



The Ethan Allen Letter

IDEAS FOR VERMONT'S FUTURE

A Monthly Publication of The Ethan Allen Institute

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The Murder of Federalism

COMMENTARY

The Congress was determined to shower Federal money upon the states. Only one man stood in its way. He was the President of the United States. His name was Andrew Jackson, and he was a Democrat

In Jackson's day a major source of Federal revenue came from the sale of public lands, ceded to the federal government by the original states at the time the Constitution took effect. The Western states in which those public lands lay wanted to receive and sell those lands to finance their state governments. The Eastern states that had no Federal lands wanted the Federal government to sell the lands and distribute the proceeds to all the states.

A prominent argument for this latter policy, known as Distribution, was that allowing money from land sales to accumulate in the Federal

Treasury was dangerous, for it would tempt Congress to spend it for extra-constitutional projects. Better the money should be distributed among the states, to let their governments fund highways and schools, or to reduce tax burdens on their own taxpayers.

The champion of Distribution, Whig Senator Henry Clay, pushed a bill through both houses of Congress. In December 1833 President Jackson returned it with a withering veto message.

Of Clay's scheme, Jackson wrote, "it appears to me that a more direct road to consolidation cannot be devised. Money is power, and in that government which pays the public officers of the states will all political power be substantially concentrated. The state governments, if governments they might be called, would lose all their independence and dignity. The economy which now distinguishes them would be converted into a profusion, limited only by the extent of its supply."

"Being the dependents of the general government, and looking to its

treasury as the source of all their emoluments, the state officers would, in effect, be the mere stipendiaries and instruments of the central power."

Now, 176 years later, another Democratic President, urged on by an enthusiastic Democratic Congress, has revived Distribution in the guise of Stimulus. A major difference is that in Jackson's day the national debt was reduced to zero, and the question was what to do with surplus revenues. Today the national debt is astronomical, and the question is how fast the government can borrow – or print – money to increase it by yet more trillions.

One modern descendant of Andrew Jackson is South Carolina Gov. Mark Sanford. (Sanford is a Republican; the Democrats have long since repudiated the limited government, hard money principles of their party's founder.)

Faced with the Stimulus bill, Gov. Sanford wrote to President Obama, asking for a waiver to use \$700 mil-

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Jefferson Day Dinner April 14 – see page 3

The Ethan Allen Letter

The Ethan Allen Institute is an independent, non-profit, nonpartisan public policy research and educational organization, incorporated in 1993 under Vermont law.

The Institute sponsors and conducts research on important public policy questions facing the people of Vermont, and makes its findings and recommendations known through various channels to the general public, the news media, and civic leaders at all levels.

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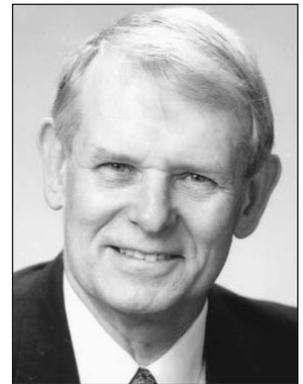
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PRESIDENT'S MESSAGE

New Leadership, Sorrell, and Jefferson



First, a report on our renewed search for a new President and CEO. We have so far attracted the interest of four individuals possessing most or all of the requisite qualifications. We'll be interviewing during April. If you have an idea for a person to fill the position, please put them in contact with us, or send them to www.ethanallen.org to click on the home page link to the job description.

A couple of our socially liberal members inquired why I penned a commentary (on page 1) on the suddenly pressing issue of gay marriage. Is this within the scope of the Institute's free market mission? Good point.

I did so, frankly, because I believed the important point made by Attorney General Sorrell in his 1998 brief against overturning Vermont's marriage law deserved wider consideration – and Sorrell, being all for gay marriage these days, wasn't likely to volunteer the argument again.

If one agrees with Sorrell's argument – that the legal rationale for opening marriage to gay couples unavoidably supports opening it to even more unusual groupings of celebrants – then one would do well to ponder the enlarged role of the state in supporting the single mothers and fatherless children that may result from the diminished respect for marriage among young heterosexuals.

I concede that this is a speculative scenario. Sorrell might actually have been mistaken in his apprehensions. (Imagine that!) But I thought someone ought to put that view on the table. For the record, the Institute has no position on the advisability of gay marriage.

I hope to see lots of you at our 16th annual Jefferson Day event. If you wonder why anybody reveres the memory of Mr. Jefferson, acquaint yourself with the eternally timely maxims on page 5.

