986); and Grant Powers, *Historical Sketches of the Discovery, Settlement, and Progress of Events in the Coos Country and Vicinity . . . 1754-1785* (Haverhill, N. H.: J. F. C. Hayes, 1841), 177-84. The figures presented here are tentative. Many important court records have been lost or destroyed. For instance, three volumes of Vermont Supreme Court records have been missing from the courthouse in Rutland County for some time. They cover the years from 1783 to 1791, and from 1799 to 1804. The first two missing volumes record capital cases throughout the state. The third volume records capital cases in Rutland County.

² Michael A. Bellesiles, "The Establishment of Legal Structures on the Frontier: The Case of Revolutionary Vermont," *Journal of American History*, 73 (1987), 895-7; John Spargo, *The Story of David Redding, Who Was Hanged* (Bennington: Bennington Historical Museum and Art Gallery, 1945); William Slade, *Vermont State Papers* (Middlebury: J. W. Copeland, 1823), 239-40, 269; E. P. Walton, comp., *Records of the Council of Safety and Governor and Council of the State of Vermont* (8 vols., Montpelier: J. and J. M. Poland, 1873-1880), 1: 120, 261, 263-4; Walter H. Crockett, comp., *Journals and Proceedings of the General Assembly of the State of Vermont* (4 vols., Bellows Falls: Secretary of State of Vermont, 1924), 3, pt. 1: 22-23; Abby Hemenway, ed., *Vermont Historical Gazetteer* (5 vols., Burlington: A. M. Hemenway, 1865-1891), 1: 161-2; and Isaac Jennings, *Memorials of a Century: Embracing a Record of Individuals and Events, Chiefly in the Early History of Bennington, Vt., and Its First Church* (Boston: Gould and Lincoln, 1869), 222. On the difficulty of establishing the sovereignty of Vermont's government, see Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia: Univ. of Pennsylvania Press, 1983), 103-45.

³ Accounts of the life and death of Toomalek appear in Powers, *Coos Country*, 175-84; Zadock Thompson, *History of Vermont, Natural, Civil, and Statistical* (Burlington: Chauncey Goodrich, 1842), 206; and Frederick Wells Palmer, *History of Newbury, Vermont* (St. Johnsbury: Caledonian Press, 1902), 61-63, 88. The accounts are typical of Yankee narratives of Abenaki homicides, which invariably depict Abenaki murderers as drunken, jealous, or vengeful. See, for example, James O. Lyford, ed., *History of Concord* (2 vols., Concord: Rumford Press, 1903), 1: 79-81, 88-89.

⁴ Alan Soule, ed., *Laws of Vermont, 1777-1780* (Montpelier: Secretary of State of Vermont, 1964), 40-3, 125-9, 141, 154, 190-1. Members of the state militia could also be sentenced to death for mutiny, sedition, striking or drawing on a superior officer, desertion or abetting desertion, participation in a duel, abandoning a post or detachment to the enemy, giving a parole or a countersign "to anyone not entitled to receive it," spying, harboring the enemy, or giving money, arms, victuals, or ammunition to the enemy. All capital sentences handed down by military courts were to be reviewed and approved by the Captain General. *Ibid.*, 221-7.

⁵ See, for example, the records of the Supreme Court (Windsor County), 1: 43, 105, 128; 2: 204.

⁶ Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660* (Athens: Univ. of Georgia Press, 1983); and David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Little, Brown, 1971). Vermont imposed capital sanctions on fewer crimes than did several other states and Great Britain. Hugo A. Bedau, ed., *The Death Penalty in America: An Anthology* (Chicago: Aldine Publishing Company, rev. ed., 1968), 1-7.

⁷ Chapin, *Criminal Justice in Colonial America*; and Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford Univ. Press, 1989).

⁸ For example, at the March 1797 term of the Supreme Court in Windsor County, John Johnson of Norwich was sentenced to a year of hard labor at the jail in Manchester for counterfeiting. At the same term, Apollos Finney of Shrewsbury was sentenced to life imprisonment for the same crime. Sentences of more than a year, however, were rare. See the records of the Supreme Court (Windsor County) at the Windsor County Courthouse, 2: 19-20.

