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National Road project shaped U.S. economic and constitutional history

Since the inception of the American republic, roads have been an important subject of government investment.

In 1806, President Thomas Jefferson signed legislation providing for the survey and laying out of a road that would carry travelers between Cumberland, Md., and Vandalia, Ill. The project would be funded by the federal government. It would come to be called the Cumberland Road or National Road. When built, it constituted the nation's first federally assisted interstate highway. Jefferson and the other presidents of the National Road era saw it as an essential instrument of national unity and economic growth.

The National Road contributed much to the economic, transportation and cultural history of the United States. It also influenced its constitutional history. It did so by serving as the context for a legal battle over the scope of the power in the Constitution to tax (and spend) to provide for the general welfare of the United States (Article I, Section 8, Clause 1). This aspect of the National Road saga is depicted in a book that I wrote, "The National Road and the Difficult Path to Sustainable National Investment," (University of Delaware Press; The Rowman & Littlefield Publishing Group Inc., 2011).

What was the constitutional fight about? Jefferson said he believed that the spending power should be construed narrowly. It should be confined, he argued, to those matters that were specified in the so-called "enumerated powers" that followed the general welfare clause. This would exclude road building. Nevertheless, Jefferson signed the 1806 National Road law, perhaps believing that a constitutional amendment to solve the interpretive problem would follow.

His friend and successor, James Madison, continued to sign appropriation legislation to build the road (beginning in 1811) west from Cumberland. However, Madison profoundly believed that a con-

stitutional amendment was necessary to continue the project. None was forthcoming.

The constitutional views of Jefferson and Madison conflicted with those of Alexander Hamilton, Madison's partner in the crafting of the Federalist Papers and President George Washington's secretary of the treasury. Hamilton said he believed that the spending power should be read literally to permit Congress to appropriate for any project that provided for "the general welfare of the United States," thus affording greater flexibility to address future problems.

In 1817, James Monroe, our fifth president, came to the White House. He presided over the continued building of the road toward the west and confronted the problem of keeping the road in repair. While sympathetic to the cause of federalism and limited government, Monroe saw the need for economic growth through federally aided infrastructure.

In a long, closely reasoned legal memorandum, he concluded that Congress had the authority, under the spending power, to appropriate funds for the repair of the road and for its extension through Ohio, Indiana and part of Illinois. Congress responded in 1824 with legislation for this purpose. A precedent had been set for a broad application of Article I, Section 8, Clause 1. See "Compilation of Papers of the Presidents" (J.D. Richardson, Ed., 1903, 2:144-83).

It was not until the 1930s that the Supreme Court came to rule on the matter. It decided that Hamilton's view of the issue was the correct one. Monroe's National Road memo was cited. *United States v. Butler*, 297 U.S. 1 (1936). The following year, the court upheld the Social Security Act's retirement benefit program under the spending power. *Helvering v. Davis*, 301 U.S. 619 (1937). The stage was set for the New Deal and Great Society programs of the 1930s and 1960s which expanded the role of government and established the safety net and investment programs we know today.

BY TED SKY

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In 1987, the Supreme Court reaffirmed the 1930s broad interpretation of the spending power in a case involving the interstate highway program, *South Dakota v. Dole*, 483 U.S. 203. In 2012, the Supreme Court sustained, on the basis of the taxing power described above, the transformative Patient Protection and Affordable Care Act, enacted during President Barack Obama's first term. *National Federation of Independent Business et al. v. Sebelius*.

The impact of the National Road was not confined to constitutional issues. My book covers the culture of the road in its prime and the accounts of emigrants, travelers, foreign visitors and wagon drivers. It also relates the fiscal circumstances that

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forced the transfer of the road to the affected states beginning in the late 1830s.

In the early 20th century, the advent of the automobile led to a revival of interest in good roads. Building on the precedent of the National Road, Congress enacted a series of laws designed to provide federal aid to states for highway construction. By the beginning of World War II, a network of federal aid highways spanned the nation.

It included U.S. Route 40, which crossed the country and embraced the route of the former National Road. This network was enhanced by the interstate highway system, commenced in 1956. It was in large measure the product of the leadership of President Dwight Eisenhower.

The National Road story is replete with contemporary significance. The maintenance of a comprehensive body of viable transportation infrastructure is as essential to the nation's general welfare today as it was in 1806. Cooperative federalism, involving both state and federal funding, is critical to the sustenance of such a system. This important work must be conducted on a fiscally sustainable basis.

Current generations have not forgotten the building of the National Road or its contribution to American progress. A conference devoted to the preservation of historic roads meets on a biennial basis to mark the significance of this heritage to the nation and to advocate for its preservation. The most recent "Preserving the Historic Road" conference was held in Indianapolis in September.

Among the resources that it considered was the National Road and its key role in federal public investment history.

For more information, see historicroads.org and Paul Daniel Marriotti, "From Milestones to Mile-Markers: Understanding Historic Roads," prepared for America's Byways Resource Center by the National Trust for Historic Preservation, 2004.