PS: I really appreciate the contributions from our first 400 renewees, especially in these difficult economic times.

Tom and Ethan Together – for the First Time

Thomas Jefferson – the cultured, intellectual Virginia plantation master, a finely dressed diplomat fluent in Latin, Greek and French, a lawyer-politician with no military experience, diffident in public forums but skilled in political maneuver, founder of a great university, venerated by a nation upon his death.

Ethan Allen – the rough-hewn frontier ranger, tavern brawler, defender of the Hampshire Grants homesteads against the Yorker lawyers, fearless colonel of militia, prisoner of war, land speculator, blasphemous scourge of divines, self-taught philosopher, dying almost unnoticed on a frozen lake.

What did these apparently dissimilar early Americans have in common? Tom and Ethan shared a vision of an America of independent property owning farmers governing themselves in a free republic.

Learn more about Tom and Ethan’s dream for America at the Ethan Allen Institute’s **16th Annual Jefferson Day Dinner, Tuesday, April 14**, at the Windjammer Restaurant in South Burlington.

This year’s speaker is a nationally distinguished scholar with deep Vermont roots. **Dr. H. Nicholas Muller** (Ph.D. Rochester 1968) has been professor of history and associate dean at UVM, Vice President of the Vermont Historical Society, Treasurer of the Ethan Allen Homestead Trust, and President of Colby-Sawyer College.

He has written extensively on early Vermont in *Vermont History*, *Encyclopedia of Vermont* and *Vermont Life*. Few persons are more conversant with the colorful and turbulent events of Ethan’s day, during



Dr. H. Nicholas Muller

which Tom authored the Declaration of Independence.

“In all my years as an amateur student of both Tom and Ethan, I have never seen or heard a side-by-side comparison of their lives and philosophies by a knowledgeable historian like Nick Muller,” said EAI President John McClaughry. “This promises to be an informative and very enjoyable evening – don’t miss it.”

Members, friends, guests and the general public are invited. Reservations are required and may be made by April 12 by email at eai@ethanallen.org or by phone at 802-695-1448. The ticket price is \$35.

Taxpayer Protest Tea Parties Set for April 15

Vermonters concerned about the wild spending and money-printing schemes multiplying in Washington will gather on income tax day (Wednesday, April 15) to protest taxes, spending, and the prospects of inflation.

EAI President John McClaughry will speak at the Montpelier gathering (noon, State House lawn). Another gathering is set for downtown Rutland, and possibly other cities. For information, go to <http://taxdayteaparty.com/teaparty/vermont>

Dealing Responsibly with Same-Sex Marriage

COMMENTARY

Twelve years ago, no doubt emboldened by the Vermont Supreme Court's astonishingly imaginative opinion in *Brigham v State* (the 1996 education finance case), three same-sex couples went to court to demand that they be issued licenses to marry. They lost in the superior court, but were rewarded with the Supreme Court's 1999 opinion in *Baker v. State*.

That opinion instructed the legislature to promptly pass legislation giving same-sex couples "all or most" of the privileges of marriage (or else, the Court strongly implied, it would simply proclaim same-sex marriage from the bench).

The result was the controversial civil unions law of 2000, that essentially gave same-sex couples all the benefits of marriage except joint income tax return filing.

Since then the Massachusetts, California and Connecticut Supreme Courts have held, notwithstanding the scarcity of state constitutional support, that same-sex couples have a right to participate in marriage on the same basis as opposite-sex couples.

Since these decisions, a wave of constitutional referenda has made it crystal clear in thirty states that marriage is available only to one man and one woman (who are of age, legally competent, not closely related, and not already married.) Indeed, never in U.S. history has either a state legislature or a vote of the people authorized same-sex marriage.

But that may soon change. Gay and lesbian activists believe that Vermont's ultra-liberal legislature can become the first in the nation to legalize same-sex marriage. On their

behalf, Rep. Mark Larson and 58 Democratic cosponsors have introduced H.178, and Senators Peter Shumlin, John Campbell and Claire Ayer have introduced S.115.

The issue raises high emotions on both sides. The gay and lesbian activists, and their many straight supporters, believe that legislating same-sex marriage will wipe out a long legacy of disgraceful discrimination, and confer the much sought after status of marriage on loving and mutually committed couples unfairly discriminated against.

Probably a majority of opponents base their opposition on religious grounds, as contrary to church teachings and natural law. There is also a secular argument that deserves more attention than it has gotten.

Marriage, so this argument goes, serves three important social functions: procreation and child rearing, mutual care and assistance, and reining in horny young males by linking approved sex to a serious and long-lasting social commitment.

