



**KENNESAW STATE
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COLES COLLEGE OF BUSINESS
*Bagwell Center for the Study of Markets
and Economic Opportunity*

Commentary

Title:

*"Infrastructure, yes. Federal aid,
no."*

Author(s):

Burton Folsom, Jr., Bagwell Center
Affiliated Faculty

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Everyone agrees that the U.S. needs good “infrastructure”—roads, highways, and bridges. But recent federal infrastructure bills enacted into law have been disasters for taxpayers. Congress’s most recent infrastructure bill, passed late in 2021, allocated about \$1,200,000,000,000 (i.e., \$1.2 trillion) for “infrastructure”, but, according to David Ditch at the Heritage Foundation, only about 4 percent of that huge sum went to improve highways and bridges. Some went for shaky experiments in mass transit and much more went for electric vehicles, emissions controls, and even Medicaid expansion, which had nothing to do with infrastructure. Many communities received various grants, which congressmen eagerly used to ingratiate themselves with the voters in their districts who benefit from them. That is one reason the bill passed so easily with bi-partisan support.

Such wasteful spending was not what our nation’s Founders intended to happen. In fact, they designed the Constitution to try to make sure such destructive actions could not occur. Our early presidents usually approached spending bills with this question: “Is this spending constitutional?” Article 1, Section 8 of the Constitution restricted the power of Congress to spending taxpayer dollars for only a limited number of items, mainly national defense. Only then, if a spending bill met the constitutional standard, would Congress and the president then ask if it was wise, if it would benefit the nation, or if it would gain votes.

Our nation in its early years desperately needed infrastructure, or “internal improvements” as they called it, to get people and products into the interior of our expanding country. We needed to improve roads, canals, and waterways—the technology of the early 1800s—to create economic development for national prosperity. But the Constitution does not grant Congress the power to appropriate funds for roads and canals. The Founders did recognize that improving our highways was essential for economic development, but they believed that states, city governments, or private companies should do the work. Neither good government nor just results occurred, they believed, when the people in Georgia could be taxed to build a canal in New York.

The problem, of course, is that congressmen in New York after 1800 had incentives to argue that federal funds could be used profitably and for the national interest to build the Erie Canal, which would connect New York City to Cleveland on the Great Lakes, and thus allow people and goods to flow smoothly across much of the northern part of the country. New York had become the largest state in the Union and presidents had to decide whether to chase votes in the north or follow the Constitution.

The issue of federal aid to internal improvements came to a head in 1817 under President James Madison when Congress, led by New Yorkers, passed the Bonus Bill of 1817, which would have used federal funds to build the Erie Canal and other roads across the country. Madison, in his last week as president, responded with a thundering veto. “I am constrained,” he said, “by the insuperable difficulty I feel in reconciling the bill with the Constitution.”

Madison admitted the bill would probably help his country economically, but then he observed that “such a power is not expressly given by the Constitution . . . and can not be deduced from any part of it without an inadmissible latitude of construction and a reliance on insufficient precedents.”

The promoters of the bill in Congress had argued that building roads and improving rivers at federal expense would “render more easy and less expensive the means and provisions for the common defense.” But Madison retorted: “To refer the power in question to the clause ‘to provide for the common defense and general welfare’ would be contrary to the established consistent rules of interpretation.” He added, “Such a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood

to belong to them, the terms ‘common defense and general welfare’ embracing every object and act within the purview of a legislative trust.”

Today, most congressmen have abandoned the limited action prescribed by “common defense and general welfare” and argue that the term is broad and can include almost any spending bill imaginable. Thus, the \$1.2 trillion infrastructure monstrosity fits the modern view nicely. But Madison concluded that twisting the General Welfare clause “would have the effect of subjecting both the Constitution and the laws of the several States in all cases not specifically exempted to be superseded by laws of Congress.”

These words from Madison carry exceptional weight because he was a chief architect of the U.S. Constitution. At the convention in Philadelphia in 1787, Madison sat in front of the presiding officer. He never missed an important speech, and he took copious notes on the proceedings. When he says that the General Welfare clause cannot be used to give Congress “a general power of legislation instead of the defined and limited one,” he is echoing the original intent of the Founders.

Even so, Madison’s veto may have surprised Congress because earlier he had conceded that “establishing throughout our country the roads and canals...can best be executed under the national authority. No objects within the circle of political economy so richly repay the expense bestowed upon them.” Madison believed, however, that the country was better off following the Constitution rather than twisting its meaning to secure more rapid economic growth. If Americans want federal road building, he reasoned, then pass a constitutional amendment to permit it.

Madison’s principled veto of the Bonus Bill of 1817 set a precedent that lasted for generations. The Erie Canal, for example, never received federal funds, but the state of New York built it and made it a huge financial success. New York had simply paid for its own infrastructure. In 1830, however, Congress tested the resolve of President Andrew Jackson with the Maysville Road Bill, which would have used federal funds to build a turnpike in Kentucky.

Jackson scrupulously followed Madison’s lead and vetoed the bill. Sure, the proposed turnpike might be economically sound, Jackson conceded, but if the country used federal funds to build a turnpike in Kentucky, “there can be no local interest that may not with equal propriety be denominated national.” He echoed Madison by adding, “A disregard of this distinction would of necessity lead to the subversion of the federal system.”

And this feared “subversion of the federal system” may be where we are today. Not only do we have taxpayers paying for infrastructure thousands of miles away from them; but politicians today also get to secure pet personal projects as “infrastructure” when they are not. If James Madison, not Joe Biden, would have been president in 2021, the U.S. taxpayers, on one bill alone, would be \$1,200,000,000,000 richer. Teachers today should at least teach the Founders’ view of the Constitution and let students think about the advantages, and possible disadvantages, of Madison’s principled veto.