⁹ See *Revision of the Laws of Vermont, 1787*, 3: 235-7; *Revision of the Laws of Vermont, 1797*, 155; and John Russell, Jr., *An Authentic History of the Vermont State Prison* (Windsor: Preston Merrifield, 1812). The legislature extended the death penalty only twice between 1781 and the Civil War. In 1801, it called for the execution of duelists who caused their opponents' deaths. *Laws of Vermont, 1801*, 21. In 1839, it extended its jurisdiction to include duelists who fought outside Vermont, if their appointments had been made in Vermont and if their opponents later died of their wounds in Vermont. *Revised Statutes of 1839*, Chapter 94, Section 4.

¹⁰ Inquisition at Pomfret upon the body of Oramel S. Burnham, August 18, 1813, Norman Williams Correspondence, Vermont Historical Society.

¹¹ *The Trial of Cyrus B. Dean, for the Murder of Jonathan Ormsby and Asa Marsh* (Burlington: Samuel Mills, 1808); and *The World* (Bennington), 8 August 1808, and 23 August 1808, supplement.

¹² On Samuel Godfrey, see Godfrey, "A Sketch of the Life of Samuel Godfrey" (Windsor, Vt.: n.p., 1818); *New Hampshire Patriot* (Concord, New Hampshire), 24 February 1818; and John Reynolds, *Recollections of Windsor Prison* (Boston: A. Wright, 1834), 38-48. On Luther Virginia, see *Rutland* (Vermont) *Herald*, 1 February 1820; and Hemenway, *Vermont Historical Gazetteer*, 2: 298.

¹³ *Trial of Mrs. Rebecca Peake, Indicted for the Murder of Ephraim Peake* (Montpelier: E. P. Walton and Son, 1836).

¹⁴ *Trial of Stephen and Jesse Bourn, for the Murder of Russell Colvin* (Rutland: Fay and Burt, 1819); Leonard Sargeant, *The Trial, Confessions, and Conviction of Jesse and Stephen Bourn, for the Murder of Russell Colvin* (Manchester: Journal, 1873); John Spargo, *The Return of Russell Colvin* (Bennington: Bennington Historical Museum and Art Gallery, 1945); and Gerald McFarland, *The Counterfeit Man: The True Story of the Boorn-Colvin Murder Case* (New York: Pantheon Books, 1990). McFarland makes a persuasive case for the Boorns' guilt.

¹⁵ See *Woodstock Observer*, 20 April and 11 May 1830; *Burlington Free Press*, 23 April and 29 October 1830; and *Rutland Daily Herald*, 24 October 1830.

¹⁶ See the petitions for Cleveland's relief in the Manuscript Vermont State Papers, volumes 61 and 74, Vermont State Archives, especially "Report of the Committee on Unfinished Business on the petition of Norman Cleveland (statement of facts)," 75: 37.

¹⁷ Jenison's annual message to the Vermont legislature appeared in the *Burlington Free Press*, 19 October 1838. On the national and international movement against capital punishment, see David Brion Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *American Historical Review*, 63 (1957), 23-46; Masur, *Rites of Execution*; and Bedau, *Death Penalty in America*, 7-13.

¹⁸ *Burlington Free Press*, 19 October 1838. Jenison was using the word "demoralizing" in its older sense. He meant that public executions had a pernicious effect on people's morals. The memoirs of Daniel Ransom, who was a child at the time of Samuel Godfrey's hanging, testify to the truth of Jenison's assertion. Ransom recalled "the boisterous hooting and yelling and fast driving of the crowd of people who had been to witness the execution, when they were returning and passing our house" in South Woodstock, "acting more as we might expect the savages to do than civilized people. And I suspect that rum and hard drinking had something to do with it." Daniel Ransom, "Reminiscences of Daniel Ransom," typescript at the Vermont Historical Society, 23.

¹⁹ *Journal of the House of Representatives of the State of Vermont . . . 1838* (Montpelier: E. P. Walton and Sons, 1839), 15, 38, 45, 48-9, 65-6, 87; and *Journal of the Senate of the State of Vermont . . . 1838* (Montpelier: E. P. Walton and Sons, 1839), 20, 29, 78-9.

An amendment to the state constitution in 1836 gave the governor for the first time the right to grant full pardons in cases of treason or murder, but no Vermont governor has ever granted a pardon to a convicted murderer sentenced to death. *The Annotated Vermont Constitution* (1991), 735-6.

²⁰ *Rutland Herald*, 9 and 16 October and 18 December 1838, and 1 January 1839; and *Burlington Free Press*, 2 February 1839.