True, the sexual liberalism that began in the Sixties has undermined this third argument; nevertheless, it's important for the laws and customs to give maximum support to the traditional institution of marriage. At least that support will slow down the slide into totally commitment-free sexual license, resulting in ever more single mothers and fatherless children.

The gays and lesbians may well say, we're pro-marriage, and those are valid arguments. But how does allowing us, loving and committed couples, to enjoy the status and benefits of marriage undermine the institution of marriage?

The response is that prohibiting discrimination against same-sex couples seeking marriage cannot be limited to just those couples. If two men or two women can marry, why not two of each as a foursome? Or a Mus-

lim taking four wives? Or brothers and sisters? Or an entire Perfectionist "complex marriage" commune (Putney, 1830s)?

Gay marriage advocates scoff at this as a red herring. They should however, heed the argument made to the Supreme Court by Vermont Attorney General William Sorrell – certainly nobody's conservative – in the Baker appeal. Said he, "[If the Court accepts gay and lesbian Appellant's argument for] separating the [marriage] statutes from their language and their historical foundations, the groundwork will be laid for other groups to claim the right to marry. The most obvious are polygamists and proponents of group marriage. Following the arguments of Appellants, such persons would have strong claims to fit within the 'purposes' of the marriage statutes."

And there's the rub. Statutes and judicial opinions allowing every conceivable collection of humans to unite in legal marriage will eventually make the idea and practice of marriage a laughing stock – especially among young heterosexual males who society most wants to channel into stable, legally recognized relationships responsible for child rearing and support.

The legislature was faced with just such an emotionally charged issue in 1976: whether to create a Vermont lottery. The legislature decreed a referendum to get the opinion of the people. By a 72-28 margin, the voters supported the creation of a lottery. The next year the legislature adopted it.

That would be the responsible thing for this legislature to do on the issue of enlarging the definition of marriage. Then every legislator elected in 2010 would know where his or her constituents stood on the issue. The question could then be settled one way or the other with a clear mandate from the people.

Thomas Jefferson

on Liberty, Government and Debt

The author of the Declaration of Independence, who wrote “that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness,” offered us additional wisdom that holds as true today as it did 200 years ago; indeed, more so.



- “A wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government.”
- “Educate and inform the whole mass of the people ... They are the only sure reliance for the preservation of our Liberty.”
- “The majority, oppressing an individual, is guilty of a crime, abuses its strength, and by acting on the law of the strongest, breaks up the foundations of society.”
- “When we are directed from Washington when to sow and when to reap, we should soon want bread.”
- “I predict future happiness for Americans if they can prevent government from wasting the labors of the people under the pretense of taking care of them.”
- “The democracy will cease to exist when you take away from those who are willing to work and give to those who would not.”
- “I would rather be exposed to the inconveniences attending too much liberty than those attending too small a degree of it.”
- “My reading of history convinces me that most bad government results from too much government.”
- “Our greatest happiness does not depend on the condition of life in which chance has placed us, but is always the result of a good conscience, good health, occupation, and freedom in all just pursuits.”
- “Banking establishments are more dangerous than standing armies, and the principle of spending money to be paid by posterity, is but swindling futurity on a large scale.”
- “We must not let our rulers load us with perpetual debt. We must make our election between economy and liberty, or profusion and servitude.
- “What country can preserve its liberties if its rulers are not warned from time to time that the people preserve the spirit of resistance?”
- “The last hope of human liberty rests on us. We ought, for so dear a stake, to sacrifice every attachment and every enmity.”

The Shumlin Evolution: “There is no more tax capacity in Vermont. There is no more money in the bank.” (Rutland *Herald*, 1/31/07).

“And we don’t have it [tax capacity] anyway. We’re maxing out, mostly, the income tax, the sales tax, the rooms-and-meals tax, the cigarette tax, the beer tax – you name it, we’ve done it.” (VDB, 3/30/07).

But now, amazingly, in the midst of a recession with state tax revenues dropping, Sen. Shumlin has discovered a new source for \$20 million in revenue: “We can get it, we all know, from the main sources of revenue raising that the state has before it: property tax, adjustments to the sales tax, rooms and meals and income.” (VPR, 2/26/09)

Bingo! “Governments do not create wealth. The jobs they create are not value added. Those jobs, as important as they are to the security, health and

welfare of our country, simply recycle the money of those who created the wealth to begin with.” – Tom Torti, President, LCRCC (3/09)

Worried About Global Warming?

The Pew Research Center poll on people’s top priorities for their elected leaders shows that America and President Obama are completely out of sync on human-caused global warming. According to the survey of 1,503 adults, global warming, on its own, ranks last out of 20 surveyed issues. (SEPP 013109)

You’re Paying for This: “The [Windsor SW] preschool collaborative has been able to provide approximately 90% of 3- and 4-year olds in eight towns with a quality preschool experience.”

“This has enabled them to arrive in kindergarten with the skills they need to succeed, such as the ability to: follow directions and routines, wait and listen to instructions; take turns and share; and use writing instruments and tools appropriately.” – Jennifer Leak, Cavendish (RH 2/5/09).

Shrine of Lourdes Effect: The Wisconsin Policy Research Institute has published a study of the effect on Wisconsin taxpayers of migration into the state to sign up for Healthy Wisconsin (universal coverage for all “permanent” residents, plus those who remain to keep from losing the coverage). Their estimate: 142,000, at a cost of \$550 million a year. (*WPRI Report*, 1/09.)

That assumes, of course, that those people don’t migrate to Vermont to enjoy our coming universal coverage system.

The Murder of Federalism

Continued from Page 1

lion of \$2.8 billion assigned to South Carolina to reduce the state’s bonded debt.

Gov. Sanford explained to the President that spending all of the Stimulus funds would in two years create a \$1.2 billion hole in the state’s budget, when the Stimulus provisions terminate. “Unless your intention is to borrow more money that we don’t have to send to states like ours in 24 months, I don’t know how we would dig out of this hole without substantially raising taxes and in turn making our economy less competitive in producing jobs.”

Even before the Obama White House rejected Gov. Sanford’s request, on the grounds that the bill does not give the President waiver authority, the Democratic National Committee launched anti-Sanford media attack ads in South Carolina.

The Stimulus bill, its effects sharply illustrated by Gov. Sanford’s letter, opens possibly the final chapter in the long-running demise of federalism.

Forty years ago, the federal government offered states money to do what the Federal government wanted done; states could decline, and thus got no money.

Then, with the 55-mph speed limit and increased drinking age laws, Congress informed the states that unless they did Congress’s bidding, not only would they not get the money, but they would lose other money already granted (“crossover sanctions”).

Now Congress is telling the states that they must take the money, and they must use it as Congress directs, regardless of effects on state budgeting, taxation and responsibilities.

For instance, the Stimulus bill reverses the landmark welfare reform legislation of 1996 by rewarding states for adding people to the welfare rolls, instead of helping them find gainful employment.

To the extent that Stimulus funds pay for infrastructure improvements, broadband deployment, debt reduction and other one-time projects, the states can benefit (at the expense of future generations). But to the extent the act changes entitlements and creates expectations of subsidies that are not likely to continue beyond 2011, the venerable American principle of federalism will enter its terminal decline.

That this was done by a wholly irresponsible Congress, voting through a 1,434 page bill almost overnight, makes the murder of federalism even more deplorable.

A “Reaganomics Tail-ender” Replies to the *Rutland Herald*

COMMENTARY

An editorial in your newspaper (“Tail-enders and Radicals”, *Rutland Herald*, February 14) levied a full-bore attack on the “tail-enders of Reaganomics” who have criticized and opposed the just-approved \$787 billion Obama-Pelosi-Reid stimulus package.

Said the editorial, “the philosophy that brought the free market economy to a halt was unfettered, laissez faire, greed-is-good government-is-bad, trust-the-market-to-police-itself Ayn Rand capitalism.” This is laughably ridiculous.

First, a word about “greed”, a favorite target of left wing scorn. What the editorial means by “greed” is the pursuit of self-interest and profit within the law, as opposed to fraud, theft, deception, and force carried on outside the law. As such, “greed” is an ever-present motivation in American economic life, evidenced, for example, by the men who founded the Rutland Railroad, the Marble Bank, the Vermont Marble Company, and the Rutland Herald. .

Invoking “greed” does not explain economic calamities. The first place to look for an explanation is always the laws, regulations, preferences and monopolies created and fostered by governments.

There would be no present economic crisis were it not for the following contributions:

- A flood of cheap money for housing finance, loosed upon the economy by the Federal Reserve System. Congress created the Fed in 1913, confirmed its extraordinary financial powers in 1935. In 1971 the President (Nixon) terminated the inconvenient requirement of a gold reserve.