²¹ Bedau, *Death Penalty in America*, 9-13. New Hampshire followed a similar course. In 1842, a bill to abolish capital punishment failed in the New Hampshire legislature by a narrow margin; and in 1844, in a state referendum, the voters of New Hampshire voted to retain capital punishment by an overwhelming margin: 21,544 to 11,241. But New Hampshire executed only one murderer between 1843 and 1868. Quentin Blaine, "'Shall Surely Be Put to Death': Capital Punishment in New Hampshire, 1623-1985," *New Hampshire Bar Journal* 27 (1986), 134-6.

²² *Burlington Free Press*, 9–10 January and 26–28 August 1862.

²³ Randolph Roth, "The Indulgence of Passion: Murders of Husbands and Wives in Northern New England, 1790–1865," in Christine Daniels, ed., *Over the Threshold: Intimate Violence in Early America, 1640–1865* (New York: Routledge, forthcoming).

²⁴ New Hampshire witnessed a similar surge in executions in the late 1860s and 1870s. Of the twenty persons who have been executed in New Hampshire since 1775, seven lost their lives in the years 1868 to 1879. Blaine, "Capital Punishment in New Hampshire," 141–2. The increase in executions eventually produced a backlash against capital punishment, which led to abolition in Maine (1876–1883, 1886–) and to a decline in executions in New Hampshire and Vermont in the 1880s and 1890s.

²⁵ The reform generation controlled the governorship from 1835 through 1861, when Erastus Fairbanks, a noted evangelical, abolitionist, temperance advocate, inventor, and entrepreneur, died in office.

²⁶ *Laws of Vermont . . . 1864*, 43. The legislature had last expanded the death penalty in 1801 and 1839, when it stiffened penalties against duelling. *Laws of Vermont . . . 1801*, 21; and *Revised Statutes of 1839*, Ch. 94, Sec. 4. All other capital punishment legislation passed between 1784 and 1864 had restricted the death penalty and diminished the number of capital crimes.

²⁷ Edith Fisher Hunter, *A History of Weathersfield for Young People* (Weathersfield, Vt.: The Hunter Press, 1985), 188–92; and *Burlington Free Press*, 13 February 1877.

²⁸ *Burlington Free Press*, 15, 16, 18, and 21 October 1875; 2 and 10 October 1876; 19 November 1877; and Miscellaneous File 846, Vermont Historical Society.

²⁹ On national trends, see Bowers, *Legal Homicide*, 49–58.

³⁰ Bowers, *Legal Homicide*, 49–58. Extralegal executions had declined dramatically in the United States, from 1,540 in the 1890s to 130 in the 1930s. Legal executions remained above 1,000 in each decade, however, and peaked at 1,670 in the 1930s, when the public demanded a crackdown on violent crime. Few Vermonters perceived a local upswing in violent crime during the Depression and Vermonters had never executed robbers, burglars, or rapists, a practice still common in the 1930s in southern states.

³¹ Meurlin and Rugg, *Capital Punishment in Vermont*, 40–41; and correspondence to the author from Clinton Krauss, October 26, 1996, concerning Krauss's forthcoming study of Mary Rogers.

³² See *State of Vermont: Vital Statistics for the years 1960–1965* (Burlington, Vermont: Vermont Department of Public Health).

³³ *Laws of Vermont, 1965*, 28; *House Journal* (1965), 50; *Senate Journal* (1965), 172–3, 176, 214–15, 328; and *Burlington Free Press*, 5, 6, 26, and 31 March 1965.

³⁴ The murdered officers include: Alexander Fontecha, chief of the Lyndonville Police Department (1965); Dana Thompson, chief of the Manchester Police Department (1972); and Arnold J. Magoon, Game Warden District Chief of the Law Enforcement Division of the Vermont Fish and Wildlife Department (1978).

³⁵ *Public Acts*, 1987 Session, No. 60, "An Act Relating to Aggravated Murder and the Penalties for First and Second Degree Murder," 124–7. Legislative committee minutes are a potentially fertile, but untouched source on the death penalty debate since 1917. See, for example, House Judiciary Committee Minutes, 7 and 14 March 1957, Vermont State Archives. There is also material on capital punishment in the gubernatorial records at the Archives.

³⁶ See *State of Vermont: Vital Statistics for the years 1976–1995* (Burlington, Vermont: Vermont Department of Public Health).