- The creation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation. Congress created and capitalized Fannie Mae (1938) and Freddie Mac (1970) to purchase home mortgages from primary lenders. Both publicly created but privately owned corporations enjoyed an implicit government guarantee. Both were notorious for aggressively driving the housing bubble, while lavishing millions in campaign contributions to key members of Congress (notably Rep. Barney Frank and Sen. Chris Dodd). That guarantee was made explicit in 2008 when both were put into government conservatorship.

- The Department of Housing and Urban Development requirement (1996) that 12 percent of all mortgages purchased by Fannie and Freddie go to borrowers with incomes below 60 percent of their area’s median income. By 2008 the required percentage was up to 28 percent. Between 2000 and 2005 Fannie and Freddie met those goals by issuing hundreds of billions of dollars of bonds, and buying a similar amount of mortgage securities, many of them backed by subprime mortgages made to borrowers who put less than 10 percent down.

- The refusal of Congress to adopt effective regulatory oversight of Fannie and Freddie. In 2005 the Bush Administration asked Congress to set up tighter lending standards. Faced with a Democratic filibuster threat, the Republican-controlled Senate was forced to let the measure die.

- The requirement by Congress (1995) that bank regulators deny applications for bank branches or mergers if the bank had a low Community Reinvestment Act rating. Complaints from activist groups like ACORN depressed CRA ratings, so banks caved in and made more risky subprime loans to gain regulatory approval.

This is just a quick sampler. The causes of the present economic collapse can not be found in “greed”, but in acts of the Federal government that made it legal and profitable for profit-seeking private sector actors to do very stupid and destructive things.

Can any trace of “laissez-faire Ayn Rand capitalism” be found in this history of catastrophic government bungling? Absolutely not.

Friends of laissez-faire capitalism have long been appalled by this endless series of stupid government interventions, enacted by corrupted politicians who welcomed campaign support from the privileged beneficiaries while scorning anything that might be called “laissez faire capitalism”.

What libertarian novelist Ayn Rand (see *Atlas Shrugged*) would have thought about all this could certainly not be printed in this newspaper. – JOHN McCCLAUGHRY



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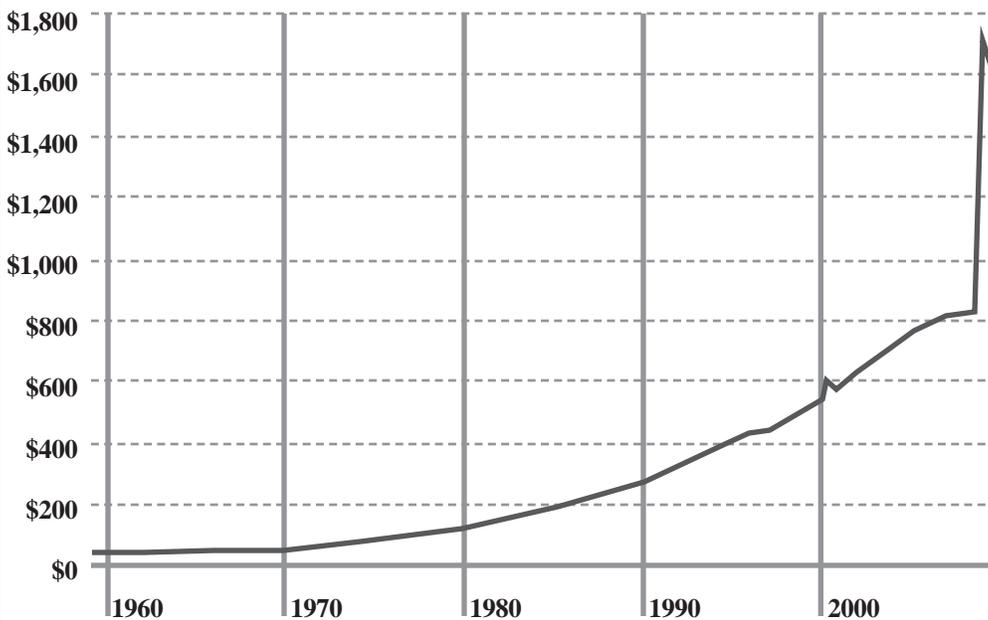
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A BASE FOR INFLATION

U.S. MONETARY BASE
CURRENCY IN CIRCULATION AND BANK DEPOSITS AT FEDERAL RESERVE BANKS IN BILLIONS OF U.S. DOLLARS.



Source: Federal Reserve Bank of St. Louis



The chart at left, from the Federal Reserve Bank of St. Louis, shows what the “recovery” plan promoted by President Obama, the Fed, and the Democratic Congress is likely to hold in store for America.

